



# FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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Vol. 125

31 January 2016

No. 1

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## Appointment

Clare Ann Neves-Scott, Midwife, Health and Social Services Department, 22.12.15.

Ashley Grimmer, Scientific Fisheries Observer, Natural Resources Department, 03.01.16.

Declan William Bonner, Apprentice Electrician, Education Department, 04.01.16.

Samuel George Cockwell, Water Supervisor, Water Section, Public Works Department, 04.01.16.

Ian James McLeod, Foreman, Highways Section, Public Works Department, 05.01.16.

Martin Eduardo Peirega, Skilled Handyperson, Property and Municipal Section, Public Works Department, 05.01.16.

Dennis David Summers, Plant Operator/Handyperson, Highways Section, Public Works Department, 05.01.16.

Regitze Petersen, Agricultural Assistant, Natural Resources Department, 11.01.16.

Paul Brian Barton, Deputy Head Teacher, Falkland Islands Community School, Education Department, 14.01.16.

Veronica Iriarte, Fisheries Observer, Natural Resources Department, 16.01.16.

Anne Margaret Milston, Deputy Head Teacher, Infant and Junior School, Education Department, 17.01.16.

Kirsty Bradley, Fisheries Observer, Natural Resources Department, 25.01.16.

Cristina Gonzalez-Fernandez, Pharmacy Technician, Health and Social Services Department, 25.01.16.

Brais Sanchez, Scientific Fisheries Observer, Natural Resources Department, 25.01.16.

Michael Keith Sawden, English Teacher, Falkland Islands Community School, Education Department, 25.01.16.

## Completion of contract

John Francis Shea, Head of Policy, Policy Department, 15.01.16.

Thomas Alexander James Busbridge, Scientific Fisheries Observer, Natural Resources Department, 21.01.16.

Karl Stuart Jackson, Staff Nurse, Health and Social Services Department, 21.01.16.

Harriet Elizabeth Rushton, Scientific Fisheries Observer, Natural Resources Department, 21.01.16.

Karen Mhairi Brand, Advanced Childcare Practitioner, Health and Social Services Department, 26.01.16.

Zoe Alexandra Gill, English Teacher, Falkland Islands Community School, Education Department, 26.01.16.

## Determination of appointment

Patrick Andrew Minto, Plant Operator/Handyperson, Property and Municipal Section, Public Works Department, 22.12.15.

Elane Marie Morrison, Licensing Clerk, Emergency Services Department, 22.01.16

## Resignation

Vladimir Laptikhovsky, Stock Assessment Scientist, Natural Resources Department, 17.03.15

Denise Herrera, Learning Support Assistant, Infant and Junior School, Education Department, 17.12.15.

Kenton John Douglas Goodwin, Plant Operator/Handyperson, Highways Section, Public Works Department, 01.01.16.

Jason Neville Alazia, Plant Operator/Handyperson, Water Section, Public Works Department, 03.01.16.

Michael Brough, Oil and Gas Programme Manager, Policy Unit, 11.01.16.

Melissa Jane McKinley, Recruitment Officer, Falkland Islands Government Office, 15.01.16.

Maria Anne Faria, Auxiliary Nurse, Health and Social Services Department, 21.01.16.

Katherine Jane Short, Finance Clerk, Health and Social Services Department, 22.01.16.

Terence Newman, Foreman, Highways Section, Public Works Department, 29.01.16.

#### **Transfer**

Stacey Louise Steen, from Police Constable to Station Enquiry Officer, Royal Falkland Islands Police, Emergency Services Department, 01.01.16.

Mandy John Lee, from Cleaner, Secretariat to Cleaner, Mineral Resources Department, 06.01.16.

Serena Samantha Sinclair, from Clerk, Environmental Planning Department to Finance Clerk, Health and Social Services Department, 15.01.16.

#### **NOTICES**

No. 1 21 December 2015

#### **Medical Practitioners, Midwives and Dentists Ordinance section 4 Registered Medical Practitioners, Midwives and Dentists**

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

#### **Doctors**

Mr Ahmad Cheema MMBS FRCS  
Dr Rebecca Edwards MBBS DRCOG DFFPRH  
Dr Narendra Dave MBBS MRCGP DRCOG  
Dr Mukhtar Uqaili MBBS MRCGP(Int) MCPS DPH  
Dr Oliver Cooper MBBS MRCGP DFM  
Dr Sherwood Elcock GP MBChB FRCGP  
Dr Arthur Allison BSc MBChB FRCA  
Dr Michael Sterns BDS FRCS  
Dr Donald MacLeod MBChB FFARCSI  
Dr Rathnam Chandrasekhar MBBS MD DRCOG DFFP  
Dr John Richer MA (Oxon) PhD DipClin Psych  
Dr Tim McInerney BA MBBS FRCPsych DipFor Psych  
Mr Norman Binnie BSc (Med Sci) MBChB MD FRCSEd  
Dr Oscar Varas Specialist Endoscopist  
John Clark MBChB FRCPATH DFM  
Dr Alex Wonner MD  
Mr Peter Richard Sill MBChB FRCOG  
Dr Nigel Leaver MBChB  
Dr Kevin Patrick MBChB FRCA  
Dr Edward Pearson MBChB FRNZCGP Dip Obs Dip MSM  
Michael Parsons MB BCh FRCPATH Dip FMS DMJ (Path)  
Dr Laszlo Pal Szabo Pre-hospital care Anaesthetic and  
Emergency Care GP

Dr Marek Stankiewicz MD GP  
Dr Ricardo Marin MD Cardiology  
Dr Evelyn Dykes MBChB FRCS FRCS-Paediatric DTMH MSc  
Dr Mandy Fry MBBS Mphil DGH DFFP FRCGP  
Dr Dipankar Bandyopadhyay MBBS FRCPsych  
Dr Sanjay Kumar Gupta MBBS Msonth MRCS MRCGP  
Dr Emily Selby MD  
Dr Keegan Selby MD  
Dr Benjamin Wellens Clinical Psychologist D.Clin Psych  
Ms Venessa Lawton MBChB MRCOG MD  
Dr Jeffrey Green MBBS BS London  
Dr Gerhard Korff Specialist in Anaesthesiology MD  
Dr David Edwards-Moss MBBS DTM&H  
Mr Sean Martin Kelly MBBS FRCS CD FRCS Ed Ortho  
Mr Matthew Hayes DM FRCS FRCS Urology  
Dr Bernadette M Paver MBBS MRCGP DPD DOccMed

#### **Dentists**

Dr Benjamin Walters LLM(U.Wales) CPE(UCLAN) BDS  
Dr Sally Owen BChD  
Dr David Fyfe BDS (UK)  
Dr Alessandra Taylor DDS (IT) MSC (UK)  
Dr Mary Ashdown BDS MSc DPHRCS DPDS

#### **Midwives**

Mrs Mandy Heathman SRN SCM  
Miss Jacqueline Earnshaw SRN SCM  
Ms Vimbainashe Doherty BSc RGN MSc Hons Midwifery  
Mrs Mavis Kachimba RGN RM BSc Nursing  
Miss Talaa Barkey RGN RM  
Mrs Angela Joseph RGN RM  
Mrs Rose Olewunne RGN RM  
Mrs Gail Johnson RM  
Mrs Claire Neves RM

Dated 21 December 2015

S. ELCOCK,  
*Acting Chief Medical Officer.*

No. 2 5 January 2016

#### **Supreme Court of the Falkland Islands**

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

Take notice that **Wayne Ian Summers James Clasen** of 15 Davis Street, Stanley, died on 5 December 2015.

Whereas **Donna Monica Clasen** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 5 January 2016

L-M. REINDERS,  
*Registrar, Supreme Court*

No. 3

21 January 2016

**Law Revision (Paving) Ordinance**  
*section 3*

**Appointment of Statute Law Commissioner and Acting Statute Law Commissioner**

1. Section 3(1) of the Law Revision (Paving) Ordinance (No 8 of 2015) provides for the Governor to appoint a Statute Law Commissioner.

2. In exercise of my powers under section 3(1) of the Law Revision (Paving) Ordinance, I, June Sandra Tyler-Haywood, Acting Governor of the Falkland Islands, appoint **Rosalind Catriona Cheek** as Statute Law Commissioner.

3. This appointment is deemed to have had effect from 30 November 2015, and continues in effect until 15 June 2017 unless terminated sooner.

4. In exercise of my powers under section 3(1) of the Law Revision (Paving) Ordinance and section 58 of the Interpretation and General Clauses Ordinance, I also appoint **Charles Peter Judge** as acting Statute Law Commissioner in order to exercise the powers or perform duties of the Statute Law Commissioner when Rosalind Catriona Cheek is unable to exercise the powers or perform the duties of office owing to absence, illness, or any other cause.

5. This acting appointment continues in effect for so long as the substantive appointment made in paragraph 2 remains in force.

Dated 21 January 2016

J. S. TYLER-HAYWOOD,  
*Acting Governor.*

No. 4

25 January 2016

**Registration Ordinance and the Falkland Islands Constitution Order**

**Appointment of Acting Registrar General**

1. In exercise of my powers under the Registration Ordinance and the Falkland Islands Constitution Order 2008 (SI 2008/2846), I Colin Roberts C.V.O., Governor of the Falkland Islands hereby appoint **David Charles Brown** to be an Acting Registrar General to discharge the functions and duties of the post of Registrar General whenever the substantive holder of the post of Registrar General Elizabeth Jayne Dent and the holder of the post of Acting Registrar General Charles Peter Judge are not able to discharge the same through absence from the Falkland Islands, unavailability or inability to perform the functions and duties of the post.

2. This appointment has effect from the date given below, and continues in effect whilst David Charles Brown holds office as Head of Legal Services for the Falkland Islands, unless terminated sooner.

Dated 25 January 2016

C. ROBERTS,  
*Governor.*

No. 5

27 January 2016

**Statutory Appointments**

1. I appoint **Stuart James Walker** to be —

**Commissioner for Oaths** under section 2 of the Commissioners for Oaths Ordinance (Title 22.3);

**Notary Public** under section 47 of the Administration of Justice Ordinance (Title 22.1); and

**Registrar** for marriages generally under section 25 of the Marriage Ordinance (Title 38(2).7).

2. These appointments have effect from the date of signature below and continue in effect until the expiry of the contract of employment of Stuart James Walker with the Falkland Islands Government, unless terminated sooner.

Dated 27 January 2016

C. ROBERTS,  
*Governor.*

No. 6

28 January 2016

**Index of Retail Prices**

The Index for the quarter ended 31 December 2015 has now been completed.

The Index has decreased during the quarter to 101.53; this equates to a 0.46% increase as shown below:

Date	Index	Annual % Increase/(Decrease)	Quarter % Increase/(Decrease)
31.03.15	102.61	1.4	0.37
30.06.15	101.74	0.3	(0.8)
30.09.15	102.00	(0.3)	0.26
31.12.15	101.53	(0.7)	(0.46)

Dated 28 January 2016

L. LYSE,  
*for Financial Secretary.*

No. 7

29 January 2016

**Education Ordinance (Title 29.1)**  
*section 57*

**Academic Year 2016 – 2017  
Term Dates**

Term One will begin in September

Term Two will begin in January

Term Three will begin in May

**Term One**

Tuesday 6 September – Friday 16 December 2016

**Half Term**

Monday 24 October – Friday 28 October 2016 (inclusive)

**Term Two**

Monday 23 January – Thursday 13 April 2017

**Half Term**

Monday 27 February – Friday 3 March 2017 (inclusive)

**Term Three**

Monday 1 May – Thursday 10 August 2017

**Half Term**

Monday 12 June – Friday 16 June 2017 (inclusive)

**Public Holidays** (schools closed)

Monday 3 October 2016      Peat Cutting Monday

Thursday 8 December 2016      Battle Day

Friday 14 April 2017      Good Friday

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

Friday 2 September 2016

Monday 5 September 2016

The equivalent of three Professional Development days to be organised at the discretion of the Head Teachers.

**Camp Schools**

Term dates for Camp Schools may be modified to suit the convenience of farms provided that children receive 190 days schooling and the dates are agreed with the Head Teacher of Infant Junior School/Camp Education in advance.

Dated 29 January 2016

T. HILL,  
*Director of Education.*



# FALKLAND ISLANDS GAZETTE

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*No. 2*

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## **Appointment**

Gina Marie Green, Learning Support Assistant, Infant and Junior School, Education Department, 25.01.16.

Stephanie Linda Maxwell, Learning Support Assistant, Infant and Junior School, Education Department, 25.01.16.

Raymond Evans, Power Station Operator, Power and Electrical Section, Public Works Department, 01.02.16.

Christine Alison Elizabeth Hewitt, Trainee Accountant, Treasury, 01.02.16.

Jessica Briony Jones, PhD Intern, Department of Natural Resources, 01.02.16.

Phillip Ellis Wells, Head Teacher, Falkland Islands Community School, Education Department, 06.02.16.

Terrence Browning, Labourer, Highways Section, Public Works Department, 18.02.16.

## **Completion of contract**

Christopher John Bowden, Internal Auditor, Treasury, 29.02.16.

## **Resignation**

Alexander Charles Henry, Driver/General Assistant, Plant and Vehicle Section, Public Works Department, 19.02.16.

Clare Louise Howes, Training and Development Co-ordinator, Training Centre, Education Department, 19.02.16.

Lewis Ronald Morrison, Assistant Foreman, Highways Section, Public Works Department, 19.02.16.

Imogen Fiona Didlick, Legal Secretary, Law and Regulation Department, 24.02.16.

Martin Eduardo Peirega, Skilled Handyperson, Property and Municipal Section, Public Works Department, 26.02.16.

Sheryl Anne Winning, Accounts Clerk, Health and Social Services Department, 26.02.16.

## **Transfer**

Zena Butler, from Customs and Immigration Officer, Customs and Immigration Department to Police Constable, Royal Falkland Islands Police, Emergency Services Department, 08.02.16.

Lee Anthony Martin, from Police Constable, Royal Falkland Islands Police, Emergency Services Department to Housing Officer, Housing Section, Public Works Department, 10.02.16.

Rodolfo Fernando Borquez Rogel, from Plant Operator/Handyperson, Highways Section to Plant Operator/Handyperson, Water Section, Public Works Department, 15.02.16.

Daniella Dawn Curtis, from Duty Supervisor, Stanley Leisure Centre, Central Services Department to Stores/Handyperson, Property and Municipal Section, Public Works Department, 22.02.16.

## NOTICES

No. 8 7 December 2015

### **Museum and National Trust Ordinance** *section 4*

#### **Appointment of Members of the Trust**

In accordance with section 4 of the Museum and National Trust Ordinance the following persons were appointed members of the Museum and National Trust:

**John Richard Cockwell** from 1 May 2015 to 30 April 2018;  
**Denise McPhee** from 1 May 2015 to 30 April 2018; and  
**Paul Ellis** from 1 December 2015 to 30 November 2018.

Dated 7 December 2015

C. ROBERTS C.V.O.,  
*Governor.*

No. 9 1 February 2016

### **International Fishing Limited** **Company Number: 10589**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 31 January 2016.

Dated 1 February 2016

E. J. DENT,  
*Registrar of Companies.*

No. 10 9 February 2016

### **Supreme Court of the Falkland Islands**

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

Take notice that **Riley Ethero Short** of 11 Barrack Street, Stanley, died on 19 January 2016.

Whereas **Brenda Short** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 9 February 2016

L-M. REINDERS,  
*Registrar, Supreme Court.*

No. 11 12 February 2016

### **Falkland Islands Pensions Scheme Ordinance** *section 5*

#### **Appointment of Members of Pensions Board**

1. Section 5(1) of the Falkland Islands Pensions Scheme Ordinance provides that the Governor shall appoint members to the Pensions Board.

2. In exercise of my powers under section 5(2)(a) I appoint **Andrew Grant McKenzie Irvine** from 1 December 2015 to 30 November 2018 to be a member of the Board.

3. In exercise of my powers under section 5(2)(c) I appoint **Mark William Neves** from 1 December 2015 to 30 November 2018 to be a member of the Board.

4. In accordance with Schedule 1, Part 1, paragraph 2(3) **Andrew Grant McKenzie Irvine** is chairman of the Board.

5. These appointments have effect and continue in effect as detailed in paragraph 2 above and in accordance with the Falkland Islands Pensions Scheme Ordinance, unless terminated sooner.

Dated 12 February 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 12 18 February 2016

### **Administration of Justice Ordinance** *Schedule 3, Part I, paragraph 3*

#### **Appointment of Bailiffs and removal from office of Bailiffs**

1. Paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance (Title 22.1) provides that the Governor may, after consulting with the Chief Justice or such person as is nominated by the Chief Justice for the purpose, appoint any person to be a bailiff.

2. In exercise of my powers under paragraph 3(1) and following consultation with the Registrar of the Supreme Court and High Bailiff as nominated by the Chief Justice, I now appoint **Rhiannon Elinore Didlick-Smith** and **Graham John Didlick** to be bailiffs.

3. This appointment has effect from the date given below, and continues in effect whilst agreement for the provision of bailiff services exists between Invenio Falkland Islands Limited and the Falkland Islands Government, and in accordance with Part I of Schedule 3 to the Administration of Justice Ordinance, unless terminated sooner.

4. Paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance (Title 22.1) provides for the Governor to remove any person from office as bailiff.

5. **Stephen William Lapham** was appointed bailiff with effect from 7 March 2014 and **Philip Robinson** was appointed bailiff with effect from 3 April 2014.

6. In exercise of my powers under paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance I now remove **Stephen William Lapham** and **Philip Robinson** from office as bailiffs.

Dated 18 February 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 13 18 February 2016

**Commissioner for Oaths Ordinance**  
*section 2*

**Appointment of Commissioner for Oaths**

1. Section 2(2) of the Commissioner for Oaths Ordinance (Title 22.3) provides that the Governor may appoint commissioner for oaths.

2. In exercise of my powers under section 2(2), I appoint **Pauline Lesley O'Rourke** to be a commissioner for oaths.

3. This appointment has effect from the date below, and continue in effect whilst **Pauline Lesley O'Rourke** continues to practice law in the Falkland Islands, unless terminated sooner.

Dated 18 February 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 14 18 February 2016

**Falkland Islands Pensions Scheme Ordinance**  
*section 5*

**Appointment of Member of Pensions Board**

1. Section 5(1) of the Falkland Islands Pensions Scheme Ordinance provides that the Governor shall appoint members to the Pensions Board.

2. In exercise of my powers under section 5(2)(c) I appoint **Karen Lucetta Steen** from 1 December 2015 to 30 November 2018 to be a member of the Board.

3. This appointment has effect and continues in effect as detailed in paragraph 2 above and in accordance with the Falkland Islands Pensions Scheme Ordinance, unless terminated sooner.

Dated 18 February 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 15

18 February 2016

**Supreme Court of the Falkland Islands**  
**Notice under the Administration of Estates Ordinance**  
**(Title 68.1)**

Take notice that **William Henry Ross** of 2 Elderly Care Unit, King Edward VII Memorial Hospital, Stanley, died on 22 August 2015.

Whereas **Paula May Vatamanu** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 18 February 2016

L-M. REINDERS,  
*Registrar, Supreme Court.*

No. 16

24 February 2016

**Falkland Islands Constitution Order 2008**  
*section 95*

**Complaints Commissioners Ordinance 2010**  
*section 4*

**Appointment of Complaints Commissioner and Designation of Principal Complaints Commissioner**

1. Section 95(1) of the Falkland Islands Constitution Order 2008 provides for the Governor acting in his discretion to appoint a Complaints Commissioner.

2. In exercise of my powers under section 95(1), I appoint **Richard Sawle** to be a Complaints Commissioner.

3. Section 4 of the Complaints Commissioners Ordinance 2010 provides for the Governor acting in his discretion to designate a Commissioner as the Principal Complaints Commissioner.

4. In exercise of my powers under section 4, I designate **Richard Sawle** to be the Principal Complaints Commissioner.

5. This appointment and designation have effect from 16 January 2016 for six months (expiring 31 July 2016), unless terminated sooner.

Dated 24 February 2016

J. S. TYLER-HAYWOOD,  
*Acting Governor.*

No. 17

24 February 2016

**Application for Falkland Islands Status**

Notice is hereby given that:

**Anastasia Alexandrovna Markina  
Benjamin Noel Hoyles; and  
Cecil George Crowie**

have applied through the Principal Immigration Officer for Falkland Islands Status to be granted by His Excellency the Governor. Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 21 March 2016.

Dated 24 February 2016

J. E. SMITH,  
*Immigration Officer.*

No. 18

24 February 2016

**Application for Naturalisation**

Notice is hereby given that **Raycrestle Falalimpa Thomas** is applying to His Excellency the Governor for naturalisation as a British Overseas Territories Citizen. Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs and Immigration Department, Stanley no later than 21 March 2016.

Dated 24 February 2016

J. E. SMITH,  
*Immigration Officer.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*29 February 2016*

*No. 1*

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The following are published in this Supplement –

**Land (Non-Residents) (Amendment) Ordinance 2015 (No 12 of 2015);**

**Mental Health (Approved Practitioners) Order 2016 (SR&O No 1 of 2016);**

**Land (Non-Residents) (Amendment) Ordinance 2015 (Correction) Order 2016 (SR&O No 2 of 2016);**

**Taxes (Amendment) Ordinance 2015 (Correction) Order 2016 (SR&O No 3 of 2016);**

**Maritime Safety and Security (FIPASS Restricted Zone) Designation Order 2016 (SR&O No 4 of 2016);**

**Stanley Services Limited (Residence in the Falkland Islands) Order 2016 (SR&O No 5 of 2016); and**

**Road Traffic (Stanley Speed Limit Zone) Regulations 2015 (Correction) Order 2016 (SR&O No 6 of 2016).**

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Land (Non-Residents) (Amendment) Ordinance 2015**

(No: 12 of 2015)

ARRANGEMENT OF PROVISIONS

Section

1. Title
2. Commencement
3. Section 2 amended — Interpretation

**ELIZABETH II**



**FALKLAND ISLANDS**

COLIN ROBERTS C.V.O.,  
*Governor.*

**LAND (NON-RESIDENTS) (AMENDMENT) ORDINANCE 2015**

(No: 12 of 2015)

*(assented to: 8 January 2016)*  
*(commencement: on publication)*  
*(published: 29 February 2016)*

**AN ORDINANCE**

To amend the Land (Non-Residents) Ordinance (No. 14 of 1999) to remove the requirement that a company is to be regarded as resident in the Falkland Islands as provided by the Taxes Ordinance 1997.

ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Land (Non-Residents) (Amendment) Ordinance 2015.

**2. Commencement**

This Ordinance comes into force on publication.

**3. Section 2 amended — Interpretation**

Section 2(2) is amended as follows —

(a) by deleting paragraph (b)(ii); and

(b) in paragraph (b)(i) by —

(i) deleting the words “; or”; and

(ii) renumbering the remaining words to fit into paragraph (b).

Passed by the Legislature of the Falkland Islands on 17 December 2015.

CHERIE CLIFFORD,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE CLIFFORD,  
*Deputy Clerk of the Legislative Assembly.*

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## SUBSIDIARY LEGISLATION

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### MENTAL HEALTH

#### **Mental Health (Approved Practitioners) Order 2016**

S. R. & O. No. 1 of 2016

*Made:* 4 February 2016

*Published:* 29 February 2016

*Coming into force:* 2 February 2016

I make this order under section 91 of the Mental Health Ordinance (No 7 of 2010) —

(a) after consulting the Chief Medical Officer on the appropriate qualifications, training and experience required by different classes of professionals for initial inclusion on the list of approved practitioners, as required by section 91(4); and

(b) without consulting Executive Council because, in my judgement, the urgency of the matter requires me to act before I can consult Executive Council.

#### **PART 1 INTRODUCTION**

##### **1. Title**

This order is the Mental Health (Approved Practitioners) Order 2016.

##### **2. Commencement**

This order is deemed to have come into force on 2 February 2016.

##### **3. Approved doctors**

Each person named in Schedule 1 is a medical practitioner who is an approved doctor for the purposes of the Ordinance.

##### **4. Approved professionals**

Each person named in Schedule 2 is a nurse, social worker or other professional who is an approved professional for the purposes of the Ordinance.

##### **5. Revocation of Orders**

The following Orders are revoked —

(a) Mental Health (Approved Practitioners) Order 2014 (S. R. & O. No. 4 of 2014)

(b) Mental Health (Approved Practitioners) (No. 2) Order 2014 (S. R. & O. No. 11 of 2014)

**SCHEDULE 1  
APPROVED DOCTORS**

Dr Narendra Pranlal Dave  
Dr Mukhtar Ahmad Uqaili  
Dr Bruce Chipps  
Mr Ahmed Cheema  
Dr Rebecca Edwards  
Dr Hilary Napier  
Dr Sherwood Elcock  
Dr Arthur Allison  
Dr Mary Whittle  
Dr Dipankar Bandy

**SCHEDULE 2  
APPROVED PROFESSIONALS**

Janice Vanessa Dent  
Mandy Heathman  
Karen Rimicans  
Phillip Kelly  
Glen Wesley Sturdee  
Derek Henry  
Rachel Williamson  
Donna Marie Ryan  
Nikki Murphy  
Kareen Mhairi Brand  
Janette Mary Vincent  
Jacqueline Susan Bailey  
Kristina Vincent  
Allison Webb  
Carol Coombs  
Miranda McKee  
Yvette Sherriff  
Karl Jackson  
Rebecca Dickens  
Alex Moreton  
Althea Maria Biggs  
Jennifer Reece  
Jonathan Hadley  
Gail Johnson  
Julie Scott  
Vince Keegan  
Julie Chapman  
Judy Westerman

Made 4<sup>th</sup> February 2016

C. Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not forming part of the order)*

Section 91(1) of the Mental Health Ordinance (No. 7 of 2010) provides that the Governor may, by Order, approve doctors as medical practitioner for the purposes of the Ordinance. Schedule 1 contains a list of medical practitioners approved as doctors. According to section 3, they are also approved practitioners.

Section 91(2) provides that the Governor may, by Order, approve a nurse, social worker or other professional as an approved professional for the purposes of the Ordinance. Schedule 2 contains a list of nurses, social workers and other professionals approved by the Governor as approved professionals. Again under section 3, they too are also approved practitioners.

As required by section 91(4), before making the list of approved doctors and approved professionals, the Governor consulted the Chief Medical Officer on the appropriate qualifications, training and experience required by different classes of professionals for initial inclusion on the list.

Clause 4 revokes the 2014 orders as they are replaced by this new updated list.

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**SUBSIDIARY LEGISLATION**

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**LAND LAW**

**Land (Non-Residents)(Amendment) Ordinance 2015 (Correction) Order 2016**

S. R. & O. No: 2 of 2016

*Made: 17 February 2016*

*Published: 29 February 2016*

*Coming into force: see article 2*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order —

**1. Title**

This order is the Land (Non-Residents) (Amendment) Ordinance 2015 (Correction) Order 2016.

**2. Commencement**

This order will come into force on publication in the *Gazette*.

**3. Correction of Land (Non-Residents) (Amendment) Ordinance 2015**

The Land (Non-Residents) (Amendment) Ordinance 2015 (No 12 of 2015) is amended in section 3 by inserting the words “of the Land (Non-Residents) Ordinance” directly after “Section 2(2)”.

Made 17<sup>th</sup> February 2016

C. P. Judge M.B.E.,  
*Attorney General.*

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**EXPLANATORY NOTE**  
*(not forming part of the order)*

This order corrects a typographical error.

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**SUBSIDIARY LEGISLATION**

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**TAXES**

**Taxes (Amendment) Ordinance 2015 (Correction) Order 2016**

S. R. & O. No: 3 of 2016

*Made: 17 February 2016*

*Published: 29 February 2016*

*Coming into force: see article 2*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order —

**1. Title**

This order is the Taxes (Amendment) Ordinance 2015 (Correction) Order 2016.

**2. Commencement**

This order is deemed to have come into force on 1 January 2016.

**3. Correction of Taxes (Amendment) Ordinance 2015**

The Taxes (Amendment) Ordinance 2015 (No 10 of 2015) is amended —

(a) in section 3 by inserting the words “of the Taxes Ordinance” directly after “Section 106(4)”; and

(b) in section 4 by inserting the words “of the Taxes Ordinance” directly after “Section 116”.

Made 17<sup>th</sup> February 2016

C. P. Judge M.B.E.,  
*Attorney General.*

---

EXPLANATORY NOTE  
*(not forming part of the order)*

This order corrects a typographical error.

---

## SUBSIDIARY LEGISLATION

---

### SHIPPING AND NAVIGATION

#### **Maritime Safety and Security (FIPASS Restricted Zone) Designation Order 2016**

S. R. & O. No: 4 of 2016

*Made: 18 February 2016*

*Published: 29 February 2016*

*Coming into force: on publication*

I make this order under section 7 of the Maritime Safety and Security Ordinance (No. 17 of 2009) on the advice of Executive Council.

#### **1. Title and commencement**

This order is the Maritime Safety and Security (FIPASS Restricted Zone) Designation Order 2016 and comes into force on publication in the *Gazette*.

#### **2. Restricted zone and duration of restriction**

(1) The whole of the harbour area at the Falkland Interim Port and Storage System (FIPASS) more particularly delineated edged grey on the plan set out in the Schedule is a restricted zone for purposes of the Ordinance.

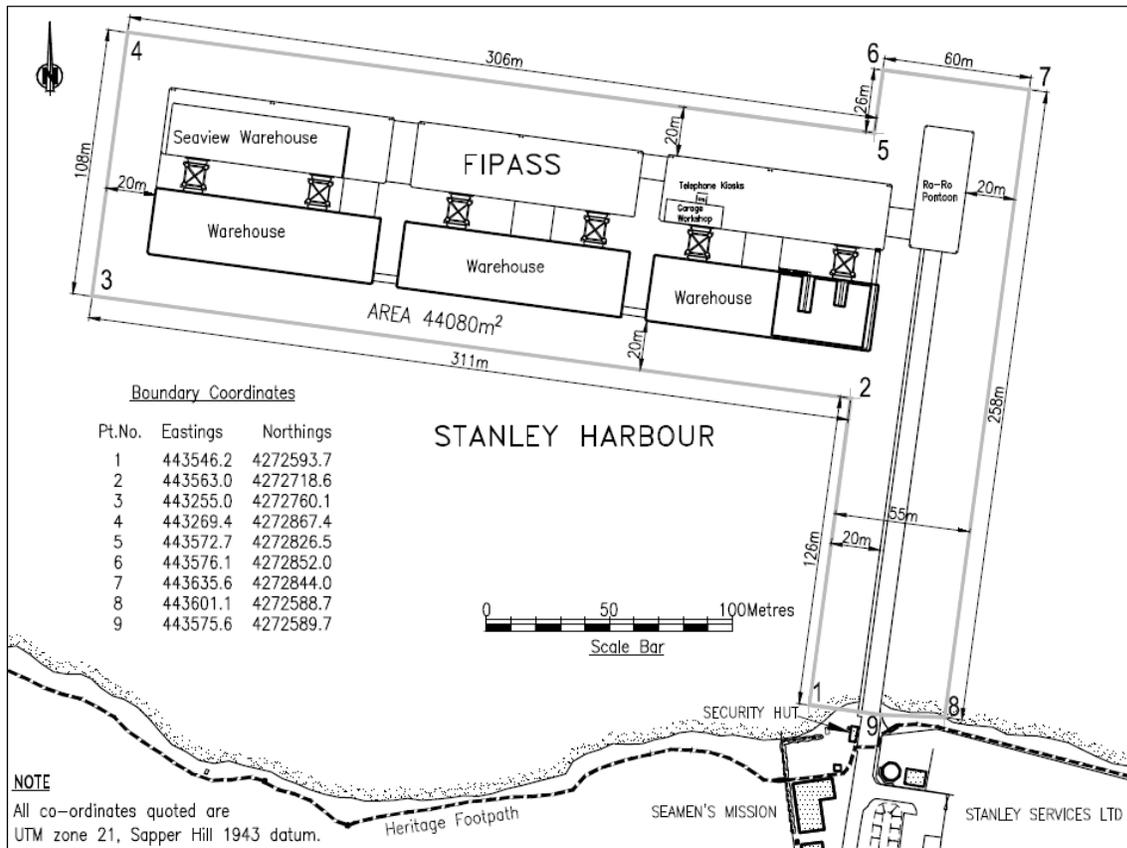
(2) This designation applies from commencement of this order and applies at all times when —

- (a) security personnel are operating controls at either end of the causeway at FIPASS; and
- (b) the restricted zone sign is displayed.

#### **3. Revocation of Notice No. 19**

Notice No 19 of 2010 published in Gazette Number (Volume 1) dated 29 January 2010 is revoked.

## SCHEDULE



Made 18<sup>th</sup> February 2016

C. Roberts C.V.O.  
Governor.

### EXPLANATORY NOTE (not part of the regulations)

This order is made under section 7 of the Maritime Safety and Security Ordinance (No. 17 of 2009) to designate a restricted zone around the Falklands Interim Port and Storage System and to cancel the existing security controls.

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**SUBSIDIARY LEGISLATION**

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**LAND**

**Stanley Services Limited (Residence in the Falkland Islands) Order 2016**

S. R. & O. No: 5 of 2016

*Made: 19 February 2016*

*Published: 29 February 2016*

*Coming into force: on publication*

I make this order under section 3(2) of the Land (Non-Residents) Ordinance 1999 (No 14 of 1999) and on the advice of Executive Council.

**1. Title and commencement**

This order is the Stanley Services Limited (Residence in the Falkland Islands) Order 2016 and comes into force on publication in the *Gazette*.

**2. Stanley Services Limited to be treated as resident in the Falkland Islands**

Stanley Services Limited (a company incorporated in the Falkland Islands with registered number 8257) shall for the purposes of the Land (Non-Residents) Ordinance be treated as being resident in the Falkland Islands for the purposes of section 3(1) of the Land (Non-Residents) Ordinance.

Made 19<sup>th</sup> February 2016

J. S. Tyler-Haywood,  
*Acting Governor.*

---

**EXPLANATORY NOTE**

*(not part of the order)*

The effect of this order is that Stanley Services Limited does not need to obtain a licence under the Land (Non-Residents) Ordinance to hold or acquire land in the Falkland Islands.

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**SUBSIDIARY LEGISLATION**

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**ROAD TRAFFIC**

**Road Traffic (Stanley Speed Limit Zone) Regulations 2015 (Correction) Order 2016**

S. R. & O. No: 6 of 2016

*Made: 26 February 2016*

*Published: 29 February 2016*

*Coming into force: see article 2*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order —

**1. Title**

This order is the Road Traffic (Stanley Speed Limit Zone) Regulations 2015 (Correction) Order 2016.

**2. Commencement**

This order is deemed to have come into force on 30 November 2015.

**3. Correction of Road Traffic (Stanley Speed Limit Zone) Regulations 2015**

The Road Traffic (Stanley Speed Limit Zone) Regulations 2015 (No 18 of 2015) are amended in regulation 3(1) by deleting the words “subregulation (1)” and replacing with the words “subregulation (2)”.

Made 26<sup>th</sup> February 2016

C. P. Judge M.B.E.,  
*Attorney General.*

---

EXPLANATORY NOTE  
*(not forming part of the order)*

This order corrects a typographical error.

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# FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*No. 3*

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## **Appointment**

Carmen Miranda, Medical Secretary, Health and Social Services Department, 01.03.16.

Charlotte Melizza McRae, Live-In House Parent, Education Department, 06.03.16.

Mark Cook, Leisure Centre Manager, Central Services Department, 17.03.16.

John Owen Clifford, Licensing Clerk, Emergency Services Department, 21.03.16.

Jayne Patricia Sawden, Learning Support Assistant, Falkland Islands Community School, Education Department, 21.03.16.

Stuart Hampson, Director, Human Resources Department, 28.03.16.

## **Completion of contract**

Bernadette Mary Eivers, Hospital Manager, Health and Social Services Department, 19.03.16.

## **Determination of contract**

Graeme John Hemming, Plant Operator/Handyperson, Property and Municipal Section, Public Works Department, 10.02.16.

## **Promotion**

Rampai McCallum, from Housekeeper to Senior Housekeeper, Government House, Central Services Department, 01.03.16.

Paul Theodore Stevens, from Plant Operator/Handyperson to Assistant Foreman, Materials Section, Public Works Department, 01.03.16.

## **Resignation**

Rhiannon Eleanor Didlick-Smith, Customs and Immigration Officer, Emergency Services Department, 04.03.16.

Nigel Keith Dodd, Health Records Clerk, Health and Social Services Department, 04.03.16.

Danielle Louise Greenough, Learning Support Assistant, Falkland Islands Community School, Education Department, 09.03.16.

Nigel Yon, Power Station Operator, Public Works Department, 13.03.16.

Michael Neil Johnson, Filtration Plant Operator, Water Section, Public Works Department, 28.03.16.

Wendy Jennifer Luxton, Accounting Assistant, Treasury Department, 31.03.16.

## **Retirement**

Colleen Mary Ford, Live-In House Parent, Education Department, 04.03.16.

Daisy Gapol, Senior Housekeeper, Government House, Central Services Department, 11.03.16.

Linda Margaret Lyse, Part-time Accounting Officer, Treasury, 18.03.16.

Joan May McLeod, Cleaner/General Assistant, Health and Social Services Department, 31.03.16.

## **Transfer**

Tracey Floyd, from Deputy Taxation Officer to Senior Assistant Taxation Officer, Treasury Department, 01.03.16.

Lisa Martin, from Senior Clerk, Royal Falkland Islands Police, Emergency Services Department to Assistant Taxation Officer, Treasury Department, 24.03.16.

## NOTICES

No. 19

29 February 2016

### **Prison Ordinance** *section 7*

#### **Appointment of Prison Visitors**

1. In exercise of my powers under section 7(2) of the Prison Ordinance, I appoint the following persons to be members of the Board of Visitors:

**Elizabeth Eve Pollard;**  
**Joost Herman Willem Pompert;** and  
**Elizabeth Jayne Dent.**

2. These appointments have effect from 10 February 2016, and continue in effect for one year expiring on 10 February 2017, unless terminated sooner.

Dated 29 February 2016

J. S. TYLER-HAYWOOD,  
*Acting Governor.*

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No. 20

1 March 2016

### **Electricity Supply Regulations (Title 31.1.1)** *regulation 10A(5)*

#### **Variation of electricity price**

1. Notice is given to comply with regulation 10A(5) of the Electricity Supply Regulations.

2. A variation in electricity prices was announced on 29 February 2016 and came into effect on 1 March 2016.

3. The overall price of electricity per unit for all consumers was decreased from 19p to 18p.

4. For consumers supplied via pre-payment meters, electricity is being supplied at 18p per unit and cards are now being sold at:

£5 card - £4.74  
£10 card - £9.48  
£20 card - £18.96  
£50 card - £47.40

5. For all other consumers, electricity is now being supplied at 18p per unit.

Dated 1 March 2016

N. J. GRANGER,  
*Financial Secretary.*

No. 21

3 March 2016

### **Customs Ordinance** *section 7*

#### **Appointment of Temporary Customs Officer**

In exercise of the powers conferred by section 7(3) of the Customs Ordinance 2003, I appoint **Cpl Nicola Jayne Stagg** – K8308428 to be a temporary Customs Officer from 24 January to 7 July 2016.

Dated 3 March 2016

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

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No. 22

22 March 2016

### **Supreme Court of the Falkland Islands** **Notice under the Administration of Estates Ordinance** **(Title 68.1)**

Take notice that **Veronica Summers** of 5 Brandon Road West, Stanley, died on 22 January 2016.

Whereas **Owen William Summers** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 22 March 2016

L-M. REINDERS,  
*Registrar, Supreme Court*

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No. 23

31 March 2016

#### **Application for Permanent Residence**

Notice is hereby given that:-

**Martin James Allen;**  
**Belinda Dawn Bagley;**  
**Saul Esteban Bustos Martinez;**  
**Rodolfo Fernando Borquez Rogel;**  
**Marcela Johanna Andrea Leiva Alfaro;**  
**Ximena Marisol Soto Aburto;** and  
**Holly Jane Williams**

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

Any person who knows of any reason why a permit should not be granted to any of the above named should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 April 2016.

Dated 31 March 2016

J. E. SMITH,  
*Immigration Officer.*

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No. 24

31 March 2016

### **Application for Naturalisation**

Notice is hereby given that:-

**Jaime Eduardo Camblor Andrade**  
**Patricia Maribel Riquelme Vera**

are applying to His Excellency the Governor for naturalisation as a British Overseas Territories Citizen.

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs and Immigration Department, Stanley no later than 22 April 2016.

Dated 31 March 2016

J. E. SMITH,  
*Immigration Officer.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*29 April 2016*

*No. 2*

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The following are published in this Supplement –

- Fisheries (Individual Transferable Quota Fees) Regulations 2016 (SR&O No 7 of 2016);**
- Illex Fishing Licences (Applications, Fees and Refunds) Regulations 2016 (SR&O No 8 of 2016);**
- Supplementary Appropriation (2015-2016) Ordinance 2016 (No 1 of 2016);**
- Tussac Cutters' Hut, Kidney Island Designation Order 2016 (SR&O No 9 of 2016);**
- Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (SR&O No 10 of 2016);**
- Taxes (Amendment) Bill 2016; and**
- Highways (Weight Limits) (Amendment) Bill 2016.**

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## SUBSIDIARY LEGISLATION

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### FISHERIES

#### **Fisheries (Individual Transferable Quota Fees) Regulations 2016**

S. R. & O. No. 7 of 2016

*Made: ..... 5 April 2016*

*Published: ..... 29 April 2016*

*Coming into force: see regulation 2*

I make the following regulations under section 35 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) on the advice of Executive Council.

#### **1. Title**

These regulations are the Fisheries (Individual Transferable Quota Fees) Regulations 2016.

#### **2. Commencement**

These regulations are deemed to have come into force on 1 January 2016 and cease to have effect on 31 December 2016.

#### **3. Interpretation**

In these regulations —

“Director” means the Director of Fisheries; and

“ITQ” means Individual Transferable Quota.

#### **4. Fees and Payment Schedule**

(1) The fees set out under Schedule 1 are the total fees payable in respect of the entire Individual Transferable Quota granted to any company for the specified fisheries.

(2) The fees payable by each company holding ITQ in an established fishery are calculated by reference to the proportion of the total ITQ held by that company.

(3) A company holding ITQ in an established fishery must pay the applicable fees annually in respect of the calendar year for which ITQ has been granted to that company.

(4) The fees must be paid on or before the dates specified under Schedule 2.

**SCHEDULE 1**  
**FISHERY FEES**  
(*regulation 4(1)*)

<b>Description of Fishery</b>	<b>Licence Code</b>	<b>Fees (£)</b>
Finfish	A	<b>1,129,012</b>
Squid – Jig or Trawl	B	<b>ITQ not currently granted</b>
Squid (Summer)	C	<b>2,133,230</b>
Skate	F	<b>247,121</b>
Squid and Restricted Finfish	G	<b>845,900</b>
Restricted Finfish - Pelagic	S	<b>60,419</b>
Restricted Finfish	W	<b>1,341,160</b>
Toothfish – Longline	L	<b>836,770</b>
Squid (Winter)	X	<b>4,242,082</b>

**SCHEDULE 2**  
**PAYMENT SCHEDULE**  
(*regulation 4(4)*)

<b>Description of Fishery</b>	<b>Licence Code</b>	<b>Payment Schedule</b>
Finfish	A	Quarterly: 31 March, 30 June, 30 September, 17 December
Scallops		
Squid – Jig or Trawl	B	See B licence conditions
Squid (Summer)	C	30 June
Skate	F	Quarterly: 31 March, 30 June, 30 September, 17 December
Squid and Restricted Finfish	G	Quarterly: 31 March and 30 June
Restricted Finfish - Pelagic	S	Quarterly: 30 September and 17 December
Restricted Finfish	W	Quarterly: 31 March, 30 June, 30 September and 17 December
Toothfish – Longline	L	Monthly (beginning of each month)
Squid (Winter)	X	17 December

Made 5<sup>th</sup> April 2016

C. Roberts C.V.O.,  
*Governor.*

---

EXPLANATORY NOTE

These Regulations are made under section 35 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) which requires that sums (payable to the Crown) be prescribed for different companies in relation to the amount of ITQs held by those companies.

The fees for 2016 are set out under Schedule 1 and Schedule 2 (the payment Schedule) indicates dates when payments are due in respect of all the different fishery licences.

*Regulation 2* provides for the period within which these fees remain valid – which is from 1 January to 31 December 2016, as the fees are set annually.

Regulation 4 sets out the fees and how they are calculated as well as the dates or times when those fees are payable. These are specified under Schedules 1 and 2.

---

## SUBSIDIARY LEGISLATION

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### FISHERIES

#### ***Illex* Fishing Licences (Applications, Fees and Refunds) Regulations 2016**

S. R. & O. No. 8 of 2016

*Made:* ..... 5 April 2016

*Published:* ..... 29 April 2016

*Coming into force:* see regulation 2

I make the following regulations under section 41, section 223(2)(b) and (p) of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) on the advice of Executive Council.

#### **1. Title**

These regulations are the *Illex* Fishing Licences (Applications, Fees and Refunds) Regulations, 2016.

#### **2. Commencement**

Except where it is specifically provided for a particular provision to come into force at a later, specified date, these regulations are deemed to have come into force on 1 January 2016 and cease to have effect on 31 December 2016.

#### **3. Interpretation**

In these regulations —

“Director” means the Director of Fisheries;

“exploratory or scientific purposes” means purposes related to the assessment of the commercial or practical viability of fishing for fish generally or for a particular species of fish or to the assessment or quantification of stocks of any species of fish or fish of any age, stage of maturity or size of a species of fish or the location in which they or any species of fish or fish of any age, stage of maturity or size may be found;

“FIPASS” means the Falkland Interim Port and Storage System as defined under the Falkland Interim Port and Storage System Ordinance (Title 57.1);

“*Illex* fishing season” means the period between 15 February to 15 June in any given year;

“fishing waters” has the same meaning under the Ordinance;

“Licence Allocation Policy” means the policy relating to *Illex* fishing licences set by Executive Council from time to time;

“refund policy” means the policy approved by Executive Council from time to time as set out under Schedule 2; and

“the Ordinance” means the Fisheries (Conservation and Management) Ordinance.

#### **4. *Illex* fishing licences – applications and fees**

(1) All applications for fishing licences must be made to the Director so as to reach the Director before 18 December or such earlier date as may be set by the Director and the Director is not bound to receive any application received after this date.

(2) The fees payable for an *Illex* fishing licence is determined by the formula set out under Part A of Schedule 1.

(3) The percentage of the fees and the period within which the fees are payable is specified under Part B of Schedule 1.

(4) When issuing fishing licences under these regulations the Director must take into account the Licence Allocation Policy.

#### **5. Refund policy**

(1) The Director in consultation with the Financial Secretary may, in any fishing season, implement the refund policy as set from time to time by Executive Council.

(2) In any assessment for a refund the Director may take into account the following —

- (a) the average catch in any fishing season;
- (b) the average catch value in any fishing season;
- (c) the full season catch taken by all licensed vessels;
- (d) the full high seas catches taken by all licensed vessels; or
- (e) any other factors as may be relevant.

(3) The refund policy for the 2016 fishing season is set out under Schedule 2.

#### **6. Exploratory licences**

(1) The Director may issue such number of exploratory licences as may be appropriate to verify the presence of *Illex* in any fishing waters.

(2) The Director must specify the expiry date for each exploratory licence issued.

(3) The Director must set the fees payable for exploratory licences.

## **7. Transhipment and export fees**

(1) No transhipment fees are payable —

- (a) for any fishing vessel with a valid fishing license;
- (b) for any Falkland Islands fishing vessel; and
- (c) for any vessel transhipping at FIPASS where cargo is crossing the dock.

(2) The following must pay a transhipment fee of £1500 for the period January to December 2016 —

- (a) subject to subsection (1)(b), any fishing vessel that is transhipping outside the period of validity of the fishing licence;
- (b) a reefer vessel; or
- (c) any unlicensed vessel.

### **SCHEDULE 1 FISHERY FEES** *(regulation 4)*

#### **PART A Fee Formula**

##### **Jigging Vessels:**

$$\text{Fee (£)} = \mathbf{£0.401 * (GT * (S + 1.5D)) + 107250}$$

GT = Gross Tonnage

S = Number of Single Jigging Machines

D = Number of Double Jigging Machines

##### **Trawling Vessels:**

$$\text{Fee (£)} = \mathbf{(4.064 * GT) + 116640}$$

GT = Gross Tonnage

**PART B**  
**Payment Periods and Proportion of Fee Payable**

<b>Payment Period</b>	<b>Proportion of Fee %</b>
15 February – 15 March	5%
16 March – 15 May	80%
16 May – 15 June	15%
<b>Total</b>	<b>100%</b>

---

**Explanatory Notes** (for guidance only)

A minimum time period of 80% must be purchased.

A 10% deposit must be paid before the 29 January 2016

Outstanding payments for each period must be paid (received by FIG's bank) at least 15 days in advance of the relevant fishing period.

Payments will be eligible for the ^early payment discounts set out below, providing the payment is made on time by the relevant date (for example in order to receive a 6% early payment discount on the full fee (100%), the entire fee would have to be received by FIG by 31 January 2016.

Letters of Credit must have an expiry date of the **31 August 2016** no other date will be accepted.

^early payment discounts are as follows:

6% for payment by 31 January 2016

5% for payment by 31 May 2016 \*

4% for payment by 30 June 2016 \*

\*Payments can be held until these dates but must be guaranteed by an Irrevocable Letter of Credit or equivalent.

**Vessel History Discount:**

A discount of 1% per year is available for any season fished by the vessel in the last 10 years.  
The maximum discount which may be claimed is 10%.

**SCHEDULE 2**  
**PAYMENT SCHEDULE**  
*(regulation 5(3))*

**2016 REFUND POLICY**

**(a) Licence Fee Refund Policy**

In the event of a poor season the Falkland Islands government will take account of the average catch in assessing refunds. The refund policy will be based on catch as follows:

<b>Catch (MT)</b>	<b>Column A Percentage Refund based on catch volume only. For use where average catch <math>\geq</math> 1000 tonnes</b>	<b>Column B Percentage Refund using catch volume and value. For use where average catch <math>&lt;</math> 1000 tonnes</b>
> 1500	No refund	0%
1500 – 1250	No refund	10%
1249 – 1000	No refund	25%
999 – 750	40%	40%
749 – 500	50%	50%
499 – 250	70%	70%
< 250	90%	90%

---

**Explanatory Notes** (for guidance only)

Referring to the above table if the average catch is 1000 tonnes or exceeds that level there will not be any refund as set out in column A.

If the average catch is less than 1000 tonnes and taking account of catch value results in an ‘adjusted catch’ less than 1500 tonnes the refund levels set out in column B will apply.

An example of the adjusted catch value is set out in below –

**(b) Licence Fee Refund Policy – Catch Value**

The refund policy is intended to be linked to catch and catch value. The base price used to calculate the figures in the table at (a) above is \$ 936 per tonne (whole *Illex*). If the 2016 *Illex* price is higher than the current base rate this will be factored into the refund calculation. In any case where the average *Illex* price is above \$ 936 the calculation will be:

*(Average Price \$ / \$ 936) \* Average Catch = Revised average catch for refund.*

For example if the 2016 *Illex* price is \$ 3000 and the average catch is 400 tonnes the calculation will be:

$$(\$ 3000 / \$ 936) = 3.2$$

*Average catch (400 tonnes) \* 3.2 = 1280 tonnes (This is the adjusted catch figure used for the refund calculation in column B of the table above).*

The adjustment will only be made if the price is above \$ 936. Price information will be collected from available sources.

**(c) Refund Policy to take account of Full Season equivalent catch**

The catch total used in the refund policy will take account of full season catches (15 February – 15 June). If the average catch of vessels fishing for 100% of the season exceeds 1000 tonnes there will be no refund for any vessels; including those which have fished for 80% of the season only and whose catches may be less than 1000 tonnes.

**(d) Refund Policy to take account of High Seas Catches**

The calculation of catch rates and totals in relation to the refund policy will take account of high seas catches taken by licensed vessels during 15 February – 15 June. Owners/operators of licensed vessels wishing to access the refund policy set out here in section 6 must provide catch reports for any days spent fishing on the high seas during the period of validity of their Falkland Islands fishing licence.

Owner/operators electing not to report high seas catches in accordance with the above may still be eligible for a refund but it is likely to be at a reduced rate compared to the refund policy calculation set out here (to be determined according to the relevant circumstances).

**(e) Monitoring of Catch Levels**

FIG will be the ultimate arbiter of catch levels and reserves the right to weight the assessment in favour of verified information. In order for this to work vessels may need to undergo additional inspections and give adequate notice of departure from the fishing zone etc.

This will be calculated on the basis of average vessel catch and not on an individual vessel basis.

The refund policy set out here in regulation 5 will only apply to vessels which comply with the requirements of catch monitoring. A number of these are covered by mandatory requirements which in any case are covered by the Fisheries Ordinance and regulations, such as:

- Full and reliable catch reporting
- Other fishery monitoring reports (Fishcom/end etc)
- Embarkation of an observer if required
- Sufficient notice of intention to leave fishing zones to allow for inspection

Additionally, the refund policy set out above will only apply to fishing vessels which report high seas catches during the fishing season (15 February – 15 June) and conduct transshipment operations in Falkland Island ports and harbours. Vessels not satisfying the criteria set out above will not ordinarily be eligible for a refund. If, in exceptional circumstances, it is determined that a vessel which has not complied should still receive a refund, that refund will be at a reduced rate (to be determined according to the relevant circumstances).

Made 5<sup>th</sup> April 2016

C. Roberts C.V.O.,  
Governor.

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EXPLANATORY NOTE  
(not part of these regulations)

These regulations are made under sections 41 and 223 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005).

Section 41(1) provides for applications and fees for a fishing licence. *Regulations 1 and 2* provide for introductory matters while *regulation 3* provides for interpretation of different words and phrases used within the regulations.

*Regulation 4* provides for the application process including dates for making applications. It further provides for the fees and the formula; and this is set out under Schedule 1;

Section 223(2)(b) of the Ordinance provides that the Governor may make regulations for the refund of fees, charges or levies payable under any provision of the Ordinance. *Regulation 5* provides for the manner of making refunds and this is set out under Schedule 2 and it is based on a refund policy approved by Executive Council.

*Regulation 6* provides for exploratory licences which give effect to section 42 of the Ordinance which deals with licences that may be issued for research purposes.

*Regulation 7* provides for transshipment and export fees and under subsection (2) sets the fee at £1500 for any unlicensed fishing vessel, any fishing vessel (not being a Falkland Island vessel) that transships outside the validity of a licence as well as any reefer vessel. A Falkland Islands fishing vessel is exempted from paying any transshipment fees as well as any vessel with a valid fishing licence. Fishing vessels transshipping through FIPASS are also excluded from paying any transshipment fees.

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Supplementary Appropriation (2015-2016) Ordinance 2016**

(No: 1 of 2016)

**ARRANGEMENT OF PROVISIONS**

Section

1. Title
2. Commencement
3. Withdrawal of additional sum
4. Replenishment of Contingencies Fund

Schedule

# ELIZABETH II



## FALKLAND ISLANDS

COLIN ROBERTS C.V.O.,  
*Governor.*

### SUPPLEMENTARY APPROPRIATION (2015-2016) ORDINANCE 2016

(No: 1 of 2016)

*(assented to: 15 April 2016)*  
*(commencement: on publication)*  
*(published: 29 April 2016)*

#### AN ORDINANCE

To authorise the withdrawal from the Consolidated Fund of the additional sum of £702,560.00 for the financial year ending 30 June 2016.

ENACTED by the Legislature of the Falkland Islands —

#### **1. Title**

This Ordinance is the Supplementary Appropriation (2015-2016) Ordinance 2016.

#### **2. Commencement**

This Ordinance comes into force on publication in the Gazette.

#### **3. Withdrawal of additional sum**

(1) The Financial Secretary may withdraw an additional sum of £702,560.00 from the Consolidated Fund.

(2) Any additional sum withdrawn under subsection (1) may be applied in the financial year ending 30 June 2016 in accordance with section 4 and the Schedule.

#### 4. Replenishment of Contingencies Fund

If any sum has been withdrawn from the Contingencies Fund by the authority of Contingencies Warrant Nos 4 to 8 of 2015/2016, the Financial Secretary will replenish the fund from the additional sum withdrawn under section 3.

#### SCHEDULE

Number	Head of Service	Amount £
<b>Operating Budget</b>		
0110	Directorate of Central Services	215,000.00
0250	Education & Training	10,000.00
0350	Public Works	106,610.00
0410	Natural Resources	221,270.00
0550	Emergency Services	143,100.00
0700	The Treasury	6,580.00
<b>Total Operating Budget</b>		<b>702,560.00</b>
<b>Total Schedule</b>		<b>702,560.00</b>

Passed by the Legislature of the Falkland Islands on 24 March 2016.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

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**SUBSIDIARY LEGISLATION**

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**PLANNING AND BUILDING**

**Tussac Cutters' Hut, Kidney Island Designation Order 2016**

S. R. & O. No: 9 of 2016

*Made: ..... 26 April 2016*

*Published: ..... 29 April 2016*

*Coming into force: upon publication*

I make the following order under section 65(1) of the Planning Ordinance (Title 55.3) —

(a) on the advice of Executive Council; and

(b) on the recommendation of the Historic Buildings Committee (composed as required by section 63(2)), as required by section 65(2)(b).

**1. Title**

This Order is the Tussac Cutters' Hut, Kidney Island Designation Order 2016.

**2. Commencement**

This Order comes into force upon publication in the Gazette.

**3. Designation of Tussac Cutters' Hut, Kidney Island**

(1) Subject to subparagraph (2), the building on Kidney Island known as the Tussac Cutters' Hut is designated as a building of special architectural and historic interest.

(2) The designation relates to the building in respect of both its external appearance and internal features.

Made 26<sup>th</sup> April 2016

C. Roberts C.V.O.,  
*Governor.*

---

**EXPLANATORY NOTE**

*(This note is not part of the order)*

This Order designates the Tussac Cutters' Hut on Kidney Island (the only building on Kidney Island) as a building of special architectural and historic interest.

This designation includes both the external appearance and the internal features of the building. Planning permission or consent is required for its demolition, alteration or extension.

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## SUBSIDIARY LEGISLATION

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### COURTS AND LEGAL SERVICES

#### Administration of Justice (Payments to Jurors and Witnesses) Rules 2016

S. R. & O. No. 10 of 2016

*Made: ..... 26 April 2016*

*Published: ..... 29 April 2016*

*Coming into force: upon publication*

In exercise of the power conferred upon me by section 60 of the Administration of Justice Ordinance (Title 22.1), and in accordance with section 25 of the Jury Ordinance (Title 22.5), I make these rules on the advice of Executive Council —

#### **1. Title**

These rules are the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016.

#### **2. Commencement**

These rules will come into force on publication in the *Gazette*.

#### **3. Interpretation**

In these rules, unless the context requires otherwise —

“appropriate officer” means the Attorney General, any member of the Attorney General’s staff or any member of the Court Service staff as may be designated by the Attorney General for any of the purposes of these rules;

“Constitution” means the Schedule to the Falkland Islands Constitution Order 2008 (S. I. No. 2008/2846);

“interpreter” must be construed in accordance with the qualification imposed by rule 4(1)(c);

“juror” must be construed in accordance with the qualification imposed by rule 4(1)(b);

“professional witness” means a witness practising as a member of the legal or medical profession or as an accountant, dentist or veterinary surgeon otherwise than in the service of the Crown;

“service of the Crown” any person employed by the Crown (which expression includes the Falkland Islands Government) or a person contracted by the Crown to provide interpreter services in relation to the relevant proceedings; and

“relevant amount” must be construed in accordance with rule 5.

#### **4. Scope of the rules and general provisions**

(1) Without prejudice to the power of the Governor in Council to allow for more than the entitlements provided for under these rules where the Governor in Council sees fit to do so, these rules provide for the entitlements to costs and expenses of —

(a) a witness who attends court or elsewhere to give evidence at the instance of the Attorney General, whether the witness gives evidence or not;

(b) a person who attends court having been called or selected for service as a member of a jury; and

(c) any other person who is not in the service of the Crown, in the opinion of the appropriate officer, necessarily attends court or elsewhere for the purpose of the prosecution's case otherwise than to give evidence (including an interpreter, but only if the interpreter is required because a person attending to give evidence at the instance of the Attorney General is unable to speak or comprehend English adequately),

in any proceedings conducted by the Attorney General in the discharge of the Attorney General's functions under section 72 of the Constitution.

(2) A person is not entitled to any of the costs or expenses under these rules if the person is a witness and, when called, refuses to give evidence.

(3) Such entitlements are the same for a person whether the person's attendance on any occasion is for the purpose of one case or more than one case.

(4) Where a person claims an entitlement under these rules, the appropriate officer must satisfy himself or herself of the person's entitlement before authorising the payment of a claim for costs or expenses.

#### **5. Determination of scales or rates of allowances**

(1) The scales or rates of the costs and expenses for which entitlements are provided for under these rules must be determined by the Attorney General with the consent of the Financial Secretary; and in these rules a reference to an allowance of or not exceeding the relevant amount is a reference to an allowance of or not exceeding an amount calculated in accordance with the scales or rates so determined.

(2) All costs and expenses arising out of the requirements of these rules must be paid out of moneys authorised to be deducted from the Consolidated Fund by the Legislative Assembly and held and administered by the Court Service.

(3) The Attorney General must arrange for the scales or rates referred to under sub-rule (1) to be published in the *Gazette*.

#### **6. Allowances to professional witnesses for attendance**

(1) A professional witness is entitled to receive a professional witness allowance for attending to give professional evidence on any day, which may be either —

(a) where the witness has necessarily incurred expenditure in providing a substitute professional person to take care of the witness's practice during that day, a locum allowance of an amount equal to actual expenditure incurred not exceeding the relevant amount; or

(b) where no claim is made under paragraph (a), a compensatory allowance of the relevant amount.

(2) This rule does not apply to an expert witness attending to give expert evidence.

**7. Overnight subsistence allowances to professional or expert witnesses and to interpreters**

(1) Any of the persons mentioned in sub-rule (2) whose attendance causes the person to be necessarily absent from the person's place of residence overnight is entitled to receive an overnight subsistence allowance of the relevant amount in respect of each night of absence.

(2) The persons referred to in sub-rule (1) are —

(a) a juror;

(b) a witness who receives an allowance under rule 6 above;

(c) an expert witness who attends to give expert evidence; and

(d) an interpreter.

**8. Allowances to jurors and witnesses, other than professional or expert, and to others for attendance**

(1) Any of the persons mentioned in sub-rule (2) whose attendance causes the person —

(a) to incur any expenditure (other than on travelling, lodging or subsistence) to which the person would not otherwise be subject; or

(b) to suffer any loss of earnings, which the person would otherwise have received,

is entitled to receive a financial loss allowance of an amount equal to the actual expenditure incurred or loss suffered not exceeding any relevant amount in respect of that expense or loss.

(2) The persons referred to in sub-rule (1) are —

(a) a juror;

(b) a witness who attends to give evidence (other than professional or expert evidence); and

(c) any other person who, in the opinion of the appropriate officer, necessarily attends for the purpose of the prosecution's case otherwise than to give evidence (excluding an interpreter).

**9. Subsistence allowances to jurors, witnesses, other than professional or expert, and to others**

(1) Any of the persons mentioned in sub-rule (3) who attends court or elsewhere is entitled to a daily subsistence allowance of the relevant amount or, if the person's attendance makes it necessary for the person to stay overnight away from home, to an overnight subsistence allowance of the relevant amount for each night of absence.

(2) An overnight subsistence allowance under sub-rule (1) must be in respect of a period of 24 hours and a witness who receives such an allowance is entitled to a further allowance in respect of any period in excess of 24 hours which is not covered by such an allowance at the rate appropriate to a day subsistence allowance under that sub-rule.

(3) The persons referred to under sub-rule (1) are —

(a) a juror;

(b) a witness who attends to give evidence (other than professional or expert evidence); and

(c) any other person who, in the opinion of the appropriate officer, necessarily attends for the purpose of the prosecution's case otherwise than to give evidence (excluding an interpreter).

**10. Reimbursement of travelling expenses incurred by jurors, witnesses and others**

(1) Where a person who is entitled to an allowance under any of rules 6 to 9 travels to or from the place of the person's attendance by public transport (including by air) the person is, subject to sub-rule (2) and (3), entitled to be reimbursed the fare actually paid.

(2) Unless the appropriate officer for special reason authorises otherwise, only the standard economy class fare will be reimbursed under sub-rule (1) for travel by air or other means.

(3) Where the person travels to or from such place by air, the person's entitlement under sub-rule (1) to be reimbursed the fare actually paid arises only if, in the opinion of the appropriate officer there was no reasonable alternative to travel by air and the class of fare paid was reasonable in all the circumstances.

(4) Where the person travels to or from such place by a private hire vehicle, the person is entitled to be reimbursed in respect of that travel the amount of the fare paid by the person.

(5) Where such person travels to or from such place by a private motor vehicle, other than one in respect of which reimbursement under this sub-rule is claimed by another person in respect of the same journey, the person is entitled to be reimbursed in respect of that journey —

(a) in a case to which sub-rule (6) applies by payment of mileage at the "standard rate" determined under rule 5 and of any parking fee actually and reasonably incurred; and

(b) in any other case, by payment of mileage at the rate determined in accordance with rule 5.

(6) This sub-rule applies where a journey to or from such place is necessarily undertaken by private motor vehicle or where the use of the vehicle is more economical in the circumstances or is otherwise reasonable.

### **11. Certain persons not to be entitled to allowances or travelling expenses**

There is no entitlement to any allowance or reimbursement for any of the travelling expenses provided for under these rules for —

(a) a member of, or special constable appointed or person employed for the purposes of, a police force, attending in the member's capacity as such;

(b) a prison officer employed on a full-time basis, attending in the prison officer's capacity as such;

(c) an inmate of such an institution in respect of any occasion on which the inmate is conveyed to attend at any place in custody.

Made 26<sup>th</sup> April 2016

Colin Roberts, C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not forming part of the order)*

These rules are made under section 60 of the Administration of Justice Ordinance (Title 22.1) and section 25 of the Jury Ordinance (Title 22.5).

Clauses 1 to 3 provide for introductory matters.

*Clause 1* provides for the title of the rules and *clause 2* provides for the rules to come into force on publication.

*Clause 2* defines various terms used in the rules. "Appropriate officer" is defined to include staff from both the AG's office and the Courts Service to potentially allow the separate administration of witness and juror's expenses in the future.

*Clause 4* provides for the scope of the rules, to set the rate of entitlements to costs and expenses for witnesses as described under sub-rule (1)(a); persons attending service as jurors and other persons as described under sub-rule (1)(a). Sub-rule (2) provides that no costs or expenses will be paid where a person called to give evidence refuses to do so.

*Clause 5* provides for the Attorney General, with the consent of the Financial Secretary, to determine and set scales or rates for the costs and expenses payable under these rules. It further provides for the Attorney General to publish the rates in the Gazette. The budget for the payment of the allowances and expenses payable under these rules are to be administered by the Courts Service.

*Clause 6* sets out the allowances payable to professional witnesses.

*Clause 7* sets out the overnight subsistence allowance payable to professional or expert witnesses as well as to interpreters.

*Clause 8* sets out the allowance payable to jurors and witnesses (other than professional or expert witnesses) for attendance as well as any financial loss suffered or any expenditure incurred as a reason of their attendance.

*Clause 9* sets out the subsistence allowance for jurors and witnesses (other than professional or expert witnesses), this includes a daily subsistence allowance as well as an overnight subsistence allowance where the juror or the witness is required to stay overnight for purposes of the attendance.

*Clause 10* provides for the reimbursement of any travelling expenses incurred by jurors, witnesses or other persons described under rules 6 to 9. The rule provides that only the standard fare paid on public transport will be reimbursed unless there are special reasons which an appropriate officer must authorise. The rule also provides for the determination of reimbursements for travel by air, private hire vehicle and private vehicle.

*Clause 11* provides that members of the police force or prison service are not entitled to any of the allowances or reimbursement for travelling expenses as set out in the rules.

## **Taxes (Amendment) Bill 2016**

(No:    of 2016)

### ARRANGEMENT OF PROVISIONS

#### Clause

1. Title
2. Commencement
3. Amendment of Taxes Ordinance
4. Section amended 2 — Interpretation
5. Section 23 amended — The charge to corporation tax and exclusion of income tax
6. Section 28 amended — Corporation tax rates
7. Section 106 amended — Interpretation for purposes of Chapter II
8. Section 116 amended — Initial allowances and writing-down allowances for capital expenditure

# TAXES (AMENDMENT) BILL 2016

(No: of 2016)

*(assented to: 2016)*  
*(commencement: in accordance with section 2)*  
*(published: 2016)*

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance (No. 14 of 1997) to provide for various tax reliefs for businesses in Camp.

BE IT ENACTED by the Legislature of the Falkland Islands —

## **1. Title**

This Ordinance is the Taxes (Amendment) Ordinance 2016.

## **2. Commencement**

This Ordinance is deemed to have come into force on 1 January 2016.

## **3. Amendment of Taxes Ordinance**

This Ordinance amends the Taxes Ordinance (No. 14 of 1997).

## **4. Section 2 amended — Interpretation**

Section 2 is amended by inserting the following definition in its correct alphabetical order —

““Camp” means any area that is more than 10km from the Christ Church Cathedral excluding—

(i) the Mount Pleasant Complex;

(ii) the Camber (Port William) site,

but includes any agricultural enterprises located within the 10km radius from the Christ Church Cathedral where livestock farming is the primary activity, and the enterprise has an annual turnover exceeding £10,000 or stock numbers exceeding 2,000 Dry Sheep Equivalent;”;

## **5. Section 23 amended — the charge to corporation tax and exclusion of income tax**

Section 23 is amended by adding the following new subsections after subsection (5) —

“(6) Subject to subsection (7) the provisions of this Ordinance relating to the charge of corporation tax shall not apply to income of the new business activity of a company resident in Camp where that company —

(a) operates a business that is new in Camp; or

(b) operates a business that is new to the Falkland Islands.

(7) Corporation tax is not chargeable to a company on the new business activity under subsection (6) for a period of —

(a) three years from the date of operation by that company of a business that is new in Camp; and

(b) six years from the date of operation by that company of a business that is new in the Falkland Islands.

(8) For purposes of subsection (6) —

(a) a company operates a business that is “new in Camp” if the company —

(i) operates or undertakes any activity which is not currently undertaken in Camp; or

(ii) offers any services which are not currently offered in Camp; and

(b) a company operates a business that is “new in the Falkland Islands” if the company—

(i) operates or undertakes any activity which is not currently undertaken in the Falkland Islands; or

(ii) offers any services which are not currently offered in the Falkland Islands.”.

## **6. Section 28 amended — Corporation tax rates**

Section 28 is amended as follows —

(a) by deleting subsection (3) and replacing it with the following —

“(3) In subsection (1)(a) above the reference to a company’s chargeable income for any period is a reference to the amount of that income less the amount of —

(a) any ring fence income of the company for that period;

(b) any franked investment income of the company for that period; or

(c) any applicable new employment income or investment income for renewable resources due to a company in Camp for that period.”; and

(b) by inserting the following new subsection immediately after subsection (3) —

“(3A) For purposes of subsection (3)(c) a company in Camp is eligible for a tax credit for—

(a) the creation of any new employment in Camp at the amount set out under subsection (3B); or

(b) any investments the company makes in acquiring renewable energy technology or any of its system components in Camp at an annual rate of 150 per cent for up to £20,000 of the total cost of that renewable energy technology or its system components.

(3B) The tax credit referred to under subsection (3A)(a) for any new employment income is £3000 in each year and it applies —

(a) for three years from the date the full-time employment is created provided the employment is for more than 12 months; or

(b) on a pro-rated basis if the full-time employment is for 6 to 12 months.

(3C) The full-time employment must —

(a) be new (being a net additional job created but excluding any change in name of an existing role);

(b) be valid for a period of at least six months;

(c) provide as a minimum for a 40 hours work week;

(d) require that a minimum of 75 per cent working hours be carried out in Camp; and

(e) be carried out by a person resident in Camp; and

(3D) “Renewable energy technology” has the same meaning given under section 106(4).”

## **7. Section 106 amended — Interpretation for purposes of Chapter II**

Section 106(4) is amended as follows —

(a) in the definition of “building” by inserting the words “or farmhouses” immediately after the word “land”;

(b) in the definition of “expenditure” by adding after paragraph (b), the following new paragraph—

“(c) any renewable energy technology including its system components.”; and

(c) inserting the following definitions in their correct alphabetical order —

““farmhouse” means the principal residence of the farm owner, manager or any person in control of the operation of the farm (that is used for residential purposes);

“renewable energy technology” means any technology that generates electricity or heat directly from natural resources or through the use of plant material that can be naturally replenished;”

**8. Section 116 amended — Initial allowances and writing-down allowances for capital expenditure**

Section 116 is amended as follows —

(a) in subsection (1) by adding the following new paragraphs immediately after paragraph (e)—

“(f) any renewable energy technology (including its system components).”.

(b) by inserting immediately after subsection (1A), the following new subsection —

“(1B) The disposal value of any renewable energy technology or any of its system components must be determined in accordance with section 113.”

(c) by deleting subsection (6A) and replacing it with the following —

“(6A) In the case of —

(a) machinery in Camp, the writing-down allowance is 60 per cent; and

(b) plant, machinery (other than machinery in Camp) or vehicle (including aircraft), writing-down allowances must be made under section 117.”.

(d) by deleting subsection (9) and replacing it with the following —

“(9) Unless subsection (10) applies —

(a) the writing-down allowance for a building (other than a building in Camp) is 10 per cent of the expenditure incurred in acquiring the building; and

(b) the writing-down allowance for a building in Camp (other than farmhouses) is 25 per cent of the expenditure incurred in acquiring the building.”

---

OBJECTS AND REASONS

This Bill amends the Taxes Ordinance (No. 14 of 1997).

*Clauses 1 and 2* provide for introductory matters and provides for a retrospective commencement of 1 January 2016;

*Clause 3* provides for the amendment of the Taxes Ordinance;

*Clause 4* provides for the amendment of section 2 by adding a new definition for “Camp”;

*Clause 5* amends section 23 as follows —

- by adding the following new subsections after subsection (5):
  - (a) subsection (6) which provides that a company is excluded from paying corporation tax for any income generated by that company from a business that is new in Camp or new in the Falkland Islands;
  - (b) subsection (7) which provides the time frames within which the exemption from paying corporation tax applies, that is 3 years for a company offering a business new to Camp and 6 years for a company offering a new business to the Falkland Islands; and
  - (c) subsection (8) which defines what it means to offer a business new in Camp or in the Falkland Islands;

*Clause 6* amends section 28 of the Ordinance as follows —

- by replacing subsection (3) with a new subsection which expands the current subsection to include new employment income and investment income derived from renewable resources to other income already covered there;
- by adding the following new subsections after subsection (3):
  - (a) subsection (3A) which provides for instances where a company resident in Camp is eligible for a tax credit, that is on the creation of any new employment in Camp by that company or on the creation of any investments made from acquiring renewable energy technologies by that company;
  - (b) subsection (3B) sets down the amount of income that the new employment must amount to in order to qualify for the tax relief provided by subsection (3A) and the time limit within which the tax credit is applicable;
  - (c) subsection (3C) lays down the requirements that must be met for employment to qualify as ‘full-time’ employment; and
  - (d) subsection (3D) provides for the meaning of ‘renewable energy technology’ by cross-referencing to section 106(4);

*Clause 7* amends section 106(4) of the Ordinance to add some new definitions as a consequence of all the new amendments – these are definitions for farmhouses (which are not included from initial writing down allowances;

*Clause 8* amends section 116 of the Ordinance as follows —

- in subsection (1) by adding a new paragraph for renewable energy technology;
- by adding a new subsection (1B) which provides for the disposal value of renewable energy technology;
- by replacing subsection (6A) with a new subsection that provides for the writing-down allowance for machinery in Camp at 60%; and
- by replacing subsection (9) with a new subsection which provides for the writing-down allowance for buildings in camp (excluding farmhouses) at 25%.

# **Highways (Weight Limits) (Amendment) Bill 2016**

(No:    of 2016)

## ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of Highways (Weight Limits) Ordinance
4. Amendment of Highways (Weight Limits on Bridges) Order

# HIGHWAYS (WEIGHT LIMITS) (AMENDMENT) BILL 2016

(No. 1 of 2016)

(assented to: 2016)  
(commencement: on publication)  
(published: 2015)

A BILL

for

AN ORDINANCE

To amend the Highways (Weight Limits) Ordinance (No. 8 of 2004) and the Highways (Weight Limits on Bridges) Order (S. R. & O. No. 11 of 2012) to make amendments relating to the power to grant exemptions for prescribed weights and to specify the new weight limits for Boxer Bridge, Malo Bridge and San Carlos Bridge.

BE IT ENACTED by the Legislature of the Falkland Islands —

## 1. Title

This Ordinance is the Highways (Weight Limits) (Amendment) Ordinance 2016.

## 2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

## 3. Amendment of Highways (Weight Limits) Ordinance

The Highways (Weight Limits) Ordinance is amended as follows —

(a) in section 6(3) by inserting the following new paragraph immediately after paragraph (a)—

“(ab) prohibit without exception, the use of any motor vehicle, trailer or vehicle combination the laden weight of which exceeds the weight specified in such Order on any publicly maintainable highway or length of publicly maintainable highway therein specified;”

(b) in section 8 by inserting the following new subsection immediately after subsection (2) —

“(2A) Where the Governor has made an Order under section 6(3)(ab) the Competent Authority may not grant any exemptions in relation to the weight limits specified in such Order.”

## 4. Amendment of Highways (Weight Limits on Bridges) Order

The Highways (Weight Limits on Bridges) Order is amended as follows —

(a) under article 3 by adding the following new definitions —

“(c) “Malo Bridge” means the structure known as Malo Bridge that crosses the Malo River on the road from Estancia Farm to Teal Inlet;

(d) “San Carlos Bridge” means the structure known as San Carlos Bridge that crosses the San Carlos River on the road between Greenfield Farm and the North camp track.”.

(b) by deleting article 4 and replacing it with the following —

**“4. 18 tonne weight limit on Boxer Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Boxer Bridge is prohibited if its laden weight exceeds 18 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”;

(c) by adding the following new articles after article 4 —

**“5A. 38 tonne weight limit on Malo Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Malo Bridge is prohibited if its laden weight exceeds 38 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.;

**5B. 38 tonne weight limit on San Carlos Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across San Carlos Bridge is prohibited if its laden weight exceeds 38 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”; and

(d) by deleting article 5 and replacing it with the following —

**“5. 32 tonne weight limit on Chartres Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Chartres Bridge is prohibited if its laden weight exceeds 32 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”;

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OBJECTS AND REASONS

This Bill amends the Highways (Weight Limits) Ordinance (No. 8 of 2004).

*Clauses 1 and 2* provide for introductory matters.

*Clause 3* amends section 6(3) by inserting a new paragraph which gives the Governor the power to make an Order prescribing a weight limit for any publicly maintainable highway or length of publicly maintainable highway to which no exemption may be made to exceed that prescribed weight limit. This is in addition to the Governor’s power under paragraph (a) to do the same but subject to the Competent Authority being able to grant exceptions for the weight to be exceeded.

It also amends section 8 to add a new paragraph to the effect that the Competent Authority may not grant any exemption where an Order is made under section 6(3)(ab).

*Clause 4* amends the Highways (Weight Limits on Bridges) Order by replacing article 4 with a new article to provide for a new weight limit of 18 tonnes for Boxer Bridge. It also specifies that the specified weight is one which no exemption can be granted. It also provides the weight limits for Malo Bridge and San Carlos Bridge. It also amends article 5 to provide that no exemption may be made in relation to Chartres Bridge.

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# FALKLAND ISLANDS GAZETTE

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## **Appointment**

Haseeb Randhawa, Fisheries Scientist (Marine Biology), Fisheries Department, 26.03.16.

Rachael Crowie, Part-time Clerk, Infant and Junior School, Education Department, 01.04.16.

Kenton John Douglas Benjamin Goodwin, Plant Operator/Handyperson, Highways Section, Public Works Department, 01.04.16.

Carol Margaret Thorsen, Senior Clerk, Royal Falkland Islands Police, Emergency Services Department, 01.04.16.

Alison Cunningham, Examinations and Administration Officer, Falkland Islands Community School, Education Department, 04.04.16.

Job Mtetwa, Design Engineer, Public Works Department, 04.04.16.

Kristina Skalicka, Receptionist, Leisure Centre, Central Services Department, 04.04.16.

Patricia Tracy Eats, Agriculture Advisor (Sheep Husbandry), Department of Agriculture, 09.04.16.

James Morgan Brooks, Head of Courts and Tribunal Service, Courts, Central Services Department, 11.04.16.

Craig Arthur Paice, Customs and Immigration Officer, Customs and Immigration Department, 11.04.16.

Brian Leslie Ashdown, Maintenance Manager, Property and Municipal Section, Public Works Department, 14.04.16.

Susan Street, Agriculture Advisor, Department of Agriculture, 16.04.16.

Philip James Kearney, Part-time Driver/Handyperson, Government House, 18.04.16.

Philip Mansell, Plumber, Property and Municipal Section, Public Works Department, 18.04.16.

Vanessa Neylon, Hospital Manager, Health and Social Services Department, 21.04.16.

Scott James Peter Betts, Information Communication Technology and EMIS Co-ordinator, Health and Social Services Department, 25.04.16.

## **Completion of contract**

Henry Buzibwa Kizito, Capital Accountant, Treasury, 06.04.16.

## **Resignation**

Bonnie Curtis, Policy Assistant, Policy Unit, 05.04.16.

Fiona Wallace, Planning Officer, Policy Unit, 06.04.16.

Daniel Mitchell, Sports Attendant, Leisure Centre, Central Services Department, 10.04.16.

Stephen Butler, Head of Environmental Planning, Policy Unit, 11.04.16.

Scott James Peter Betts, Medical Stores Assistant, Health and Social Services Department, 15.04.16.

Alison Gummer, Teacher, Falkland Islands Community School, Education Department, 15.04.16.

Tracey Lynne Desjardins, Legal Secretary, Law and Regulation Department, 29.04.16.

Natalia Sytchova, Senior Staff Nurse, Health and Social Services Department, 29.04.16.

## **Retirement**

Trudi Ann Betts, Clerk, Health and Social Services Department, 29.03.16.

## NOTICES

No. 25

1 April 2016

### **Currency Ordinance 1987** *section 5*

#### **Appointment of Commissioner of Currency**

His Excellency the Governor has been pleased to appoint **Donna Louise Henry** as a Commissioner of Currency in accordance with section 5 of the Currency Ordinance 1987 with effect from 1 April 2016.

Dated 1 April 2016

N. J. GRANGER,  
*Financial Secretary.*

No. 26

5 April 2016

### **Administration of Justice Ordinance** *Schedule 3, Part I, paragraph 3*

#### **Appointment of Bailiffs**

1. Paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance (Title 22.1) provides that the Governor may, after consulting with the Chief Justice or such person as is nominated by the Chief Justice for the purpose, appoint any person to be a bailiff.

2. In exercise of my powers under paragraph 3(1) and following consultation with the Registrar of the Supreme Court and High Bailiff as nominated by the Chief Justice, I now appoint **Karen Michella Rozee; Peter Young and Jane Clement** to be bailiffs.

3. This appointment has effect from the date given below, and continues in effect whilst agreement for the provision of bailiff services exists between Invenio Falkland Islands Limited and the Falkland Islands Government, and in accordance with Part I of Schedule 3 to the Administration of Justice Ordinance, unless terminated sooner.

#### **Removal from office as Bailiff**

4. Paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance (Title 22.1) provides for the Governor to remove any person from office as bailiff.

5. **Rhiannon Elinore Didlick-Smith** was appointed bailiff with effect from 18 February 2016.

6. In exercise of my powers under paragraph 3(1) of Part I of Schedule 3 to the Administration of Justice Ordinance I now remove **Rhiannon Elinore Didlick-Smith** from office as bailiff.

Dated 5 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 27

5 April 2016

### **Taxes Ordinance** *section 57B(2)*

#### **Approved list of charities**

1. Section 57B (2) of the Taxes Ordinance (Title 69.1) provides for a list of eligible charities to be approved by the Governor for the purpose of section 57A of the Taxes Ordinance.

2. I give notice that the following list of eligible charities has been approved for tax deduction purposes (any previous approved list and amendment to it is now wholly replaced):

<u>Charity name:</u>	<u>Domicile:</u>	<u>Charity no:</u>
	<u>England and Wales</u>	
Falklands Conservation		1073859
Great Ormond Street Hospital Children's Charity		207318
Haig Housing Trust		1125556
The United Kingdom Falkland Islands Trust		282786
British Wireless for the Blind Fund		1078287
The Royal British Legion		219279
Corona Worldwide		204802
The New Island Conservation Trust		1047676
EveryChild		1089879
Plan International UK		276035
The South Atlantic Medal Association (1982) (SAMA 82)		1118842
National Society for the Prevention of Cruelty to Children		216401
Motor Neurone Disease Association		294354
WWF-UK		1081247
Royal Society for the Protection of Birds		207076
The National Trust for Places of Historic Interest or Natural Beauty		205846
Cancer Research UK		1081247
Falklands Veterans Foundation		1094950
The Services Sound and Vision Corporation		233480
Help for Heroes		1120920
International Agency for the Prevention of Blindness		1100559
United Kingdom Antarctic Heritage Trust		1160847
The Royal Navy Association		266982
Disasters Emergency Committee		1062638
The Royal National Lifeboat Institution		209603
Compassion UK Christian Child Development		1077216
The Gurkha Welfare Trust		1103669
	<u>Scotland</u>	
South Georgia Heritage Trust		SC036819
	<u>Austria</u>	
SOS Children's Village International		83115702

Dated 5 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

Note: Section 57A of the Taxes Ordinance provides for deductions from income for tax purposes of donations of £50 or more made to registered charities in any calendar year. Written evidence from the charity of the total amount of donations made to the charity in the calendar year must be provided to the Commissioner of Taxes. Approved charities are:- (a) bodies which are registered as a charity under the Charities Act 1960 as it applies to the Falkland Islands; and (b) any body of persons or trust which appears on the approved list of charities. The bodies "on the approved list" are charities established overseas which are not registered under the Charities Act 1960 in the Falkland Islands. They have been approved for tax deduction purposes.

No. 28

6 April 2016

**Banking Ordinance (Title 10.1)  
Banking (Amendment) Ordinance 1996**

Notice is hereby given pursuant to section 19B(1) of the Banking Ordinance (Title 10.1), as amended, that the audited accounts of Standard Chartered Bank for the year ended 31 December 2015 are available for inspection at the bank branch office, Ross Road, Stanley, or a copy will be supplied on application to the Chief Executive Officer.

Dated 6 April 2016

S. HORSEWOOD,  
*Chief Executive Officer, Standard Chartered Bank.*

No. 29

7 April 2016

**Falkland Islands Development Corporation Ordinance  
section 8(1)**

**Appointment of Member to  
Falkland Islands Development Corporation Board**

1. Section 8(1)(c) of the Falkland Islands Development Corporation Ordinance 2013 (No 4 of 2013) provides for the Governor to appoint one member to the Falkland Islands Development Corporation Board.

2. In exercise of my powers under section 8(1)(c) of the Falkland Islands Development Corporation Ordinance, I appoint to the Falkland Islands Development Corporation Board **Andrew Keith Pollard** as a member.

3. This appointment has effect from 1 April 2016 and will, unless the appointee resigns by written notice to the Governor, continue in effect until 30 June 2017.

Dated 7 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 30

13 April 2016

**Customs Ordinance  
section 7**

**Appointment of Temporary Customs Officer**

In exercise of the powers conferred by section 7(3) of the Customs Ordinance 2003, I appoint **FS Ian Waters** – S8414726 to be a temporary Customs Officer from 12 April to 10 October 2016.

Dated 13 April 2016

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

No. 31

13 April 2016

**Commissioners for Oaths Ordinance  
section 2(2)**

**Appointment of Commissioner for Oaths**

1. Section 2(2) of the Commissioners for Oaths Ordinance 1969 (Title 22.3) provides that the Governor may appoint commissioners for oaths.

2. In exercise of my powers under section 2(2), I appoint **Paula Veronica Brown** to be a commissioner for oaths.

3. This appointment has effect from the date below, and continues in effect whilst **Paula Veronica Brown** continues to practice law in the Falkland Islands, unless terminated sooner.

Dated 13 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 32

13 April 2016

**Retirement Pensions Ordinance  
section 3**

**Appointment of Member  
Retirement Pensions – Board of Management**

1. Section 3(2) of the Retirement Pensions Ordinance (Title 65.2) provides for the Governor to appoint three persons to be members of the Board of Management.

2. In exercise of my powers under section 3(2) I appoint **John Frederick Simpson** to be a member of the Board of Management.

3. This appointment has effect from 29 March 2016, and continues in effect for three years expiring on 30 March 2019, unless terminated sooner.

Dated 13 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 33

18 April 2016

**Falkland Islands Cricket Association Limited  
Company Number: 14454**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 31 March 2016.

Dated 18 April 2016

E. J. DENT,  
*Registrar of Companies.*

No. 34

18 April 2016

**Creating Choices Falklands Limited**  
**Company Number: 14647**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 31 March 2016.

Dated 18 April 2016

E. J. DENT,  
*Registrar of Companies.*

No. 35

26 April 2016

**Planning Ordinance (Title 55.3)**  
*section 5(2)*

**Appointment of Members of  
Planning and Building Committee**

1. Section 5(2) of the Planning Ordinance provides that the Governor shall appoint members to the Planning and Building Committee.

2. In exercise of my powers under section 5(2) I appoint **Simon Roy Miller** and **Roxanne McCarthy King-Clark** to be members of the Planning and Building Committee.

3. This appointment has effect on the date given below, and continues in effect for three years from that date, unless terminated sooner.

Dated 26 April 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 36

28 April 2016

**Administration of Justice (Payments to Jurors and  
Witnesses) Rules 2016**  
*rule 5*

**Rates for expenses for witnesses and jurors**

The Attorney General sets the following rates in accordance with rule 5 of the Administration of Justice Ordinance (Payments to Jurors and Witnesses) Rules 2016:

**(1) Travel:**

Public transport including air travel (standard/economy class travel only at cost).

Motorcycle or car 40 pence per mile (where more than one person travels together only the driver may claim).

Taxis (may only be claimed with the prior permission of the court). If permission is given the actual fare without gratuity will be paid. A receipt must be produced.

**(2) Food and drink:**

Daily rate - up to 5 hours - £5

Daily rate - over 5 hours - £15

**(3) Loss of Earnings:**

For loss of earnings, you must show that you have suffered a financial loss eg your employer did not pay you because you are a casual worker or if self-employed someone was actually employed to substitute whilst you were away. These are not the only examples and any loss you have actually suffered will be considered by the Court but you should provide evidence to support your claim. Your actual costs will be reimbursed up to the maximums set out below.

The court will require you to provide a certificate of loss of earnings which must be signed by your employer.

Claims:

During the first ten days attendance:

(a) of up to four hours £40

(b) over four hours £80

Day eleven onwards:

(a) of up to four hours £60

(b) over four hours £120

**(4) Carer allowance:**

You may also claim this if you are the primary carer for a child or dependent adult and you have to pay for alternative care because of your attendance at court.

**(5) Accommodation:**

If overnight accommodation is required by the court this will be arranged and paid for by the court.

Normally overnight accommodation is not allowed. If however you live beyond a reasonable commuting distance of where the court hearing will take place overnight accommodation may be paid for. However, if you want to make a claim you must get the permission of the court first. Basic bed and breakfast rate will be paid.

If staying with friends or family a claim of £31 per night can be claimed.

Dated 28 April 2016

D. C. BROWN,  
*Acting Attorney General.*



# FALKLAND ISLANDS GAZETTE

## Extraordinary

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The following are published in this Extraordinary Gazette —

**Register of Electors for Camp Constituency; and**

**Register of Electors for Stanley Constituency.**

## Register of Electors for Camp Constituency at 1 May 2016

1	Alazia	Hazel	Teal Inlet, E.F.I
2	Alazia	Keith	Goose Green, E.F.I
3	Alazia	Michael Robert	Port Edgar Farm, W.F.I
4	Anderson	Tony James	Port Howard Farm
5	Ashworth	Glennis	Fitzroy Ridge, E.F.I
6	Ashworth	Malcolm	Fitzroy Ridge, E.F.I
7	Barrientos	Jose Sixto Ruiz	North Arm, E.F.I
8	Battersby	Jon Alan	Hawkbit, Fitzroy, E.F.I
9	Battersby	Margaret Mary	Hawkbit, Fitzroy, E.F.I
10	Beattie	Ian Robert Ewen	North Arm, E.F.I
11	Bendyshe	Angela Geraldine Mary	Gibraltar Station, E.F.I
12	Bendyshe Pitaluga	Antoinette Margaretha Mary	Gibraltar Station, E.F.I
13	Berntsen	Benjamin John	Elephant Beach, E.F.I
14	Berntsen	Iain Kenneth	Sheffield Farm, W.F.I
15	Betts	Bernard Keith	Boundary Farm, W.F.I
16	Betts	Diane Joan	Fox Bay East, W.F.I
17	Bonner	Katie Jean	Port Howard, W.F.I
18	Bonner	Simon	Port Howard, W.F.I
19	Castro Barrientos	Gilberto Enrique	Manager House, Fitzroy Farm, E.F.I
20	Clark	Alan Neil	Port Howard, W.F.I
21	Clarke	Jan Michael	Lorenzo Farm, E.F.I
22	Clarke	Jeanette	Lorenzo Farm, E.F.I
23	Clarke	Michael Jan	Lorenzo Farm, E.F.I
24	Clarke	Suzanna	Manager House, Fitzroy Farm, E.F.I
25	Clarke	Tanya	Lorenzo Farm, E.F.I
26	Clarke-Turner	Stefen Michael	Rincon Grande Farm, E.F.I
27	Clausen Goodwin	Sophia Marina	Goose Green Farm, E.F.I
28	Cockwell	Benjamin William	Fox Bay Village, W.F.I
29	Cockwell	Clare Marie	Fox Bay, W.F.I
30	Cockwell	Grizelda Susan	Chartres, W.F.I
31	Collins Finlay	Shiralee	18 Fox Bay Village, W.F.I
32	Coulter	Julian Anthony	Port Howard Farm, W.F.I
33	Davis	Aase	Evelyn Station, E.F.I
34	Davis	Ian John	Evelyn Station, E.F.I
35	Decroliere	Carrie Madeline Helen	Fox Bay Village, W.F.I
36	Decroliere	Eric Ernest Albert	Fox Bay Village, W.F.I
37	Dickson	Charles George	Brookfield, E.F.I
38	Dickson	Doreen	Wreck Point, E.F.I
39	Dickson	Gerald William	Wreck Point, E.F.I
40	Dickson	Steven Charles	North Arm, E.F.I
41	Didlick	Fiona Margaret	C Cottage, Darwin, E.F.I
42	Didlick	Graham John	C Cottage, Darwin, E.F.I
43	Donnelly	Daniel	Crooked Inlet, W.F.I
44	Donnelly	Joyce Elizabeth	Crooked Inlet, W.F.I
45	Edwards	Norma	Lake Sullivan, W.F.I

46	Edwards	Rebecca Elizabeth	Port Howard Farm, W.F.I
47	Edwards	Roger Anthony	Lake Sullivan, W.F.I
48	Evans	Dale Clement	Spring Point Farm, W.F.I
49	Evans	Donna Newell	Spring Point Farm, W.F.I
50	Evans	Duane Richard	Doyle Farm, W.F.I
51	Evans	Michael David	Spring Point Farm, W.F.I
52	Evans	Richard Gregory	Pebble Island Lodge
53	Evans	Shaun Peter	Spring Point Farm, W.F.I
54	Felton-Short	Scott Daniel	Philomel Farm, Fox Bay, W.F.I
55	Finlay	Andrew John	18 Fox Bay Village, W.F.I
56	Finlayson	Neil Roderick	North Arm, E.F.I
57	Ford	Daniel Timothy	Peaks Farm, W.F.I
58	Ford	David	Port Louis, E.F.I
59	Ford	Tanya Louise	Albemarle Station, W.F.I
60	Gilding	Amy Heather	Port Louis, E.F.I
61	Gilding	Peter Bernard	Port Louis, E.F.I
62	Gleadell	Marklin John	Mosside Farm, E.F.I
63	Goodwin	Neil Alexander William	Goose Green Farm, E.F.I
64	Goss	Kimberley Rose	Horseshoe Bay, E.F.I
65	Goss	Margaret Rose	Horseshoe Bay, E.F.I
66	Goss	Michael Peter	Horseshoe Bay, E.F.I
67	Goss	Peter	Horseshoe Bay, E.F.I
68	Gould	Alexander Philip	Pebble Island
69	Gould	Dorothy Ruth	Pebble Island
70	Green	Carol Ann	13 Fitzroy, E.F.I
71	Greenland	Bonita Doreen	Valkyrie House, Darwin, E.F.I
72	Greenland	Kenneth David	Valkyrie House, Darwin, E.F.I
73	Grierson	Hew McInnes	Blue Beach, San Carlos, E.F.I
74	Grimmer	Edward	Clear View, Fitzroy River, E.F.I
75	Grimmer	Keith	The Dunes, Fitzroy River, E.F.I
76	Grimmer	Marilyn	The Dunes, Fitzroy River, E.F.I
77	Halford	Rodney John	Casa Verde, San Carlos, E.F.I
78	Halford	Sara Jayne	Casa Verde, San Carlos, E.F.I
79	Halford	Sharon	Casa Verde, San Carlos, E.F.I
80	Hansen	Ian	Main Point Farm, W.F.I
81	Hansen	Susan Ann	Main Point Farm, W.F.I
82	Harvey	Jen	Hill Cove, W.F.I
83	Harvey	Valerie Ann	Hill Cove, W.F.I
84	Harwood	Reuben Joseph	Rum Station, Port Stephens, W.F.I
85	Heathman	Ailsa	Estancia, E.F.I
86	Heathman	Ewart Tony	Estancia, E.F.I
87	Hill	Jennifer Eileen	Stoney Ridge Farm, W.F.I
88	Hirtle	Anthony	Peaks Farm, W.F.I
89	Hirtle	Doris Linda	Port Howard, W.F.I
90	Hirtle	Samantha Lee	Peaks Farm, W.F.I
91	Hirtle	Susan Mary	Peaks Farm, W.F.I
92	Hobman	John Malcolm	Goose Green, E.F.I
93	Hobman	Juan Jose Eleuterio	Westley Farm, W.F.I

94	Hobman	Vivien	Goose Green, E.F.I
95	Hoy	Dawn	Sheffield Farm, W.F.I
96	Hoy	Gabriella Daisy	Sheffield Farm, W.F.I
97	Innes	Gordon	Hill Cove, W.F.I
98	Innes	Isabella Alice	Hill Cove, W.F.I
99	Jaffray	Tanya Fiona	Clear View, Fitzroy River, E.F.I
100	Jamieson	Brian Neil	South Harbour, W.F.I
101	Jamieson	Kerri Yeoman	South Harbour, W.F.I
102	Jones	John Hugh	Race Point Farm, E.F.I
103	Jones	Karen Diana	Bold Cove Farm, W.F.I
104	Jones	Michael David	Head Of Bay, E.F.I
105	Jones	Michelle	Race Point Farm, E.F.I
106	Jones	Sheila Janice	Head Of Bay, E.F.I
107	Joshua	Angeline Gloria	The Galley, North Arm, E.F.I
108	Joshua	Paul Alan	The Galley, North Arm, E.F.I
109	Kilmartin	Kevin Seaton	Bluff Cove Farm, E.F.I
110	Kilmartin	Nicola Ruth	Bluff Cove Farm, E.F.I
111	Knight	Justin Robert Campbell	Leicester Creek Farm, W.F.I
112	Knight	Keith Andrew	Coast Ridge, W.F.I
113	Knight	Nigel Arthur	Coast Ridge, W.F.I
114	Larsen-Miller	Betty	North Arm, E.F.I
115	Lee	Christopher	Port Howard, W.F.I
116	Lee	Elizabeth	Goose Green, E.F.I
117	Lee	John Alfred	Goose Green, E.F.I
118	Lee	Leslie James	Galley Café, Goose Green, E.F.I
119	Lee	Mervyn Richard	North Arm, E.F.I
120	Lee	Myles	Port Howard, W.F.I
121	Lee	Trudi Dale	Galley Café, Goose Green, E.F.I
122	Livermore	Darren	Rat Castle, Fitzroy, E.F.I
123	Lloyd	Melvyn John	Point View, Goose Green, E.F.I
124	Lloyd	Valerie Ann	Point View, Goose Green, E.F.I
125	Lowe	Adrian Stewart	Murrell Farm, E.F.I
126	Lowe	Lisa Helen	Murrell Farm, E.F.I
127	Lowe	Nathan Reginald Eugenio	Murrell Farm, E.F.I
128	Luxton	William Robert	Chartres, W.F.I
129	MacDonald	Derek George	3 Goose Green, E.F.I
130	MacDonald	Isla Karen	3 Goose Green, E.F.I
131	Marsh	Alastair Roy	Shallow Harbour, W.F.I
132	Marsh	Anna Deirdre	Philomel Farm, Fox Bay, W.F.I
133	Marsh	Gavin Nicholas	Philomel Farm, Fox Bay, W.F.I
134	Marsh	Helen Rose	Rincon Ridge, W.F.I
135	Marsh	Kevin Roy	Harps Farm, W.F.I
136	Marsh	Leon Peter	Rincon Ridge, W.F.I
137	Marsh	Marlane Rose	Shallow Harbour, W.F.I
138	Marsh	Patricia Ann	Lakelands Farm, Fox Bay, W.F.I
139	Marsh	Rachel Mandy	Philomel Farm, Fox Bay, W.F.I
140	Marsh	Robin Frank	Lakelands Farm, Fox Bay, W.F.I
141	Maskell-Bott	John Malcolm	Hill Cove, W.F.I

142	Maskell-Bott	Sarah	Hill Cove, W.F.I
143	May	Christopher Raymond	Speedwell Island
144	May	Lindsey Olga	Speedwell Island
145	May	Shaun Christopher	Albemarle Station, W.F.I
146	McGhie	Jodie	Port North, W.F.I
147	McGhie	Roy	Port North, W.F.I
148	McGill	Lorraine Iris	Carcass Island
149	McGill	Robin Perry	Carcass Island
150	McKay	Josephine Ann	Greenhill Farm, Chartres, W.F.I
151	McKay	Kenneth Andrew	Greenhill Farm, Chartres, W.F.I
152	McKay	Penelope Rose	Westley Farm, W.F.I
153	McKay	Roy Derek	Greenhill Farm, Chartres, W.F.I
154	McLeod	Albert John	Goose Green, E.F.I
155	McLeod	John	Dunvegan Cabin, E.F.I
156	McLeod	Madeline Jean	Dunvegan Cabin, E.F.I
157	McLeod	Sarah Rose	Goose Green, E.F.I
158	McMullen	Matthew John	Kingsford Valley Farm, San Carlos, E.F.I
159	McPhee	Mark	Brookfield, E.F.I
160	McPhee	Sheila Margaret	16 The Beach House, GG, E.F.I
161	McPhee	Terence Owen	16 The Beach House, GG, E.F.I
162	McPhee	Trudi Lynette	Brookfield, E.F.I
163	McRae	David Michael	Cape Dolphin, E.F.I
164	Middleton	Kerry Ann	Goose Green, E.F.I
165	Miller	Catherine McLeod	Fox Bay Village, W.F.I
166	Miller	James Albert	Fox Bay Village, W.F.I
167	Minnell	Donna Marie	Moss Side, E.F.I
168	Minnell	Michael Robert	Moss Side, E.F.I
169	Mitchell	Leon John	Mount Kent Farm, E.F.I
170	Molkenbuhr	Lee Charles	Johnson's Harbour Farm, E.F.I
171	Morrison	Lewis Ronald	Goose Green, E.F.I
172	Morrison	Nigel Peter	7 Goose Green, E.F.I
173	Murphy	Roy David	Port Howard, W.F.I
174	Newman	Glynnis Karen	Goose Green, E.F.I
175	Newman	Lisa Jeraine	Harps Farm, W.F.I
176	Nightingale	Charlene	West Lagoons, Hill Cove, W.F.I
177	Nightingale	Karl Richard	West Lagoons, Hill Cove, W.F.I
178	Nightingale	Peter Richard	West Lagoons, Hill Cove, W.F.I
179	Nightingale	Sian Yvonne	West Lagoons, Hill Cove, W.F.I
180	Oliver	Cynthia Dawn	Fitzroy, E.F.I
181	Oliver	Paul	Fitzroy, E.F.I
182	Ovenden	Philip David	13 Fitzroy, E.F.I.
183	Phillips	Linda	North Arm, E.F.I
184	Phillips	Paul David	Hope Cottage, E.F.I
185	Phillips	Shula Louise	Hope Cottage, E.F.I
186	Pitaluga	Nicholas Alexander Robinson	Gibraltar Station, E.F.I
187	Pitaluga	Robin Andreas McIntosh	Gibraltar Station, E.F.I
188	Platt	Claire	Lakelands Farm, Fox Bay, W.F.I
189	Pole-Evans	Carole Suzan	Saunders Island

190	Pole-Evans	David Llewellyn	Saunders Island
191	Pole-Evans	Louise Suzan	Saunders Island
192	Pole-Evans	Shirley Helen	Manybranch, W.F.I
193	Pole-Evans	Suzan	Saunders Island
194	Pole-Evans	William Reginald	Manybranch, W.F.I
195	Poncet	Dion Michael	Beaver Island
196	Poncet	Jerome Pierre	Beaver Island
197	Poncet	Leiv Sigismond	Beaver Island
198	Porter	Joan	Shallow Harbour, W.F.I
199	Reeves	Ronald James	Port Howard, W.F.I
200	Reid	Emily Margaret	North Arm, E.F.I
201	Rendell	Michael	Bleaker Island
202	Rendell	Phyllis Mary	Bleaker Island
203	Robertson	Ann	Port Stephens, W.F.I
204	Robertson	Leigh Francesca	Doyle Farm, W.F.I
205	Robertson	Paul Jonathan	Port Stephens, W.F.I
206	Robertson	Peter Charles	Port Stephens, W.F.I
207	Robson	Miranda Gaye	Corral Cottage, Fitzroy, E.F.I
208	Robson	Raymond Nigel	Corral Cottage, Fitzroy, E.F.I
209	Ross	Marie	Port Louis, E.F.I
210	Rowlands	Neil	River House, Fitzroy River, E.F.I
211	Sackett	Pauline	22 Fitzroy Farm, E.F.I
212	Shepherd	Colin David	Goose Green, E.F.I
213	Short	Clint Andrez Robert	Walker Creek, E.F.I
214	Short	Elaine Elizabeth	Bleaker Island
215	Short	Lyndsay Marie	4 Walker Creek, E.F.I
216	Short	Robert Charles	Bleaker Island
217	Short	Robert George	4 Walker Creek, E.F.I
218	Sinclair	Simon Keith	Fitzroy Farm, E.F.I
219	Smith	Nadia Louise	Leicester Creek Farm, W.F.I
220	Steen	Gail	Paragon House Lafonia, E.F.I
221	Steen	Vernon Robert	Paragon House Lafonia, E.F.I
222	Stevens	Richard James	Port Sussex, E.F.I
223	Stevens	Toni Donna	Port Sussex, E.F.I
224	Street	David Charles	Plot 13A Fitzroy Ridge, E.F.I
225	Street	Edith Mary	Plot 13A Fitzroy Ridge, E.F.I
226	Summers	Nichola Jane	Cape Dolphin, E.F.I
227	Taylor	Christopher John	19 Goose Green, E.F.I
228	Tellez	Rodolfo	Goose Green, E.F.I
229	Thom	John Currie	22 Fitzroy Farm, E.F.I
230	Towersey	Diane Katherine	Port Stephens, W.F.I
231	Turner	Arthur Leonard Pitaluga	Rincon Grande, E.F.I
232	Turner	Elaine Ellen	Rincon Grande, E.F.I
233	Tuson	Michael Anthony	Saunders Island
234	Tuson	Olwen Carol	Saunders Island
235	Vatamanu	Paula May	Port Howard Farm, W.F.I
236	Velasquez	Arleen	North Arm, E.F.I
237	Velasquez	Evan Oscar Christopher	North Arm, E.F.I

238	Velasquez	Oscar Hernan	North Arm, E.F.I
239	Watson	Glenda Joyce	Long Island, E.F.I
240	Watson	Neil	Long Island, E.F.I
241	Whitney	Daniela Grace	Mount Kent Farm, E.F.I
242	Whitney	Dennis	Arkvilla MPA Plot, E.F.I
243	Whitney	Sara Marie	Home Farm, Douglas, E.F.I
244	Whitney	Tyrone	Home Farm, Douglas, E.F.I
245	Wilkinson	Rosemary	Dunnose Head, W.F.I
246	Woodward	James Gregory	Little Chartres Farm, W.F.I
247	Woodward	Lesley Ann	Little Chartres Farm, W.F.I

## Register of Electors for Stanley Constituency at 1 May 2016

1	Adams	John Harvey	21 Ross Road East
2	Adams	Marjorie Rose	21 Ross Road East
3	Adams-Leach	Shirley	4 Moody Street
4	Adeoye	Anneliese Rose	39 Callaghan Road
5	Adeoye	Jamel Bolanle	39 Callaghan Road
6	Adeoye	Tobi Akeem	39 Callaghan Road
7	Aguila Aguilar	Jeannette Del Carmen	Eliza Crescent Road
8	Alazia	Andrew	36 Callaghan Road
9	Alazia	Freda Evelyn	K.E.M.H
10	Alazia	George Robert	9 Thatcher Drive
11	Alazia	Sandra Marie	36 Callaghan Road
12	Alazia	Shannon Christine	36 Callaghan Road
13	Alazia	Yvonne	5 Thatcher Drive
14	Aldridge	Brian George	17 James Street
15	Aldridge	Caroline Mary	2 McKay Close
16	Aldridge	Diana Mary	17 James Street
17	Aldridge	Jody May	13 Hansen Hill
18	Aldridge	Kenneth John	2 McKay Close
19	Aldridge	Nina Ann	2 Mountain View
20	Aldridge	Stephen John	13 Hansen Hill
21	Allan	Joyce Ena	39 Ross Road
22	Allan	Valerie Anne	6A Jeremy Moore Avenue
23	Almonacid	Orlando	1 Villiers Street
24	Almond	Adrian Arthur James	4 Allardyce Street
25	Anderson	Carol Anne	22 Endurance Avenue
26	Anderson	Chloe	22 Endurance Avenue
27	Anderson	Eddie	22 Endurance Avenue
28	Anderson	Jenny	8 Goss Road
29	Anderson	Margaret Kathleen	18 Murray Heights
30	Anderson	Paul James	9 Fieldhouse Close
31	Anderson	Reginald Stanford	18 Murray Heights
32	Anderson	Richard Louis	7 Yates Place
33	Anderson	Rupert William	87A Davis Street
34	Anderson	Stephen Robert	25 Callaghan Road
35	Anderson	Tony James	8 Goss Road
36	Anderson-Smith	Georgina Carol	11 Fitzroy Road East
37	Appleby	Amelia	15 Fieldhouse Close
38	Arkhipkin	Alexander Ivanovich	13 Biggs Road
39	Arkhipkina	Nadezhda Alexandrovna	13 Biggs Road
40	Arkhipkina	Sofia Alexandrovna	13 Biggs Road
41	Armstrong-Ford	Karen Jane	2 Sullivan Street
42	Arthur-Almond	Daphne	4 Allardyce Street
43	Ashbridge	Corina Rose	116 Davis Street
44	Ashworth	Cara Michelle	5A Kent Road
45	Ashworth	Iain	5A Kent Road
46	Bagley	Corey Darren	9 Murray Heights

47	Bagley	Darren Clive	1A Hansen Hill
48	Bahamonde Salazar	Luis Alberto	21 Mink Park
49	Baigorri	Joanne Rose	7 Biggs Road
50	Baker	Alison Margaret	29 Fitzroy Road
51	Barker	Jane Elizabeth Diana	5 Pitaluga Place
52	Barker	Philip Craig	5 Pitaluga Place
53	Barkman	Teslyn Siobhan	23 Rex Hunt Road
54	Barlow	Andrea Joanna	Mullet Creek
55	Barlow	Martyn Liam	Mullet Creek
56	Barnes	Dierdre	8 Discovery Close
57	Barnes	Karen Rose	26 Ross Road West
58	Barnes	Marshall	8 Discovery Close
59	Barnes	Paul	26 Ross Road West
60	Barnes Acevedo	Melisa Beverley	14 Hansen Hill
61	Barton	Alison Mary	6 Villiers Street
62	Barton	Arthur John	6 Villiers Street
63	Barton	David Arthur	6 Villiers Street
64	Barton	John David	41 Fitzroy Road
65	Barton	Michael Richard	6A Jeremy Moore Avenue
66	Bates	Barbara	8 Watson Way
67	Bates	James William	8 Watson Way
68	Bedford	Kita Muriel	13 Jersey Road
69	Benjamin-Ibarra	Sheena Marie	18 Callaghan Road
70	Berntsen	Arina Janis	12 Rex Hunt Road
71	Berntsen	Brenda Diann Joanna	6 McKay Close
72	Berntsen	Christian Olaf Alexander	15A James Street
73	Berntsen	Falkland	10 Fitzroy Road
74	Berntsen	Gene Stanley	8 Fieldhouse Close
75	Berntsen	John Alexander	Flat 1, 7 Jeremy Moore Avenue
76	Berntsen	Kenneth Frederick	1 Racecourse Road East
77	Berntsen	Lucas Delhi John	2 Rex Hunt Road
78	Berntsen	Matthew John	19 Rex Hunt Road
79	Berntsen	Olaf Christian Alexander	35 Eliza Crescent
80	Berntsen	Rachel Ena	15A James Street
81	Berntsen	Robyn Chanelle	34 Teaberry Way
82	Berntsen	Saphena Anya Jane	20 Teaberry Way
83	Berntsen	Tessa Linda	20 Teaberry Way
84	Berntsen	Trevor John	6 McKay Close
85	Berntsen	Valdamar Lars	9 Teaberry Way
86	Besley-Clark	Barbara June	16 Ross Road West
87	Besley-Clark	Norman	16 Ross Road West
88	Betts	Arlette	Lafone House, Ross Road
89	Betts	Boonruam Phisil	7 Short Street
90	Betts	Coral Elizabeth	15 Pioneer Row
91	Betts	Dion James	13 Rowlands Rise
92	Betts	Donald William	7 Jeremy Moore Avenue
93	Betts	George Winston Charles	35 Ross Road West
94	Betts	Ian	1 Villiers Street

95	Betts	Lucia Elizabeth	35 Ross Road West
96	Betts	Michael George	16 Rex Hunt Road
97	Betts	Peter James	50A Davis Street
98	Betts	Priscilla Violet Morrison	Stanley Cottage South
99	Betts	Scott James Peter	YMCA
100	Betts	Severine	15 Pioneer Row
101	Betts	Shirley Rose	7 Jeremy Moore Avenue
102	Betts	Trudi Ann	50A Davis Street
103	Betts	Tyrone Trevor	7 Short Street
104	Betts-McKay	Cody Michael	50A Davis Street
105	Biggs	Ailie Christine	9 Brandon Road
106	Biggs	Althea Maria	3 Dairy Paddock Road
107	Biggs	Christopher David	Harbour View Knott
108	Biggs	Coleen Margot	9 Moody Street
109	Biggs	Daniel Craig	16 Endurance Avenue
110	Biggs	Edith Joan	K.E.M.H
111	Biggs	Frances	16 Endurance Avenue
112	Biggs	Kyle Alexander	36 Rex Hunt Road
113	Biggs	Lucas Sebastian	16 Endurance Avenue
114	Biggs	Michael Elfed	21 Fitzroy Road
115	Biggs	Peter Julian Basil	16 Endurance Avenue
116	Biggs	Terri-Sue	Harbour View Knott
117	Biles	Kathleen Anne	14 Kent Road
118	Biles	Keith Robert	14 Kent Road
119	Binnie	Linda Rose	6 Fieldhouse Close
120	Binnie	Ronald Eric	6 Fieldhouse Close
121	Binnie	Susana	3 Brandon Road
122	Birmingham	Alexandra Sally	5A Hansen Hill
123	Birmingham	John	4 Drury Street
124	Birmingham	Joseph John	4 Drury Street
125	Bishop	Nigel Ian	5 Jersey Road
126	Bishop	Tansy Fiona	5 Jersey Road
127	Blackley	Candy Joy	4 Barrack Street
128	Blackley	Maurice	10A German Camp, Callaghan Road
129	Blackley	Shane David	4 Barrack Street
130	Blake	Alexander Charles	38 Eliza Crescent
131	Blake	Anthony Thomas	14 Watson Way
132	Blake	Larissa Celly	12 Ross Road West
133	Blake	Lionel Geoffrey	1 Ross Road
134	Blake	Mariela	14 Watson Way
135	Blake	Sally Gwynfa	1 Ross Road
136	Blake	Thomas Patrick	12 Ross Road West
137	Bolt	Dennis John	4 Watson Way
138	Bone	Andrew James	7 Discovery Close
139	Bonner	Avril Margaret Rose	4 Felton Court
140	Bonner	Cheryl Anne	10 Racecourse Road
141	Bonner	Declan William	10 Watson Way
142	Bonner	Elizabeth Eleanor	19B Mink Park

143	Bonner	Ewen Shane	6 Mink Park
144	Bonner	Hayley Trina	10 Watson Way
145	Bonner	Linda Jane	4A Ross Road West
146	Bonner	Lindsay Jane	10 Rex Hunt Road
147	Bonner	Nicholas	4A Ross Road West
148	Bonner	Odette Ellen May	1A Capricorn Road
149	Bonner	Paul Roderick	5 John Street
150	Bonner	Richard James	19B Mink Park
151	Bonner	Susan Anne	43 Ross Road East
152	Bonner	Tansie Rebecca	9 Murray Heights
153	Bonner	Terence Leslie	1A Capricorn Road
154	Bonner	Vera Ann	5 John Street
155	Booth	Myriam Margaret Lucia	7 Philomel Street
156	Bowers	Arlene Elizabeth	14 Endurance Avenue
157	Bowles	Norma Evangeline	Kennedy House
158	Bowles	Sarah	9 Drury Street
159	Bowles	William Edward	Kennedy House
160	Bowles	William George Troyd	9 Drury Street
161	Bradford-Smith	Lani Maria	10 Brandon Road
162	Bragger	Edward Laurence	14 Jeremy Moore Avenue
163	Bragger	Stacy John	7 Eliza Crescent
164	Brickle	Paul	32 Fitzroy Road
165	Brock	Juanita Lois	20 Drury Street
166	Brook	Emma Jane	41 Ross Road East
167	Brooks	Cheryl Rose	Flat 6, 7 Jeremy Moore Avenue
168	Browning	Anita Jayne	29 Brandon Road
169	Browning	Gavin	29 Brandon Road
170	Browning	Henry Standford	36 John Street
171	Browning	Joan Lucy Ann	5 Villiers Street
172	Browning	Nathan David	3 Dairy Paddock Road
173	Browning	Rex	1 Yates Place
174	Browning	Richard William	96 Davis Street
175	Browning	Terence Irving	10 Ian Campbell Drive
176	Browning	Trevor Osneth	5 Villiers Street
177	Brownlee	Andrew Samuel	19 Ross Road East
178	Brownlee	Lynn Frances	19 Ross Road East
179	Brownlee	Michael Stewart	19 Ross Road East
180	Brownlee	Samantha Louise	19 Ross Road East
181	Buckett	Ronald Peter	49 Fitzroy Road
182	Buckett	Roy Peter	22 James Street
183	Buckett	Ryan Peter	2 Hansen Hill
184	Buckland	Carole Lynda Jane	8 Moody Street
185	Buckland	Darlene Joanna	5 James Street
186	Buckland	Kristy Lesley Anne	1B Capricorn Road
187	Buckley-Whitney	Helena Jane	2 Pioneer Row
188	Budd	Dennis Raymond	5 Ian Campbell Drive
189	Budd	Grant William	1 Ian Campbell Drive
190	Budd	Pamela Joan	5 Ian Campbell Drive

191	Burston	Catherine	91 Davis Street
192	Burston	Stephen Leslie	91 Davis Street
193	Bury	Ian Thomas	63 Davis Street
194	Butcher	Michael George	3A Dairy Paddock Road
195	Butler	George Joseph	1A Moody Street
196	Butler	Margaret Orlanda	5 Short Street
197	Buxton	Nicole Gabrielle	9 Ian Campbell Drive
198	Cant	Daniel James	24 Goss Road
199	Carey	Anthony Michael	19 Ross Road West
200	Carey	Gladys	19 Ross Road West
201	Cartwright	Stephen	39 Ross Road West
202	Castle	David Peter	26 John Street
203	Castle	Isobel	26 John Street
204	Castro Aguila	Jeannette del Pilar	37 Davis Street
205	Ceballos	Eulogio Gabriel	28 Endurance Avenue
206	Ceballos	Isabel del Carmen	3 Felton Court
207	Chaloner	Anthony Ross	8 Endurance Avenue
208	Chapman	Paul	27 Fitzroy Road
209	Chapman	Samantha Helen	71 Rex Hunt Road
210	Chater	Victoria	The Pink Shop, Fitzroy Road
211	Chater	William John	The Pink Shop, Fitzroy Road
212	Cheek	Gerald Winston	9 Biggs Road
213	Cheek	Janet Lynda	35 Ross Road East
214	Cheek	Marie	9 Biggs Road
215	Cheek	Rosalind Catriona	32 Goss Road
216	Christie	Darren James	8 Jeremy Moore Avenue
217	Christie	Phillippa Josephine	8 Jeremy Moore Avenue
218	Clapp	Kevin Christopher	1 Murray Heights
219	Clark	Douglas James	39 Fitzroy Road
220	Clarke	Aaron Charles	4 Philomel Street
221	Clarke	Angela Sindy	20 Jeremy Moore Avenue
222	Clarke	Camilla Marie	8 Drury Street
223	Clarke	David James	8 Diddle Dee Drive
224	Clarke	Derek Simon	23 Jeremy Moore Avenue
225	Clarke	Doreen	17 Ross Road West
226	Clarke	Gwynne Edwina	17 Jeremy Moore Avenue
227	Clarke	Ian	3A Racecourse Road
228	Clarke	Jeremy Ian Thomas	11 Fitzroy Road
229	Clarke	Jonathan Terence	3A Brandon Road
230	Clarke	Julie Ann	2A Racecourse Road
231	Clarke	Luke Anthony	17 Mink Park
232	Clarke	Mari-Ann Lucille	5 Mink Park
233	Clarke	Marvin Thomas	13 Davis Street
234	Clarke	Ronald John	17 Ross Road West
235	Clarke	Rudy Thomas	8 Drury Street
236	Clarke	Stephen Boyd	14A Brandon Road
237	Clarke	Terence John	17 Jeremy Moore Avenue
238	Clarke	Tracey Clare	23 Jeremy Moore Avenue

239	Clarke	Trudi Ann	13 Davis Street
240	Clarke	Violet Rose	23 Murray Heights
241	Clasen	Donna Monica	15 Davis Street
242	Clausen	Andrea Patricia	3 St Mary's Walk
243	Clausen	Denzil	24 Murray Heights
244	Clausen	Denzil George Gustavius	3 St Mary's Walk
245	Clausen	Melanie	29 Rex Hunt Road
246	Clement	Gary	9 Snake Street
247	Clement	Jacqueline Ann	25 Hansen Hill
248	Clement	Jane	Gift Shop Flat, Villiers St
249	Clement	Lee	25 Hansen Hill
250	Clement	Sarah Jane	10 Snake Hill
251	Clement	Wayne	10 Snake Hill
252	Clifford	Cherie Yvonne	Beckside Farm House
253	Clifford	John Owen	Beckside Farm House
254	Clifford	Michaela Sara Monica	Beckside Farm House
255	Clifford	Rhys John David	Beckside Farm House
256	Clifton	Darwin Lewis	53 Davis Street
257	Clifton	Heidi Monica	10 Pioneer Row
258	Clifton	Leonard	2 Murray Heights
259	Clifton	Marie	16 Fieldhouse Close
260	Clifton	Melvyn	12 Callaghan Road
261	Clifton	Neil	8 Anderson Drive
262	Clifton	Stephen Peter	61 Fitzroy Road
263	Clifton	Teresa Ann	20 Davis Street
264	Clifton	Thora Janeene	2 Murray Heights
265	Clifton	Valerie Ann	10 Pioneer Row
266	Clingham	Shaun Michael Ashley	19A Mink Park
267	Cockwell	Jennifer Marie	90 Davis Street
268	Cockwell	John Richard	14 Ross Road West
269	Cockwell	Maurice Adam	90 Davis Street
270	Cockwell	Samuel George	18 Kent Road
271	Cofre	Anya Evelyn	37 Eliza Crescent
272	Cofre	Elvio Miguel	3 Philomel Place
273	Cofre	Reuben Patrick	37 Eliza Crescent
274	Collier	Victoria Louise	7 Mink Park
275	Collins	Brian Richard	41 Davis Street
276	Collins	Christopher Allan	Flat 2, 5 Jeremy Moore Avenue
277	Collins	Hazel	41 Davis Street
278	Collins	Michael William Archibald	Flat 5, 7 Jeremy Moore Avenue
279	Collins	Steven Paul	Flat 4, 7 Jeremy Moore Avenue
280	Connolly	Kevin Barry	1 King Street
281	Cordero	Crystal Rose	1A Capricorn Road
282	Cotter	Jacqueline Ann	18 Mink Park
283	Cotter	Mary Jane	9 Jeremy Moore Avenue
284	Cotter	Timothy Stewart	9 Jeremy Moore Avenue
285	Courtney	Anthony Clive	30 Goss Road
286	Courtney	Julie Doris	30 Goss Road

287	Courtney	Marc Anthony	30 Goss Road
288	Coutts	John	36 Ross Road West
289	Coutts	Marie Anne	36 Ross Road West
290	Crabb	Elizabeth Ann	34A Davis Street
291	Crowie	Alan John	17 Ian Campbell Drive
292	Crowie	Ana Bonita	72 Davis Street
293	Crowie	Bethany Alice	72 Davis Street
294	Crowie	Bradley Rhys	72 Davis Street
295	Crowie	Dave Mark	10 James Street
296	Crowie	David Martin	39 Callaghan Road
297	Crowie	Ella Josephine	17 Ian Campbell Drive
298	Crowie	Nicola Jane	18 Sandy Woodward
299	Crowie	Rachael	10 James Street
300	Crowie	Robert John	18 Sandy Woodward
301	Cruickshank	Stuart Eric	6 Hansen Hill
302	Curtis	Bonnie Elizabeth Hamilton	22 Mink Park
303	Curtis	Daniella Dawn	6 Ian Campbell Drive
304	Curtis	James William Hamilton	5A Brisbane Road
305	Curtis	Tanya	5A Brisbane Road
306	Curtis	Tiegan Jane	5A Brisbane Road
307	Daille Marchant	Antoine Rene	18 Mink Park
308	Davies	Anthony Warren	7 Callaghan Road
309	Davies	Colin George	15 Ross Road West
310	Davies	Eileen Wynne	15 Ross Road West
311	Davies	Helen Louise	15 Ross Road West
312	Davies	Jacqueline Nancy	7 Callaghan Road
313	Davies	Samantha	14 Rex Hunt Road
314	Davies	Sian Karen	1 Drury Street
315	D'Avino	Damaris Priscila	17 Rex Hunt Road
316	D'Avino	Juan Marcelo	17 Rex Hunt Road
317	D'Avino	Pamela Martha	17 Rex Hunt Road
318	Davis	Doreen Susan	11 Callaghan Road
319	Davis	Ellen Rose	55 Davis Street
320	Davis	Macauley John	37 Davis Street
321	Davis	Roy George Victor	6 Narrows View
322	Davis	Samantha Jane	21 Kent Road
323	Davis	Stacey Elizabeth	1A Hansen Hill
324	Davis	Yona	37 Davis Street
325	Dent	Dean Angus	19 Hansen Hill
326	Dent	Elizabeth Jayne	4 Fieldhouse Close
327	Dent	Janice Vanessa	19 Hansen Hill
328	Dent	Stephen John	4 Fieldhouse Close
329	Dickson	Iris	2 Dairy Paddock Road
330	Dickson	Michael Keith	12 Dairy Paddock Road
331	Dickson	Ronald Edward	2 Dairy Paddock Road
332	Didlick	Imogen Fiona	54 Rex Hunt Road
333	Didlick-Smith	Rhiannon Elenore	13 Ross Road East
334	Dobbyns	Kathleen Gay	60 Davis Street

335	Dodd	Alison	10 Beaver Road
336	Dodd	Mark Thomas	8 Mink Park
337	Dodd	Nigel Keith	10 Beaver Road
338	Dodd	Samantha Jane	4 Sullivan Street
339	Drysdale	Karen Margaret	1 Watson Way
340	Duncan	Stuart Dave	2 Fieldhouse Close
341	Eagle	Rex Edward	25 Ross Road East
342	Earnshaw	Jacqueline Elizabeth	37 Ross Road West
343	East	Justin Clive Richard	1 Fieldhouse Close
344	Eccles	Ashton Laura	3 John Biscoe Road
345	Eccles	Bernard Leslie	18 Jeremy Moore Avenue
346	Eccles	Matthew James	3 John Biscoe Road
347	Eccles	Mhairi-Anne	18 Jeremy Moore Avenue
348	Eccles	Moira Cameron	18 Jeremy Moore Avenue
349	Elbakidze	Zaza	10 Mink Park
350	Ellick	Joanne Marie	11 McKay Close
351	Elliot	Elizabeth Rose	15 Callaghan Road
352	Elliot	Henry James	15 Callaghan Road
353	Ellis	Cyril	24 Ross Road East
354	Ellis	Louise	34 Davis Street
355	Ellis	Lucy	11 James Street
356	Ellis	Paul	43 John Street
357	Ellis	Sally Jean	43 John Street
358	Ellis	Valerie	24 Ross Road East
359	Elsby	Barry	Moody Brook House
360	Elsby	Thomas	112A Davis Street
361	Erikson	Fiona Alison	Flat 2, 6 Jersey Road
362	Evans	Kyran Binnie	Murray Heights
363	Evans	Michele Paula	Murray Heights
364	Evans	Raymond	12 Rex Hunt Road
365	Evans	Tracy	45 Ross Road East
366	Eynon	Carol	8 Villiers Street
367	Eynon	David John	8 Villiers Street
368	Faria	April Marie	3A Brisbane Road
369	Faria	Basil Harry	3A Brisbane Road
370	Faria	Maria Anne	3A Brisbane Road
371	Faria	Paul	22 Hansen Hill
372	Faria	Sarah Louise	22 Hansen Hill
373	Faria	Susana Caroline Berntsen	22 Hansen Hill
374	Felton	Trudi Eileen	13 Eliza Crescent
375	Ferguson	John William	47 Ross Road East
376	Ferguson	Rose	6 Thatcher Drive
377	Ferguson	Stephanie Janet	47 Ross Road East
378	Ferguson	Thelma	4A St Mary's Walk
379	Ferriby	Debora Susana	56 Davis Street
380	Ferriby	Lee Robert	56 Davis Street
381	Fiddes	Douglas Graham	The Stables, Moody Brook
382	Fiddes	Gardner Walker	3 Watson Way

383	Fiddes	Julia Bertrand	6 Rowlands Rise
384	Fiddes	Keelan Shaun	The Stables, Moody Brook
385	Fiddes	Kelly Melody	19A Mink Park
386	Fiddes	Melody Christine	3 Watson Way
387	Finlayson	Kimberley Elizabeth	Whyteways, James Street
388	Finlayson	Marilyn Christine	24 James Street
389	Finlayson	Peter	24 James Street
390	Finlayson	Phyllis	6 Brandon Road
391	Fisher-Smith	Julie Anne	8 Fieldhouse Close
392	Floyd	Michael	7 Pitaluga Place
393	Floyd	Michael Anthony	9 Gleadell Close
394	Floyd	Stephen Paul	26 Hansen Hill
395	Floyd	Tracy	26 Hansen Hill
396	Fogerty	Richard Edwin John	Stone Cottage, Bypass Road
397	Ford	Alison Jane Marie	9 Jersey Road
398	Ford	Arthur Henry	K.E.M.H
399	Ford	Bronwen Rebecca	3 Pitaluga Place
400	Ford	Chloe Elizabeth	Flat 4, Moody Street
401	Ford	Christine	6 Drury Street
402	Ford	Christopher James	6 Felton Court
403	Ford	Colin Stewart	15 Kent Road
404	Ford	Colleen Mary	12 Davis Street
405	Ford	Darrel Michael	29 Rex Hunt Road
406	Ford	Debbi Louisa	6 Felton Court
407	Ford	Donna Marie	19 Kent Road
408	Ford	Gerard Allan	12 Hansen Hill
409	Ford	Ieuan Colin	15 Kent Road
410	Ford	Jill Edith	12 Hansen Hill
411	Ford	Jonathan	3 Pitaluga Place
412	Ford	Julie Ann	3 Pitaluga Place
413	Ford	Leann Caroline	15 Kent Road
414	Ford	Leonard	9 Jersey Road
415	Ford	Mandy	1 James Street
416	Ford	Mikaela Jayne	10 Murray Heights
417	Ford	Neil Frazer	6 Drury Street
418	Ford	Paul Edward	2 Sullivan Street
419	Ford	Simon	1 James Street
420	Ford	Wade Leonard	9 Jersey Road
421	Forrest	Jennifer Carol	6 Fitzroy Road East
422	Forrest	Michael John	6 Fitzroy Road East
423	Forster	Amanda	9 Fieldhouse Close
424	Forster	Gwyneth May	10 Drury Street
425	Forster	James	10 Drury Street
426	Forster	Lynne	112A Davis Street
427	Fowler	Alan Claude	4 Capricorn Road
428	Fowler	Daniel Martin	2 Glasgow Road
429	Fowler	John Andrew Thomas	The Old Bakery, Fitzroy Road
430	Fowler	Vanessa Kay	4 Capricorn Road

431	Fowler	Zoë	2 Glasgow Road
432	France	Ian Peter	4 Sullivan Street
433	Francis	Carla Marie	2 Fieldhouse Close
434	Freeman	Carl Francis	Moody Brook Road
435	Freeman	Dianne May	Moody Brook Road
436	Freer	Edward Craig	7 Fitzroy Road East
437	Freer	Matthew Paul	7 Fitzroy Road East
438	Freer	Pamela Jane	7 Fitzroy Road East
439	Freer	Stephen Paul James	7 Fitzroy Road East
440	French	Breda Marie	46 Rex Hunt Road
441	French	Robert Alan	12 Narrows View
442	Fyfe	David	6 Capricorn Road
443	George	Kevin Charles	26 Ross Road East
444	Gilbert	Christopher Paul	11 Ian Campbell Drive
445	Gilbert	Mark Ian	13 Beaver Road
446	Gilbert	Neil Robert	17 Sullivan Street
447	Gilbert	Robert Ernest	22 Jeremy Moore Avenue
448	Gilbert	Sharon	11 Ian Campbell Drive
449	Gilding	Melanie Carol	38 Ross Road
450	Gilding	Petra Sophie	8 Murray Heights
451	Gilson-Clarke	Martyn Ian	79 Rex Hunt Road
452	Gisby	Annie	37 Ross Road East
453	Glanville	Adam James	12 James Street
454	Gleadell	Ian Keith	2 Yates Place
455	Gomez	Eduardo Daniello	41 Callaghan Road
456	Gomez	Rebecca Lily	41 Callaghan Road
457	Goodwin	Bonita Colleen	21 Eliza Crescent
458	Goodwin	Catherine Dawn	8 Hansen Hill
459	Goodwin	Cheveze John Douglas	YMCA
460	Goodwin	Colin Valentine	86 Davis Street
461	Goodwin	Derek Samuel	21 Eliza Crescent
462	Goodwin	Emily Rose	7 Brisbane Road
463	Goodwin	Gareth Kevin	15 Hansen Hill
464	Goodwin	Hazel Rose	7 Thatcher Drive
465	Goodwin	June Elizabeth	86 Davis Street
466	Goodwin	Kenton John Douglas Benjamin	9 Discovery Close
467	Goodwin	Margaret Ann	3`H` Jones Road
468	Goodwin	Margo Jane	5C Hansen Hill
469	Goodwin	Marie-Bernard Therese	15 Hansen Hill
470	Goodwin	Rachel Karen	31 Ross Road West
471	Goodwin	Robin	31 Ross Road West
472	Goodwin	Robin Christopher	27 Callaghan Road
473	Goodwin	Simon James	8 Hansen Hill
474	Goodwin	Tonisha Louisa	21 Eliza Crescent
475	Goodwin	Una	27 Callaghan Road
476	Goodwin	William John Maurice	7 Brisbane Road
477	Goss	Annagret	16 Jeremy Moore Avenue
478	Goss	Ariane Storm	16 Jeremy Moore Avenue

479	Goss	Carole-Ann	2A Capricorn Road
480	Goss	Eric Miller	2 Fitzroy Road East
481	Goss	Ian Ernest Earle	98 Davis Street
482	Goss	Jane Alexander	3A Brandon Road
483	Goss	Morgan Edmund	16 Jeremy Moore Avenue
484	Goss	Sandra Kathleen	11 Kent Road
485	Goss	Shirley Ann	2 Fitzroy Road East
486	Goss	Simon Peter Miller	11 Kent Road
487	Goss	Susan Diann	98 Davis Street
488	Goss	William Henry	7 Brandon Road
489	Gough	Phyllis Candy	8 John Street
490	Gough	Tanzey Jayne	3 Police Cottages
491	Granger	Nicola Jane	3 Biggs Road
492	Granger	Robin David	3 Biggs Road
493	Gray	Patricia May	22 Ross Road West
494	Green	David William	4 Discovery Close
495	Greenland	James Andrew William	13 Scoresby Close
496	Greenland	Kimberley Joanna	13 Scoresby Close
497	Greenland-Elbakidze	Natasha Bonita	10 Mink Park
498	Greenough	Geoffrey	Cemetery Cottage
499	Greenough	Wanda Rose	Cemetery Cottage
500	Halliday	Cathy Anne	5 Drury Street
501	Halliday	Jeffrey James	9A Philomel Street
502	Halliday	Joyce Isabella Patience	5 Fieldhouse Close
503	Halliday	Julie Ann	9A Philomel Street
504	Halliday	Kenneth William	5 Fieldhouse Close
505	Halliday	Raynor	9 Brisbane Road
506	Hancox	Alice Fiona	41 Eliza Crescent
507	Hancox	Emily Clare	7 Racecourse Road
508	Hansen	Keva Elizabeth	1 Dairy Paddock Road
509	Hardcastle	Eileen Beryl	7 Ross Road East
510	Hardcastle	Simon Brook	7 Ross Road East
511	Harris	Angela Jane	10 Haskard Rise
512	Harris	Christopher James	4A Ross Road East
513	Harris	Dennis Sefton	19 Callaghan Road
514	Harris	Heather	3 Ross Road East
515	Harris	Jill Yolanda Miller	19 Fitzroy Road
516	Harris	Karl Henry	10 Haskard Rise
517	Harris	Leeann Watson	11 Dairy Paddock Road
518	Harris	Leslie Sidney	19 Fitzroy Road
519	Harris	Michael Ronald	3 Ross Road East
520	Harris	Ralph Aaron	11 Dairy Paddock Road
521	Harris	Reece Lee	11 Dairy Paddock Road
522	Harris	Wendy Ann	19 Callaghan Road
523	Harte	Emma Louise	9A Philomel Street
524	Harte	Jessica Elise	9A Philomel Street
525	Hartley	Jeannette	21 Callaghan Road
526	Harvey	Sheila	8 Barrack Street

527	Harvey	William	Flat 3, 5 Jeremy Moore Avenue
528	Hawksworth	Christopher	6B Gleadell Close
529	Hawksworth	David	25 Eliza Crescent
530	Hawksworth	Ryan	2 Goss Road
531	Hay	Graeme	30 Rex Hunt Road
532	Hay	Joanne Hazel Rose	30 Rex Hunt Road
533	Hayward	Marjorie	4B St Mary's Walk
534	Hayward	Matthew Oliver	Mullet Creek
535	Hayward	Neville	21 Hansen Hill
536	Hayward	Pauline May	21 Hansen Hill
537	Heathcock	Andrew James	7 Drury Street
538	Heathman	Abbie Louise	15 Eliza Cove Road
539	Heathman	Malcolm Keith	15 Eliza Cove Road
540	Heathman	Mandy Gail	15 Eliza Cove Road
541	Heathman	Nyree	7 Allardyce Street
542	Heathman	Sally Hermione	15 Eliza Cove Road
543	Henry	Adam Robert	28 Brandon Road
544	Henry	Derek William	4 Pitaluga Place
545	Henry	Donna Louise	3 Davis Street
546	Henry	John Stuart	15 Villers Street
547	Henry	Patricia Denise	8 Beaver Road
548	Henry	Tracey Dawn	4 Pitaluga Place
549	Hewitt	Bernice Marilyn Sarah	40 Ross Road West
550	Hewitt	Charles David James Munro	YMCA
551	Hewitt	Christine Alison Elizabeth	16 Sullivan Street
552	Hewitt	Frances Agnes	K.E.M.H
553	Hewitt	Gary George	3 Hebe Place
554	Hewitt	Margaret Ann	3 Hebe Place
555	Hills	David John	19 Scoresby Close
556	Hirtle	Christine	5 Capricorn Road
557	Hirtle	Debbie Ann	2B Capricorn Road
558	Hirtle	Rose Ann Shirley	4 Villiers Street
559	Hirtle	Zane Eric	12 Drury Street
560	Hobman	Anola Zoey	Flat 8, Jersey Road
561	Hobman	Kyle	YMCA
562	Howe	Alexander Luke Desmond	36 Davis Street
563	Howe	Alison Delia	36 Davis Street
564	Howe	Paul Anthony	36 Davis Street
565	Humphreys	Dennis James	7 Dean Street
566	Humphreys	Hannah Elaine	12 Mink Park
567	Hutton	Elizabeth Isabella	3 John Street
568	Hutton	Philip	3 John Street
569	Ibarra Espinosa	Gonzalo Patricio	18 Callaghan Road
570	Igao	Noel Neri	10 Goss Road
571	Igao	Pauline Lynx	10 Goss Road
572	Inglis	Alison Anne MacKenzie	9 Short Street
573	Irvine	Andrew Grant McKenzie	9 McKay Close
574	Jackson	Kathleen	7 Drury Street

575	Jackson	Malcolm	7 Drury Street
576	Jackson	Mark Malcolm	5 Drury Street
577	Jacobsen	Alastair	1A Philomel Street
578	Jacobsen	Catherine Joan	1A Philomel Street
579	Jacobsen	Tanzi	19 Scoresby Close
580	Jacobsen	Toni Rhona	10 Ian Campbell Drive
581	Jaffray	Anika Doreen	9B Sullivan Street
582	Jaffray	Arlette Sharon	7 Jersey Road
583	Jaffray	Dereck Charles	2 Arch Green
584	Jaffray	Dominic Summers	84A Davis Street
585	Jaffray	Eileen	5 Hebe Street
586	Jaffray	Estelle Anita	11 Snake Hill
587	Jaffray	Eva Lynn	47 Callaghan Road
588	Jaffray	Frank Alexander	1 Gleadell Close
589	Jaffray	Gerard Alan	47 Callaghan Road
590	Jaffray	Helen Rose	84 Davis Street
591	Jaffray	Ian	5 Hebe Street
592	Jaffray	Ingrid Joyce	9 Fitzroy Road
593	Jaffray	Janet	3 Ross Road West
594	Jaffray	John	3 Ross Road West
595	Jaffray	John Summers	84A Davis Street
596	Jaffray	John Willie	21 Watson Way
597	Jaffray	June Elizabeth	17 Ross Road East
598	Jaffray	Kalon David	10 Diddle Dee Drive
599	Jaffray	Kenneth Ian	7 Jersey Road
600	Jaffray	Lisa Jane	7 Hebe Street
601	Jaffray	Nicole Dawn	5A Hebe Street
602	Jaffray	Phyllis	21 Watson Way
603	Jaffray	Shaun Melvyn	28 Davis Street
604	Jaffray	Stephen James	5 James Street
605	Jaffray	Terence Roy	5 Hebe Street
606	Jaffray	Terri-Ann	24 Endurance Avenue
607	Jaffray	Tony	84 Davis Street
608	Jamieson	Malcolm William	1 Rex Hunt Road
609	Jamieson	Patricia Anne	1 Rex Hunt Road
610	Jennings	Hamish Warren	9A Davis Street
611	Jennings	Jacqueline	5A Davis Street
612	Jennings	Leeanne Kate	9 Davis Street
613	Jennings	Nancy Elizabeth	7 Philomel Street
614	Jennings	Roy	9 Davis Street
615	Jennings	Stephen	5 Fitzroy Road
616	Jennings	Warren Alan	9 Davis Street
617	Johnson	Michael Neil	30 Jersey Road
618	Jones	Deena Marie	6 Allardyce Street
619	Jones	Evan Glynn	1 Drury Street
620	Jones	Kevin Richard	3A Brandon Road
621	Jones	Yvonne Malvina	2 Thatcher Drive
622	Jordan	Cara Jane	12 Goss Road

623	Joshua	Josephine Mary	7 Gleadell Close
624	Joshua	Rosemond Patricia	3 Felton Stream
625	Keane	Alva Rose Marie	18 Davis Street
626	Keane	Olaf James	18 Davis Street
627	Keane	Thomas James	18 Davis Street
628	Keenleyside	Charles Desmond	3 Pioneer Row
629	Keenleyside	Manfred Michael Ian	2 Snake Hill
630	Keenleyside	Nanette Barbara	2 Snake Hill
631	Kenny	Erling	20 James Street
632	Kidd	John Nathan	7 Ross Road West
633	Kidd	Lillian Rose Orissa	7 Ross Road West
634	King	Anna Constance Eve	34 Ross Road
635	King	Glynis Margaret	15 Jersey Road
636	King	Michelle Beverly	4 Biggs Road
637	King	Peter Thomas	10 Jeremy Moore Avenue
638	King	Robert John	22/24 Davis Street
639	King	Rosemarie	10 Jeremy Moore Avenue
640	King-Clark	Roxanne McCarthy	39 Fitzroy Road
641	Kirkham	Campbell Joseph	5 Capricorn Road
642	Knight	Margaret Anne	6 Yates Place
643	Knipe	Chedwin Norman	3 Davis Street West
644	Knipe	Susan Jane Helena	3 Davis Street West
645	Kultschar	John William	33C Davis Street
646	Kultschar	Richard Paul	5 Brisbane Road
647	Kultschar	Yvonne Rosina	33C Davis Street
648	Ladron De Guevara	Simon	22/24 Davis Street
649	Ladron De Guevara Barnes	Jeremy Marshall	22/24 Davis Street
650	Ladron De Guevara Vilches	Carmen Benilda	22/24 Davis Street
651	Laffi	Atilio Segundo	3 Brisbane Road
652	Laffi	Kathleen Mary	3 Brisbane Road
653	Lang	Colin David	2 Brisbane Road
654	Lang	David Geoffrey	K.E.M.H
655	Lang	James Patrick	2 Davis Street West
656	Lang	Leah Falalimpa	2 Davis Street West
657	Lang	Theresa Margaret	28 Goss Road
658	Lang	Valma Emily	8A Moody Street
659	Lang	Wendy Diane	2 Brisbane Road
660	Larsen	Ellen	6A Moody Street
661	Larsen	Ronald Ivan	2 Anderson Drive
662	Lazo	Javier Waldemar Sanchez	80 Davis Street
663	Lazo	Joanna Rose	80 Davis Street
664	Lazo	Matthew Derek	5 Allardyce Street
665	Leach	Nigel Jon	4 Moody Street
666	Lee	Beverley Christina	4 Police Cottages
667	Lee	Gladys	11 Drury Street
668	Lee	Karen Jane	14 Davis Street
669	Lee	Mandy John	15 James Street
670	Lee	Owen Henry	4 Pioneer Row

671	Lee	Victoria Jane	2 Rex Hunt Road
672	Legg	Robert Keith	21 Kent Road
673	Lennie	Gordon Carnie	9 Narrows View
674	Lennie	Roberto Carnie	9 Narrows View
675	Lewis	David James	3 Ian Campbell Drive
676	Lewis	Jason	9 Short Street
677	Lewis	Pamela Irene	3 Ian Campbell Drive
678	Leyland	Frank	10 Brandon Road
679	Leyland	Vera	10 Brandon Road
680	Livermore	Anton	82 Davis Street
681	Livermore	Doreen Emily	82 Davis Street
682	Livermore	Kirsty Nicole	6 Hansen Hill
683	Lloyd	Christopher Sturdee	12 McKay Close
684	Lloyd	Natalie Anne	12 McKay Close
685	Lowe	Katrina Louise	9 Discovery Close
686	Luxton	Anna	18 Kent Road
687	Luxton	Jennifer Mary	4 Hebe Place
688	Luxton	Michael	1A Pioneer Row
689	Luxton	Nicola	1A Pioneer Row
690	Luxton	Robin	1 Jersey Road
691	Luxton	Stephen Charles	1 Mullet Creek
692	Luxton	Susan Vera	1 Mullet Creek
693	Luxton	Wendy Jennifer	1 Jersey Road
694	Luxton	Winifred Ellen	15 Fitzroy Road
695	Lyse	Linda Margaret	65 Fitzroy Road
696	Macaskill	Angus Lindsay	11 Short Street
697	Macaskill	John	34 Ross Road West
698	Macaskill	Robert John	1A Brisbane Road
699	Macaskill	Tracey Jayne	1A Brisbane Road
700	MacDonald	Irene	Flat 2, Racecourse Road
701	Maddocks	Robert Charles	11 Murray Heights
702	Marsh	Samantha Ann	Whyteways, James Street
703	Martin	Lee Anthony	7 McKay Close
704	Martin	Lisa Maria	7 McKay Close
705	May	Angela Jane	11 Sullivan Street
706	May	Bruce Raymond	9 Kent Road
707	May	Bryan Roy	21 Jeremy Moore Avenue
708	May	Connie	9 Kent Road
709	May	Heather	1 Glasgow Road
710	May	Monica	21 Jeremy Moore Avenue
711	May	Roger	11 Sullivan Street
712	May	Tiphanie	3 Diddle Dee Drive
713	May	William Albert	1 Glasgow Road
714	McBain	Arthur	29 Goss Road
715	McBain	Rhoda Margaret	29 Goss Road
716	McCallum	Bettina Kay	14 Drury Street
717	McCallum	Rampai	14A Drury Street
718	McCormick	Dale Ronald	24 Eliza Crescent

719	McCormick	Pauline Margaret Ruth	29 Callaghan Road
720	McCormick	Richard Paul	29B Callaghan Road
721	McCormick	Samantha Laura	2 Mullet Creek
722	McCormick	Tamara Ann	54 Davis Street
723	McCormick	Wayne Stanley James	29 Fitzroy Road
724	McDade	Priscilla Alison	3 Gleadell Close
725	McGhie	James	10 Pioneer Row
726	McGhie	Thomas Forsyth	4 Yates Place
727	McGill	Cara Jane	Flat 7, 6 Jersey Road
728	McGill	Daniel Stanford	2 James Street
729	McGill	David William	Gardeners Cottage South
730	McGill	Diane Beverley	2 James Street
731	McGill	Doris Mary	K.E.M.H
732	McGill	Glenda	1C Capricorn Road
733	McGill	Heather Margaret	Gardeners Cottage South
734	McGill	Ian Peter	1C Capricorn Road
735	McGill	Len Stanford	2 James Street
736	McGill	Teresa Rose	26 Ross Road East
737	McGill	Travis Ian	1C Capricorn Road
738	McKay	Bono John	21 Ross Road West
739	McKay	Clara Mary	20 Ross Road West
740	McKay	Heather Valerie	16 Eliza Crescent
741	McKay	Jeannie Paullina	2 Allardyce Street
742	McKay	Jennifer Coral	24 Eliza Crescent
743	McKay	John David Toby	51 Callaghan Road
744	McKay	Lauren Joyce	24 Rex Hunt Road
745	McKay	Michael John	64 Davis Street
746	McKay	Michelle Jane	64 Davis Street
747	McKay	Neil	10 Watson Way
748	McKay	Peter John	21 Ross Road West
749	McKay	Rex	16 Eliza Crescent
750	McKay	Stacey Jane	9 Mountain Berry Road
751	McKee	Miranda	12 Watson Way
752	McKee	Richard Buick	12 Watson Way
753	McKenzie	Alice Maud	2B St Mary's Walk
754	McKenzie	Charles Alexander Albert John	2B St Mary's Walk
755	McLaren	Caroline Mary	Flat 9, 6 Jersey Road
756	McLean	Stephen Thomas Turnbull	2 Mountain View
757	McLeod	David	49 Callaghan Road
758	McLeod	Glenda Otadoy	49 Callaghan Road
759	McLeod	Henry Donald Alexander	16 Fieldhouse Close
760	McLeod	Ian	17 Davis Street
761	McLeod	Janet Wensley	75 Davis Street
762	McLeod	Janice	2 Ross Road West
763	McLeod	Joan May	13 Murray Heights
764	McLeod	John	23 Hansen Hill
765	McLeod	Mally	17 Davis Street
766	McLeod	Margaret Ann	13 Fitzroy Road East

767	McLeod	Michael William	5 Short Street
768	McLeod	Pearl Mary Ann	18 Brandon Road
769	McLeod	Robert	75 Davis Street
770	McLeod	Robert John	2 Ross Road West
771	McLeod	Valorie Marcela	7 Ian Campbell Drive
772	McMullen	June	8 Brandon Road
773	McMullen	Lucille Anne	6 John Street
774	McMullen	Tony	8 Brandon Road
775	McPhee	Denise	4 Brandon Road West
776	McPhee	Jessica	4 Brandon Road West
777	McPhee	Justin Owen	4 Brandon Road West
778	McRae	Charlotte Melize	Stanley House, Lady Hunt
779	McRae	Elvis	YMCA
780	McRae	Gloria Linda	9 Snake Street
781	McRae	Kerry Jane	15 Sullivan Street
782	McRae	Michael	2A 'H' Jones Road
783	Merrey	Adrianna Janine	6 Beaver Road
784	Middleton	Callum William	14 Mink Park
785	Middleton	Caren	15 Mink Park
786	Middleton	Caroline Ann	7 James Street
787	Middleton	Charlotte Anne	2 Police Cottages
788	Middleton	Dennis Michael	Dolphin Cottage
789	Middleton	Joan Eliza	8 James Street
790	Middleton	Leonard	8 Yates Place
791	Middleton	Macauley Brian	13 McKay Close
792	Middleton	Megan Shirley Rebecca	79 Davis Street
793	Middleton	Murray Alexander	15 Mink Park
794	Middleton	Nevin Alexander	15 Mink Park
795	Middleton	Phillip John	5 St Marys Walk
796	Middleton	Sharon Elizabeth	Dolphin Cottage
797	Middleton	Stephanie Anne	13 McKay Close
798	Middleton	Yvonne Allison	50 Davis Street
799	Miller	Andrew Nigel	7 Villiers Street
800	Miller	Carol	Marine Cottage
801	Miller	Gail Marie	6A Brisbane Road
802	Miller	Janet Mary	Market Garden, Airport Rd
803	Miller	Jayne Elizabeth	27 Davis Street
804	Miller	Samuel Andrew	27 Davis Street
805	Miller	Simon Roy	Marine Cottage
806	Miller	Timothy John Durose	Market Garden, Airport Rd
807	Mills	Terence Kenneth	1 Thatcher Drive
808	Minnell	Adrian James	8 Moody Street
809	Minnell	Hazel Eileen	5 Yates Place
810	Minnell-Goodwin	Mandy Hazel	31 Ross Road West
811	Minto	Adam Daniel	70 Davis Street
812	Minto	Christian Ian	18 Endurance Avenue
813	Minto	Dilys Rose	18 Endurance Avenue
814	Minto	Graham Stewart	12 Brisbane Road

815	Minto	Isabel Joan	12 Brisbane Road
816	Minto	Karen Joleen	3 Felton Court
817	Minto	Laura Jayne	3 Felton Court
818	Minto	Sean Daem	34 Teaberry Way
819	Minto	Timothy Ian	18 Endurance Avenue
820	Miranda	Augusto	3 Thatcher Drive
821	Miranda	Carmen Ediht	8 Anderson Drive
822	Mitchell	Hayden Owen	16 Fieldhouse Close
823	Mitchell	Paige	16 Fieldhouse Close
824	Mitchell	Shane Leon	6A John Street
825	Moffatt	Angela	20 Ross Road East
826	Moffatt	James	20 Ross Road East
827	Molkenbuhr-Smith	Sara Jayne	1 Callaghan Road
828	Montgomerie	Carolyn Anne	1 McKay Close
829	Montgomerie	Kerys Elizabeth Victoria	1 McKay Close
830	Montgomery	Delen Ann	1 McKay Close
831	Morris	Aiden Liam	4 Callaghan Road
832	Morris	Alana Marie	4 Callaghan Road
833	Morris	David	4 Callaghan Road
834	Morris	Jason Paul	Flat 4, 30 Jersey Road
835	Morris	Trevor Alan	1 Moody Street
836	Morrison	Carol Margaret	79 Rex Hunt Road
837	Morrison	Edgar Ewen	5 Racecourse Road
838	Morrison	Fayan	54 John Street
839	Morrison	Gerald	1A Brandon Road
840	Morrison	Graham Stewart	34A Davis Street
841	Morrison	Jacqueline Denise Anita	13 Ian Campbell Drive
842	Morrison	John	108 Davis Street
843	Morrison	Kathleen Iris	1A Brandon Road
844	Morrison	Keiran Kenneth	7 Mink Park
845	Morrison	Kenneth	13 Ian Campbell Drive
846	Morrison	Lena	108 Davis Street
847	Morrison	Leslie Theodore Norman	108 Davis Street
848	Morrison	Marcus Lewis	5 Mink Park
849	Morrison	Michael John	10 Fitzroy Road East
850	Morrison	Nanette Rose	46 Davis Street
851	Morrison	Paul Roderick	3 Racecourse Road East
852	Morrison	Richard Lowry	1 Biggs Road
853	Morrison	Russell John Allan	16 Mink Park
854	Morrison	Susan Margaret	10 Fitzroy Road East
855	Morrison	Tamara	2A' H' Jones Road
856	Morrison	William Roderick Halliday	54 John Street
857	Morrison-Sanchez	Angely Susanne	16 Mink Park
858	Murphy	Andrew Paul	2 King Street
859	Murphy	Ann Susan	2 King Street
860	Napier	Lily	2 Racecourse Road
861	Napier	Roderick Bertrand	2 Racecourse Road
862	Neilson	Barry Marwood	6 Barrack Street

863	Neilson	Edward Sydney	12 Goss Road
864	Neilson	Harold Ian	74 Davis Street
865	Neilson	Margaret	6 Barrack Street
866	Newell	Joseph Orr	11 Davis Street
867	Newman	Andrew Raymond	51 Ross Road East
868	Newman	Marlene	11 Jeremy Moore Avenue
869	Newman	Terence	24 Endurance Avenue
870	Newton	Josephine Ellen	22 Shackleton Drive
871	Norman	Heather Thelma	6A Pioneer Row
872	Olmedo	Alex	20 Hansen Hill
873	Olmedo Apablaza	Marcelo Rodrigo	14 Endurance Avenue
874	Ormond	Christina Helen	6 Goss Road
875	Ormond	Kevin Michael Patrick Joseph	6 Goss Road
876	Ormond	Krysteen Alison	1 Hebe Place
877	Ormond	Terrienne Helen	2 Gleadell Close
878	Owen	Sally	1 Biggs Road
879	Padgett	Keith	Sullivan House, Ross Road West
880	Padgett	Valerie Janet	Sullivan House, Ross Road West
881	Paice	Corrinne	3 Racecourse Road
882	Paice	Craig Arthur	3 Racecourse Road
883	Parke	James Fred	25 Ross Road West
884	Parke	Janet Margaret	25 Ross Road West
885	Passfield	Kenneth Alexander	2A Brandon Road West
886	Paver	Bernadette Marguerite	Moody Brook House
887	Peck	Christine	21 Jersey Road
888	Peck	Daelyn Robert	15 Villiers Street
889	Peck	David Patrick	5 Sullivan Street
890	Peck	Davina Margaret	Stanley House Hostel
891	Peck	Eleanor Margaret	10 Davis Street
892	Peck	Farrah Louise	Stanley House Hostel
893	Peck	Gordon Pedro James	34 Eliza Crescent
894	Peck	Harwood John Charles	26 Eliza Crescent
895	Peck	Joshua Dolan	36 Rex Hunt Road
896	Peirega	Naomi Renee	27 Rex Hunt Road
897	Pennisi Minto	Barbara	8A Moody Street
898	Perry	Hilda Blanche	6A St Marys Walk
899	Peters	Patricia Ann	30 Eliza Crescent
900	Pettersson	Derek Richard	3 Anderson Drive
901	Pettersson	Trudi Ann	3 Anderson Drive
902	Phillips	Antony Vincent	28 Brandon Road
903	Phillips	Carol Joan	6 Rex Hunt Road
904	Phillips	David Albert	35 Fitzroy Road
905	Phillips	David Dawson	35 Fitzroy Road
906	Phillips	Elisa	35 Fitzroy Road
907	Phillips	Jordan Liam	32 Davis Street
908	Phillips	Terence	6 Rex Hunt Road
909	Pitt	Myra May	6A Pioneer Row
910	Plato	Darren Richard	2 Jersey Road

911	Pointing	Stephen William	1 Nutt Cartmell Close
912	Pole-Evans	Amy Rose	4 McKay Close
913	Pole-Evans	John	16 Ross Road East
914	Pole-Evans	Lisa	74 Davis Street
915	Pole-Evans	Marcus Samuel	12 Murray Heights
916	Pole-Evans	Martin	19 Kent Road
917	Pole-Evans	Michael Anthony	4 McKay Close
918	Pollard	Andrew Keith	4 Fitzroy Road East
919	Pollard	Cathy	2 Kent Road
920	Pollard	Elizabeth Eve	23 Ross Road East
921	Pollard	John	23 Ross Road East
922	Pollard	Mark John	2 Kent Road
923	Pompert	Joost Herman Willem	11 Ross Road West
924	Pompert Robertson	Sorrel Freya	11 Ross Road West
925	Poncet	Jeremy Nigel	9 Mountain Berry Road
926	Poncet	Sally Elizabeth	2A Brandon Road West
927	Poole	Evelyn May	31 Fitzroy Road
928	Poole	Juliet Hazel	28 Davis Street
929	Poole	Michael James	19 Davis Street
930	Poole	Nancy Margaret	1 Racecourse Road
931	Poole	Raymond John	1 Racecourse Road
932	Poole	Ross William	52 John Street
933	Poole	Ryan James	6 Ian Campbell Drive
934	Poole	Toby Raymond	19 Davis Street
935	Poole	William John	31 Fitzroy Road
936	Porter	Geoffrey Bell	3 Sullivan Street
937	Prindle-Middleton	Stella Margaret	5 St Mary's Walk
938	Pring	Bernadette Jane Spencer	5A Ross Road West
939	Pring	Geoffrey Alan	5A Ross Road West
940	Prior	Claudette	1 Goss Road
941	Prior	Malcolm	1 Goss Road
942	Quinto Salluca	Luis Alberto	88 Davis Street
943	Ramirez Mardones	Vanessa Elisa	20 Hansen Hill
944	Reddick	Keith John	By-Pass Road
945	Regalado	Roxanne	25 Shackleton Drive
946	Reid	Beverley Rose	12 James Street
947	Reid	Colleen Rose	9 Fitzroy Road East
948	Reid	John Alexander	7 Fitzroy Road
949	Reid	Joseph Reynold Benjamin	26 Kent Road
950	Reid	Pamela Ruth	17 Rex Hunt Road
951	Reid	Paula	5 Biggs Road
952	Reid	Reynold Gus	5 Biggs Road
953	Reid	Simon Gus	9 Fitzroy Road East
954	Rendell	Nicholas Simon Oliver	23 Rex Hunt Road
955	Richards	Shirley	8A James Street
956	Roberts	Aaron Hugh	Flat 2, Moody Street
957	Roberts	Bradley Gerard	2 Hansen Hill
958	Roberts	Cheryl Ann Spencer	49 Ross Road East

959	Roberts	David Anthony	1 Mountain View
960	Roberts	Laura May	4 Kent Road
961	Roberts	Nicholas Daniel	1 Mountain View
962	Roberts	Peter James	49 Ross Road East
963	Roberts	Simon Theodore Nathaniel	5 Narrows View
964	Robertson	Dion Sebastian	5 Jeremy Moore Avenue
965	Robertson	Janet	11 Ross Road West
966	Robson	Alison Emily	15 Villiers Street
967	Robson	Cherry Rose	5 Philomel Street
968	Robson	Jodie	1 Philomel Place
969	Robson	Patricia Jayne	18 Ross Road East
970	Robson	Phyllis Ann	1 Philomel Place
971	Robson	William Charles	18 Ross Road East
972	Ross	Allan John	1 Short Street
973	Ross	Christine Aislinn	6 Mink Park
974	Ross	Claudio Javier Ampuero	2 Mullet Creek
975	Ross	Gabrielle Leigh	25 Rex Hunt Road
976	Ross	Glenn Stephen	23 Watson Way
977	Ross	Janet	23 Watson Way
978	Ross	Kerri-Anne	8 Mink Park
979	Ross	Lachlan Neil	14 Fieldhouse Close
980	Ross	Rebecca Jane	3 Beaver Road
981	Ross	Roy	19 Jersey Road
982	Ross	Sheena Margaret	25 Rex Hunt Road
983	Ross	Shirley Vyona	1 Short Street
984	Rowland	Charlene Rose	19 Jeremy Moore Avenue
985	Rowland	John Christopher	19 Jeremy Moore Avenue
986	Rowland	Sarah Anne	9 Hansen Hill
987	Rowlands	Dorinda Roberta	3 Hebe Street
988	Rowlands	Robert John	13 Callaghan Road
989	Rozee	Betty Ellen	16 Davis Street
990	Rozee	Derek Robert Thomas	16 Davis Street
991	Rozee	Karen Michella	6 Discovery Close
992	Sackett	Albert John	25A Ross Road East
993	Sackett	Jacqueline	25 Callaghan Road
994	Sanchez	Jennifer Helen	26 Endurance Avenue
995	Sanchez Ladron De Guevara	Karin Pamela	5 Brisbane Road
996	Sawle	Felicity Anne Hermione	7 Rex Hunt Road
997	Sawle	James Christopher	Seaview Cottage, Ross Road
998	Sawle	Judith Margaret	Seaview Cottage, Ross Road
999	Sawle	Richard	Seaview Cottage, Ross Road
1000	Senociain Short	Kylie Deborah	6 Police Cottages
1001	Shelbourne	Carolyn Wendy	39 Brandon Road
1002	Shepherd	Ramsey	3 Yates Place
1003	Shepherd	Roy	23 Mink Park
1004	Shepherd	Sarah Jayne	23 Mink Park
1005	Shillitoe	Helena De Fatima	The Brook, Moody Brook
1006	Shillitoe	Roger William	The Brook, Moody Brook

1007	Shillitoe	Stephen Bruce	4 Mink Park
1008	Short	Alison	9 Pioneer Row
1009	Short	Andrez Peter	9 Pioneer Row
1010	Short	Brenda	11 Barrack Street
1011	Short	Celia Soledad	7 Pitaluga Place
1012	Short	Christina Ethel	12 Brandon Road
1013	Short	Emily Christina	1 Fitzroy Road East
1014	Short	Gavin Phillip	6 Police Cottages
1015	Short	Isabel Rose	3 Brisbane Road
1016	Short	Jason Francis	3 Brisbane Road
1017	Short	Marc Peter	7 Anderson Drive
1018	Short	Marlene Cindy	9 Pitaluga Place
1019	Short	Montana Tyrone	4 Dairy Paddock Road
1020	Short	Patrick Warburton	3 Brisbane Road
1021	Short	Peter Robert	1 Fitzroy Road East
1022	Short	Richard Edward	9 Pitaluga Place
1023	Short	Vilma Alicia	4 Dairy Paddock Road
1024	Simpson	Bertha Veronica	8 Rowlands Rise
1025	Simpson	James Alexander Bruce	7 Racecourse Road
1026	Simpson	John Frederick	8 Rowlands Rise
1027	Sinclair	Serena Samantha	11 Rex Hunt Road
1028	Sinclair	Veronica Joyce	21 Ross Road West
1029	Skene	Greta Winnora Miller	22 Ross Road East
1030	Smallwood	Margo Ameer	105 Davis Street
1031	Smallwood	Michael Anthony	105 Davis Street
1032	Smith	Andrew John	11 Fitzroy Road East
1033	Smith	Antony David	33A Davis Street
1034	Smith	Anya Deirdre	8 Eliza Crescent
1035	Smith	Colin David	6 James Street
1036	Smith	Elenore Olive	1 Davis Street West
1037	Smith	Ellis Nia	8 Fieldhouse Close
1038	Smith	Felicity Marie	5 Brandon Road
1039	Smith	George Patterson	15 Watson Way
1040	Smith	Gerard Alexander	8 Barrack Street
1041	Smith	Heather	19 Watson Way
1042	Smith	Ian Lars	5 Brandon Road
1043	Smith	Ileen Rose	28 Ross Road West
1044	Smith	James Terence	3 Fitzroy Road
1045	Smith	Jennifer Ethel	6 Watson Way
1046	Smith	Jenny Lorraine	15 Watson Way
1047	Smith	John	28 Ross Road West
1048	Smith	John Derek	8 Eliza Crescent
1049	Smith	Kane David	6 James Street
1050	Smith	Martyn James	6A Ross Road West
1051	Smith	Michael Edmund	39 Eliza Crescent
1052	Smith	Natalie Marianne	6 James Street
1053	Smith	Nora Kathleen	5 Fitzroy Road East
1054	Smith	Paul	1 Callaghan Road

1055	Smith	Robin Charles	19 Watson Way
1056	Smith	Roy Alan	11 Brandon Road
1057	Smith	Susan	17 Jersey Road
1058	Socodo	Phoebe Esther	20 Mink Park
1059	Spicer	Mark Anthony	16 St Mary's Walk
1060	Spicer	Susan	16 St Marys Walk
1061	Spink	Roger Kenneth	The Brook Moody Brook
1062	Spinks	Malvina Ellen	8 Thatcher Place
1063	Spruce	Helena Joan	Milestone, 29 Ross Road West
1064	Spruce	Mark Felton	6 Anderson Drive
1065	Spruce	Terence George	Milestone, 29 Ross Road West
1066	Steen	Allan Graham	15 Sullivan Street
1067	Steen	Barbara Ingrid	39 Ross Road West
1068	Steen	Karen Lucetta	32 Fitzroy Road
1069	Steen	Stacey Louise	24 Fitzroy Road
1070	Stenning	Kate Alexandra	5B Ross Road West
1071	Stenning	Timothy Charles	5B Ross Road West
1072	Stephenson	Dylan	Moody Vally
1073	Stephenson	Katrina	4 Davis Street
1074	Stephenson	Zachary	4 Davis Street
1075	Stevens	Kelly-Marie	70 Davis Street
1076	Stevens	Lucy Mary Rose Ellen Doreen	6 Dairy Paddock Road
1077	Stevens	Paul Theodore	6 Dairy Paddock Road
1078	Stewart	Celia Joyce	14 Allardyce Street
1079	Stewart	Daniel Duane	Stanley House, Lady Hunt
1080	Stewart	Duane William	Flat 3, 6 Jersey Road
1081	Stewart	Hulda Fraser	24 Ross Road West
1082	Stewart	Ian Bremner	34 Ross Road East
1083	Stewart	Kenneth Barry	Flat 5, 6 Jersey Road
1084	Stewart	Kerena Mary Ann	Flat 2, Racecourse Road
1085	Stewart	Ros Ian	34 Ross Road East
1086	Stewart	Ruth Jane	17 Scoresby Close
1087	Stewart	Sheila Olga	34 Ross Road East
1088	Stewart-Reid	Carol Ellen Eva	7 Fitzroy Road
1089	Strange	Ian John	The Dolphins, Snake Street
1090	Strange	Maria Marta	The Dolphins, Snake Street
1091	Strange	Shona Marguerite	6B Ross Road West
1092	Stroud	Mark Adrian	10 Sullivan Street
1093	Sullivan	Jonathan Francis	1 Mullet Creek
1094	Summers	Brian	1 Ross Road East
1095	Summers	Colin Owen	17 Nutt Cartmell Close
1096	Summers	Dorothy Constance	42 Eliza Crescent
1097	Summers	Edith Catherine	5 Dean Street
1098	Summers	Irvin Gerard	1 Anderson Drive
1099	Summers	Jacqueline	12 Pioneer Row
1100	Summers	Joanne Elizabeth	17 Nutt Cartmell Close
1101	Summers	Judith Orissa	1 Ross Road East
1102	Summers	Lynn Jane	5 Villiers Street

1103	Summers	Michael Kenneth	6A Brisbane Road
1104	Summers	Michael Victor	12 Pioneer Row
1105	Summers	Naomi Christine	4 Anderson Drive
1106	Summers	Owen William	5 Brandon Road West
1107	Summers	Rowena Elsie	5 Allardyce Street
1108	Summers	Roy	32 Eliza Crescent
1109	Summers	Sheila	1 Anderson Drive
1110	Summers	Sybella Catherine Ann	1 Ross Road West
1111	Summers	Sylvia Jean	8 Racecourse Road
1112	Summers	Terence	1 Ross Road West
1113	Summers	Tony	8 Racecourse Road
1114	Sutcliffe	Lynsey Claire	1 Moody Street
1115	Sutcliffe	Michael Ian	1 Moody Street
1116	Sutherland	John Gall	3 Mountain View
1117	Sytchova	Natalia Mikhaylovna	1 Felton Court
1118	Sytchova	Ulia	1 Felton Court
1119	Taylor	Anne Louise	4 Drury Street
1120	Taylor	Graham	55 Fitzroy Road
1121	Taylor	Ruth Eleanor	55 Fitzroy Road
1122	Tellez	Arturo	9 Rex Hunt Road
1123	Tellez	Tylor Mathew James	8 Murray Heights
1124	Thain	Craig John	8 Davis Street
1125	Thain	John	8 Davis Street
1126	Thain	Scott Hayden	8 Davis Street
1127	Thain	Stephanie Ann	8 Davis Street
1128	Thom	Norma Ann	92 Davis Street
1129	Thomas	Andrew Neil	11 Jersey Road
1130	Thomas	Jacqueline Joyce	3 Moody Street
1131	Thomas	Jane Lilian Louisa	11 Jersey Road
1132	Thomas	Justin Paul	3 Moody Street
1133	Thorsen	Carol Margaret	14 Jersey Road
1134	Thorsen	David Moller	17A Ross Road West
1135	Thorsen	Gloria Penelope	27A Fitzroy Road
1136	Thorsen	Kristiane Annergret Helena	27A Fitzroy Road
1137	Toolan	George Benjamin	13 Sullivan Street
1138	Toolan	Rose Mary	13 Sullivan Street
1139	Toolan	Stephen David John	13 Sullivan Street
1140	Trinidades Burucua	Dahiana	4 Rex Hunt Road
1141	Turner	Betty Ann	8 Fitzroy Road East
1142	Turner	Howard Guy	8 Fitzroy Road East
1143	Turner	Joanne Elizabeth	61 Fitzroy Road
1144	Turner	Ronald	K.E.M.H
1145	Tyrrell	Garry Bernard	1 Beaver Road
1146	Tyrrell	Gina Michelle	1 Beaver Road
1147	Tyrrell	Tasmin Andrea	1 Beaver Road
1148	Ubeda Hernandez	Julio Antonio	21 Jersey Road
1149	Velasquez	Eva Irma Linda	16 Brandon Road
1150	Vidal Roberts	Leona Lucila	1 Mountain View

1151	Vilchez Valverde	Maria Yhovana	88 Davis Street
1152	Villegas	Caroline	7 Fieldhouse Close
1153	Villegas	Pedro Francisco	7 Fieldhouse Close
1154	Vincent	Elliott Lawrence	11 Ross Road East
1155	Vincent	Janette Mary	10 Endurance Avenue
1156	Vincent	Matthew Stephen	21 Rex Hunt Road
1157	Vincent	Stephen Lawrence	10 Endurance Avenue
1158	Wade	Darren Martin	9 Fitzroy Road East
1159	Wade	Donald Harold	4A Jeremy Moore Avenue
1160	Wade	June Rose Elizabeth	17 Murray Heights Tigh Na Mara, Moody Brook Road
1161	Wallace	Fiona Alice	10 John Street
1162	Wallace	Fraser Barrett	38 Ross Road West
1163	Wallace	Maria Lilian	23 Callaghan Road
1164	Wallace	Michael Ian	38 Ross Road West
1165	Wallace	Stuart Barrett	23 Callaghan Road
1166	Wallace	Una	9 James Street
1167	Watson	Andrew James	2 Auster Place
1168	Watson	Joanne	20 Endurance Avenue
1169	Watson	Paul	YMCA
1170	Watson	Ryan	7 Hebe Street
1171	Watt	Stephen Robert	5 Racecourse Road
1172	Watt	Sylvia Ann	13 Brisbane Road
1173	Watts	Patrick James	58 Davis Street
1174	Webb	Gary Colin	58 Davis Street
1175	Webb	Loretta Isobel	5A Davis Street
1176	White	Allan Paul George	5 Discovery Close
1177	White	Chanelle Lawrence	Flat 1, 3 Jeremy Moore Av
1178	White	Judy Marie	9 Rex Hunt Road
1179	Whitney	Caitlin	9 Ross Road
1180	Whitney	Frederick William	15 Ross Road East
1181	Whitney	Jason	2 Pioneer Row
1182	Whitney	Kurt Ian	22 Eliza Crescent
1183	Whitney	Lana Rose	9 Ross Road
1184	Whitney	Susan Joan	5 Felton Court
1185	Wilkinson	Alistair Graham	24 Goss Road
1186	Wilkinson	Carol Rosina	24 Goss Road
1187	Wilkinson	David Clive Walter	5 Felton Court
1188	Wilkinson	Johan	11 Fieldhouse Close
1189	Wilks	Bruce Allan	11 Fieldhouse Close
1190	Wilks	Susan Jean	7 Eliza Crescent
1191	Williams	Christian Leonard Edward John	33 Ross Road East
1192	Williams	Glen	14 Hansen Hill
1193	Williams	Lee Perry Adrain John	6 Anderson Drive
1194	Williams	Margaret Elizabeth	30 Eliza Crescent
1195	Williams	Ray Allan	5 McKay Close
1196	Williamson	Kathleen Laura	5 McKay Close
1197	Williamson	Rachel Mary	9 Dairy Paddock Road
1198	Wilson	Stephen John	

1199	Wilson	Tara	9 Dairy Paddock Road
1200	Wylie	Ashley Craig Robert	1 McKay Close
1201	Wylie	Julian Richard	1 McKay Close
1202	Yon	Julian Lemarc Patrick	3 Davis Street West
1203	Zuvic-Bulic	Kuzma Mario	Holdfast House, Holdfast Rd
1204	Zuvic-Bulic	Saul Kuzma	Holdfast House, Holdfast Road
1205	Zuvic-Bulic	Sharon Marie	Holdfast House, Holdfast Rd
1206	Zuvic-Bulic	Zoran Mario	Holdfast House, Holdfast Rd

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# FALKLAND ISLANDS GAZETTE

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No. 6

## **Appointment**

Boonruam Betts, Assistant Housekeeper, Central Services Department, 02.05.16.

Daniela Cardenas, Learning Support Assistant, Infant and Junior School, Education Department, 02.05.16.

Katherine Chavez, General Assistant, Health and Social Services Department, 02.05.16.

Louise Ellis, Policy Assistant, Policy Department, 02.05.16.

Denise Herrera, Data Manager, Fisheries Department, 02.05.16.

Rina Romero, General Assistant, Health and Social Services Department, 02.05.16.

Sofia Torres, Law Clerk, Law and Regulation Directorate, 02.05.16.

Tsitsi Chitsiku, Legislative Drafter, Law and Regulation Directorate, 05.05.16.

Misty Green, Personal Assistant to the Director, Health and Social Services Department, 09.05.16.

Nancy Locke, Personal Assistant to the Director, Central Services Department, 16.05.16.

## **Completion of contract**

Ashley Winnett, Complex Needs Teacher, Falkland Islands Community School, Education Department, 04.05.16.

Simon Catton, Roads Engineer, Highways Section, Public Works Department, 26.05.16.

Norman Mitchell, Maintenance Manager, Property and Municipal Section, Public Works Department, 28.05.16.

## **Resignation**

Joseph Sein, Art Teacher, Falkland Islands Community School, Education Department, 02.05.16.

Stephanie Maxwell, Learning Support Assistant, Infant and Junior School, Education Department, 11.05.16.

Anne Johnston, Learning Support Assistant, Falkland Islands Community School, Education Department, 16.05.16.

Moyra Pierce, Health Visitor, Health and Social Services Department, 27.05.16.

## **NOTICES**

No. 37

29 April 2016

### **Supreme Court of the Falkland Islands**

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

Take notice that **Trudi Butcher** of 3a Dairy Paddock Road, Stanley, died on 30 March 2016 without leaving a will.

Whereas **Michael Butcher** (the petitioner) has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 29 April 2016

J. BROOKS,  
*Registrar, Supreme Court.*

**Supreme Court of the Falkland Islands****Notice under the Administration of Estates Ordinance  
(Title 68.1)**

Take notice that **Paz Blyth** (formerly known as Paz Neri Igao) latterly of St Anthony's, Mildred Road, Watford, Hertfordshire, England but formerly of Racecourse Road, Stanley, Falkland Islands died on 23 February 2016 without leaving a will.

Whereas **Noel Igao** (the petitioner) has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 29 April 2016

**J. BROOKS,**  
*Registrar, Supreme Court.*

**Application for Falkland Islands Status**

Notice is hereby given that:

**Karen Jane Armstrong-Ford**  
**Alison Elizabeth Roose**  
**Jasper Joy Gottschalk**  
**Philip James Kearney; and**  
**Sarah Jane Boyce**

have applied through the Principal Immigration Officer for Falkland Islands Status to be granted by His Excellency the Governor. Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 June 2016.

Dated 24 May 2016

**J. E. SMITH,**  
*Immigration Officer.*

**Application for Naturalisation**

Notice is hereby given that:-

**Ma. Rogie Lee** (formerly McLaren, Alarde)

is applying to His Excellency the Governor for naturalisation as a British Overseas Territories Citizen.

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs and Immigration Department, Stanley no later than 22 June 2016.

Dated 24 May 2016

**J. E. SMITH,**  
*Immigration Officer.*

**Beauchene Trading Company Limited**  
**Company Number: 12762**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 31 May 2016.

Dated 31 May 2016

**E. J. DENT,**  
*Registrar of Companies.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*24 June 2016*

*No. 3*

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The following are published in this Supplement –

**Restrictions on Permitted Development (Stanley) Direction 2016 (SR&O No 11 of 2016);**

**Fishery Products (Designations)(Amendment) Order 2016 (SR&O No 12 of 2016);**

**Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (Correction) Order 2016 (SR&O No 13 of 2016);**

**Finance Ordinance 2016 (Correction) Order 2016 (SR&O No 14 of 2016);**

**Coins Order 2016 (SR&O No 15 of 2016);**

**Coins Order (No 2) 2016 (SR&O No 16 of 2016);**

**Supplementary Appropriation (2015-2016) (No 2) Ordinance 2016 (No 2 of 2016);**

**Appropriation Ordinance 2016 (No 3 of 2016);**

**Capital Appropriation Ordinance 2016 (No 4 of 2016);**

**Finance Ordinance 2016 (No 5 of 2016);**

**Taxes (Amendment) Ordinance 2016 (No 6 of 2016); and**

**Highways (Weight Limits) (Amendment) Ordinance 2016 (No 7 of 2016).**

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## SUBSIDIARY LEGISLATION

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### PLANNING AND BUILDING

#### Restrictions on Permitted Development (Stanley) Direction 2016

S. R. & O. No: 11 of 2016

*Given: ..... 2 June 2016*

*Published: ..... 24 June 2016*

*Coming into force: on publication*

IN EXERCISE of my powers under paragraph 5 of the General Development Order 1991 (Title 55.3.1), I give the following Direction.

#### **1. Title**

This Direction may be cited as the Restrictions on Permitted Development (Stanley) Direction 2016.

#### **2. Commencement**

This Direction comes into force upon publication in the *Gazette*.

#### **3. Requirement to obtain planning permission**

The planning permission granted by paragraph 4 of the General Development Order does not apply to the developments on land of the descriptions set out in the Schedule to this Direction within the area of Stanley shown edged black on the attached plan.

#### **Schedule**

Developments of classes A and D of Part 1 of Schedule 2 of the General Development Order affecting:

- (1) All existing development with an internal area of less than 400 square metres, or
- (2) All plots of land occupied by a message or dwelling house which occupies 25% or more of its existing plot; or
- (3) All those parts or parcels of land known as:
  - (i) south end of garden at 9 Pioneer Row, Stanley, consisting of approximately 320 square metres of land;

(ii) north end of garden at 27 Fitzroy Road, Stanley, consisting of approximately 275 square metres;

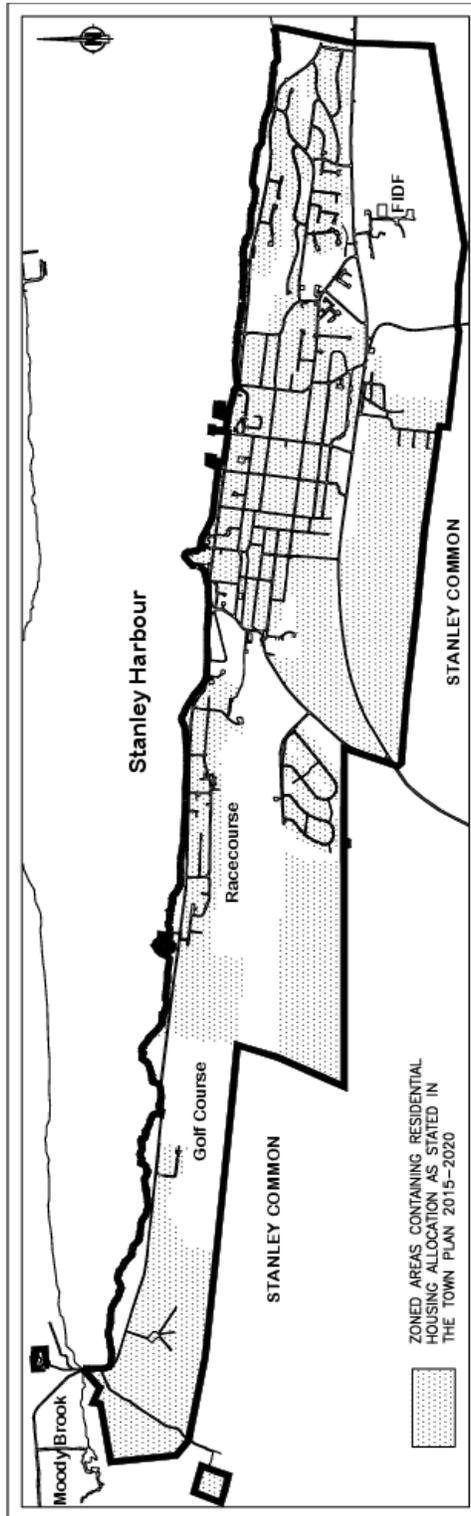
(iii) north end of garden at 10 Fitzroy Road, Stanley, consisting of 350 square metres of land;

(iv) 58 John Street, Stanley, consisting of 250 square metres of land;

(v) land to the east of Harbour View Knott, Eliza Cove Road, Stanley consisting of 295 square metres of land; and

(vi) north part of garden at 1 Felton Court, Stanley, comprising of 343 square metres.

# Plan



Given 2<sup>nd</sup> June 2016

Colin Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of the direction)*

The Governor of the Falkland Islands (being the appropriate planning authority within the meaning of Paragraph 4 of the General Development Order) acting on the recommendation of the Planning and Building Committee is satisfied that it is expedient that development of the descriptions set out in the Schedule to this Direction should not be carried out in the land in Stanley shown edged black on the attached plan unless planning permission is granted on an application made under the Planning Ordinance 1991.

The reason for this is to align the General Development Order with the Falkland Islands Development Plan (adopted August 2015) and to require residents of prescribed areas of Stanley to require planning permission before commencing ‘in fill’ developments.

It being impracticable to effect individual service on each affected owner and occupier the Planning Officer will publish this Direction on the Environmental Planning Department’s website and place a copy in the department for free public inspection during all reasonable hours.

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**SUBSIDIARY LEGISLATION**

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**FISHERIES**

**Fishery Products (Designations) (Amendment) Order 2016**

S. R. & O. No. 12 of 2016

*Made: ..... 2 June 2016*

*Published: ..... 24 June 2016*

*Coming into force: on publication*

I make this order under section 35 of the Fishery Products Ordinance (No 21 of 2006) on the advice of Executive Council.

**PART 1  
INTRODUCTION**

**1. Title**

This order is the Fishery Products (Designations) (Amendment) Order 2016.

**2. Commencement**

This order comes into force on publication in the *Gazette*.

**3. Fishery Products (Designations) Order amended**

The Fishery Products (Designations) Order 2014 (SR&O No 10 of 2014) is amended by adding the following new article after article 5 and the corresponding Schedule —

**“6. Designation as processing plant**

The establishment listed in Schedule 4 is designated as a processing plant.

**SCHEDULE 4  
PROCESSING PLANT**

<b>Establishment name</b>	<b>Approval number</b>	<i>(article 6)</i>
Falkland Islands Fish Company Limited	FK 02”	

Made 2<sup>nd</sup> June 2016

Colin Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of the regulations)*

Section 35 of the Fishery Products Ordinance (No 21 of 2006) allows the Governor to designate vessels, establishments and installations of prescribed descriptions. Seven defined categories have been prescribed by the Fishery Products (Designation of Vessels, Establishments and Installations) Regulations (SR&O No. 9 of 2014):

- cold stores
- factory vessels
- fresh fishery products plant;
- freezer vessel;
- mechanically separated fishery products plant;
- processing plant;
- re-wrapping establishment

Based on this the Fishery Products (Designations) Order 2014 designates factory vessels and a cold store.

This order amends the 2014 Order to add to that list a processing plant.

It designates, under Schedule 4, the Falkland Islands Fish Company Limited as a processing plant.

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**SUBSIDIARY LEGISLATION**

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**COURTS AND LEGAL SERVICES**

**Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (Correction)  
Order 2016**

S. R. & O. No: 13 of 2016

*Made: .....10 June 2016*

*Published: .....24 June 2016*

*Coming into force: see article 2*

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order —

**1. Title**

This order is the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (Correction) Order 2016.

**2. Commencement**

This order is deemed to have come into force on 29 April 2016.

**3. Correction of Administration of Justice (Payments to Jurors and Witnesses) Rules 2016**

The Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (SR&O No 10 of 2016) is amended —

(a) in rule 3 —

(i) in the definition of “appropriate officer” by replacing it with the following definition—

““appropriate officer” means the Attorney General, or any member of the Attorney General’s or Court Service’s staff as may be designated by the Attorney General for any of the purposes of these rules;”

(ii) in the definition of “service of the Crown” by inserting the word “means” after the words ““service of the Crown””;

(b) in rule 4(1)(c) by inserting the word “who” after the words “the Crown”; and

(c) in rule 11(c) by deleting the words “such an institution” and replacing with the words “a prison”.

Made 10<sup>th</sup> June 2016

C. P. Judge M.B.E.,  
*Attorney General.*

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EXPLANATORY NOTE  
*(not forming part of the order)*

This order corrects a typographical error.

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**SUBSIDIARY LEGISLATION**

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**CONSTITUTIONAL AND ADMINISTRATIVE LAW**

**Finance Ordinance 2016 (Correction) Order 2016**

S. R. & O. No: 14 of 2016

*Made:* 10 June 2016

*Published:* 24 June 2016

*Coming into force:* see article 2

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order —

**1. Title**

This order is the Finance Ordinance 2016 (Correction) Order 2016.

**2. Commencement**

This order comes into force on publication in the *Gazette*.

**3. Correction of Finance Ordinance 2016**

The Finance Ordinance 2016 (No 5 of 2016) is amended in section 5 by deleting the words “Matter in which fee may be taken      Annual fee” appearing after the words “TABLE OF FEES”.

Made 10<sup>th</sup> June 2016

C. P. Judge M.B.E.,  
*Attorney General.*

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**EXPLANATORY NOTE**  
*(not forming part of the order)*

This order corrects a typographical error.

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## SUBSIDIARY LEGISLATION

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### CURRENCY

#### Coins Order 2016

S. R. & O. No: 15 of 2016

*Made: ..... 16 June 2016*

*Published:..... 24 June 2016*

*Coming into force: on publication*

I make this order under section 22 of the Currency Ordinance (Title 25.1) on the advice of Executive Council.

#### **1. Title**

This order is the Coins Order 2016.

#### **2. Commencement**

This order comes into force upon publication in the *Gazette*.

#### **3. New coins**

(1) The minting and issue of the coins described and specified in the schedule to this Order are authorised.

(2) The schedule specifies —

(a) the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1);

(b) the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins; and

(c) the design of the obverse and reverse of the coins.

#### **4. Deemed denomination of Crown coins and their value as legal tender**

(1) For the purposes of the Ordinance —

(a) the cupro-nickel Crown coins, sterling silver Crown and sterling silver gold clad Crown coins authorised by this order are deemed to be of 25 pence denomination;

(b) the silver 5 Crown coins authorised by this order are deemed to be of £1.25 denomination; and

(c) the gold 1 Crown coins authorised by this order are deemed to be of £5.00 denomination.

(2) The coins specified under paragraph (1) are legal tender in the Falkland Islands in the amount of their deemed denomination.

Made 16<sup>th</sup> June 2016

C. Roberts C.V.O.,  
*Governor.*

## SCHEDULE 1

### Queen Elizabeth II – 90<sup>th</sup> Birthday Colour Portrait

<b>Type</b>	<b>Cupro-nickel</b>	<b>Silver Proof</b>	<b>Silver Proof Gold Clad</b>	<b>Silver Proof</b>	<b>Gold Proof</b>
<i>Denomination</i>	1 Crown	1 Crown	1 Crown	5 Crown	1 Crown
<i>Weight (grams)</i>	28.28	31.103	31.103	155.52	31.103
<i>Diameter (millimetres)</i>	38.60	38.60	38.60	65.00	32.70
<i>Fineness</i>	Cu 75% Ni 25%	999 Silver	999 Silver	999 Silver	999 Gold
<i>Quality</i>	Brilliant Uncirculated	Proof	Proof	Proof	Proof
<i>Shape</i>	Round	Round	Round	Round	Round
<i>Edge</i>	Milled	Milled	Milled	Milled	Milled
<i>Edition limit for each reverse design</i>	Unlimited	3,000	3,000	1,000	1,000
<i>Mint</i>	Pobjoy Mint Ltd.				
<i>Remedy</i>	Variations to be allowed of the tolerance permitted by the Pobjoy Mint Ltd.				
<i>Obverse design</i>	Pobjoy Mint Effigy of Her Majesty Queen Elizabeth II.				
<i>Reverse design</i>	The design features a colour portrait of Her Majesty Queen Elizabeth II shown in full Order of the Garter Robes by Alastair Barford. The wording 'HM QUEEN ELIZABETH II' appears in the surround with the value at the base of the coin.				

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## SUBSIDIARY LEGISLATION

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### CURRENCY

#### Coins Order (No 2) 2016

S. R. & O. No: 16 of 2016

*Made: ..... 16 June 2016*

*Published:..... 24 June 2016*

*Coming into force: on publication*

I make this order under section 22 of the Currency Ordinance (Title 25.1) on the advice of Executive Council.

#### 1. Title

This order is the Coins (No 2) Order 2016.

#### 2. Commencement

This order comes into force upon publication in the *Gazette*.

#### 3. New coins

(1) The minting and issue of the coins described and specified in the schedule to this Order are authorised.

(2) The schedule specifies —

(a) the denomination, fineness, weight, diameter, quality, shape, edge and number of the coins authorised by paragraph (1);

(b) the tolerance or remedy which may be permitted in respect of variations from the standard weight, diameter and fineness of the coins; and

(c) the design of the obverse and reverse of the coins.

#### 4. Deemed denomination of Crown coins and their value as legal tender

(1) For the purposes of the Ordinance —

(a) the cupro-nickel Crown coins, sterling silver Crown and sterling silver gold clad Crown coins authorised by this order are deemed to be of 25 pence denomination;

(b) the silver 5 Crown coins authorised by this order are deemed to be of £1.25 denomination;

- (c) the gold 1 Crown coins authorised by this order are deemed to be of £5.00 denomination;
- (2) The coins specified under paragraph (1) are legal tender in the Falkland Islands in the amount of their deemed denomination.

Made 16<sup>th</sup> June 2016

C. Roberts C.V.O.,  
*Governor.*

**SCHEDULE 1**

**Queen Elizabeth II – 90<sup>th</sup> Birthday**

<b>Type</b>	<b>Cupro-nickel</b>	<b>Silver Proof</b>	<b>Gold Proof</b>	<b>Gold Proof</b>	<b>Gold Proof</b>	<b>Gold Proof</b>
<i>Denomination</i>	1 Crown	1 Crown	1/64 <sup>th</sup> Crown	1/32 <sup>nd</sup> Crown	1/25 <sup>th</sup> Crown	1/5 <sup>th</sup> Crown
<i>Weight (grams)</i>	28.28	28.28	0.50	1.00	1.244	6.25
<i>Diameter (millimetres)</i>	38.60	38.60	11.00	13.92	13.92	22.00
<i>Fineness</i>	Cu 75% Ni 25%	925 Sterling silver	999 Gold	999 Gold	999 Gold	999 Gold
<i>Quality</i>	Brilliant Uncirculated	Proof	Proof	Proof	Proof	Proof
<i>Shape</i>	Round	Round	Round	Round	Round	Round
<i>Edge</i>	Milled	Milled	Milled	Milled	Milled	Milled
<i>Edition limit for each reverse design</i>	Unlimited	10,000	10,000	10,000	10,000	2,000
<i>Mint</i>	Pobjoy Mint Ltd.					
<i>Remedy</i>	Variations to be allowed of the tolerance permitted by the Pobjoy Mint Ltd.					
<i>Obverse design</i>	I.R.B. Effigy of Her Majesty Queen Elizabeth II.					
<i>Reverse design</i>	An image based on a 1977 Silver Jubilee portrait of Her Majesty Queen Elizabeth II. A smaller image of Windsor Castle, where the portrait was painted, is also shown. The wording 'HM QUEEN ELIZABETH II' appears in the surround with the value at the base of the coin.					

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Supplementary Appropriation (2015-2016) (No 2) Ordinance 2016**

(No: 2 of 2016)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Title
2. Commencement
3. Withdrawal of additional sum
4. Replenishment of Contingencies Fund

**Schedule**

# ELIZABETH II



## FALKLAND ISLANDS

COLIN ROBERTS C.V.O.,  
*Governor.*

### SUPPLEMENTARY APPROPRIATION (2015-2016) (No 2) ORDINANCE 2016

(No: 2 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: on publication)*  
*(published: 24 June 2016)*

#### AN ORDINANCE

To authorise the withdrawal from the Consolidated Fund of the additional sum of £5,218,250.00 for the financial year ending 30 June 2016.

ENACTED by the Legislature of the Falkland Islands —

#### **1. Title**

This Ordinance is the Supplementary Appropriation (2015-2016) (No 2) Ordinance 2016.

#### **2. Commencement**

This Ordinance comes into force on publication in the Gazette.

#### **3. Withdrawal of additional sum**

(1) The Financial Secretary may withdraw an additional sum of £5,218,250.00 from the Consolidated Fund.

(2) Any additional sum withdrawn under subsection (1) may be applied in the financial year ending 30 June 2016 in accordance with section 4 and the Schedule.

#### 4. Replenishment of Contingencies Fund

If any sum has been withdrawn from the Contingencies Fund by the authority of Contingencies Warrant Nos 9 and 10 of 2015/2016, the Financial Secretary will replenish the fund from the additional sum withdrawn under section 3.

#### SCHEDULE

<b>Number</b>	<b>Head of Service</b>	<b>Amount</b> £
<b>Operating Budget</b>		
0110	Central Services	33,500.00
0200	Health and Social Services	10,250.00
0600	Executive Management	24,500.00
0999	Islands' Plan Investments	5,150,000.00
<b>Total Operating Budget</b>		<b>5,218,250.00</b>
<b>Total Schedule</b>		<b>5,218,250.00</b>

Passed by the Legislature of the Falkland Islands on 31 May 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Appropriation Ordinance 2016**

(No: 3 of 2016)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Title
2. Commencement
3. Appropriation

Schedule

**ELIZABETH II**



**FALKLAND ISLANDS**

COLIN ROBERTS C.V.O.,  
*Governor.*

**APPROPRIATION ORDINANCE 2016**

(No: 3 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: on publication)*  
*(published: 24 June 2016)*

**AN ORDINANCE**

To authorise the withdrawal from the Consolidated Fund of money for the financial year ending 30 June 2017.

ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Appropriation Ordinance 2016.

**2. Commencement**

This Ordinance comes into force on publication in the Gazette.

**3. Appropriation**

- (1) The Financial Secretary may withdraw the sum of £62,859,400 from the Consolidated Fund.
- (2) Any sum withdrawn under subsection (1) may be applied in the financial year ending 30 June 2017 for the purpose of supplying the votes set out in the Schedule.

## SCHEDULE

DIRECTORATE	Total Operating Budget	Capital Charges	Departmental Expenditure	Less Internal Charges	Net Operating Budget
<i>OPERATING BUDGET</i>	£	£	£	£	£
110 Central Services	6,020,150	481,170	5,538,980	131,890	5,407,090
120 Human Resources	487,360	-	487,360	1,700	485,660
200 Health & Social Services	10,976,870	737,560	10,239,310	190,560	10,048,750
250 Education	6,915,210	425,550	6,489,660	95,590	6,394,070
350 Public Works	13,627,200	3,919,040	9,708,160	120,700	9,587,460
410 Natural Resources	7,065,780	117,620	6,948,160	300,730	6,647,430
451 Law & Regulation	1,322,240	3,640	1,318,600	21,880	1,296,720
550 Emergency Services	2,827,920	290,710	2,537,210	49,130	2,488,080
600 Executive Management	3,025,320	62,410	2,962,910	25,320	2,937,590
620 Mineral Resources	551,460	3,020	548,440	3,380	545,060
700 The Treasury	2,518,980	5,340	2,513,640	12,250	2,501,390
<b>TOTAL DEPT BUDGET</b>	<b>55,338,490</b>	<b>6,046,060</b>	<b>49,292,430</b>	<b>953,130</b>	<b>48,339,300</b>
999 Islands' Plan Investments	10,125,830	-	10,125,830	-	10,125,830
998 Social Investments	1,468,270	-	1,468,270	-	1,468,270
<b>TOTAL MTFP EXPENDITURE</b>	<b>66,932,590</b>	<b>-</b>	<b>60,886,530</b>	<b>-</b>	<b>59,933,400</b>
997 Oil	2,926,000	-	2,926,000	-	2,926,000
<b>TOTAL LTFP EXPENDITURE</b>	<b>69,858,590</b>	<b>6,046,060</b>	<b>63,812,530</b>	<b>953,130</b>	<b>62,859,400</b>

Passed by the Legislature of the Falkland Islands on 3 June 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

---

COLIN ROBERTS C.V.O.,  
*Governor.*

**Capital Appropriation Ordinance 2016**

(No: 4 of 2016)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Title
2. Commencement
3. Appropriation

Schedule

# ELIZABETH II



## FALKLAND ISLANDS

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COLIN ROBERTS C.V.O.,  
*Governor.*

### CAPITAL APPROPRIATION ORDINANCE 2016

(No: 4 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: on publication)*  
*(published: 24 June 2016)*

#### AN ORDINANCE

To authorise the withdrawal from the Capital Equalisation Fund of money for capital projects.

ENACTED by the Legislature of the Falkland Islands —

#### **1. Title**

This Ordinance is the Capital Appropriation Ordinance 2016.

#### **2. Commencement**

This Ordinance comes into force on publication in the Gazette.

#### **3. Appropriation**

(1) The Financial Secretary may make payments out of the Capital Equalisation Fund not exceeding, in total, £20,029,850 as are required to fund the amendments to the capital programme detailed in the Schedule.

(2) The authorisation given in subsection (1) authorises payments additional to those authorised by order made under section 11(2) of the Public Funds Ordinance (Title 19.7).

## SCHEDULE

*section 3*

### Capital Programme

	Financial Year	Financial Year	Total
	2015/16	2016/17	
	£	£	£
Economic Development	-	350,000	350,000
Population and Workforce	-	90,000	90,000
Transport & Communications	400	1,339,000	1,339,400
Education & Training	130,000	300,000	430,000
Health & Social Care	36,600	4,089,400	4,126,000
Maintenance	18,540	924,000	942,540
Infrastructure	3,813,450	8,424,310	12,237,760
Safety & Security	152,800	255,700	408,500
Protecting the Environment	-	85,650	85,650
Community & Culture	-	20,000	20,000
	<hr/>	<hr/>	<hr/>
	4,151,790	15,878,060	20,029,850

Passed by the Legislature of the Falkland Islands on 3 June 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Finance Ordinance 2016**

(No: 5 of 2016)

**ARRANGEMENT OF PROVISIONS**

Section

1. Title
2. Commencement
3. Amendment of Administration of Estates Rules
4. Amendment of Banking Regulations Order
5. Amendment of British Nationality Ordinance
6. Amendment of Civil Cases (Fees) Rules
7. Amendment of Commissioners for Oaths Rules
8. Amendment of Coroners Rules
9. Amendment of Court Fees (Family Proceedings) Rules
10. Amendment of Customs (Fees) Regulations
11. Amendment of Customs (Import Prohibitions) (Fees) Regulations
12. Amendment of Dogs Rules
13. Amendment of Licensing Ordinance
14. Amendment of Minimum Wage Ordinance
15. Amendment of Notaries Public Rules
16. Amendment of Planning (General) Regulations
17. Amendment of Plant Importation Regulations
18. Amendment of Retirement Pensions (Prescribed Rates) Regulations
19. Amendment of Road Traffic (Provisional) Regulations Order

20. Amendment of Taxes Ordinance

Schedule 1: New Schedule 2 to Administration of Estates Rule

Schedule 2: New Schedules to Civil Cases (Fees) Rules

Schedule 3: New Schedule to Court Fees (Family Proceedings) Rules

Schedule 4: New Schedule to Licensing Ordinance

Schedule 5: New Schedule to Notaries Public Rules

Schedule 6: New Schedule to Planning (General) Regulations

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**FINANCE ORDINANCE 2016**

(No: 5 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: in accordance with section 2)*  
*(published: 24 June 2016)*

**AN ORDINANCE**

To increase various allowances, benefits, charges, contributions and fees provided for under the laws of the Falkland Islands, to make new provision for certain new charges and to increase the threshold on corporation tax.

ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Finance Ordinance 2016.

**2. Commencement**

(1) Sections 4, 14, 18(c) and 20 come into force on 1 January 2017.

(2) The rest of this Ordinance comes into force on 1 July 2016.

**3. Amendment of Administration of Estates Rules**

Schedule 2 of the Administration of Estates Rules (Title 68.1.1) is revoked and replaced with the schedule set out under Schedule 1.

**4. Amendment of Banking Regulations Order**

Regulation 4 of the Banking Regulations Order (Title 10.1.1) is amended by omitting “£7,000.00” and replacing it with “£8,000.00”.

## 5. Amendment of British Nationality Ordinance

The Schedule to the British Nationality Ordinance (Title 52.1) is amended by replacing the Table of Fees with the following —

### “TABLE OF FEES

Matter in which fee may be taken	Annual fee
Matter in which fee may be taken	Amount of fee
1. Application under the Act, except an application under section 5, for registration as a British Overseas Territories citizen,	
(a) application relating to one adult	£833.00
(b) application relating to one child	£749.00
2. Application for naturalisation as a British Overseas Territories citizen under section 18(1) or 18(2) of the Act,	£925.00
3. Registration of a declaration of renunciation of British Overseas Territories citizenship under section 24 of the Act,	£272.00
4. Supply a certified copy of a notice, certificate, order, declaration or entry, given, granted or made under the Act or any of the former nationality Acts,	£ 20.00
5. Administering the oath of allegiance for the purposes of the Act.	£5.00”

## 6. Amendment of Civil Cases (Fees) Rules

Schedules 1 and 2 of the Civil Cases (Fees) Rules (Title 16.1.1) are revoked and replaced with the schedules set out under Schedule 2.

## 7. Amendment of Commissioners for Oaths Rules

Rule 2(1) of the Commissioners for Oaths Rules (Title 22.1.1) is amended in paragraph (b) by omitting “£4.00” and replacing it with “£5.00”.

## 8. Amendment of Coroners Rules

Schedule 1 of the Coroners Rules (Title 22.1.4) is revoked and replaced with the following —

### “SCHEDULE 1 FEES

1. For a copy of all or part of any document	28p per page
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2. Standard copy fee for sealed /verified copy of any documents

For the first copy	£10.00
For every subsequent copy of the same document if supplied at the same time”	28p

**9. Amendment of Court Fees (Family Proceedings) Rules**

The Schedule to the Court Fees (Family Proceedings) Rules (Title 38(2).5.1) is revoked and replaced with the schedule set out under Schedule 3.

**10. Amendment of Customs (Fees) Regulations**

The Customs (Fees) Regulations (SR&O No 10 of 2006) are amended as follows —

(a) in regulation 3 —

- (i) by omitting “£77.80” in each place it appears and replacing it with “£78.60”;
- (ii) by omitting “£116.70” in each place it appears and replacing it with “£117.90”;
- (iii) in paragraph (a)(ii) by omitting “£38.90” and replacing it with “£39.30”; and
- (iv) in paragraph (c)(ii) by omitting “£58.35” and replacing it with “£58.95”; and

(b) in regulation 4 —

- (i) by omitting “£53.10” in each place it appears and replacing it with “£53.60”;
- (ii) by omitting “£263.20” in each place it appears and replacing it with “£265.80”;
- (iii) in subregulation (3)(a) by omitting “£26.55” and replacing it with “£26.80”; and
- (iv) in subregulation (3)(b) by omitting “£131.60” and replacing it with “£132.90”.

**11. Amendment of the Customs (Import Prohibitions) (Fees) Regulations**

Regulation 3 of the Customs (Import Prohibitions) (Fees) Regulations (SR &O No 12 of 2009) is amended by omitting —

(a) paragraph (a) and replacing it with the following —

“(a) Importation of Animals etc. Proclamation 2000 (No 2 of 2000) —

- (i) licence for importation of animal – standard (per licence) £128.90
- (ii) licence for importation of animal – poultry/exotic pet (per licence) £32.80
- (iii) licence for importation of animal – poultry/exotic pet (annual) £65.50

(iv) inspection and treatment on arrival	£11.10 plus the cost of necessary drug treatment
(v) clearance from port of arrival – (per importer)	£116.00
(vi) inspection following house quarantine (per animal)	£11.10”;
(b) paragraph (b) and replacing it with the following —	
“(b) Importation of Food and Animal Products from South America Proclamation 2001 (No 3 of 2001) —	
(i) licence for the importation of animal/animal product (commercial – single importation)	£16.00
(ii) licence for the importation of animal/animal product (commercial – annual)	£128.90
(iii) licence for the importation of animal/animal product (non-commercial).”;	£4.10
(c) paragraph (c) and replacing it with the following —	
“(c) Proclamation Number 6 of 1985 —	
Inspection of shearing equipment by the Government Veterinary Officer”.	£39.90

## **12. Amendment of Dogs Rules**

Rule 3 of the Dogs Rules (Title 5.2.1) is amended by omitting “£31.90” and replacing it with “£32.20”.

## **13. Amendment of Licensing Ordinance**

Schedule 3 of the Licensing Ordinance (Title 48.2) is revoked and replaced with the schedule set out under Schedule 4.

## **14. Amendment of Minimum Wage Ordinance**

The Minimum Wage Ordinance (No 10 of 2013) is amended under section 11(1) by omitting “£5.38” and replacing it with “£5.81”.

## **15. Amendment of Notaries Public Rules**

The Schedule to the Notaries Public Rules (Title 22.1.2) is revoked and replaced with the schedule set out in Schedule 5.

## **16. Amendment of Planning (General) Regulations**

The Schedule to the Planning (General) Regulations (Title 55.3.3) is revoked and replaced with the schedule set out under Schedule 6.

## **17. Amendment of Plant Importation Regulations**

Regulation 7 of the Plant Importation Regulations (Title 4.4.1) is amended by omitting —

- (a) “£4.00” and replacing it with “£4.10”;
- (b) “£127.60” and replacing it with “£128.90”; and
- (c) “£15.40” and replacing it with “£15.60”.

## **18. Amendment of Retirement Pensions (Prescribed Rates) Regulations**

The Retirement Pensions (Prescribed Rates) Regulations (SR&O No 39 of 1996) are amended —

- (a) in regulation 3 by omitting —
  - (i) “£147.00” and replacing it with “£150.00”; and
  - (ii) “£83.00” and replacing it with “£85.00”;
- (b) in regulation 5(3)(b) by omitting “£49.00” and replacing it with “£50.00”; and
- (c) in regulation 6 by omitting “£215.00” and replacing it with “£232”.

## **19. Amendment of Road Traffic (Provisional) Regulations Order**

The Road Traffic (Provisional) Regulations Order (Title 63.1.1) is amended in article 5(4)(aa) by omitting “£1.50” and replacing it with “£5.00”.

## **20. Amendment of Taxes Ordinance**

Section 28(2) of the Taxes Ordinance (Title 69.1) is amended by omitting “£1,000,000.00”, and replacing it with “£500,000.00” in each place it appears.

### **SCHEDULE 1**

New Schedule 2 of the Administration of Estates Rules

(section 3)

### **SCHEDULE 2**

The following fees are payable in respect of the non-contentious items:

Item	Fee
------	-----

1. On application for a grant of probate, letters of administration or for resealing a grant of probate or letters of administration —	
--	--

(a) net estate is £5,000 or less	no fee
(b) net estate exceeds £5,000	£150.00
2. For the entry or withdrawal of a caveat	£20.00
3. For a search for any document	£10.00
4. For a copy of all or part of any document	28p per page
5. Standard copy fee for sealed /verified copy of any documents	
For the first copy	£10.00
For every subsequent copy of the same document if supplied at the same time	28p
6. For pursuing and settling citations, advertisements, oaths, affidavits or other documents —	
(a) For any one document settled	£20.00
(b) For any number of additional documents in the same case at the same time	£20.00

## **SCHEDULE 2**

New Schedules to the Civil Cases (Fees) Rules

(section 6)

### **SCHEDULE 1**

#### **FEEs PAYABLE IN SUPREME COURT**

1. The following notes have effect in relation to the Table of Fees appearing below:

(a) “Originating process” includes a writ commencing an action, originating summons, petition in bankruptcy, petition for winding up a company or other body corporate and an application for leave to apply for judicial review;

(b) For purposes of the Table an application of any kind is made —

(i) when a document of any kind requesting the court to entertain that application is delivered to the court office, and not when the application is heard by the court; and

(ii) in relation to any other matter (such as, for example, a writ of execution or sale pursuant to such a writ) specified in Part II of the Table, the relevant fee is payable on the

delivery to the court office of a document of any kind requesting the issue of the process is delivered to the court office and not when that process is issued.

TABLE

Fee number	Amount of fee
<b>PART I</b>	
<b>COMMENCEMENT PROCEEDINGS</b>	
1. Issue of originating process	£300.00
2. Application for an injunction ancillary to any cause of action	£150.00
3. (a) On the making of a general application —	
(i) on notice	£150
(ii) by consent/ without notice	£50
(b) On filing a counter claim	The same fee as if the remedy sought were the subject of separate proceedings
<b>PART 2</b>	
<b>ENFORCEMENT PROCEEDINGS</b>	
4. Upon issuing enforcement action following an earlier judgment	£300.00
5. Sale under a writ of execution —	
(a) Removing or taking steps to remove goods to a place of deposit	reasonable expenses incurred as determined by the Court
(b) for the sale of goods, including all necessary catalogues, commissions and other matters	reasonable expenses incurred as determined by the Court

PART 3  
MISCELLANEOUS

6. Service by the court of any summons or other document —	
(a) if served by post	No fee
(b) request for personal service by the Court of any summons or other document	
(i) East Falkland	£70.00
(ii) West Falkland and other islands fee and plus reasonable travel and subsistence costs as determined by the Court	£70.00
7. On filing a notice of appeal from any Court or tribunal from which an appeal lies to the Supreme Court ( <i>other than in relation to appeals of prohibition orders under the Licensing Ordinance or orders of the Workmen's Compensation Commission for which there is no fee</i> )	£150.00
8. Copy documents per A4 page	28p
9. On taxation of costs by the Registrar	
(a) where the party is legally aided	Nil
(b) where the party is not legally aided	5p per £1.00 of profit costs and disbursements allowed
10. On issue of a costs certificate	£10.00
11. On appeal of taxation by the Registrar	£200.00
12. On deposing an affidavit or affirmation before an officer of the court	£7.50 plus £3.50 for each exhibit
13. Upon lodging an appeal for judicial review —	
(a) upon seeking first permission	£150.00
(b) upon granting of permission	£300.00
14. Upon requesting a certificate of satisfaction	£10.00

15. Upon the making of a Constitutional reference £500.00

**SCHEDULE 2**  
**FEES PAYABLE IN THE MAGISTRATE’S COURT AND THE SUMMARY COURT**

1. Except as provided in the Table below the fees prescribed in Schedule 1 apply to the equivalent steps or items in civil proceedings in the Magistrate’s Court or in the Summary Court.

2. For purposes of paragraph 1 the following table has effect:

**TABLE**

1. On the issuing of proceedings for the recovery of a sum of money or delivery of goods	£70.00
2. On the filing of a counterclaim, on the amount or value (if any)	£70.00
3. Upon issuing enforcement action following an earlier judgment	£70.00
4. Service by the court of any summons or other document —	
(a) if served by post	Nil
(b) request for personal service by the Court of any summons or other document	
(i) East Falkland	£70.00
(ii) West Falkland and other islands	£70.00 plus reasonable travel and subsistence costs as determined by the Court
5. On requesting a certificate of satisfaction	£10.00
6. Upon the lodging of an appeal with the Summary Court constituted as the Employment Tribunal	
(a) where the appellant’s annual earnings in the last tax year are less than £15, 000.00	Nil
(b) where the appellant’s annual earnings in the last tax year are more than £15, 000.00	£160.00

7. Upon the lodging of an application with the Fisheries Disputes Commission £200.00

### **SCHEDULE 3**

New Schedule to Court Fees (Family Proceedings) Rules

(section 9)

#### **SCHEDULE**

#### **FEES PAYABLE IN FAMILY PROCEEDINGS**

1. In the Table of Fees below, “Originating process” includes a petition, writ, originating summons or other process commencing proceedings.

2. The following Table of Fees has effect:

#### **TABLE**

##### **PART 1**

##### **COMMENCEMENT OF PROCEEDINGS**

<b>Fee number</b>	<b>Amount of fee</b>
1. Issue of originating process (including an application for an injunction or restraining order where that is sought other than as ancillary to other relief)	£300.00
2. On application to make a decree nisi absolute	£45.00
3. On any other application under the Matrimonial Causes Ordinance	
(a) by consent	£50.00
(b) other than by consent	£150.00

##### **PART 2**

##### **Proceedings under the Children Ordinance**

1. On application for any originating process (excluding financial relief)	£200.00
2. Any application within proceedings (excluding financial relief)	£100.00
3. On application for an order for financial relief —	
(a) by consent	£50.00
(b) other than by consent	£150.00

4. On application to vary or discharge a financial order —	
(a) on consent	£50.00
(b) other than by consent	£150.00
5. On appeal relating to fostering or hosting provisions	£150.00
6. On requesting a parental responsibility order following the completion of a parental responsibility agreement	£50.00
7. On application for a maintenance order to be sent abroad	£50.00
8. On application for variation of an existing financial order from abroad (under reciprocal enforcement legislation or similar)	£150.00

#### **SCHEDULE 4**

New Schedule to Licensing Ordinance

(section 13)

#### **SCHEDULE 3**

#### **COURT FEES PAYABLE IN CONNECTION WITH JUSTICES' LICENCES**

1. On the application for the grant of a new justices' licence	£100.00
2. On the grant (including a grant on transfer) or renewal of a justices' on-licence, other than a Part V licence or an occasional licence	£235.00
3. On the grant (including a grant on transfer) or renewal of a Part V licence	£235.00
4. On the grant (including a grant on transfer) or renewal of a justices' off-licence	£235.00
5. On an application for a protection order	£50.00
6. On the grant of an application for a protection order	£60.00
7. On inspection of the register of licences pursuant to section 25(1)	£10.00
8. On an application for a special hours certificate	£20.00
9. On the grant of a special hours certificate	£150.00
10. On application for a club registration certificate	Nil

11. On the grant or renewal of a club registration certificate	£80.00
12. On application for a children's certificate	Nil
13. On grant of a children's certificate	£50.00
14. On application for a Camp exemption order	Nil
15. On grant of a Camp exemption order	£20.00
16. On application for an extension of permitted hours	£20.00
17. On the grant of an extension of permitted hours, for every hour or part thereof to which the extension relates	£15.00 per hour or part thereof
18. On application for an occasional licence	£20.00
19. On the grant of an occasional licence, for every day or part thereof to which the occasional licence relates	£35.00 per day up to a maximum of £100.00
20. On application for a prohibition order	Nil

## **SCHEDULE 5**

### New Schedule to Notaries Public Rules

(section 15)

#### SCHEDULE

1. For every affidavit and exhibit to an affidavit	£10.00 for every affidavit and £5.00 for every exhibit thereto
2. Preparing a Note of Protest or other document (including any certificate thereon)	£100.00 for every hour engaged therein and proportionately for every part of an hour, with a minimum fee of £50.00
3. Preparing and attesting any notarial act	(a) £35.00 if a notarial act in public form;  (b) £25.00 otherwise (but no fee where Fee 2 is charged)

4. Extending a Protest	£100
5. Examining any document with the original thereof and certifying it as a true and correct copy	(a) if not copied by the notary public, £25.00 plus £5.00 for every page  (b) if copied by or under the supervision of the notary public, £25.00 plus 50 pence for every page.
6. Attending to Protest a Bill of Exchange or Promissory Note	£100.00 and proportionately for part of an hour thus engaged plus reasonable travelling expenses incurred (if applicable) with a minimum fee of £50.00.
7. Any other notarial act done by a notary public	£100

## SCHEDULE 6

### New Schedule to Planning (General) Regulations

(section 16)

#### SCHEDULE

(regulation 8)

TYPE OF APPLICATION	FEE	
1. Application for demolition	Full application	£20.00
2. Mobile home park/temporary accommodation park (excluding proposals for individual mobile homes)	Outline	£48.00
	Reserved matters	£36.00
	Full planning	£72.00
	Building Permit	£90.00*
	Joint application	£150.00*
3. Construction of buildings, structures or erections for use as residential accommodation (excluding Mobile	Outline application	£32.00
	Reserved matters application	£24.00

\*building permit only required if each unit is within 6m of another

Homes) – charge per unit

	Full planning	£48.00
	Building Permit application	£64.00
	Joint application	£80.00
4. Subdivision of land for residential development	Outline planning	£20.00
	Reserved matters	£20.00
	Full planning	£30.00
5. Application by householder to enlarge, improve or alter an existing dwelling-house	Outline application	£16.00
	Reserved matters application	£12.00
	Full planning	£24.00
	Building Permit application	£32.00
	Joint application	£40.00
6. Erection of garage within residential area over 108m <sup>3</sup> (cubic metres)	Outline planning	£20.00
	Reserved matters	£20.00
	Full planning	£30.00
	Building permit	£40.00
	Joint application	£60.00
7. Erection of buildings for non-residential uses (area less than 75sqm).	Outline application	£48.00
	Reserved matters application	£36.00
	Full planning	£72.00
	Building Permit application	£96.00
	Joint application	£120.00
8. Erection of buildings for non-residential uses (area more than 75sqm)	Outline application	£160.00
	Reserved matters application	£120.00
	Full planning	£240.00
	Building Permit application	£320.00

	Joint application	£400.00
Mixed Use Proposals	Fee as per component uses	
9. Infrastructure such as drainage, roads & accesses, power and water and laydown areas	Private residential:	
	Outline planning	£24.00
	Reserved matters	£24.00
	Full planning	£48.00
	Building Permit	£56.00
	Joint application	£85.00
	Other: Outline planning	£56.00
	Reserved matters	£56.00
	Full planning	£112.00
	Building Permit	£125.00
	Joint application	£215.00
10. Siting of containers outside of container parks (other than for private domestic use)	Full planning	£48.00
	Renewal	£55.00
11. For permission to construct or maintain a car park	No fee if for individual dwelling	
(a) Residential	If for more than one dwelling:	
	Outline application	£20.00
	Full/Reserved matters application	
	• £25.00 where the area of gross car park space does not exceed 40 sq. m;	
	• £30.00 where the area of gross car park space exceeds 40 sq. m but does not exceed 75 sq. m	
(b) Industrial/Commercial	Where the area of gross car park space exceeds 75 sq. m £50 for each 75 sq. m (or part thereof).	
	Outline application	£75.00
	Full / Reserved matters application	

- £50 where the area of gross car park space does not exceed 75 sq. m

- Where the area of gross car park space exceeds 75 sq. m £100.00 for each 75 sq. m (or part thereof)

12. Operations connected with exploratory drilling for appraisal, extraction or export of oil or natural gas	£401.00 per 0.1 ha or the site	
	Maximum	£30,240
13. For permission to place or assemble equipment in any part of any marine water for the purpose of fish farming	£100.00 per application	
14. For permission to engage in winning and working of minerals (excluding peat & calcified seaweed)	£202.00 per 0.1 ha of site (or part thereof)	
	Maximum	£30,240
15. For permission to engage in winning and working of peat & calcified seaweed	£50.00 per application	
16. Change of use of a building for use as one or more dwelling-houses	£80.00 per each additional dwelling-house to be created by the development	
17. For permission to use, dispose of waste/storage of minerals		
(a) use of land for disposal of refuse or waste materials or for the deposit of material remaining after minerals have been extracted from land.	£50.00 per application	
(b) the use of land for the storage of minerals in the open.	£50.00 per application	
18. For permission for other change of use Making of a material change in the use of a building or land or in the use of equipment placed or assembled in marine waters	(a) Where the end use is residential or incidental to residential	£30.00
	Building Permit	£30.00
	Joint application	£50.00
	(b) Where the end use is commercial/industrial	£60.00
	Building Permit	£56.00
	Joint application	£100.00

19. Application to vary or remove a condition on an existing permission (or renew a permission)

£30.00

20. Planning Searches

£20 per search

Passed by the Legislature of the Falkland Islands on 3 June 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

---

COLIN ROBERTS C.V.O.,  
*Governor.*

**Taxes (Amendment) Ordinance 2016**

(No: 6 of 2016)

**ARRANGEMENT OF PROVISIONS**

Section

1. Title
2. Commencement
3. Amendment of Taxes Ordinance
4. Section amended 2 — Interpretation
5. Section 23 amended — The charge to corporation tax and exclusion of income tax
6. Section 28 amended — Corporation tax rates
7. Section 106 amended — Interpretation for purposes of Chapter II
8. Section 116 amended — Initial allowances and writing-down allowances for capital expenditure

# ELIZABETH II



## FALKLAND ISLANDS

COLIN ROBERTS C.V.O.,  
*Governor.*

### TAXES (AMENDMENT) ORDINANCE 2016

(No: 6 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: in accordance with section 2)*  
*(published: 24 June 2016)*

#### AN ORDINANCE

To amend the Taxes Ordinance (No. 14 of 1997) to provide for various tax reliefs for businesses in Camp.

ENACTED by the Legislature of the Falkland Islands —

#### **1. Title**

This Ordinance is the Taxes (Amendment) Ordinance 2016.

#### **2. Commencement**

This Ordinance is deemed to have come into force on 1 January 2016.

#### **3. Amendment of Taxes Ordinance**

This Ordinance amends the Taxes Ordinance (No. 14 of 1997).

#### **4. Section 2 amended — Interpretation**

Section 2 is amended by inserting the following definition in its correct alphabetical order —

““Camp” means any area that is more than 10km from the Christ Church Cathedral excluding—

- (i) the Mount Pleasant Complex;
- (ii) the Camber (Port William) site,

but includes any agricultural enterprises located within the 10km radius from the Christ Church Cathedral where livestock farming is the primary activity, and the enterprise has an annual turnover exceeding £10,000 or stock numbers exceeding 2,000 Dry Sheep Equivalent;”;

#### **5. Section 23 amended — the charge to corporation tax and exclusion of income tax**

Section 23 is amended by adding the following new subsections after subsection (5) —

“(6) Subject to subsection (7) the provisions of this Ordinance relating to the charge of corporation tax shall not apply to income of the new business activity of a company resident in Camp where that company —

- (a) operates a business that is new in Camp; or
- (b) operates a business that is new to the Falkland Islands.

(7) Corporation tax is not chargeable to a company on the new business activity under subsection (6) for a period of —

- (a) three years from the date of operation by that company of a business that is new in Camp; and
- (b) six years from the date of operation by that company of a business that is new in the Falkland Islands.

(8) For purposes of subsection (6) —

- (a) a company operates a business that is “new in Camp” if the company —
  - (i) operates or undertakes any activity which is not currently undertaken in Camp; or
  - (ii) offers any services which are not currently offered in Camp; and
- (b) a company operates a business that is “new in the Falkland Islands” if the company—
  - (i) operates or undertakes any activity which is not currently undertaken in the Falkland Islands; or
  - (ii) offers any services which are not currently offered in the Falkland Islands.”.

#### **6. Section 28 amended — Corporation tax rates**

Section 28 is amended as follows —

(a) by deleting subsection (3) and replacing it with the following —

“(3) In subsection (1)(a) above the reference to a company’s chargeable income for any period is a reference to the amount of that income less the amount of —

(a) any ring fence income of the company for that period;

(b) any franked investment income of the company for that period; or

(c) any applicable new employment income or investment income for renewable resources due to a company in Camp for that period.”; and

(b) by inserting the following new subsection immediately after subsection (3) —

“(3A) For purposes of subsection (3)(c) a company in Camp is eligible for a tax credit for—

(a) the creation of any new employment in Camp at the amount set out under subsection (3B); or

(b) any investments the company makes in acquiring renewable energy technology or any of its system components in Camp at an annual rate of 150 per cent for up to £20,000 of the total cost of that renewable energy technology or its system components.

(3B) The tax credit referred to under subsection (3A)(a) for any new employment income is £3000 in each year and it applies —

(a) for three years from the date the full-time employment is created provided the employment is for more than 12 months; or

(b) on a pro-rated basis if the full-time employment is for 6 to 12 months.

(3C) The full-time employment must —

(a) be new (being a net additional job created but excluding any change in name of an existing role);

(b) be valid for a period of at least six months;

(c) provide as a minimum for a 40 hours work week;

(d) require that a minimum of 75 per cent working hours be carried out in Camp; and

(e) be carried out by a person resident in Camp; and

(3D) “Renewable energy technology” has the same meaning given under section 106(4).”

## **7. Section 106 amended — Interpretation for purposes of Chapter II**

Section 106(4) is amended as follows —

(a) in the definition of “building” by inserting the words “or farmhouses” immediately after the word “land”;

(b) in the definition of “expenditure” by adding after paragraph (b), the following new paragraph—

“(c) any renewable energy technology including its system components.”; and

(c) inserting the following definitions in their correct alphabetical order —

““farmhouse” means the principal residence of the farm owner, manager or any person in control of the operation of the farm (that is used for residential purposes);

“renewable energy technology” means any technology that generates electricity or heat directly from natural resources or through the use of plant material that can be naturally replenished;”

## **8. Section 116 amended — Initial allowances and writing-down allowances for capital expenditure**

Section 116 is amended as follows —

(a) in subsection (1) by adding the following new paragraphs immediately after paragraph (e)—

“(f) any renewable energy technology (including its system components).”.

(b) by inserting immediately after subsection (1A), the following new subsection —

“(1B) The disposal value of any renewable energy technology or any of its system components must be determined in accordance with section 113.”

(c) by deleting subsection (6A) and replacing it with the following —

“(6A) In the case of —

(a) machinery in Camp, the writing-down allowance is 60 per cent; and

(b) plant, machinery (other than machinery in Camp) or vehicle (including aircraft), writing-down allowances must be made under section 117.”.

(d) by deleting subsection (9) and replacing it with the following —

“(9) Unless subsection (10) applies —

(a) the writing-down allowance for a building (other than a building in Camp) is 10 per cent of the expenditure incurred in acquiring the building; and

(b) the writing-down allowance for a building in Camp (other than farmhouses) is 25 per cent of the expenditure incurred in acquiring the building.”

Passed by the Legislature of the Falkland Islands on 3 June 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Highways (Weight Limits) (Amendment) Ordinance 2016**

(No: 7 of 2016)

**ARRANGEMENT OF PROVISIONS**

Section

1. Title
2. Commencement
3. Amendment of Highways (Weight Limits) Ordinance
4. Amendment of Highways (Weight Limits on Bridges) Order

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**HIGHWAYS (WEIGHT LIMITS) (AMENDMENT) ORDINANCE 2016**

(No: 7 of 2016)

*(assented to: 16 June 2016)*  
*(commencement: on publication)*  
*(published: 24 June 2016)*

**AN ORDINANCE**

To amend the Highways (Weight Limits) Ordinance (No. 8 of 2004) and the Highways (Weight Limits on Bridges) Order (S. R. & O. No. 11 of 2012) to make amendments relating to the power to grant exemptions for prescribed weights and to specify the new weight limits for Boxer Bridge, Malo Bridge and San Carlos Bridge.

ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Highways (Weight Limits) (Amendment) Ordinance 2016.

**2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

**3. Amendment of Highways (Weight Limits) Ordinance**

The Highways (Weight Limits) Ordinance is amended as follows —

- (a) in section 6(3) by inserting the following new paragraph immediately after paragraph (a)—

“(ab) prohibit without exception, the use of any motor vehicle, trailer or vehicle combination the laden weight of which exceeds the weight specified in such Order on any publicly maintainable highway or length of publicly maintainable highway therein specified;”

(b) in section 8 by inserting the following new subsection immediately after subsection (2) —

“(2A) Where the Governor has made an Order under section 6(3)(ab) the Competent Authority may not grant any exemptions in relation to the weight limits specified in such Order.”

#### **4. Amendment of Highways (Weight Limits on Bridges) Order**

The Highways (Weight Limits on Bridges) Order is amended as follows —

(a) under article 3 by adding the following new definitions —

“(c) “Malo Bridge” means the structure known as Malo Bridge that crosses the Malo River on the road from Estancia Farm to Teal Inlet;

(d) “San Carlos Bridge” means the structure known as San Carlos Bridge that crosses the San Carlos River on the road between Greenfield Farm and the North camp track.”.

(b) by deleting article 4 and replacing it with the following —

##### **“4. 18 tonne weight limit on Boxer Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Boxer Bridge is prohibited if its laden weight exceeds 18 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”;

(c) by adding the following new articles after article 4 —

##### **“5A. 38 tonne weight limit on Malo Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Malo Bridge is prohibited if its laden weight exceeds 38 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.;

##### **5B. 38 tonne weight limit on San Carlos Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across San Carlos Bridge is prohibited if its laden weight exceeds 38 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”; and

(d) by deleting article 5 and replacing it with the following —

##### **“5. 32 tonne weight limit on Chartres Bridge**

The use of a motor vehicle, trailer or vehicle combination on the length of road across Chartres Bridge is prohibited if its laden weight exceeds 32 tonnes and no exemption may be granted by the Competent Authority in relation to this weight.”.

Passed by the Legislature of the Falkland Islands on 3 June 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

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# FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. 125

30 June 2016

No. 7

## Appointment

Paul Alan Joshua, Labourer, Materials Section, Public Works Department, 19.05.16.

Emma Carrasco Campos, Learning Support Assistant, Education Department, 01.06.16.

Tara Marie Hewitt, Learning Support Assistant, Education Department, 01.06.16.

Miriam Ann Newton, Accounting Assistant (Post, Pensions and Statistics), Treasury, 01.06.16.

Dino Bruna, Labourer, Materials Section, Public Works Department, 07.06.16.

Barbara Bates, Events/Residence Manager – Government House, Central Services Department, 08.06.16.

Cheryl Jane March, Medical Stores Assistant, Health and Social Services Department, 13.06.16.

Octavio Enrique Marinovic Dey, Mechanic/Storesperson, Materials Section, Public Works Department, 20.06.16.

## Resignation

Colette Bassford, Events/Residence Manager – Government House, Central Services Department, 03.06.16.

Joan Clarke, Learning Support Assistant, Education Department, 07.06.16.

Jeremy Poncet, Head Gardener, Central Services Department, 13.06.16.

Sally Minto, Senior Finance Clerk, Administration Section, Public Works Department, 21.06.16.

Clare Neves-Scott, Midwife, Health and Social Services Department, 27.06.16.

## Retirement

Lachlan Ross, Senior Store Person, Plant and Vehicle Section, Public Works Department, 30.06.16.

## NOTICES

No. 42

31 May 2016

### **Customs Ordinance** *section 7*

#### **Appointment of Temporary Customs Officer**

In exercise of the powers conferred by section 7(3) of the Customs Ordinance 2003, I appoint **Cpl Benn Grimshaw** – 30058656 to be a temporary Customs Officer from 11 April to 11 October 2016.

Dated 31 May 2016

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

No. 43

1 June 2016

#### **Index of Retail Prices**

The Index for the quarter ended 31 March 2016 has now been completed.

The Index has decreased during the quarter, to 101.16; this equates to a 0.37% decrease as shown below:

Date	Index	Annual % Increase/(Decrease)	Quarter % Increase/(Decrease)
30.06.15	101.74	0.3	(0.8)
30.09.15	102.00	(0.3)	0.26
31.12.15	101.53	(0.7)	(0.46)
31.03.16	101.16	(1.4)	(0.37)

Dated 1 June 2016

J. M. ALDRIDGE,  
*for Financial Secretary.*

No. 44 4 June 2016

**Customs Ordinance 2003**  
*section 113*

**Customs Resolution of the Legislative Assembly**  
No: 1 of 2016

It is resolved by the Legislative Assembly, under section 113 of the Customs Ordinance 2003 (Title 26.1), that —

(a) the Customs Order (Title 26.1.2) is amended to increase the customs duties payable for tobacco products and alcoholic beverages as follows —

on beer from 33p to 34p per litre;  
on wines from 81p to 83p per litre;  
on fortified wines from 97p to £1.00 per litre;  
on spirituous beverages from £6.59 to £6.79 per litre;  
on spirits from £12.06 to £12.42 per litre;  
on cigars from £329.24 to £345.70 per kilo;  
on cigarettes from £354.51 to £372.24 per kilo;  
on tobacco from £216.41 to £227.23 per kilo; and

(b) this amendment of the Customs Order comes into force on 4 June 2016.

Dated 4 June 2016

C. PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

No. 45 16 June 2016

**Planning Ordinance (Title 55.3)**  
*section 5(2)*

**Appointment of Member of  
Planning and Building Committee**

1. Section 5(2) of the Planning Ordinance provides that the Governor shall appoint members to the Planning and Building Committee.

2. In exercise of my powers under section 5(2) I appoint **Gary Clement** to be a member of the Planning and Building Committee.

3. This appointment has effect on the date given below, and continues in effect for three years from that date, unless terminated sooner.

Dated 16 June 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 46

27 June 2016

**Freiwin Limited**  
**Company Number: 9876**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 with effect from 27 June 2016.

Dated 27 June 2016

E. J. DENT,  
*Registrar of Companies.*

No. 47

27 June 2016

**Beauchene Property Company Limited**  
**Company Number: 9749**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 with effect from 27 June 2016.

Dated 27 June 2016

E. J. DENT,  
*Registrar of Companies.*

No. 48

27 June 2016

**Companies (Amendment) Ordinance 2006**

**Chartres River Properties Limited (the "Company")**  
**Registered Number: 7853**

Notice is hereby given pursuant to section 175 of the Companies Act 1985 (in its application to the Falkland Islands pursuant to the Companies (Amendment) Ordinance 2006) (the "Act"); that on 27 June 2016 the Company approved a payment of £38,213.76 out of capital for the purpose of purchasing 49,998 of its own ordinary shares of £1 each; that the statutory declaration of the Company's directors and the auditors' report required by section 173 of the Act are available for inspection at the Company's registered office, Waverley House, Philomel Street, Stanley, Falkland Islands; and that any creditor of the Company may at any time within the 5 weeks immediately following the aforementioned date apply to the Court under section 176 of the Act for an order prohibiting the payments.

By Order of the Board

Dated 27 June 2016

G. FARQUHAR,  
*Director, Pinsent Masons Nominee Company (Falklands)  
Limited (Company Secretary)*

**Application for Permanent Residence**

Notice is hereby given that:-

**Hector Manuel Dominguez Hernandez;**  
**Lani Salumbides;**  
**Texia Loreto Palma Munoz;**  
**Monica Isabel Ovalle Pita;**  
**Emma Gilda Carrasco Campos;**  
**Tristan Mark Peters;**  
**Ronald John MacLennan Baird;**  
**Pamela Dianne Frances (nee Reynolds); and**  
**Christopher David Francis**

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

Any person who knows of any reason why a permit should not be granted to any of the above named should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 July 2016.

Dated 27 June 2016

J. E. SMITH,  
*Immigration Officer.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*15 July 2016*

*No. 4*

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The following are published in this Supplement –

**Livestock and Meat Products (Amendment) Bill 2016; and  
Court Fees (Family Proceedings) (Amendment) Rules 2016 (SR&O No 17 of 2016).**

# **Livestock and Meat Products (Amendment) Bill 2016**

(No:      of 2016)

## **ARRANGEMENT OF PROVISIONS**

Clause

### **PART 1 - INTRODUCTION**

1. Title
2. Commencement

### **PART 2 – AMENDMENT OF LIVESTOCK AND MEAT PRODUCTS ORDINANCE**

3. Amendment of Livestock and Meat Products Ordinance
4. Section 3 amended — Interpretation

### **PART 3 – REVOCATION OF SAND BAY ABATTOIR (DESIGNATION) ORDER**

5. Revocation of Sand Bay Abattoir (Designation) Order

# LIVESTOCK AND MEAT PRODUCTS (AMENDMENT) BILL 2016

(No: of 2016)

(assented to: 2016)  
(commencement: on publication)  
(published: 2016)

## A BILL

for

## AN ORDINANCE

To amend the Livestock and Meat Products Ordinance (No. 14 of 2010) to provide for a new definition for ‘designated abattoirs’ and to revoke the Sand Bay Abattoir (Designation) Order; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

### **PART 1 INTRODUCTION**

#### **1. Title**

This Ordinance is the Livestock and Meat Products (Amendment) Ordinance 2016.

#### **2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

### **PART 2 AMENDMENT OF LIVESTOCK AND MEAT PRODUCTS ORDINANCE**

#### **3. Amendment of Livestock and Meat Products Ordinance**

This Part amends the Livestock and Meat Products Ordinance (No. 14 of 2010).

#### **4. Section 3 amended – Interpretation**

Section 3(3) is amended by omitting the definition of “designated abattoir” and replacing it with the following —

““designated abattoir” means an abattoir designated by Notice for the purpose of producing and processing meat for placing on the market for human consumption and the Notice must specify the meat which the designated abattoir produces for placing on the market for human consumption;”.

**PART 3**  
**REVOCATION OF SAND BAY ABATTOIR (DESIGNATION) ORDER**

**5. Revocation of Sand Bay Abattoir (Designation) Order**

The Sand Bay Abattoir (Designation) Order (S.R. & O. No. 27 of 2001) is revoked.

---

**OBJECTS AND REASONS**

This Bill amends the Livestock and Meat Products Ordinance and revokes the Sand Bay Abattoir (Designation) Order.

*Part 1* provides for introductory matters.

*Part 2* amends the Livestock and Meat Products Ordinance.

*Clause 4* amends section 3(3) by replacing the definition of ‘designated abattoir’ to expand the definition to include details which must be included in the designation Notice

*Part 3* revokes the Sand Bay Abattoir (Designation) Order (S.R. & O. No. 27 of 2001). Section 3 of the Abattoirs Ordinance provided for the designation of abattoirs by Order. The Governor made an Order to designate the Sand Bay Abattoir as a designated abattoir.

The Livestock and Meat Products Ordinance (LMPO) also provides for the designation of abattoirs by Notice. Since this is the legislation that deals with production of meat for human consumption and in particular for the export of meat to the EU and has specific requirements in regulations dealing with this the designation of Sand Bay Abattoir must be done under the LMPO.

In 2015 the LMPO repealed the Abattoirs Ordinance and made a specific provision saving any subsidiary legislation made under the Abattoirs Ordinance. Since all the necessary regulations required under the LMPO have been done there is no longer any need to save the Sand Bay Abattoir (Designation) Order and therefore *clause 5* provides for its revocation.

A Notice to designate the Sand Bay Abattoir will be made under the Livestock and Meat Products Ordinance which will be published at the same time with this amendment when it comes into force.

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**SUBSIDIARY LEGISLATION**

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**COURTS AND LEGAL SERVICES**

**Court Fees (Family Proceedings) (Amendment) Rules 2016**

S. R. & O. No. 17 of 2016

*Made: ..... 13 July 2016*

*Published: ..... 15 July 2016*

*Coming into force: 1 July 2016*

**1. Title**

These rules are the Court Fees (Family Proceedings) (Amendment) Rules 2016.

**2. Commencement**

These rules are deemed to have come into force on 1 July 2016.

**3. Amendment of rule 4 - Fees**

Rule 4(1) of the Court Fees (Family Proceedings) Rules (Title 38(2).5.1) is amended by deleting the words “in the Supreme Court”.

Made 13<sup>th</sup> July 2016

June Sandra Tyler-Haywood,  
*Acting Governor.*

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**EXPLANATORY NOTE**  
*(not forming part of the order)*

These rules amend the Court Fees (Family Proceedings) Rules (Title 38(2).5.1).

Rule 4(1) of the Rules is amended to delete the words “in the Supreme Court” so that the Fees set out in the Schedule can apply and be payable in the Supreme Court, Magistrate’s Court and Summary Court.

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# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*18 July 2016*

*No. 5*

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The following are published in this Supplement –

**Committees (Public Access) (Amendment) Bill 2016; and**

**Committees (Public Access) (Designation of Public Bodies) Order 2016 (SR&O No 18 of 2016).**

# **Committees (Public Access) (Amendment) Bill 2016**

(No:            of 2016)

## **ARRANGEMENT OF PROVISIONS**

Clause

1. Title
2. Commencement
3. Schedule 1 amended – Committees to which the rights of access to meetings and documents do not apply



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**SUBSIDIARY LEGISLATION**

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**CONSTITUTIONAL AND ADMINISTRATIVE LAW**

**Committees (Public Access) (Designation of Public Bodies) Order 2016**

S. R. & O. No. 18 of 2016

*Made: ..... 18 July 2016*

*Published: ..... 18 July 2016*

*Coming into force: on publication*

I make this order under section 9(1) of the Committees (Public Access) Ordinance (No. 10 of 2012) —

- (a) after consulting with the bodies to be designated as public bodies, as required by section 9(3); and
- (b) on the advice of the Executive Council.

**1. Title**

This order is the Committees (Public Access) (Designation as Public Bodies) Order 2016.

**2. Commencement**

This order comes into force on publication in the *Gazette*.

**3. Designation as public bodies**

The following statutory corporations are designated as public bodies for purposes of the Committees (Public Access) Ordinance —

- (a) Falkland Islands Tourist Board; and
- (b) Falklands Landholdings Corporation.

Made 18<sup>th</sup> July 2016

June Sandra Tyler-Haywood,  
*Acting Governor.*

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EXPLANATORY NOTE  
*(not part of the order)*

Section 9(1) of the Committees (Public Access) Ordinance (No. 10 of 2012) gives the Governor the power to designate statutory corporations as public bodies for purposes of the Ordinance.

The Ordinance gives members of the public rights of access to the meetings and documents of certain committees. These include boards or managing committees of public bodies.

This order designates the Falkland Islands Tourist Board and the Falklands Landholdings Corporation Ordinance as public bodies for purposes of the Ordinance. This means that members of the public have rights of access to meetings and documents of their boards or managing committees.

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# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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The following are published in this Supplement –

**Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2016 (SR&O No 19 of 2016);**

**Criminal Justice (Police Codes of Practice) (Amendment) Order 2016 (SR&O No 20 of 2016).**

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## SUBSIDIARY LEGISLATION

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### CIVIL AVIATION

#### **Civil Aviation (Investigations of Air Accidents and Incidents) Regulations 2016**

S. R. & O. No. 19 of 2016

*Made: ..... 21 July 2016*

*Published: ..... 27 July 2016*

*Coming into force: on publication*

IN EXERCISE of the powers conferred by section 75 of the Civil Aviation Act 1982 as extended to the Falkland Islands by Article 4 of the Civil Aviation Act 1982 (Overseas Territories) Order 2001 and in accordance with Schedule 1 to that Order I make the following Regulations —

#### **1. Citation and commencement**

These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2016 and come into force on publication in the *Gazette*.

#### **2. Interpretation**

(1) In these Regulations, unless the context otherwise requires —

“accident” means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft takes place between the time a person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which —

(a) a person is fatally or seriously injured as a result of being in the aircraft, or in direct contact with any part of the aircraft including parts which have become detached from the aircraft, or direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or were inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which —

(i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and

(ii) would normally require major repair or replacement of the affected component,

except for engine failure or damage when damage is limited to a single engine (including its cowlings or accessories), to propellers, wing tips, antennas, probes, tyres, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes) or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or

(c) the aircraft is missing or is completely inaccessible;

“accredited representative” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State;

“adviser” means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

“aerodrome authority” means, in relation to an aerodrome, the person by whom the aerodrome is managed;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface;

“cause” means an act, omission, condition or circumstance which if eliminated or avoided would have prevented the occurrence or would have mitigated the resulting injuries or damage;

“Chief Investigator” means the Chief Air Accident Investigator appointed under regulation 8;

“Contracting State” means any State which is party to the Chicago Convention;

“contributing factors” means actions, omissions, events, conditions, or a combination thereof, which, if eliminated, avoided or absent, would have reduced the probability of the accident or incident occurring, or mitigated the severity of the consequences of the accident or incident;

“crew” includes every person employed or engaged by the operator in an aircraft in flight in relation to the operation of the aircraft including, where the operator and the pilot in command are the same person, the pilot in command;

“expert” means a person appointed by a State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens;

“fatal injury” means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;

“flight recorder” means any type of recorder installed in an aircraft for the purpose of complementing accident or incident investigation including a flight data recorder, cockpit voice recorder and image recorder;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

“investigation” means a process conducted by a Safety Investigation Authority for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and/or contributing factors and, when appropriate, the making of safety recommendations;

“Investigator” means a person appointed as an Air Accident Investigator under regulation 8;

“Investigator-in-Charge” means a person charged, on the basis of his or her qualifications, with responsibility for the organisation, conduct and control of an investigation conducted pursuant to these Regulations;

“maximum mass” means certificated maximum take-off mass of an aircraft;

“operator” means a person, organisation or enterprise engaged in, or offering to engage in the operation of an aircraft, whether for valuable consideration or otherwise ;

“owner” means, where an aircraft is registered, the registered owner;

“pilot in command” means the pilot designated by the operator as being in command of an aircraft and charged with the safe conduct of its flight or, if no such designation has been made, the person who for the time being is in charge of piloting the aircraft without being under the direction of any other pilot in the aircraft;

“preliminary report” means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

“safety recommendation” means a proposal of an accident investigation authority, based on information derived from an investigation, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident;

“serious incident” means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft; and

“serious injury” means an injury which is sustained by a person in an accident and which —

- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received;
- (b) results in a fracture of a bone, excluding simple fractures of fingers, toes, or nose;
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) involves injury to an internal organ;

(e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or

(f) involves verified exposure to infectious substances or harmful radiation;  
and references to “seriously injured” in these Regulations is to be construed accordingly;

“State of Design” means the State having jurisdiction over the organisation responsible for the type design of an aircraft or aircraft engine;

“State of Manufacture” means the State having jurisdiction over the organisation responsible for the final assembly of an aircraft, aircraft engine, or major components of the aircraft;

“State of Occurrence” means the State in the territory of which an accident or serious incident occurs;

“State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence; and

“State of Registry” means the State on whose register an aircraft is entered.

(2) A notice or other document required or authorised by a provision of these Regulations to be served on or given to a person may be served or given by —

(a) delivery to the person;

(b) leaving it at the person's usual or last-known residence or place of business, whether in the Falkland Islands or elsewhere;

(c) sending it to the person at the address referred to in paragraph (b) by post, telex, facsimile transmission, or other similar means which produce a document containing a text of the communication, where the document will be treated as served when it is received.

### **3. Application**

These Regulations apply only to accidents and incidents involving aircraft engaged in civil aviation.

### **4. Purpose of the investigation of accidents and incidents**

The sole objective of the investigation of an accident or incident under these Regulations is the prevention of accidents and incidents and it is not the purpose of this activity to apportion blame or liability.

### **5. Duty to furnish information relating to accidents and serious incidents**

(1) Where an accident or a serious incident occurs the relevant person and, in case of an accident or a serious incident occurring on or adjacent to an aerodrome, the aerodrome authority must —

(a) give notice of the accident or incident to the Governor, the Chief Investigator and to the designated authority for civil aviation regulation in the Falkland Islands by the quickest means of communication available; and

(b) where an accident occurs in or over the Falkland Islands, notify forthwith the local police authorities of the accident and of the place where it occurred.

(2) The notice to the Chief Investigator referred to in paragraph (1) must contain, to the extent it is available —

(a) in the case of an accident, the identifying abbreviation 'ACCID' or, in the case of a serious incident 'INCID';

(b) the manufacturer, model, nationality and registration marks, and serial number of the aircraft;

(c) the name of the owner, operator and hirer or lessee, if any, of the aircraft;

(d) the qualifications of the pilot in command, and the nationality of the crew and passengers;

(e) the date and time (local time or UTC) of the accident or serious incident;

(f) the last point of departure and the point of intended landing of the aircraft;

(g) the position of the aircraft with reference to some easily defined geographical point and latitude and longitude;

(h) the number of —

(i) crew on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of crew killed or seriously injured as a result of the accident;

(ii) passengers on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of passengers killed or seriously injured as a result of the accident; and

(iii) in the case of an accident, other persons killed or seriously injured as a result of the accident;

(i) a description of the accident or serious incident and the extent of the damage to the aircraft as far as is known as well as an indication of access difficulties or special requirements to reach the site; and

(j) the presence and description of any dangerous goods on board the aircraft.

(3) The Chief Investigator must forward a notification of an accident or serious incident in the ICAO ADREP format with the minimum of delay and by the most suitable and quickest means available to —

(a) the State of Registry;

(b) the State of the Operator;

(c) the State of Design;

(d) the State of Manufacture; and

(e) ICAO, when the aircraft involved is of a maximum mass of over 2,250kg or is a turbo-jet powered aircraft.

(4) The owner, operator, pilot in command or hirer of the aircraft must, if so required by notice in writing given to him or her by the Chief Investigator, send to the Chief Investigator such information as is in his or her possession or control, in such form and at such times as may be specified in the notice.

(5) Upon receipt of notification of an accident or a serious incident occurring outside the Falkland Islands involving an aircraft registered in the Falkland Islands or of which the Falkland Islands is the State of the operator, the operator of the aircraft must, as soon as possible, provide the authorities of the State conducting the investigation with any relevant information available regarding the aircraft and flight crew involved in the accident or serious incident, and a copy of the passenger manifest and any dangerous cargo.

(6) Notwithstanding the provisions of paragraph (6), the Chief Investigator must inform the authorities of the State conducting the investigation whether the Falkland Islands intends to appoint an accredited representative.

(7) In this regulation “relevant person” means —

(a) in the case of an accident or serious incident occurring in or over the Falkland Islands, or occurring elsewhere to an aircraft registered in the Falkland Islands, the pilot in command of the aircraft involved at the time of the accident or serious incident or, if the pilot in command is killed or incapacitated, the operator of the aircraft; and

(b) in the case of a serious incident occurring in or over a country or territory other than a Contracting State to an aircraft registered elsewhere than in the Falkland Islands but operated by an undertaking established in the Falkland Islands, the undertaking.

## **6. Preliminary report on accident or incident to be published**

Subject to regulations 11(2) and 18, the Chief Investigator may at any time publish, or cause to be published, a preliminary report or information relating to an accident or serious incident.

## **7. Protection and removal of damaged aircraft**

(1) Subject to paragraphs (2) and (3) and regulation 9, where an accident or serious incident occurs in or over the Falkland Islands —

(a) no person other than an authorised person must have access to the aircraft involved in the accident or serious incident;

(b) neither the aircraft nor its contents must except under the authority of the Chief Investigator or the Investigator-in-Charge, be removed or otherwise interfered with;

(c) the Chief Investigator, the Investigator-in-Charge, or persons authorised on his or her behalf, must take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation; and

(d) the Chief Investigator, the Investigator-in-Charge or person authorised on his or her behalf, must take all necessary steps to ensure that the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative, pursuant to a request from the State of Registry, State of Design, State of Manufacture or State of the Operator, so far as this is reasonably practicable and compatible with the proper conduct of the investigation and provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

(2) Notwithstanding paragraph (1) —

(a) the aircraft may be accessed, moved or interfered with to the extent necessary to—

(i) extricate persons, animals, mail and valuables;

(ii) prevent destruction by fire or other causes;

(iii) eliminate any danger or obstruction to air navigation, to other transport or to the public; or

(iv) remove other property from the aircraft under the supervision of an Investigator or with the agreement of an Investigator or a police officer; and

(b) where an aircraft is in water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing the aircraft or the contents to a place of safety.

(3) The Chief Investigator or the Investigator-in-Charge must release custody of the aircraft, its contents or any parts of the aircraft as soon as they are no longer required in the investigation, to any person or persons duly designated by the State of Registry or the State of the Operator, as applicable.

(4) In this regulation “authorised person” means —

- (a) a person authorised by the Governor either generally or specially to have access to an aircraft involved in an accident or serious incident;
- (b) the Chief Investigator, the Investigator-in-Charge or a person authorised by him;
- (c) a police officer; or
- (d) an officer of the Customs and Excise Department.

## **8. Air Accident Investigators**

(1) For the purpose of carrying out investigations into accidents and incidents to which these Regulations apply, the Governor must appoint a Chief Investigator who will appoint persons as air accident investigators, one of whom must be appointed as the Investigator in Charge.

(2) Subject to paragraphs (4) and (5), the Chief Investigator must carry out, or cause an Investigator to carry out, an investigation into —

(a) accidents and serious incidents which occur in or over the Falkland Islands;

(b) accidents and serious incidents which occur to aircraft registered in the Falkland Islands in or over a country or territory which is not a Contracting State or where the location of the accident or serious incident cannot definitely be established as being in the territory of any State;

(c) accidents and serious incidents which occur in or over a country or territory which is not a Contracting State to aircraft which are registered elsewhere than in the Falkland Islands but which are operated by an undertaking established in the Falkland Islands when such an investigation is not carried out by another State.

(3) Subject to paragraphs (4) and (5), the Chief Investigator may, where he expects to draw air safety lessons from it, carry out, or cause an Investigator to carry out, an investigation into an incident, other than a serious incident, which occurs—

(a) in or over the Falkland Islands; or

(b) otherwise than in or over the Falkland Islands to an aircraft registered in the Falkland Islands.

(4) The Chief Investigator may delegate the whole or any part of an investigation into an accident or incident to another State or a regional accident investigation organisation by mutual arrangement and consent.

(5) Where the Chief Investigator delegates the task of carrying out an investigation pursuant to paragraph (4), the Chief Investigator must to the extent possible facilitate inquiries by the Investigator-in-Charge appointed by the relevant State.

(6) Without prejudice to the power of an Investigator to seek such advice or assistance as the Investigator thinks fit in making an investigation, the Chief Investigator may appoint suitably qualified persons to assist an Investigator in a particular investigation.

(7) The Chief Investigator may invite the aviation authorities and suitably qualified persons or organisations from the Falkland Islands and other Contracting States to assist in the conduct of the investigation, so far as this is compatible with the proper conduct of the investigation.

(8) The Chief Investigator must designate a person as the Investigator-in-Charge of an investigation except where the investigation has been delegated under paragraph (4).

(9) If, in the course of an investigation, it becomes known, or it is suspected, that an act of unlawful interference to the aircraft was involved in the cause of the accident or serious incident the Investigator-in-Charge must immediately initiate action to ensure that the aviation security authorities of the Falkland Islands are informed.

## **9. Powers and duties of Investigators**

(1) An Investigator is authorised, for the purpose of enabling him or her to carry out an investigation into an accident or incident in the most efficient way and within the shortest time, in co-operation with the authorities responsible for any judicial inquiry where appropriate, to—

(a) have unrestricted and unhampered access to and control over the site of the accident or incident, the aircraft, its contents or its wreckage, and all relevant material or evidence including the protection of the aircraft, debris or components for examination or analysis purposes;

(b) ensure an immediate listing of evidence and controlled removal of debris, or components, for examination or analysis purposes;

(c) have immediate access to and use of the contents of the flight recorders and any other recordings;

(d) arrange for the read out of the flight recorders without delay;

(e) arrange for an expeditious autopsy or medical examination of the crew, passengers and other persons and have immediate access to the results of examination of the bodies of victims or of tests made on samples taken from the bodies of victims;

(f) have immediate access to the results of examinations of the people involved in the operation of the aircraft or of tests made on samples taken from such people;

(g) call and examine witnesses and to require them to produce information or evidence relevant to the investigation; and

(h) have free access to any relevant information or records held by the owner, the operator or the manufacturer of the aircraft, by the authorities responsible for civil aviation, air navigation services or airport operations.

(2) For the purposes of paragraph (1), an Investigator has power —

(a) by summons under the Investigator's hand, to call before him or her and examine all persons as the Investigator thinks fit, require persons to answer questions or furnish information or produce books, papers, documents and articles which the Investigator may consider relevant, and to retain any such books, papers, documents and articles until the completion of the investigation;

(b) to take statements from all persons as the Investigator thinks fit and to require any person to make and sign a declaration of the truth of the statement made by him or her;

(c) on production of the Investigator's credentials, where these are required, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to the Investigator to be requisite for the purposes of the investigation;

(d) on production of the Investigator's credentials, where these are required, to remove, test, take measures for the preservation of or otherwise deal with any aircraft, other than an aircraft involved in the accident or incident, where it appears to the investigating Investigator requisite for the purposes of the investigation; and

(e) to take such measures for the preservation of evidence as the Investigator considers appropriate.

(3) A person summoned by an Investigator under paragraph (2)(a) is allowed such expenses as the Governor may determine.

## **10. Form and conduct of investigations**

The extent of investigations and the procedure to be followed in carrying out investigations required or authorised under these Regulations must be—

(a) wholly independent of, and separate from, any judicial or administrative proceedings to apportion blame or liability;

(b) coordinated with any investigation conducted by the judicial authorities;

(c) determined by the Chief Investigator taking account of the purpose described in regulation 4 and the lessons the Chief Investigator expects to draw from the accident or incident for the improvement of aviation safety.

## **11. Investigation report**

(1) On completion of an investigation into an accident or incident, the Investigator-in-Charge must prepare a Final Report of the investigation in a form, prescribed in the Appendix to Annex 13 of the Convention, appropriate to the type and seriousness of the accident or incident.

(2) On completion of an investigation, the Chief Investigator must send a copy of the draft final report to the following States, inviting their significant and substantiated comments on the report as soon as possible —

- (a) the State of Registry;
- (b) the State of the Operator;
- (c) the State of Design;
- (d) the State of Manufacture; and
- (e) any other State that participated in the investigation,

and must take account of such comments received within 60 days on technical aspects of the report and either amend the report to include the substance of the comments or, at the request of the State that provided the comments, append the comments upon which no agreement could be reached, to the Final Report.

(3) Where it appears to the Investigator-in-Charge that the investigation of an accident or incident —

- (a) involving a collision between a civil aircraft and a military aircraft, or
- (b) occurring while a civil aircraft was on, or in the course of taking off from or landing on, an aerodrome controlled by a naval, military or air force or by the naval, military or air forces of any country,

has been completed, except for the investigation of matters affecting the discipline or internal administration of naval, military or air forces which are more appropriate for the investigation by some other person or body —

- (i) the investigation may be treated for the purpose of paragraph (1) as if it had been completed without such matters being investigated under these regulations; and
- (ii) where sub-paragraph (i) applies, the report of the investigation into the accident or incident must state the matters to which the investigation, by reason of this paragraph, has not extended.

(4) The report of an investigation into an accident or incident must state the sole objective of the investigation as described in regulation 4 and, where appropriate, contain a list of findings, causes, causal factors or contributing factors and safety recommendations.

(5) The Chief Investigator must submit a copy of every report prepared pursuant to paragraph (1) to the Governor without delay.

## **12. Notice of investigation report and representations**

(1) Where, in the Chief Investigator's opinion, publication of a report required by regulation 13 to be published is likely to adversely affect the reputation of a person, the Chief Investigator must not submit the Final Report to the Governor for publication until the Chief Investigator has—

(a) where it appears to him or her practicable to do so, served a notice on the person or, where the person is deceased, on the person who appears to him or her to best represent the interest of the deceased at the time he or she proposes to serve the notice; and

(b) made such changes to the report as he or she thinks fit following consideration of representations made to him or her in accordance with paragraph (3) by or on behalf of the person served with the notice under sub-paragraph (a).

(2) The notice referred to in paragraph (1)(a) must include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident or incident which may affect the person on whom or in respect of whom the notice is served.

(3) Subject to paragraph (5), representations made pursuant to paragraph (1)(b) must be in writing and served on the Chief Investigator within 28 days of service of the notice or such longer period as the Chief Investigator may allow.

(4) A person must not disclose or permit to be disclosed any information contained in a notice or report served on such person pursuant to paragraphs (1) or (4) to any other person without the prior consent in writing of the Chief Investigator.

(5) The Chief Investigator may, notwithstanding that the period has expired, extend the period of 28 days referred to in paragraph (3).

(6) A person who contravenes or fails to comply with paragraph (4) commits an offence.

(7) A person must not circulate, publish or give access to a draft report or any part of a report, or any documents obtained during an investigation of an accident or incident conducted by another State without the consent of that State, unless the reports or documents have been released by that State.

### **13. Publication of reports**

The Governor must cause the Final Report of an investigation into an accident or incident to be made public —

(a) in the shortest time possible;

(b) where possible, within 12 months of the date of the accident or incident; and

(c) in such a manner as the Governor thinks fit.

### **14. Safety recommendations**

(1) The Chief Investigator must cause the report referred to in regulation 13, and the safety recommendations contained in it, to be communicated to ICAO and to all of the relevant undertakings or aviation authorities concerned in the States referred to in regulation 11(2).

(2) A safety recommendation must in no case create a presumption of blame or liability for an accident or incident.

(3) Without prejudice to the investigation or publication of the Final Report, at any stage of an investigation of an accident or incident, the Chief Investigator may recommend in a dated transmittal communication to the appropriate authorities, including those in other States and where appropriate ICAO, any preventative action that he considers necessary to be taken promptly to enhance aviation safety.

(4) An undertaking or authority to which a safety recommendation is communicated pursuant to paragraph (1) must, without delay —

(a) consider the safety recommendation and, where it considers it to be appropriate, act upon it; and

(b) send to the Chief Investigator one of the following —

(i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation without delay and, where it proposes to implement measures, the timetable for securing that implementation; or

(ii) a full explanation as to why the recommendation is not to be the subject of measures to be taken to implement it; and

(c) give written notice to the Chief Investigator where at any time information provided to him or her pursuant to sub-paragraph (b)(i), concerning the measures it proposes to take or the timetable for securing their implementation, is rendered inaccurate by any change of circumstances.

## **15. Reopening of investigation**

(1) If, after an investigation has been closed, new and significant evidence becomes available, the Chief Investigator may cause the investigation of an accident or incident to be reopened.

(2) An investigation that is reopened must be subject to and conducted in accordance with these Regulations.

## **16. Accredited representatives, advisers and experts**

(1) Where an investigation of an accident or serious incident is being carried out by an Investigator pursuant to regulation 8, accredited representatives may be appointed by—

(a) the State of Registry;

(b) the State of Design;

(c) the State of Manufacture;

(d) the State of the Operator; and

(e) a Contracting State which has, on request, furnished information, facilities or experts to the Investigator in connection with the accident or serious incident.

(2) Where an investigation of an accident or serious incident is being carried out by an Investigator pursuant to regulation 8, an 'expert' may be appointed by a State which has a special interest in the accident by virtue of fatalities or serious injuries to its citizens.

(3) Accredited representatives may participate in the investigation and are permitted to —

(a) visit the scene of the accident;

(b) examine the wreckage;

(c) obtain witness information and suggest areas of questioning;

(d) receive copies of all pertinent documents, saving all just exceptions; have full access to all relevant evidence as soon as possible;

(e) participate in read outs of recorded media;

(f) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;

(g) participate in investigation progress meetings, including deliberations related to analysis, findings, causes and safety recommendations;

(h) make submissions in respect of the various elements of the investigation; and

(i) be accompanied by such advisers as may be considered necessary by the authorities of the State by which the accredited representative is appointed.

(4) An 'expert' representative may participate in the investigation and be permitted to —

(a) visit the scene of the accident;

(b) have access to the relevant factual information which is approved for public release by the State conducting the investigation, and information on the progress of the investigation; and

(c) receive a copy of the Final Report;

(d) assist in the identification of victims and in meetings with survivors from their State.

### **17. Obstruction of investigation**

(1) A person must not obstruct or impede an Investigator or any person acting under the authority of the Chief Investigator in the exercise of any powers or duties under these Regulations.

(2) A person must not without reasonable excuse fail, after having had the expenses, if any, to which he or she is entitled under these Regulations tendered to him or her, to comply with any summons of an Investigator holding an investigation.

### **18. Disclosure of relevant records**

In this regulation —

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

“Governor” includes any Investigator or officer appointed by the Governor;

“relevant court” in the case of judicial proceedings or an application for disclosure means the Magistrate’s Court; and

“relevant record” means cockpit voice and flight data recordings and airborne image recordings and any transcripts from such recordings and any other records in the possession, custody or power of the Chief Investigator which includes —

- (a) all statements taken from persons by an Investigator or supplied to an Investigator in the course of his investigation, together with any notes or voice recordings of interviews;
- (b) all communications between persons having been involved in the operation of the aircraft;
- (c) medical or private information regarding persons involved in the accident or incident;
- (d) recordings and transcriptions of recordings from air traffic control units;
- (e) analysis of and opinions expressed about information, including flight recorder information, made in the investigation in relation to the accident or incident; and
- (f) the draft final report, except as mentioned in regulation 11(1).

(2) Subject to paragraphs (3), (4), (5) and (6), no relevant record must be made available by the Chief Investigator or the Governor to any person for purposes other than an accident or incident investigation conducted under these Regulations.

(3) The records listed in paragraph (1) must be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident and parts of the records not relevant to the analysis must not be disclosed.

(4) The names of persons involved in an accident or incident must not be disclosed to the public by an Investigator.

(5) Nothing in paragraph (2) precludes the Governor or the Chief Investigator from making a relevant record available to any other person where —

(a) in a case where the other person is a party to or otherwise entitled to appear at judicial proceedings, the relevant court has ordered that the relevant record must be made available to that person for the purpose of those proceedings; or

(b) in any other circumstances, the relevant court has ordered that the relevant record must be made available to that person for any other purpose.

(6) Subject to paragraph (2), no order must be made under paragraph (5) unless the relevant court is satisfied that the interests of justice in the circumstances in question outweigh any adverse domestic and international impact which disclosure may have on the investigation into the accident or incident to which the record relates or on any future accident or incident investigation undertaken in the Falkland Islands.

(7) A relevant record or part of the record must not be treated as having been made available contrary to paragraph (2) in any case where that record or part is included in the Final Report or the appendices to the Final Report, of the accident or incident included in a notice served under regulation 12.

(8) The provisions of this regulation apply without prejudice to any rule of law, which authorises or requires the withholding of any relevant record or any part of the record on the ground that the disclosure of it would be injurious to the public interest.

## **19. Revocation**

(1) The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1997 (S. R. & O. No. 8 of 1997) are revoked.

(2) Any investigation commenced under the Regulations revoked by paragraph (1), which has not been completed, will continue as if it had been commenced under these Regulations.

Made 21 July 2016

June Sandra Tyler-Haywood,  
*Acting Governor.*

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### EXPLANATORY NOTE *(not part of the regulations)*

These Regulations replace the Civil Aviation (Investigation of Air Accidents) Regulations 1997 which were modelled on the UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996.

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## SUBSIDIARY LEGISLATION

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### CRIMINAL PROCEDURE

#### **Criminal Justice (Police Codes of Practice) (Amendment) Order 2016**

S. R. & O. No. 20 of 2016

*Made:* 27 July 2016  
*Published:* 27 July 2016  
*Coming into force:* on publication

I make this Order under section 206 of the Criminal Justice Ordinance (Title 24.1) on the advice of Executive Council.

#### **1. Title**

This order is the Criminal Justice (Police Codes of Practice) (Amendment) Order 2016.

#### **2. Commencement**

This order comes into force on publication in the *Gazette*.

#### **3. Police Codes of Practice amended — Code of Practice E**

The Criminal Justice (Police Codes of Practice) Order 2014 (S.R. & O. No. 6 of 2014) is amended by repealing Code of Practice E and replacing it with the following —

### **“CODE OF PRACTICE E THE TAPE OR DIGITAL RECORDING OF INTERVIEWS**

#### **1 General**

1.1 This code of practice must be readily available for consultation by police officers, detained persons and members of the public at every police station.

1.2 The notes for guidance included are not provisions of this code. They form guidance to police officers and others about its application and interpretation.

1.3 Nothing in this code shall be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). [See Notes 1A and 1B.]

1.4 In this code:

“digital recording” means a recording made using recording media;

“recorder” means a tape or recording media; and

“recording media” means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.

#### Notes for Guidance

1A. Reserved.

1B. As in Code C, references to responsible officers include those carrying out the functions of a responsible officer.

## **2 Recording and the sealing of master tapes or digital recordings**

2.1 Tape or digital recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

[See Note 2A]

2.2 One tape or digital recording, referred to in this code as the master tape or digital recording, will be sealed before it leaves the presence of the suspect. A second tape or digital recording will be used as a working copy. The master tape or digital recording is either one of the two tapes or digital recordings used in a twin deck/drive machine or the only tape or digital recording used in a single deck/drive machine. The working copy is either the second tape or digital recording used in a twin deck/drive machine or a copy of the master tape or digital recording made by a single deck/drive machine.

[See Notes 2B and 2C]

#### Notes for Guidance

2A. Police Officers will wish to arrange that, as far as possible, tape or digital recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the tape or digital recording equipment or the tapes or digital recordings.

2B. The purpose of sealing the master tape or digital recording before it leaves the presence of the suspect is to establish his confidence that the integrity of the tape or digital recording is preserved. Where a single deck machine is used the working copy of the master tape or digital recording must be made in the presence of the suspect and without the master tape or digital recording having left his sight. The working copy shall be used for making further copies where the need arises. The recorder will normally be capable of recording voices and have a time coding or other security device.

2C. Throughout this code any reference to "tapes" shall be construed as "tape", as appropriate, where a single deck machine is used.

## **3 Reserved**

## **4 The interview**

### **Commencement of interviews**

4.1 When the suspect is brought into the interview room the police officer shall without delay, but in the sight of the suspect, load the recorder with previously unused tapes or recording media and set it to record. The tapes or recording media must be unwrapped or otherwise opened in the presence of the suspect.

[See Note 4A.]

4.2 The police officer shall then tell the suspect formally about the tape or digital recording. He shall say:

- a. that the interview is being tape or digitally recorded;
- b. his name and rank and the name and rank of any other police officer present;
- c. the name of the suspect and any other party present (eg a solicitor);
- d. the date, time of commencement and place of the interview; and
- e. that the suspect will be given a notice about what will happen to the tapes or recording media.

[See Note 4B.]

4.3 The police officer shall then caution the suspect in the following terms:

"You do not have to say anything unless you wish to do so, but what you say may be given in evidence."

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.

[See Notes 4C and 4D.]

### **Interviews with the deaf**

4.4 If the suspect is deaf or there is doubt about his hearing ability, the police officer shall take a contemporaneous note of the interview in accordance with the requirements of Code C, as well as tape or digitally record it in accordance with the provisions of this code.

[See Notes 4E and 4F.]

### **Objections and complaints by the suspect**

4.5 If the suspect raises objections to the interview being tape or digitally recorded either at the outset or during the interview or during a break in the interview, the police officer shall explain the fact that the interview is being tape or digitally recorded and that the provisions of this code require that the suspect's objections should be recorded on tape or recording media. When any objections have been recorded on tape or recording media or the suspect has refused to have his objections recorded, the police officer may turn off the recorder. In this eventuality he shall say that he is turning off the recorder and give his reasons for doing so and then turn it off. The police officer shall then make a written record of the interview in accordance with section 11 of

Code C. If, however, the police officer reasonably considers that he may proceed to put questions to the suspect with the recorder still on, he may do so.

[See Note 4G]

4.6 If in the course of an interview a complaint is made by the person being questioned, or on his behalf, concerning the provisions of this code or of Code C, then the officer shall act in accordance with paragraph 12.8 of Code C.

[See Notes 4H and 4J]

4.7 If the suspect indicates that he wishes to tell the police officer about matters not directly connected with the offence of which he is suspected and that he is unwilling for these matters to be recorded on tape or recording media, he shall be given the opportunity to tell the police officer about these matters after the conclusion of the formal interview.

### **Changing tapes or digital recordings**

4.8 When the recorder indicates that the tape or recording media has only a short time left to run, the police officer shall tell the suspect that the tapes or recording media are coming to an end and round off that part of the interview. If the police officer wishes to continue the interview but does not already have a second set of tapes or recording media, he shall obtain a set. The suspect shall not be left unattended in the interview room. The police officer will remove the tapes or recording media from the recorder and insert the new tapes or recording media which shall be unwrapped or otherwise opened in the suspect's presence. The recorder shall then be set to record on the new tapes or recording media. Care must be taken, particularly when a number of sets of tapes or recording media have been used, to ensure that there is no confusion between the tapes or recording media. This may be done by marking the tapes or recording media with an identification number immediately they are removed from the recorder.

### **Taking a break during the interview**

4.9 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 shall be recorded on tape or recording media. The tapes or recording media shall then be removed from the recorder and the procedures for the conclusion of an interview set out in paragraph 4.15 below followed.

4.10 When a break is to be 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 shall be recorded on tape or recording media. The recorder may be turned off; there is, however, no need to remove the tapes or recording media and when the interview is recommenced the tape or recording media recording shall be continued on the same tapes or recording media. The time at which the interview recommences shall be recorded on tape or recording media.

4.11 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution must be given again in full when the interview resumes.

[See Notes 4K and 4L.]

## **Failure of recording equipment**

4.12 If there is a failure of equipment which can be rectified quickly, for example by inserting new tapes or recording media, the appropriate procedures set out in paragraph 4.8 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder or recorder in another interview room is readily available, the interview may continue without being tape or digitally recorded. In such circumstances the procedures in paragraph 3.3 above for seeking the authority of the custody officer will be followed.

[See note 4M.]

## **Removing tapes or digital recordings from the recorder**

4.13 Where tapes or recording media are removed from the recorder in the course of an interview, they shall be retained and the procedures set out in paragraph 4.15 below followed.

## **Conclusion of interview**

4.14 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

4.15 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the tape recorder or recording media switched off. The master tape or digital recording shall be sealed with a master tape or digital recording label and treated as an exhibit in accordance with the force standing orders. The police officer shall sign the label and ask the suspect and any third party present to sign it also. If the suspect or third party refuses to sign the label, an officer of at least the rank of sergeant, or if one is not available the responsible officer, shall be called in to the interview room and asked to sign it.

4.16 The suspect shall be handed a notice which explains the use which will be made of the tape or digital recording and the arrangements for access to it.

### Notes for Guidance

4A. The police officer should attempt to estimate the likely length of the interview and ensure that the appropriate number of unused tapes or recording media and labels with which to seal the master copies are available in the interview room.

4B. It will be helpful for the purpose of voice identification if the officer asks the suspect and any other persons present to identify themselves.

4C. If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words.

4D. In case anyone who is given a caution is unclear about its significance, the officer concerned should explain that the caution is given in pursuance of the general principle of English law that

a person need not answer any question or provide any information which might tend to incriminate him, and that no adverse inferences from this silence may be drawn at any trial that takes place. The person should not, however, be left with a false impression that non co-operation will have no effect on his immediate treatment as, for example, his refusal to provide his name and address may render him liable to detention.

4E. This provision is intended to give the deaf equivalent rights of first hand access to the full interview record as other suspects.

4F. The provisions of paragraphs 14.1, 14.4 and 14.7 of code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply. In a tape or digitally recorded interview there is no requirement on the interviewing officer to ensure that the interpreter makes a separate note of interview as prescribed in section 14 of Code C.

4G. The officer should bear in mind that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

4H. Where the responsible officer is called immediately to deal with the complaint, wherever possible the tape or digital recorder should be left to run until he 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 by an inspector under paragraph 9.1 of Code C.

4J. Where the complaint is about a matter not connected with this code of practice or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. Where the interviewing officer decides to continue with the interview the person being interviewed shall be told that the complaint will be brought to the attention of the responsible officer at the conclusion of the interview. When the interview is concluded the interviewing officer must, as soon as practicable, inform the responsible officer of the existence and nature of the complaint made.

4K. In considering whether to caution again after a break, the officer should bear in mind that the may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

4L. The officer should bear in mind that it may be necessary to show to the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. The officer should consider, therefore, after a break in an interview or at the beginning of subsequent interview summarising on tape or recording media the reason for the break and confirming this with the suspect.

4M. If one of the tapes or recording media breaks during the interview it should be sealed as a master tape or digital recording in the presence of the suspect and the interview resumed where it left off. The unbroken tape or digital recording should be copied and the original sealed as a master tape or digital recording in the suspect's presence, if necessary after the interview. If equipment for copying the unbroken tape or digital recording is not readily available, both tapes or digital recording should be sealed in the suspect's presence and the interview begun again. If the tape or digital recording breaks when a single deck/drive machine is being used and the

machine is one where a broken tape or digital recording cannot be copied on available equipment, the tape or digital recording should be sealed as a master tape or digital recording in the suspect's presence and the interview begun again.

## **5 After the interview**

5.1 The police officer shall make a note in his notebook of the fact that the interview has taken place and has been recorded on tape or recording media, its time, duration and date and the identification number of the master tape or digital recording.

5.2 Where no proceedings following respect of the person whose interview was recorded the tapes or digital recording must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6.4.

5.3 Where such proceedings do follow the officer shall prepare a written record of the interview which will be signed by the officer. The interview record shall be exhibited to any written statement prepared by the officer.

[See Notes 5A and 5B]

5.4 Where the police officer's evidence of the interview is accepted by the defence the evidence shall refer to the fact that the interview was tape or digitally recorded and may be presented to the court in the form of the interview record. Where the police officer's evidence of the interview is not accepted by the defence the police officer shall refer to the fact that the interview was tape or digitally recorded and shall produce the master tape or digital recording as an exhibit. The officer shall inform the court of any transcription which has been made of which he is aware.

[See Note 5C.]

### Notes for Guidance

5A. Prior to preparing the record of the interview, the officer may refresh his memory by listening to the working copy of, the tape or digital recording. The purpose of using the tape or digital recording will be to act as a check on the accuracy of the interview record.

5B. The interview record shall be prepared on the basis that it shall be used first to enable the prosecutor to make informed decisions about the case on the basis of what was said at the interview; secondly, to be exhibited to the officer's witness statement and used pursuant to section 9 the Criminal Justice Act 1967 and section 102 of The Magistrates Courts Act 1980; thirdly, to enable the prosecutor to comply with the rules of advance disclosure; and fourthly, where the record is accepted by the defence, to be used for the conduct of the case by the prosecution, the defence, and the court. The record shall, therefore comprise a balanced account of the interview including points in mitigation and/or defence made by the suspect. Where an admission is made the question as well as the answer containing the admission shall be recorded verbatim in the record. Care should be taken to bring to the attention of the prosecutor, by means of a covering report, any material on the tape or digital recording which might be regarded by a court as prejudicial or inadmissible.

5C. Production of the tape or digital recording as an exhibit will have the effect in court proceedings of producing the content of the whole interview (subject to any decision on editing carried out on the direction of the crown prosecutor).

## **6 Tape or digital recording security**

6.1 The Chief Police Officer shall make arrangements for master tapes or digital recordings 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 force standing orders.

[See Note 6A.]

6.2 A police officer has no authority to break the seal on a master tape or digital recording which is required for criminal proceedings. If it is necessary to gain access to the master tape or digital recording, the police officer shall arrange for its seal to be broken in the presence of a representative of the Attorney General. The defendant or his legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or his legal representative is present he shall be invited to re-seal and sign the master tape or digital recording. If either refuses or neither is present this shall be done by the representative of the Attorney General.

[See Notes 6B and 6C.]

6.3 Where no criminal proceedings result it is the responsibility of the Chief Police Officer to establish arrangements for the breaking of the seal on the master tape or digital recording, where this becomes necessary.

### Notes for Guidance

6A. This section is concerned with the security of the master tape or digital recording which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies of tapes or digital recordings since their loss or destruction may lead unnecessarily to the need to have access to master tapes or digital recordings.

6B. If the tape or digital recording has been delivered to the court for their keeping after committal for trial the crown prosecutor will apply to the court for the release of the tape or digital recording for unsealing by the crown prosecutor.

6C. Reserved.”.

Made 27 July 2016

J. S. Tyler-Haywood,  
*Acting Governor.*

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### EXPLANATORY NOTE

*(not part of the order)*

This order amends the Criminal Justice (Police Codes of Practice) Order 2014 (S.R. & O. No. 6 of 2014) by replacing Code of Practice E with a new code to provide for the recording of interviews to be done by other digital means and not just through tape.

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# FALKLAND ISLANDS GAZETTE

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## **Appointment**

Rodel Artazo, Carer, Health and Social Services Department, 15.06.16.

Dana Morrison, Carer, Health and Social Services Department, 15.06.16.

Lucy Elizabeth Blackmore, Staff Nurse, Health and Social Services Department, 16.06.16.

Barbara June Besley-Clark, Medical Records Clerk, Health and Social Services Department, 01.07.16.

Alexander Charles Blake, Data Analyst/Stock Assessment Scientist, Fisheries, Natural Resources Department, 01.07.16.

Alan John Crowie, Plant Operator/Handyperson, Materials Section, Public Works Department, 04.07.16.

Martyn James Smith, Qualifying Inspector, Falkland Islands Government Air Service, Central Services Department, 04.07.16.

Rafael Mauricio Sotomayor, Sports Attendant, Leisure Centre, Central Services Department, 04.07.16.

Matthew Marc Young, General Handyperson, Property and Municipal Section, Public Works Department, 04.07.16.

Katherine Patricia Reyes-Jeria, Sports Attendant, Leisure Centre, Central Services Department, 05.07.16.

Patricia Williamson, Complex Needs Teacher, Education Department, 06.07.16.

Margaret Mary Battersby, Quality Assurance Co-ordinator, Training Centre, Education Department, 07.07.16.

Robert Keith Legg, Plant Operator/Handyperson, Property and Municipal Section, Public Works Department, 13.07.16.

Della Marie Buck, Staff Nurse, Health and Social Services Department, 14.07.16.

Rodolfo Fernando Borquez Rogel, Filtration Plant Operator, Water Section, Public Works Department, 18.07.16.

Zoe Leigh Taylor, Clerk, Health and Social Services Department, 18.07.16.

## **Completion of contract**

Penelope Hope Nicholson, Crown Counsel Child Protection, Government Legal Services, Law and Regulation Directorate, 06.07.16.

Thomasz Zawadowski, Scientific Fisheries Observer, Fisheries, Natural Resources Department, 21.07.16.

## **Promotion**

Nicolas Huin, from Gardener to Head Gardener, Government House, Central Services Department, 15.06.16.

Tanzi Jacobsen, from Storeperson to Senior Storeperson, Plant and Vehicle Section, Public Works Department, 01.07.16.

Kerri-Anne Ross, from Higher Learning Support Assistant to Senior Learning Support Assistant, Infant and Junior School, Education Department, 04.07.16.

## **Resignation**

Jessica Chapman, Learning Support Assistant, Education Department, 08.07.16.

Veronica Joyce Sinclair, Accounts Assistant, Treasury, 12.07.16.

Zoe Leigh Taylor, Clerk, Health and Social Services Department, 20.07.16.

Misty Green, Personal Assistant to the Director of Health and Social Services and Chief Medical Officer, Health and Social Services Department, 21.07.16.

Charlotte Elsie Emma Simpson, Residential Care Worker, Health and Social Services Department, 23.07.16.

Kelly Melody Fiddes, Clerk, Training Centre, Education Department, 27.07.16.

#### **Retirement**

Henry James Elliot, Training Advice and Placements Officer, Training Centre, Education Department, 30.06.16.

#### **Transfer**

Isabel Margaret Simon, from Customs and Immigration Officer, Customs and Immigration, Emergency Services Department, to Technical Stores Officer, Health and Social Services Department, 11.07.16.

Daniella Dawn Curtis, from Stores/Handyperson, Property and Municipal Section, Public Works Department to Medical Secretary, Health and Social Services Department, 22.07.16.

#### **NOTICES**

No. 50

13 July 2016

#### **Land Ordinance (Title 45.2) section 11A**

#### **Notice of Application for Vesting Deed**

Notice is given that **Peter Thomas King** of 10 Jeremy Moore Avenue, Stanley, Falkland Islands and Robert John King of 22/24 Davis Street, Stanley, Falkland Islands have made a joint application in accordance with section 11A of the Land Ordinance to have executed in their favour a Vesting Deed of land in Stanley, Falkland Islands measuring approximately 894 square metres forming part of Crown Grant 28 bounded on the south by the road or alley known as Philomel Place, on the west by the properties known as 35 and 35A Fitzroy Road, on the north by the property known as 39 Fitzroy Road, and on the east by the properties known as 41 Fitzroy Road and 7 Philomel Street.

The applicant's statutory declaration may be inspected by any person at the Registrar General's Office, Town Hall, Stanley during normal working hours for 30 days following the date of publication of this notice.

Notice is given that any person objecting to the vesting of title to the land in the application may, within 30 days following publication of this notice, lodge a notice in writing, specifying the grounds for objection, delivered to the Registrar General.

Notice is hereby given that unless any objection has been received within 30 days following the publication of this notice the Registrar General under the terms of section 11A of the Land Ordinance will execute in favour of Peter Thomas King and Robert John King a Vesting Deed of the said land.

Dated 13 July 2016

E. J. DENT,  
*Registrar General.*

No. 51

20 July 2016

#### **Tax - Extra Statutory Concession 19 Foster Care Payments**

Under the Taxes Ordinance, there is no provision for a specific allowance against tax for foster care payments which are therefore treated as self-employment income, with expenses that are wholly and exclusively incurred for the purpose of providing foster care being offset against the payments to work out the taxable income.

It is recognised it can be difficult for Falkland Islands Government approved foster carers to evidence the expenses wholly and exclusively incurred for foster caring. From 2011, the Commissioner was prepared to accept an amount per year as expenses automatically with Falkland Islands Government approved foster carers able to claim additional relief if they show they incur expenses above the amount set.

Executive Council has signalled their intention to change the policy for all foster care payments (including remuneration elements) to be exempted from tax in due course. The change in policy when confirmed would be put under the statutory footing when an appropriate legislative vehicle is available.

In the interim, the Commissioner of Taxation can treat all Falkland Islands Government approved foster care payments as expenses, this concession gives taxpayers a reduction in tax liability to which they would not be entitled under the strict letter of the law. The concession is to be applied retrospectively from tax year 2014 onwards.

Dated 20 July 2016

L. WONG,  
*Taxation Officer.*

No. 52

25 July 2016

#### **Application for Naturalisation**

Notice is hereby given that:-

**Rosa Adelaida Davis** (nee Acosta Ortiz)

is applying to His Excellency the Governor for naturalisation as a British Overseas Territories Citizen.

Any person who knows of any reason why naturalisation should not be granted is invited to send a written and signed statement of the facts to the Immigration Officer, Customs and Immigration Department, Stanley no later than 22 August 2016.

Dated 25 July 2016

J. E. SMITH,  
*Immigration Officer.*



# FALKLAND ISLANDS GAZETTE

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## **Appointment**

Tansie Rebecca Bonner, Pensions Assistant, Treasury, 01.08.16.

Bradley Rhys Crowie, Store Person, Plant and Vehicle Section, Public Works Department, 01.08.16.

Sian Karen Davies, Senior Houseparent, Education Department, 01.08.16.

Zoe Dorothy May James, Personal Assistant/Office Manager, South Atlantic Environmental Research Institute, 01.08.16.

Robert Gerard Maddock, Sports Attendant, Leisure Centre, Central Services Department, 01.08.16.

Lorriane Ann Thorn, Duty Supervisor, Leisure Centre, Central Services Department, 01.08.16.

Diane Simsovic, Head of Policy and Economic Advisor, Policy Department, 08.08.16.

Susan Jane Linnell, Health Visitor, Health and Social Services Department, 15.08.16.

Katrina Anne Hope, Medical Officer, Health and Social Services Department, 16.08.16.

Ana Risa Regalado, Carer, Health and Social Services Department, 22.08.16.

## **Completion of contract**

Kerry Alice May Bell, Information Technology Teacher, Education Department, 31.08.16.

Emily Joy Garner, Primary Teacher, Education Department, 31.08.16.

Mark Harrington, Primary Teacher, Education Department, 31.08.16.

Ellen Jolly, Primary Teacher, Education Department, 31.08.16.

Fiona Kelly, Primary Teacher, Education Department, 31.08.16.

Kenneth Osborne, Maths and Physical Education Teacher, Education Department, 31.08.16.

Richard Christian Smith, Settlement Teacher, Education Department, 31.08.16.

Wendy Jane Wilson, English Teacher, Education Department, 31.08.16.

## **Resignation**

Kayleigh May Anderson, Learning Support Assistant, Education Department, 09.08.16.

Lisa Pole-Evans, Learning Support Assistant, Education Department, 09.08.16.

Yvette Rademeyer, Customs and Immigration Officer, Customs and Immigration, Emergency Services Department, 12.08.16.

Joshua Thomas Blakeley, Airport Firefighter, Falkland Islands Government Air Service, Central Services Department, 31.08.16.

Krysteen Alison Ormond, Public Relations and Media Manager, Policy Department, 31.08.16.

## **Transfer**

Ruth Jane Stewart, from Auxiliary Nurse to Social Work Assistant, Health and Social Services Department, 22.08.16.

Felicity Marie Smith, from Senior Finance Assistant, Treasury to Senior Finance Clerk, Public Works Department, 29.08.16.

**NOTICES**

No. 53

2 August 2016

**Supreme Court of the Falkland Islands**

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

Take notice that **Glenda McGill** of 1C Capricorn Road, Stanley, died on 12 July 2016.

Whereas **Teresa Rose McGill** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 2 August 2016

J. BROOKS,  
*Registrar, Supreme Court.*

No. 54

3 August 2016

**Supreme Court of the Falkland Islands**

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

Take notice that **Kathleen Ivy Johnson** of Tenacres, Stanley, died on 14 June 2016.

Whereas **Melvyn George Johnson** has applied for Letters of Administration to administer the estate of the said deceased in the Falkland Islands.

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

Dated 3 August 2016

J. BROOKS,  
*Registrar, Supreme Court.*

No. 55

10 August 2016

**South Atlantic Inspection and Supply Services Limited  
Company number: 15171**

Take notice that in accordance with the provisions of section 652A of the Companies Act 1985, the requirements of the said section having been complied with, the above named company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated 10 August 2016

E. J. DENT,  
*Registrar of Companies.*

No. 56

19 August 2016

**Stanley Bakery Limited  
Company number: 8936**

Take notice that in accordance with the provisions of section 652A of the Companies Act 1985, the requirements of the said section having been complied with, the above named company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated 19 August 2016

E. J. DENT,  
*Registrar of Companies.*

No. 57

23 August 2016

**Application for Falkland Islands Status**

Notice is hereby given that:

**Rodrigo Cordeiro Garcia; and  
Rampai McCallum**

have applied through the Principal Immigration Officer for Falkland Islands Status to be granted by His Excellency the Governor. Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 September 2016.

Dated 23 August 2016

J. E. SMITH,  
*Immigration Officer.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*31 August 2016*

*No. 7*

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The following are published in this Supplement –

**Livestock and Meat Products (Amendment) Ordinance 2016 (No 8 of 2016); and  
Committees (Public Access) (Amendment) Ordinance 2016 (No 9 of 2016)**

**ELIZABETH II**



**FALKLAND ISLANDS**

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JUNE SANDRA TYLER-HAYWOOD,  
*Acting Governor.*

**Livestock and Meat Products (Amendment) Ordinance 2016**

(No: 8 of 2016)

ARRANGEMENT OF PROVISIONS

Section

**PART 1 - INTRODUCTION**

1. Title
2. Commencement

**PART 2 – AMENDMENT OF LIVESTOCK AND MEAT PRODUCTS ORDINANCE**

3. Amendment of Livestock and Meat Products Ordinance
4. Section 3 amended — Interpretation

**PART 3 – REVOCATION OF SAND BAY ABATTOIR (DESIGNATION) ORDER**

5. Revocation of Sand Bay Abattoir (Designation) Order

**ELIZABETH II**



**FALKLAND ISLANDS**

JUNE SANDRA TYLER-HAYWOOD,  
*Acting Governor.*

**LIVESTOCK AND MEAT PRODUCTS (AMENDMENT) ORDINANCE 2016**

(No: 8 of 2016)

*(assented to: 3 August 2016)*  
*(commencement: on publication)*  
*(published: 31 August 2016)*

**AN ORDINANCE**

To amend the Livestock and Meat Products Ordinance (No. 14 of 2010) to provide for a new definition for ‘designated abattoirs’ and to revoke the Sand Bay Abattoir (Designation) Order; and for connected purposes.

ENACTED by the Legislature of the Falkland Islands —

**PART 1  
INTRODUCTION**

**1. Title**

This Ordinance is the Livestock and Meat Products (Amendment) Ordinance 2016.

**2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

**PART 2  
AMENDMENT OF LIVESTOCK AND MEAT PRODUCTS ORDINANCE**

**3. Amendment of Livestock and Meat Products Ordinance**

This Part amends the Livestock and Meat Products Ordinance (No. 14 of 2010).

#### **4. Section 3 amended – Interpretation**

Section 3(3) is amended by omitting the definition of “designated abattoir” and replacing it with the following —

““designated abattoir” means an abattoir designated by Notice for the purpose of producing and processing meat for placing on the market for human consumption and the Notice must specify the meat which the designated abattoir produces for placing on the market for human consumption;”.

### **PART 3 REVOCATION OF SAND BAY ABATTOIR (DESIGNATION) ORDER**

#### **5. Revocation of Sand Bay Abattoir (Designation) Order**

The Sand Bay Abattoir (Designation) Order (S.R. & O. No. 27 of 2001) is revoked.

Passed by the Legislature of the Falkland Islands on 28 July 2016.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

**ELIZABETH II**



**FALKLAND ISLANDS**

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JUNE SANDRA TYLER-HAYWOOD,  
*Acting Governor.*

**Committees (Public Access) (Amendment) Ordinance 2016**

(No: 9 of 2016)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Title
2. Commencement
3. Schedule 1 amended – Committees to which the rights of access to meetings and documents do not apply

# ELIZABETH II



## FALKLAND ISLANDS

JUNE SANDRA TYLER-HAYWOOD,  
*Acting Governor.*

### COMMITTEES (PUBLIC ACCESS) (AMENDMENT) ORDINANCE 2016

(No: 9 of 2016)

*(assented to: 3 August 2016)*  
*(commencement: in accordance with section 2)*  
*(published: 31 August 2016)*

#### AN ORDINANCE

To amend the Committees (Public Access) Ordinance (No. 10 of 2012) to narrow down and specify committees of Executive Council to which rights of access to meetings and documents do not apply.

ENACTED by the Legislature of the Falkland Islands —

#### **1. Title**

This Ordinance is the Committees (Public Access) (Amendment) Ordinance 2016.

#### **2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

#### **3. Schedule 1 amended — Committees to which the rights of access to meetings and documents do not apply**

Schedule 1 to the Committees (Public Access) Ordinance is amended by omitting paragraph (b) and replacing it as follows —

“(b) committees or sub-committees of Executive Council exclusively made up of some members of Executive Council to discharge an Executive Council function in accordance with section 57(3) of the Constitution;”.

Passed by the Legislature of the Falkland Islands on 28 July 2016.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

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# FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*Vol. 125*

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*No. 10*

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## **Appointment**

Benjamin Joseph Keningale, Fisheries Observer, Natural Resources Department, 04.08.16.

Clare Cockwell, Travelling Teacher, Education Department, 01.09.16.

Tiegan Jane Curtis, Clerk, Health and Social Services Department, 01.09.16.

Rhiannon Elinore Didlick-Smith, Personal Assistant to Director, Emergency Services Department, 01.09.16.

Simon Gus Reid, Handyperson/painter, Plant and Vehicle Section, Public Works Department, 01.09.16.

Sheena Margaret Ross, Accounting Assistant, Treasury, 01.09.16.

Gail Maria Summers, Cook, Health and Social Services Department, 01.09.16.

Jennifer Patricia Barclay, Special Education Needs Co-ordinator, Education Department, 02.09.16.

Mallory Deborah Barnes, Travelling Teacher, Education Department, 02.09.16.

Joanne Claire Ford, Primary Teacher, Education Department, 02.09.16.

Michele Louise Gallacher, Information Computer Technology/Business Studies Teacher, Education Department, 02.09.16.

Karen Marie Howard, Primary Teacher, Education Department, 02.09.16.

Lesley Anne King, Settlement Teacher, Education Department, 02.09.16.

Karen Wilenee Learmond, Maths Teacher, Education Department, 02.09.16.

William Alan McCormack, Primary Teacher, Education Department, 02.09.16.

Charlotte Helen Mountford, Special Education Needs Teacher, Education Department, 02.09.16.

Paul Muncaster, Art Teacher, Education Department, 02.09.16.

Rachel Elizabeth Radford, Catering/Textiles Teacher, Education Department, 02.09.16.

Katherine Sheppard, Primary Teacher, Education Department, 02.09.16.

Jill Rosemary Sugden, Travelling Teacher, Education Department, 02.09.16.

Ann-Marie Tibble, Primary Teacher, Education Department, 02.09.16.

Hillel Jordan Sokolsky, English Teacher, Education Department, 02.09.16.

Andrew Jack White, English Teacher, Education Department, 02.09.16.

Abbie Louise Heathman, Office Manager/Benefits Adviser, Health and Social Services Department, 05.09.16.

Shula Louise Phillips, Cook, Education Department, 05.09.16.

Cathy Pollard, Senior Finance Assistant, Treasury, 05.09.16.

Sarah Dawn Witherley, Head of Environmental Planning, Policy Department, 08.09.16.

Henry Hernan Guala, Cook, Health and Social Services Department, 10.09.16.

Charlotte Elsie Emma Simpson, Learning Support Assistant, Education Department, 14.09.16.

Eduardo Danielo Gomez, Learning Support Assistant, Education Department, 19.09.16.

Cara Jane McGill, Learning Support Assistant, Education Department, 19.09.16.

Tomas Alexander James Busbridge, PHD Intern – Marine Ecology, South Atlantic Environmental Research Institute, 22.09.16.

#### **Completion of contract**

Margaret Shackleton, Contracts Engineer, Public Works Department, 29.09.16.

#### **Renewal of contract**

Linda Flinders, Primary Teacher, Education Department, 01.09.16.

Tracey Jane Forrester, Settlement Teacher, Education Department, 01.09.16.

Joanne Catherine Furniss, Primary Teacher, Education Department, 01.09.16.

Kirsty Johnston, Settlement Teacher, Education Department, 01.09.16.

Andrea Stanworth, Primary Teacher, Education Department, 01.09.16.

Claudia Glatzmeier, Veterinary Officer, Natural Resources Department, 01.09.16.

Alexander William Moreton, Senior Staff Nurse, Health and Social Services Department, 14.09.16.

#### **Resignation**

Paul Alan Joshua, Labourer, Materials Section, Public Works Department, 07.09.16.

Wayne Neil Jaffray, Deputy Director, Public Works Department, 15.09.16.

Kenton John Douglas Benjamin Goodwin, Plant Operator/Handyperson, Property and Municipal Section, Public Works Department, 29.09.16.

Ewen Shane Bonner, Plant Operator/Handyperson, Highways Section, Public Works Department, 30.09.16.

#### **Retirement**

Henry Hernan Guala, Cook, Health and Social Services Department, 31.08.16.

Thomas James Keane, Filtration Plant Operator, Water Section, Public Works Department, 01.09.16.

Julie Doris Courtney, Senior Houseparent, Education Department, 05.09.16.

#### **Transfer**

Tobi Akeen Adeoye, from Sports Attendant, Leisure Centre, Central Services to Airport Fire Fighter, Central Services, 01.09.16.

Julie Ann Fisher Smith, from School Secretary, Education Department to Customs and Immigration Officer, Emergency Services Department, 05.09.16.

## **NOTICES**

No. 58

10 August 2016

### **Falkland Islands Constitution Order 2008** *section 95*

### **Complaints Commissioners Ordinance 2010** *section 4*

### **Appointment of Complaints Commissioner and Designation of Principal Complaints Commissioner**

1. Section 95(1) of the Falkland Islands Constitution Order 2008 provides for the Governor acting in his discretion to appoint a Complaints Commissioner.
2. In exercise of my powers under section 95(1), I appoint **Richard Sawle** to be a Complaints Commissioner.
3. Section 4 of the Complaints Commissioners Ordinance 2010 provides for the Governor acting in his discretion to designate a Commissioner as the Principal Complaints Commissioner.
4. In exercise of my powers under section 4, I designate **Richard Sawle** to be the Principal Complaints Commissioner.
5. This appointment and designation have effect from 31 July 2016 to 31 July 2018, unless terminated sooner.

Dated 10 August 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 59

25 August 2016

### **Protection of Animals Act 1911**

### **Code of Practice for the Welfare of Sheep** **Code of Practice for the Welfare of Cattle**

### **RESOLUTION OF THE LEGISLATIVE ASSEMBLY**

No: 1 of 2016

Resolved by the Legislative Assembly on 25 August 2016, pursuant to section 1A(2) of the Protection of Animals Act 1911 (as it applies in the Falkland Islands), that the revised Code of Practice for the Welfare of Sheep, and the revised Code of Practice for the Welfare of Cattle laid on the Table under Motion number 14 of 2016 are approved.

Dated 25 August 2016

C. PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

**Land Ordinance (Title 45.2)**  
*section 11A*

**Vesting Deed**

Further to an application made by **Peter Thomas King** of 10 Jeremy Moore Avenue, Stanley, Falkland Islands and **Robert John King** of 22/24 Davis Street, Stanley, Falkland Islands, pursuant to section 11A of the Land Ordinance (notice of which application was published in the Gazette on 31 July 2016) I hereby give notice that I have this day executed a Vesting Deed in the form set out hereafter.

“WHEREAS on application having been made to me Elizabeth Jayne Dent, Registrar General pursuant to section 11A of the Land Ordinance by **Peter Thomas King** of 10 Jeremy Moore Avenue, Stanley, Falkland Islands and **Robert John King** of 22/24 Davis Street, Stanley, Falkland Islands, I am satisfied that the said Peter Thomas King and Robert John King are entitled to be registered as the owners in fee simple absolute in possession of the land described in the Schedule to this deed NOW THEREFORE by this deed I do declare that the estate in fee simple absolute in possession of the said land is vested in the said Peter Thomas King and Robert John King SUBJECT only to such matters as are mentioned in Crown Grant 28 and to such easements rights privileges and encumbrances as may have been created prior to the date of this deed.

SCHEDULE  
(Description of land)

ALL THAT piece or parcel of land situate in Stanley, Falkland Islands forming part of Crown Grant 28 bounded on the south by the road or alley known as Philomel Place, on the west by the properties known as 35 and 35A Fitzroy Road, on the north by the property known as 39 Fitzroy Road, and on the east by the properties known as 41 Fitzroy Road and 7 Philomel Street measuring approximately 894 square metres and shown for identification purposes only edged and hatched red on the plan annexed hereto.”

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

Dated 1 September 2016

E. J. DENT,  
*Registrar General.*

**Police Ordinance (Title 56)**  
*section 52*

**Notice of unclaimed property**

Take notice that the following items are in the charge of the Royal Falkland Island Police:

Date found	Description of item
15.05.11	£7.00 cash 1 x £5 note and 2 x £1 coins
13.06.11	1 x Falklands £5 note: B051172
11.07.11	Falkland Islands £10 note ser A188178

20.10.11	1 x £10 note
21.10.11	1 x Falklands £5 note
20.08.12	1 x white framed Raleigh mens mountain bike (rusty)
06.09.12	1 Red Silver Fox Slither cycle – no chain, rust spots on front suspension rods
21.09.12	1 pink, black and white MuddySox girls bike
02.11.12	1 x FK £20, 1 FK £10
22.02.13	£5 note – B056733
05.07.13	1 x £5 note FI
31.03.14	1 x FR £20 note
15.01.15	Knife with black handle
27.01.15	£25 cash
24.02.15	£6.78 cash plus 11x peso coins (centavos) Argentina/Peru/Chile
26.02.15	Pink coloured watch (Henley)
05.03.15	Black Raleigh Explore bike
06.03.15	Silver coloured crossroad specialised mountain bike
06.04.15	Waterproof trousers navy
29.04.15	Brown framed spectacles on black neck cord
25.05.15	1 x £10 + 1 x £20 electricity cards
06.06.15	Metal chain with ratchet and hook
16.06.15	Silver coloured Accessorize watch – diamonds around face
20.07.15	Black framed reading glasses
22.07.15	Garmin GPS (handheld) black
26.07.15	Rotary watch – yellow with black leather strap (strap is broken)
29.07.15	Vapestic black/silver e-cigarette
27.08.15	Liberation Anniversary Medal Falklands
08.09.15	Me to You silver coloured bracelet with crystal bear head
21.09.15	Metal framed black prescription sunglasses/spectacles
06.10.15	2 x keys on a peach fob with No 5 on it
01.11.15	Pair of red/black pump training shoes
07.11.15	Pair of glasses black rim/white and black pattern
17.11.15	Navy blue childs jacket
20.11.15	2 x gold coins/ 2 x metal coins
07.12.15	Small frame blue mountain bike
10.12.15	2 x 5 litre black diesel canteens
28.12.15	White LG mobile phone in pink case LG D722
31.12.15	Web-Tex in name GDSM Michael Grant - Scots Guards
01.01.16	Set of 3 keys
01.01.16	Grey damaged HTC
18.01.16	Orange walking pole
19.01.16	1 x black damaged iPhone containing O2 sim card
26.01.16	Furry grey hat
08.02.16	Yellow metal charm bracelet
09.02.16	Flat cap Moon fabric woven in UK checked pattern
11.02.16	1 x £5 note
14.02.16	Black male jacket Peacocks XXL
14.02.16	£20 FI note
15.02.16	Yellow/black waterproof thinsulate glove
03.03.16	1 x Sony Cyber Sport camera – black

Any person who may have a claim to such property to lodge a claim in writing to the Magistrate’s Court within six months of the publication of this list in the Gazette.

Dated 15 September 2016

J. BROOKS,  
*Clerk, Magistrates Court.*

**Chartres River Properties Limited**  
**Company number: 7853**

Take notice that in accordance with the provisions of section 652A of the Companies Act 1985, the requirements of the said section having been complied with, the above named company will be removed from the Register of Companies upon the

expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated 19 September 2016

E. J. DENT,  
*Registrar of Companies.*

No. 63 19 September 2016

**Offshore Environmental Limited**  
**Company number: 15258**

Take notice that in accordance with the provisions of section 652A of the Companies Act 1985, the requirements of the said section having been complied with, the above named company will be removed from the Register of Companies upon the expiry of three months from the publication of this notice in the Gazette unless good cause do be shown as to why such action should not be taken.

Dated 19 September 2016

E. J. DENT,  
*Registrar of Companies.*

No. 64 20 September 2016

**Index of Retail Prices**

The Index for the quarter ended 30 June 2016 has now been completed.

The Index has increased during the quarter, to 101.27; this equates to a 0.11% increase for the quarter as shown below:

Date	Index	Annual % Increase/(Decrease)	Quarter % Increase/(Decrease)
30.09.15	102.00	(0.3)	0.26
31.12.15	101.53	(0.7)	(0.46)
31.03.16	101.16	(1.4)	(0.36)
30.06.16	101.27	(0.5)	0.11

Dated 20 September 2016

J. M. ALDRIDGE,  
*for Financial Secretary.*

No. 65 22 September 2016

**Livestock and Meat Products (Welfare of Livestock)**  
**Regulations**  
*regulation 4*

1. This notice is issued under regulation 4 of the Livestock and Meat Products (Welfare of Livestock) Regulations (“the Livestock Welfare Regulations”).

2. I have prepared and issued the following revised Code of Practice for the Welfare of Animals:

Code of Practice for the Welfare of Sheep; and  
Code of Practice for the Welfare of Cattle.

3. These are revised Codes for the purposes of the Livestock Welfare Regulations – further, the existing Codes issued under the Protection of Animals Act 1911 (as it applies in the Falkland Islands) will also be replaced with these revised Codes.

4. The revised Codes came into force on 26 August 2016.

5. Arrangements have been made to make the revised Codes available to those who have responsibility for livestock.

Dated 22 September 2016

Z. FOWLER,  
*Acting Senior Veterinary Officer.*

No. 66 23 September 2016

**Protection of Animals Act 1911**  
**(as it applies in the Falkland Islands)**  
*section 1A*

1. This notice is issued under section 1A of the Protection of Animals Act 1911 (as it applies in the Falkland Islands).

2. Having consulted in accordance with section 1A(1) of the Act, I have had prepared revised Codes of Practice to replace those issued previously.

3. These Codes of Practice have been approved by resolution of the Legislative Assembly in accordance with section 1A(2).

4. I have issued the following revised Codes of Practice for the Welfare of Animals:

Code of Practice for the Welfare of Sheep; and  
Code of Practice for the Welfare of Cattle

5. Arrangements have been made for the revised Codes to be printed and distributed.

Dated 23 September 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 67 23 September 2016

**Livestock Ordinance (Title 5.3)**  
*Section 3*

**Appointment of Inspectors**

1. Section 3 of the Livestock Ordinance provides that the Governor may appoint duly qualified persons to act as inspectors for the purpose of carrying out the provisions of the Ordinance.

2. In exercise of my powers under section 3, I appoint the following officers of the Department of Natural Resources to be inspectors:

Ian Peter Campbell - Senior Agricultural Advisor  
Adam Leonard Dawes - Agricultural Advisor  
Patricia Tracy Eats - Agricultural Advisor  
Susan Helen Street - Agricultural Advisor

Lucy Ellis - Assistant Agricultural Advisor  
Stephen William Pointing - Senior Veterinary Officer  
Zoe Fowler - Veterinary Officer  
Claudia Glatzmeier - Veterinary Officer

3. These appointments have effect from the date given below and continue for one year from that date, unless terminated sooner.

Dated 23 September 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 68 26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 37*

**Notice of Total Allowable Effort – Finfish Fishery**

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

Fishery: Finfish

Species: All finfish species except Skate (*Rajidae*) and Toothfish (*Dissostichus eleginoides*)

Period: 1 January – 31 December 2017

Total Allowable Effort: 12.2 (Vessel Units)

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 69 26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 37*

**Notice of Total Allowable Effort –  
Restricted Finfish Fishery**

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

Fishery: Restricted Finfish

Species: All finfish species except Hake (*Merluccius spp.*), Skate (*Rajidae*) and Toothfish (*Dissostichus eleginoides*)

Period: 1 January – 31 December 2017

Total Allowable Effort: 20.1 (Vessel Units)

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 70

26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 37*

**Notice of Total Allowable Effort – Skate Fishery**

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

Fishery: Skate

Species: All species of Skate (*Rajidae*)

Period: 1 January – 31 December 2017

Total Allowable Effort: 25.86 (Vessel Units)

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 71 26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 37*

**Notice of Total Allowable Effort –  
Squid and Restricted Finfish Fishery**

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

Fishery: Squid and Restricted Finfish

Species: *Illex argentinus*, *Martialia hyadesi*, all finfish species except Hake (*Merluccius spp.*), Skate (*Rajidae*) and Toothfish (*Dissostichus eleginoides*)

Period: 1 March – 31 May 2017

Total Allowable Effort: 18.0 (Vessel Units)

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 72

26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 37*

**Notice of Total Allowable Effort –  
Squid (*Doryteuthis gahi*) Fishery**

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

Fishery: Squid (*Doryteuthis gahi*)

Species: *Doryteuthis gahi*

Period: 24 February – 28 April 2017

Total Allowable Effort: 27.02 (Vessel Units)

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 73 26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 38*

**Notice of Total Allowable Catch  
Restricted Finfish – Pelagic**

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

Fishery: Restricted Finfish – Pelagic

Species: Southern Blue Whiting (*Micromesistius australis*)  
Hoki (*Macruronus magellanicus*)

Period: 1 January – 31 December 2017

Total Allowable Catch: 2000 metric tonnes

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 74 26 September 2016

**Fisheries (Conservation and Management) Ordinance 2005**  
*section 38*

**Notice of Total Allowable Catch – Toothfish Fishery**

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

Fishery: Toothfish - Longline

Species: Toothfish (*Dissostichus eleginoides*)

Period: 1 January – 31 December 2017

Total Allowable Catch: 1040 metric tonnes

Dated 26 September 2016

A. J. BARTON,  
*Director of Natural Resources.*

No. 75 27 September 2016

**Application for Permanent Residence**

Notice is hereby given that:-

**Karina Balbuena Rovira;**  
**Duane Theodore March;**  
**Cheryl Jane March;**  
**Arlene Dawn March; and**  
**Garret George March**

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

Any person who knows of any reason why a permit should not be granted to any of the above named should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 October 2016.

Dated 27 September 2016

J. E. SMITH,  
*Immigration Officer.*

No. 76 29 September 2016

**Administration of Justice Ordinance (Title 22.1)**  
*Schedule 3, paragraph 3*

**Revocation of Appointment of Bailiff**

1. Paragraph 3(1) of Schedule 3 to the Administration of Justice Ordinance provides for the Governor to remove any person from office as bailiff.

2. **Jeremy Andrew Pierce** was appointed as bailiff on 10 April 2014, in exercise of my powers as above I now remove **Jeremy Andrew Pierce** from office as bailiff with effect from 30 September 2016.

Dated 29 September 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 77 29 September 2016

**Administration of Justice Ordinance (Title 22.1)**  
*Schedule 3, paragraph 3*

**Appointment of Bailiff**

1. Paragraph 3(1) of Schedule 3 to the Administration of Justice Ordinance provides for bailiffs to the Courts of the Falkland Islands to be appointed by the Governor following consultation with the Chief Justice or such person as is nominated by the Chief Justice for the purpose.

2. Following such consultation and in exercise of my powers under paragraph 3(1) of Schedule 3 to the Administration of Justice Ordinance I appoint **Mark Frederick Dalgarno** to be a bailiff of the Courts of the Falkland Islands.

3. This appointment has effect from the date given below, and continues in effect until further order or revocation.

Dated 29 September 2016

C. ROBERTS C.V.O.,  
*Governor.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*7 October 2016*

*No. 8*

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The following is published in this Supplement –

**Statistics (Census) Order 2016 (SR&O No 21 of 2016)**

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## SUBSIDIARY LEGISLATION

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### CONSTITUTIONAL AND ADMINISTRATIVE

#### Statistics (Census) Order 2016

S. R. & O. No: 21 of 2016

*Made:* 7 October 2016

*Published:* 7 October 2016

*Coming into force:* on publication

I make this order under sections 13(2), 13(4), 13(5) and 32 of the Statistics Ordinance (No 10 of 2010) on the advice of Executive Council.

#### **1. Title**

This order is the Statistics (Census) Order 2016.

#### **2. Commencement**

This order comes into force on publication in the *Gazette*.

#### **3. Interpretation**

In this order —

“2016 Census” means the census to be carried out in 2016;

“census date” means 9 October 2016;

“communal establishment” —

(a) means a place that is not a dwelling but where one or more persons live or stay; and

(b) includes each of the following —

(i) a hotel, guest house or similar establishment;

(ii) the King Edward VII Memorial Hospital;

(iii) a religious or charitable community;

(iv) the area of Stanley Police Station declared to be a prison by article 3(1) of the Prison (Declaration) Order 2009 (SR&O No 10 of 2009) and known as HMP Stanley (including

the parts of that area declared to be a young offender institution by article 4(1) of the same order); and

(v) accommodation for civilian employees of contractors at the Mount Pleasant Complex;

“eCensus” means a system by which information is submitted electronically via a secure website; and

“temporary visitor to the Falkland Islands” means a person who is present in the Falkland Islands on the census date but who —

(a) usually lives outside the Falkland Islands; and

(b) on the census date, is only visiting the Islands temporarily (on holiday or for other reasons), for a period of less than 3 months.

#### **4. Census to be carried out in 2016**

The census is to be carried out in October 2016.

#### **5. eCensus and paper forms**

(1) The primary method by which the 2016 Census is to be carried out is by means of an eCensus.

(2) The Statistician must ensure that adequate arrangements are made for those who wish to complete a paper form for the 2016 Census instead of participating in an eCensus.

#### **6. Questions to be asked in census**

The questions to be asked in the 2016 Census are those set out in the Schedule.

#### **7. Questions to be asked in census: supplementary**

(1) Additional instructions and explanation (including examples) may be added to the questions.

(2) The questions may be expressed with minor variations appropriate to the method by which the information is being collected.

#### **8. Provision of assistance, etc.**

(1) The Statistician must ensure (as far as reasonably practicable) that adequate arrangements are made to provide assistance to those required to submit information for the 2016 Census (either via the eCensus or by completing a paper form).

(2) The Statistician may arrange for information and other assistance to be provided in languages other than English but need not arrange for information to be submitted in a language other than English.

(3) The Statistician may enter into arrangements for those participating in the eCensus to receive compensation for their usage of telecommunications services.

### **9. Communal establishments and vessels**

(1) The Statistician must make arrangements to ensure (as far as reasonably practicable) that information for the 2016 Census is collected in respect of every person who, on the night of the census date —

(a) is living or staying in a communal establishment; and

(b) is on board a vessel moored in Stanley Harbour.

(2) The Statistician need not (but may) make arrangements to collect information in respect of anyone who spends the night of the census date on board a vessel that is not moored in Stanley Harbour.

(3) The Statistician may make different arrangements for different establishments and different vessels.

### **10. Exemption for members of UK Armed Forces**

The following persons are exempt from participation in the 2016 Census (and information need not be provided by them or about them) —

(a) members of the United Kingdom Armed Forces who are serving in the Falkland Islands on the census date; and

(b) their dependents.

### **11. Use of information from other sources**

The Statistician may use information from sources other than the eCensus and paper forms for the following purposes —

(a) to check information submitted via the eCensus and on paper forms;

(b) to supplement the information submitted in those ways; and

(c) to substitute for information that it has not been possible to collect in either of those ways.

## SCHEDULE

### PART 1 – HOUSEHOLD QUESTIONS

- 1** Counting everyone, including yourself, how many people **usually** live here?  
*For this question, include people that would usually be at this address but are temporarily away e.g. people working night-shifts, Falkland Islanders serving in the Armed Forces students away at school or college, people that are staying elsewhere on the Islands or are off the Islands for less than 12 months.*

Number of people usually resident in the household

- 2** Including yourself, how many people **USUALLY LIVE** at this address **AND ARE PRESENT** in the household on Census night?

Number of usually resident people in the household on 9<sup>th</sup> October 2016

- 3 Household members: Please list all the members of your household that you counted in Question 2, starting with yourself.** (If you have more than 5 household members, please request an additional form from Policy Unit or complete the Census online instead).

	First name	Last name	Date of Birth (dd/mm/yy)
Person 1 (yourself)	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>
Person 2	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>
Person 3	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>
Person 4	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>
Person 5	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>	<input style="width: 100%; height: 25px;" type="text"/>

- 4 How are these people related to each other?**

*Please mark an X in the relevant box for each person, using the list of people in Question 3.*

	Person 2	Person 3	Person 4	Person 5
	How is Person 2 related to Person 1?	How is Person 3 related to Person 2?	How is Person 4 related to Person 3?	How is Person 5 related to Person 4?
Husband or wife	<input style="width: 40px; height: 20px;" type="checkbox"/>			
(Unmarried) partner	<input style="width: 40px; height: 20px;" type="checkbox"/>			
Son or daughter	<input style="width: 40px; height: 20px;" type="checkbox"/>			
Partner's son or daughter	<input style="width: 40px; height: 20px;" type="checkbox"/>			
Step-child	<input style="width: 40px; height: 20px;" type="checkbox"/>			
Brother or sister	<input style="width: 40px; height: 20px;" type="checkbox"/>			
Step-brother or step-sister	<input style="width: 40px; height: 20px;" type="checkbox"/>			

Mother or father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Step-mother or step-father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grandchild	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grandparent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other relation –please state	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Unrelated –please state	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**5 Visitors: How many visitors are staying in your household on Census night?**

Number of visitors in the household → if there are visitors present, remember to fill in **Part 3: Visitor Questions** for each person.

A visitor is anyone that usually lives elsewhere on the Islands, as well as people visiting from abroad.

**6 Mark the box that best describes the type of accommodation your household occupies:**

→ A **HOUSE** that is:

- Detached     Semi-detached     Terraced

→ A **FLAT, MAISONETTE** or **APARTMENT** that is:

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

→ In a **MOBILE** or **TEMPORARY STRUCTURE** that is:

- A mobile home or portacabin adapted for permanent use  
 A caravan  
 In any other mobile or temporary structure  
 Other, such as yacht etc. (please state)

**7** Are you civilian support personnel at MPC or other military sites in the Falklands, or are you and all members of your household normally resident overseas and only temporarily residing in the Islands (for less than 3 months)?

No → **Go to Question 8**

Yes → *If yes, you do **not** need to complete the remaining **Part 1 - Household Questions**. Please now go to **Part 2 – Individual Questions** on page 8 and read the instructions before continuing.*

**8** How many bedrooms are there in your accommodation? That is, if you were to put your house up for sale, how many bedrooms would you say there were?

Number of rooms

**9** How old is your accommodation? If you do not know the exact age of your accommodation then you should estimate the age and put an **X** in the appropriate box. The Brewster Houses were built in 1983-84; the Jersey Estate Houses in 1989; and the East Stanley Development began in 1998.

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

**10** Do you or someone in your household own or rent your accommodation?

Own outright (free and clear of any mortgage or loan) → **Go to Question 14**

Own with a mortgage → **Go to Question 11**

Rent → **Go to Question 12**

Live here rent free → **Go to Question 14**

**11** If paying a mortgage in respect of the property your household occupies, how much is paid MONTHLY on mortgage repayments?

Less than £100     £101-£250

£251-£400     £401-£550

£551-£700     £701-£850

£851-£1,000     £1,000 or more

*If paying a mortgage, please now → go to Question 14*

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

Less than £100     £101-£250

£251-£400     £401-£550

£551-£700     £701-£850

£851-£1,000     £1,000 or more

*If paying rent, please now → go to Question 13*

**13 Does this rent include any meals?**

- Yes  No

**14 What is the MAIN fuel used for heating in your accommodation? (Cross ONE box)**

- Kerosene  Diesel Oil  
 Electricity  Gas  
 Peat  Other (please state)

**15 What is the MAIN fuel used for cooking in your accommodation? (Cross ONE box)**

- Kerosene  Diesel Oil  
 Electricity  Gas  
 Peat  Other (please state)

**16 What is the MAIN source of electrical power for your household's accommodation? (Cross ONE box)**

- Stanley Power Station (*Power Station Diesel Generators and Sand Bay Wind Farm*)  
 Fox Bay Power Station  Solar/PV Cells  
 Settlement generator  Wind Turbine  
 Diesel Oil (i.e. Private generator)  Hydro-electric  
 Solar Thermal  Heat Pump  
 Other (please state)

**What is the MONTHLY cost of electricity and fuel (for heating and cooking) for your household's accommodation?**

**17 MONTHLY cost of electricity**

- Less than £20  £81 - £100  Included in rent  
 £20 - £40  £101 - £120  
 £41 - £60  £121 - £140  
 £61 - £80  £141 or more

**18 MONTHLY cost of Kerosene, Oil, Peat, Coal, Wood etc.**

- Less than £40  £41 - £60  
 £61 - £80  £81 - £100  
 £101 - £120  £121 - £140  
 £141 or more  Included in rent  
 No charge or these fuels not used

**19 MONTHLY cost of Gas**

- Less than £10     £61 - £80  
 £10 - £25     £81 - £100  
 £26 - £40     £101 or more  
 £41 - 60     Included in rent  
 No charge or this fuel not used

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

*Central heating is defined as a system for heating a room or rooms by radiators or air vents connected by pipes or ducts to a central source of heat, such as a boiler. It includes: gas, oil or solid fuel central heating, night storage heaters, warm air heating and underfloor heating.*

*If you have central heating available, cross the relevant box WHETHER OR NOT you use it.*

- NONE of the accommodation has central heating  
 SOME of the accommodation (i.e. some living areas) has central heating  
 ALL of the accommodation (i.e. all living areas) have central heating

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

- Good     Fairly Good     Not Good

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

- Yes     No

**23 Do you or another person in this household (excluding temporary visitors) own or rent/lease a second home in the Falkland Islands?** *Please mark all the boxes that apply to this second home. If more than one second home is owned or rented, please place a number in the box to represent how many homes are owned or rented in each category.*

- No, or only property outside of the Falkland Islands    → go to Question 24  
 Yes and it is/they are:

*Please indicate the **number** of properties in each location:*

Owned, for personal use (e.g. second home/holiday home)

**In Stanley    In Camp**

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Owned and rented out

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Rented/leased by you as a tenant

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

**24 How many motor vehicles are owned or available for use by members of your household?** *Do not count any vehicle that is not currently in working order, vehicles that belong to visitors, vehicles that this household borrows occasionally from another household, vehicles that can be used ONLY for work. Company cars that are available for personal use should be counted.*

- None    → Go to Question 26  
 One or more    → Please answer Question 25

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

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

**26 Please indicate HOW MANY of the appliances listed below are available in your household's accommodation. Do not include anything that is disconnected or broken. Place a number in the box to represent how many of each of the appliances below are available for use in your house.**

- |  |   |
|--|---|
| <input type="checkbox"/> Telephone (Landline)      | <input type="checkbox"/> Carbon monoxide detector                       |
| <input type="checkbox"/> Mobile telephone          | <input type="checkbox"/> Fire extinguisher                              |
| <input type="checkbox"/> 2 metre radio             | <input type="checkbox"/> Television Set                                 |
| <input type="checkbox"/> Radio                     | <input type="checkbox"/> DVD player/ Blu-Ray Player                     |
| <input type="checkbox"/> Fridge or Fridge/Freezer  | <input type="checkbox"/> Digital Television Recorder                    |
| <input type="checkbox"/> Deep Freeze               | <input type="checkbox"/> Cable/satellite television (Paid Subscription) |
| <input type="checkbox"/> Washing machine           | <input type="checkbox"/> Computer/laptop                                |
| <input type="checkbox"/> Tumble Dryer/Washer-Dryer | <input type="checkbox"/> Tablet Computer (e.g. i-Pad)                   |
| <input type="checkbox"/> Dishwasher                | <input type="checkbox"/> MP3 Player (e.g. i-Pod)                        |
| <input type="checkbox"/> Microwave                 | <input type="checkbox"/> Games Console (e.g. Xbox, Playstation)         |
| <input type="checkbox"/> Smoke alarm               |   |

**27 Does the Household have access to the internet at this address?**

- Yes       No

## PART 2: INDIVIDUAL QUESTIONS

**1 What is your sex?**

Male

Female

**2 Your present marital status.**

*For the avoidance of doubt, even if you are living apart from your spouse you are "married" unless there has been a formal end to the marriage by Decree Absolute or Annulment.*

Never married

Married

Married but permanently separated

Cohabiting

Divorced and not now married

Widow or widower

Other (please state)

**3 Where were you on Census night?**

At the address this form was sent to

Elsewhere in the Falkland Islands

Outside the Falkland Islands

**4 What is your usual address?**

At the address this form was sent to

Elsewhere – please write full address below (do not use a PO Box number)

**5 Where were you normally resident TEN YEARS AGO?**

Stanley → *now go to Question 7*

Camp → *now go to Question 7*

Overseas → *now go to Question 6*

**6 Have you returned to the Falkland Islands after an absence of more than 10 years? Do not count any times during your absence in which you may have returned temporarily for holidays etc.**

No → *now go to Question 7*

Yes

if yes, please state how long you were away in years:

 Years

**7 Were you born in the Falkland Islands?**

Yes → *now go to Question 11*

No → *now answer Question 8 and Question 9*

**8 Where were you born?**

United Kingdom

*(The UK consists of England, Wales, Scotland and Northern Ireland but does not include the Channel Islands, the Isle of Man or the Republic of Ireland).*

St. Helena

Chile

Other country

If other, please state the country of birth:

**9 Did you arrive in the Falkland Islands within 6 months of birth?**

Yes → *now go to Question 10*

No → *now go to Question 11*

**10 Were you born outside the Falkland Islands for medical reasons?**

Yes

No

**11 How long have you been resident in the Falkland Islands? Only periods of temporary absence (such as overseas trips for medical treatment, holidays or business) should be ignored when calculating the duration of your residence.**

2 years or less

3 to 5 years

6 to 10 years

More than 10 years

**12 Which of the following immigration categories applies to you?** *If you are unsure which immigration category below applies to you, further assistance can be obtained by telephoning the Customs and Immigration Department on 27340 or by emailing [admin@customs.gov.fk](mailto:admin@customs.gov.fk)*

Falkland Islander/Falkland Island Status Holder

Permanent Residence Permit Holder

Temporary Residence Permit Holder

Naturalised citizen of the Falkland Islands

Holder of a Visitor's Permit

Work Permit Holder

Dependant partner of a Work Permit Holder

Exempt from immigration control by reason of employment with UK Ministry of Defence or another part of UK Government (or is a spouse/ dependant of such a person)

**13 What is your citizenship?** *If you hold more than one citizenship, please state the one which you consider to be your MAIN citizenship.*

British citizen

British Overseas Territories Citizen

Citizen of another country - please State country below:

**14 How would you describe your National Identity?** *National Identity is not necessarily related to the place a person was born or their citizenship, but is more the cultural group they most closely identify with. For example, a person may have been born in the UK but consider themselves a Falkland Islander.*

Falkland Islander

British

St. Helenian

Chilean

Other - please state below:

**15 Is English your first language?**

No → go to Question 16

Yes → go to Question 17

**16 How well do you speak English?**

Very well

Well

Not well

Not at all

**17 Do you speak a language other than English at home?**

No → go to Question 18

Yes

if yes, please state which language below:

**18 What is your religion?** *Answering this question is voluntary*

No religion

Christian

Jehovah's Witness

Buddhist

Bahá'í

Muslim

Any other religion

– please state below:

**19 What is your employment status?**

Employed → go to Question 20

Unemployed → go to Question 29

Retired and not working → go to Question 31

Semi-retired and working occasionally → go to Question 20

Not working for other reasons → go to Question 29

**20 Do you work as an employee or are you self-employed?** Please answer the following question about your MAIN job (your MAIN job is the job in which you usually work the most hours).

- Employee
- Self-employed with employees
- Self-employed without employees

**21 In this job, what is your MAIN occupation?** For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc. If in doubt please state your job title or main role and type of work undertaken. In respect of FIG employees just state the job title.

**Please state your MAIN occupation:**

**22 In terms of the job above, which economic activity are you working in?**

Public Service (FIG)

If Public Service (FIG), please state Department/Section below:

Tourism

If your main job is in tourism, please indicate the main activity below e.g. tourist driving, walking tours etc.:

- Agriculture
- Fishing
- Construction
- Mining and quarrying including oil and gas exploration activities
- Electricity, Water and Gas
- Wholesale and Retail Trade
- Hospitality: hotels, restaurants, pubs etc
- Transport and Storage
- Communication
- Financial Services

**Question 22 continued...**

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

**23 Do you have a secondary or part-time occupation in addition to your main occupation?**

No → go to Question 28

Yes

if yes, please answer the following questions:

**24 In this secondary or part-time job, do you work as an employee or are you self-employed?**

Employee

Self-employed with employees

Self-employed without employees

**25 In your secondary job, what is your occupation?**

For example, administrative manager, clerk, book-keeper, restaurant/hotel manager or worker, cleaner, farm manager, farmer, agriculture worker, fisherman, computer operator, cook, waitress, barperson, shop assistant, tour guide, plumber, carpenter, builder, journalist etc. If in doubt please state your job title or main role and type of work undertaken. In respect of FIG employees just state the job title.

**Please state your secondary occupation:**

**26 In terms of the secondary job above, which economic activity are you working in?**

Public Service (FIG)

If Public Service (FIG), please state Department/Section below:

Continued on the next page →

Continued in the next column →

**Question 26 continued...**

Tourism

If your secondary job is in tourism, please indicate the main activity below e.g. tourist driving, walking tours etc.:

Agriculture

Fishing

Construction

Mining and quarrying including oil and gas exploration activities

Electricity, Water and Gas

Wholesale and Retail Trade

Hospitality: hotels, restaurants, pubs etc

Transport and Storage

Communication

Financial Services

Insurance

Real Estate

Business Services

Community, Social and Personal Services

Other - please state below:

**27 Do you undertake any regular paid employment in addition to the two jobs mentioned above?**

*Only include employment undertaken on a regular basis. Do not include casual or ad hoc employment.*

No → go to Question 28

Yes

If yes, please list the additional job or jobs below and then answer **Question 28**

**28 Please state the total number of paid hours the person normally works per week in all jobs.**

*Complete if employed or self-employed.*

 **Total number of hours worked**

**If you are unemployed, answer the following 3 Questions, then continue on to Question 32 →**

**29 Are you actively seeking any kind of paid work?**

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

No → go to Question 31

Yes

if yes, please answer Questions 30 and 31

**30 If a job were available, would you be able to start straight away?**

Yes

No

**31 Are you doing any of the following? Please cross ALL the boxes that apply to you.**

Household work, cooking, repairs, gardening etc. for your own household

Looking after a child who is a member of your household

Looking after a member of your household who is ill or has a disability

Looking after a child (who does NOT live in your household) on an unpaid basis

Helping someone who is ill or has a disability (who does NOT live in your household) on an unpaid basis

Other helping or voluntary (unpaid) work for or through any organisation or group

Attending or studying for 20 hours or more per week at school or any other place

Attending or studying for less than 20 hours per week at school or any other place

None of these

**Continue on the next page →**

**32 The Falkland Islands Government has recently proposed a 'living wage' of £7.26 per hour.**

**A living wage is the income that people feel they need in order to obtain a minimum socially acceptable standard of living – essentially, it is an estimate of the amount a person needs to earn to cover the basic costs of living.**

**Do you earn greater than or equal to this amount per hour?**

- Yes
- No
- Don't know
- Prefer not to answer this question

**33 What is your total ANNUAL income?**

*Include all income that you got before tax or before anything was taken out of it. Include wages, salaries, commissions, bonuses etc, paid from all jobs, income from self employment or a business you own or work in, interest, dividends, rent, other investments, pensions, student grant payments, social welfare payments, child allowance, child support payments, or any other sources of income.*

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

- |  |  |
|--|--|
| <input type="checkbox"/> £1 - £5000      | <input type="checkbox"/> £40001 - £45000 |
| <input type="checkbox"/> £5001 - £10000  | <input type="checkbox"/> £45001 - £50000 |
| <input type="checkbox"/> £10001 - £15000 | <input type="checkbox"/> £50001 - £55000 |
| <input type="checkbox"/> £15001 - £20000 | <input type="checkbox"/> £55001 - £60000 |
| <input type="checkbox"/> £20001 - £25000 | <input type="checkbox"/> £60001 - £65000 |
| <input type="checkbox"/> £25001 - £30000 | <input type="checkbox"/> £65001 - £70000 |
| <input type="checkbox"/> £30001 - £35000 | <input type="checkbox"/> £70001 - £75000 |
| <input type="checkbox"/> £35001 - £40000 | <input type="checkbox"/> £75001 or more  |

**34 Education – have you obtained any of the following qualifications? Please mark a cross in the box next to ALL qualifications you have obtained. If the qualification is not stated below, please mark its nearest equivalent. If you are unsure of its nearest equivalent, please state the name of the qualification in the 'Other qualifications' space provided below. Do not include any qualifications not yet awarded.**

No qualifications

**Academic Qualifications:**

1-4 O Levels/CSEs/GCSEs (any grades), Entry Level, Foundation Diploma

5+ O Levels (passes)/CSEs (grade 1)/GCSEs (grades A\*-C), School Certificate, 1 A Level/ 2-3 AS Levels/VCEs, Higher Diploma

2+ ALevels/VCEs, 4+AS Levels, Higher School Certificate, Progression/Advanced Diploma

Degree (for example, BA, BSc)

Higher degree (for example Postgraduate Diploma, MA, PhD, PGCE)

**Vocational/Trade & Work-Based Qualifications:**

NVQ Level 1, Foundation GNVQ, Basic Skills

NVQ Level 2, Intermediate GNVQ, City & Guilds Craft, BTEC First/General Diploma, RSA Diploma

Apprenticeship

NVQ Level 3, Advanced GNVQ, City and Guilds Advanced Craft, ONC, OND, BTEC National Diploma, RSA Advanced Diploma

NVQ Level 4-5, HNC, HND, RSA Higher Diploma, BTEC Higher Level

Other vocational/work-related qualifications - please state below:

**Professional and Other Qualifications:**

Professional qualifications (for example teaching, nursing, accountancy etc)

Other qualifications - please state below:

**35 How do you rate your health in general?**

- Very good
- Good
- Fair
- Bad
- Very bad

**36** Not counting anything done as part of paid employment, do you look after or give help or any support to family members, friends, neighbours, or others because of long-term physical or mental ill-health or disability, or problems related to old age?

No → *now go to Question 37*

Yes

If 'Yes', please indicate the total time spent on this activity in a typical week in the space below:

Total number of hours per week

**37** Are your day to day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months? *Include problems related to old age.*

No → *now go to Question 38*

Yes, limited a lot

Yes, limited a little

**38** Do you smoke cigarettes?

No → *now go to Question 39*

Yes

If 'Yes', please indicate the total number smoked per day:

Number of cigarettes smoked per day

**39** Do you drink alcohol?

No

Yes

If 'Yes', please indicate how many units **per week**:

*Please answer based on a typical week where alcohol is consumed.*

*See the examples beside each option for a guide on the number of units per typical drinks*

Units	Examples
5 or less	<input type="checkbox"/> 2 cans or bottles of beer/cider is <b>3 units</b> 2 small glasses of wine is <b>3 units</b> 1 pub measure of spirits is <b>1 unit</b>
6-10	<input type="checkbox"/> 6 beers is <b>9 units</b> 1 bottle of wine is about <b>10 units</b> A quarter bottle of spirits is <b>9 units</b>
11-15	<input type="checkbox"/> 10 beers/ciders is <b>15 units</b> 1 litre carton of wine is <b>15 units</b> 15 pub measures of spirits is <b>15 units</b>
15-20	<input type="checkbox"/> 12 beers/ciders is <b>18 units</b> 2 bottles of wine is <b>20 units</b>
21-30	<input type="checkbox"/> ¾ case of beer is <b>27 units</b> 3 bottles of wine is <b>30 units</b> Half a bottle of spirits is <b>18 units</b>
31 or more	<input type="checkbox"/> 1 case of beer is <b>36 units</b> 1 bottle of spirits is <b>38 units</b>

## PART 3 – VISITOR QUESTIONS

**V1 Are there any temporary visitors as described above staying overnight in the household on Census night?**

Yes If **Yes**, please complete the details for all temporary visitors in questions V2 to V5 below.

No if **No**, then please check that you have entered all details correctly and that all required information has been completed in **PART 1 – Household Questions**, and for all those people who are present in the household on Census night in **PART 2 – Individual Questions** (except any members of the Armed Forces currently serving in the Falkland Islands and their dependants).

*Thank you for completing your Census form.*

*Please return it to the FIG Policy Unit in the supplied prepaid envelope **by the 14<sup>th</sup> October**.*

**V2 How many visitors are staying in your household on Census night?**

Number of visitors in the household

If you have more than 5 visitors, you will need to contact the FIG Policy Unit to obtain additional visitor forms. The contact details for the Policy Unit are available on the last page.

**V3 Please fill in the full name and date of birth for each visitor staying in your household:**

	First name	Last name	Date of Birth (dd/mm/yy)
Visitor 1	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 2	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 3	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 4	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 5	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

**V4 What is the person's sex?**

	Visitor 1	Visitor 2	Visitor 3	Visitor 4	Visitor 5
Male	<input type="checkbox"/>				
Female	<input type="checkbox"/>				

**V5 What is the person's usual country of residence?**

Visitor 1	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 2	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 3	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 4	<input style="width: 100%; height: 20px;" type="text"/>
Visitor 5	<input style="width: 100%; height: 20px;" type="text"/>

C. Roberts C.V.O.,  
Governor.

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EXPLANATORY NOTE  
(not part of the order)

Under section 13(1) of the Statistics Ordinance, one of the functions of the Statistical Service of the Falkland Islands Government is to organise and carry out a census every five years. The last census was to be carried out in 2011 but was postponed to 2012 in terms of section 13(3)(b).

Section 13(2) requires that the month in which a census is to be held is fixed by order and section 13(4) requires that the questions to be asked in a census are to be prescribed by order. Section 13(5) allows for the method by which the census is to be undertaken to be prescribed by order.

Section 32 is a general provision about subsidiary legislation for the purposes of the Statistics Ordinance.

*Article 3* defines terms used in the order.

*Article 4* fixes October 2016 as the month in which the 2016 census is to be held.

*Article 5* prescribes that the primary method by which the 2016 census is to be carried out is an eCensus (which is defined as a system in which information is submitted electronically via a secure website). However, it also provides that arrangements must be made for those who do not want to take part in the eCensus to complete a paper form instead.

*Article 6* deals with the questions to be asked for the 2016 census which are set out under the Schedule.

*Article 7* contains supplementary provisions about the questions.

Under *article 8*, the Statistician will have to arrange for assistance to be provided. Assistance can be provided in languages other than English but the Statistician will not be required to allow information to be submitted in languages other than English.

*Article 9* requires the Statistician to make alternative arrangements for communal establishments (defined in *article 3*) and vessels moored in Stanley Harbour. However, it gives the Statistician discretion about whether or how to collect information from vessels that are not moored in Stanley Harbour.

Under *article 10*, members of the UK armed forces serving in the Falkland Islands (and their dependents) will be exempt from taking part in the 2016 census.

*Article 11* allows the Statistician to make use of other sources of information to check or complete the census information.

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# FALKLAND ISLANDS GAZETTE

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## **Appointment**

Emma Jane Brook, College Development Manager, Education Department, 01.10.16.

Jake Suarez Carnaje, Carer, Health and Social Services Department, 01.10.16.

Alison Marie Ford, Careers and Development Officer, Education Department, 01.10.16.

Daisy Gapol, Carer, Health and Social Services Department, 01.10.16.

Amelia McCormick, Carer, Health and Social Services Department, 01.10.16.

Angela Mujaji, Carer, Health and Social Services Department, 01.10.16.

Deborah Davidson, Projects and Finance Officer, Mineral Resources Department, 03.10.16.

Terence Newman, Foreman, Highways Section, Public Works Department, 04.10.16.

Barry Alan Rowland, Chief Executive, Executive Management, 04.10.16.

Wendy White, Learning Support Assistant, Education Department, 04.10.16.

Errol Barry Gordon Goss, Customs and Immigration Officer, Customs and Immigration, Emergency Services Department, 05.10.16.

Emily Jane Price, Crown Counsel, Law and Regulation Department, 13.10.16.

Celia Soledad Short, Part Time Finance Assistant, Treasury, 17.10.16.

Dominic Summers Jaffray, Airport Firefighter, Falkland Islands Government Air Service, Central Services Department, 19.10.16.

Marina Costa, Marine Ecologist (Falkland Cetaceans), South Atlantic Environmental Research Institute, 20.10.16.

Sharon Ruth Henry, Events/Residence Manager, Government House, Central Services Department, 24.10.16.

## **Completion of contract**

Stefano Mainardi, Economist, Fisheries, Natural Resources Department, 04.10.16.

Maria Taylor, BEST III Ecologist, South Atlantic Environmental Research Institute, 30.10.16.

Darren Doyle, Senior Police Constable, Royal Falkland Islands Police, Emergency Services Department, 31.10.16.

Clare Faulds, Senior Magistrate, Courts, 31.10.16.

## **Promotion**

Ian Peter France, from Airport Firefighter to Watch Manager (Airport), Central Services Department, 19.10.16.

## **Resignation**

Coral McGill, Plant Operator/Handyperson, Highways Section, Public Works Department, 26.09.16.

Stephen Thomas McLean, Customs and Immigration Officer, Customs and Immigration, Emergency Services Department, 06.10.16.

Keith Padgett, Chief Executive, Secretariat, 06.10.16.

Valerie Janet Padgett, Personal Assistant to the Director, Mineral Resources Department, 06.10.16.

Nicola Jane Granger, Financial Secretary, Treasury, 10.10.16.

James McGhie, Saladero Farm Manager, Agriculture, Natural Resources Department, 18.10.16.

Ian Lars Smith, Maintenance Manager, Falkland Islands Government Air Service, Central Services Department, 31.10.16.

#### **Retirement**

Celia Soledad Short, Finance Assistant, Treasury, 30.09.16.

#### **Transfer**

Ana Risa Regalado, from Carer to Staff Nurse, Health and Social Services Department, 06.10.16.

Lee Anthony Martin, from Housing Officer to Cemetery Caretaker/Handyperson, Property and Municipal Section, Public Works Department, 10.10.16.

Barbara Bates, from Events/Residence Manager, Government House, Central Services Department to School Secretary, Education Department, 17.10.16.

Eulogio Gabriel Ceballos, from Airport Fire and Rescue Crew Manager, Central Services Department to Plant Operator/Handyperson, Water Section, Public Works Department, 19.10.16.



# FALKLAND ISLANDS GAZETTE

## Supplement

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The following are published in this Supplement –

**Animals (Welfare and Protection) Bill 2016; and  
Communications Bill 2016.**

# **Animals (Welfare and Protection) Bill 2016**

(No:                    of 2016)

## **ARRANGEMENT OF PROVISIONS**

### **PART 1 - PRELIMINARY**

Clause

1. Title and commencement
2. Interpretation
3. Responsibility for animals
4. Meaning of “animal”
5. Application of the Ordinance

### **PART 2 - ANIMAL WELFARE**

#### *Unnecessary suffering - domestic animals*

6. Unnecessary suffering

#### *Promotion of welfare*

7. Duty of person responsible for animal to ensure welfare
8. Improvement notices
9. Transfer of animals by way of sale or prize to persons under 16
10. Regulations to promote welfare
11. Licensing of activities involving animals

#### *Domestic animals in distress*

12. Powers in relation to animals in distress
13. Power of entry for section 12 purposes
14. Orders in relation to animals taken under section 12(5)
15. Orders under section 14: Appeals

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#### *Poison, etc.*

16. Poisoning, etc. of domestic animals
17. Other offences in connection with poisons
18. Prohibited or restricted use of poisons

#### *Traps*

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20. Restriction on type of trap
21. Open trapping of hares and rabbits

#### *Performing animals*

22. Prohibition of exhibiting and training performing animals

### *Films*

- 23. Prohibition of films involving cruelty to domestic animals
- 24. Section 23: Supplementary

### *Mutilation of domestic animals*

- 25. Mutilation
- 26. Docking of dogs' tails

### *Animals fighting*

- 27. Fighting, etc.
- 28. Seizure of animals involved in fighting offences
- 29. Reimbursement of expenses relating to animals involved in fighting offences
- 30. Destruction of animals involved in fighting offences

### *Non-native and unsuitable animals*

- 31. Prohibition of importing or keeping unsuitable animals
- 32. Inspection of premises
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59. Transitional provisions
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Schedule – Consequential amendments



“exhibit” means exhibit at any entertainment to which the public are admitted, whether on payment of money or otherwise; and “exhibitor” has the corresponding meaning;

“fowl” includes any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea-fowl, peacock, peahen, swan, or pigeon;

“goat” includes a kid;

“horse” includes any mare, gelding, pony, foal, colt, filly, or stallion;

“humanely destroy”, in relation to an animal, means —

(a) to put to death by means of the administration of a lethal injection in such a way as not to be likely to cause unnecessary pain or suffering to the animal; or

(b) otherwise to put to death in a way not likely to cause unnecessary pain or suffering to the animal;

“inspector” includes a veterinary officer or any person appointed by the Governor to be an inspector for the purposes of this Ordinance;

“keeper” has the meaning given that term by section 3(3);

“licence” means a licence issued under regulations made under section 54;

“non-native animal” has the meaning given that term by section 31;

“owner”, in relation to an animal, means the person to whom the animal lawfully belongs and includes an agent of the owner;

“pig” includes any boar, hog, sow or piglet;

“post-conviction powers” means the powers in any of sections 40 to 47;

“premises” includes —

(a) any place;

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

(c) any tent or movable structure;

“Senior Veterinary Officer” means the person performing the duties of the senior veterinary officer of the Government;

“sheep” includes any lamb, ewe, or ram;

“suffering” means physical or mental suffering and related expressions are to be construed accordingly;

“train” means train for the purpose of exhibiting; and “trainer” has the corresponding meaning;

“unsuitable animal” means an animal specified as such by an order made under section 31;

“veterinary surgeon” means a person qualified in veterinary medicine and surgery and registered with a body established or recognised for that purpose under the laws of a country or territory.

(2) In this Ordinance —

(a) references to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied premises” are to be construed accordingly;

(b) references to a part of premises which is used as a private dwelling include any yard, garden, garage or outhouse which is used for purposes in connection with it;

(c) references to responsibility, in relation to an animal, are to be read in accordance with section 3;

(d) references to the needs of an animal are to be read in accordance with section 7(2).

[*UK Animal Welfare Act 2006 s.3; Dangerous Wild Animals Act 1976 s.7*]

### **3. Responsibility for animals**

(1) In this Ordinance —

(a) references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis;

(b) references to being responsible for an animal include being in charge of it.

(2) For the purposes of this Ordinance —

(a) the owner of an animal is to be regarded as responsible for it;

(b) a person (‘A’) is to be regarded as responsible for any animal for which a person under the age of 16 years of whom A has actual care and control is responsible.

(3) In this Ordinance —

(a) “keeper”, in relation to an animal, means a person, not being the owner of that animal, by whom that animal is for the time being ordinarily kept;

(b) a person is a keeper of an animal if the person has it in the person’s possession;

(c) if at any time an animal ceases to be in the possession of a person, any person who immediately before that time was a keeper of the animal by virtue of paragraph (a) or (b) continues to be a keeper of the animal until another person becomes its keeper by virtue of those provisions;

(d) if an animal is in the possession of any person only so that the person can —

- (i) prevent it from causing damage;
- (ii) restore it to its owner;
- (iii) arrange for it to undergo veterinary treatment; or
- (iv) transport it on behalf of another person,

the person is not because of that possession to be treated for the purposes of this Ordinance as a keeper of the animal;

(e) expressions cognate with “keeper” must be construed in accordance with this subsection.

*[Animals (Amendment) Ordinance; UK Protection of Animals Act 1911 s.15; Animal Welfare Act 2006 s.3 etc.]*

#### **4. Meaning of “animal”**

(1) In this Ordinance, except subsections (4) and (5) of this section, “animal” means a vertebrate other than a human.

(2) Nothing in this Ordinance applies to an animal while it is in its foetal or embryonic form.

(3) The Governor may by order for all or any of the purposes of this Ordinance —

- (a) extend the definition of “animal” so as to include invertebrates of any description;
- (b) make provision in place of subsection (2) as respects any invertebrates included in the definition of “animal”; and
- (c) amend subsection (2) to extend the application of this Ordinance to an animal from an earlier stage of its development specified in the regulations.

(4) The power under subsection (3)(a) or (c) may only be exercised if the Governor is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.

(5) In this section, “vertebrate” means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and “invertebrate” means any animal not of that Sub-phylum.

*[UK Animal Welfare Act 2006 ss.1 and 59]*

## **5. Application of the Ordinance**

(1) This Ordinance applies to all animals, including animals of a kind that are commonly kept for slaughter, except that —

(a) provisions that are stated to apply to domestic animals apply only to the animals specified in subsection (3);

(b) if there is any conflict between the requirements of or under this Ordinance and the requirements of or under the Livestock and Meat Products Ordinance in relation to animals kept for slaughter, the latter requirements prevail.

(2) This Ordinance —

(a) does not apply in relation to anything which occurs in the normal course of fishing;

(b) does not displace or affect any of the written laws relating to fishing and fisheries;

(c) does not displace or affect any enactment relating to animals except as provided in Schedule 2.

(3) An animal is a “domestic animal” for the purposes of this Ordinance if it is —

(a) a horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl;

(b) an animal of any other kind or species, whether a quadruped or not, which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man;

(c) under the control of man whether on a permanent or temporary basis; or

(d) not living in a wild state.

*[UK Animal Welfare Act 2006 s.2 adapted]*

## **PART 2 – ANIMAL WELFARE**

### *Unnecessary suffering - domestic animals*

## **6. Unnecessary suffering**

(1) A person (‘A’) commits an offence if —

(a) an act of A, or a failure of A to act, causes an animal to suffer;

(b) A knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so;

(c) the animal is a domestic animal; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if—

(a) A is responsible for an animal;

(b) an act, or failure to act, of another person ('B') causes the animal to suffer;

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) For the purposes of this Ordinance, any pain or suffering is unnecessary if, in all the circumstances of the case, it is reasonably avoidable or preventable.

(4) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include whether—

(a) the suffering could reasonably have been avoided or reduced;

(b) the conduct which caused the suffering was in compliance with this Ordinance, or any provisions of a licence or code of practice issued under this Ordinance;

(c) the conduct which caused the suffering was for a legitimate purpose, such as—

(i) the purpose of benefiting the animal; or

(ii) the purpose of protecting a person, property or another animal;

(d) the suffering was proportionate to the purpose of the conduct concerned;

(e) the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

(5) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

*[UK Animal Welfare Act 2006 s.4]*

### *Promotion of welfare*

#### **7. Duty of person responsible for animal to ensure welfare**

(1) A person who is responsible for any animal commits an offence if the person does not take such steps as are reasonable in all the circumstances to ensure that the needs of the animal are met to the extent required by good practice.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(2) For the purposes of this Part, an animal's needs are to be taken to include—

- (a) its need for a suitable environment;
- (b) its need for a suitable diet;
- (c) its need to be able to show normal behaviour patterns;
- (d) any need it has to be housed with, or apart from, other animals; and
- (e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular —

- (a) any lawful purpose for which the animal is kept; and
- (b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

*[UK Animal Welfare Act 2006 s.9]*

## **8. Improvement notices**

(1) If an inspector is of the opinion that a person is failing to comply with section 7(1), the inspector may serve on the person a notice which —

- (a) states that the inspector is of that opinion;
- (b) specifies the respects in which he or she considers the person is failing to comply with that provision;
- (c) specifies the steps he or she considers need to be taken in order to comply with the provision;
- (d) specifies a period for the taking of those steps (“the compliance period”); and
- (e) explains the effect of subsections (3) and (4).

(2) An improvement notice may —

- (a) be in the form of a letter;
- (b) specify a compliance period according to the severity of the harm and the nature of the conditions.

(3) If a notice under subsection (1) (“an improvement notice”) is served, no proceedings for an offence under section 7(1) may be instituted before the end of the compliance period in respect of —

- (a) the non-compliance which gave rise to the notice; or
- (b) any continuation of that non-compliance.

(4) If the steps specified in an improvement notice are taken at any time before the end of the compliance period, no proceedings for an offence under section 7(1) may be instituted in respect of —

- (a) the non-compliance which gave rise to the notice; or
- (b) any continuation of that non-compliance prior to the taking of the steps specified in the notice.

(5) An inspector may extend, or further extend, the compliance period specified in an improvement notice.

*[UK Animal Welfare Act 2006 s.10]*

## **9. Transfer of animals by way of sale or prize to persons under 16**

(1) A person who sells an animal to a person under the age of 16 years commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) For the purposes of subsection (1), selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

(3) Subject to subsections (4) to (6), a person ('A') who enters into an arrangement with a person ('B') under which B has the chance to win an animal as a prize commits an offence if B is under the age of 16 years.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(4) A does not commit an offence under subsection (3) if —

- (a) A enters into the arrangement in the presence of the person with whom the arrangement is made; and
- (b) A has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16 years.

(5) A does not commit an offence under subsection (3) if —

- (a) A enters into the arrangement otherwise than in the presence of the person with whom the arrangement is made; and
- (a) A has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement.

(6) A does not commit an offence under subsection (3) if A enters into the arrangement with A's own child or grandchild (including by adoption), cousin, nephew, niece or sibling.

*[UK Animal Welfare Act 2006 s.11 expanded]*

## **10. Regulations to promote welfare**

(1) The Governor may by regulations under section 54 make any provision the Governor thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the offspring of such animals.

(2) Without limiting subsection (1), regulations made for the purpose mentioned in that subsection may include provision —

(a) imposing specific requirements for the purpose of securing that the needs of animals are met;

(b) to facilitate or improve co-ordination in relation to the carrying out by different persons of functions relating to the welfare of animals;

(c) either —

(i) conferring on a department of the government functions relating to advice about the welfare of animals; or

(ii) for the establishment of a statutory body with those functions.

*[UK Animal Welfare Act 2006 s.12]*

## **11. Licensing of activities involving animals**

(1) A person must not carry on an activity to which this section applies except under the authority of a licence issued under regulations made under section 54.

(2) Subsection (1) applies to an activity which —

(a) involves animals for which a person is responsible; and

(b) is specified for the purposes of the subsection by regulations.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

*[UK Animal Welfare Act 2006 s.13]*

### *Domestic animals in distress*

## **12. Powers in relation to animals in distress**

(1) If —

(a) an inspector or a police officer (within Stanley) reasonably believes that a domestic animal is suffering; or

(b) any person outside of Stanley reasonably believes that a domestic animal is suffering, the inspector, officer or the person may take, or arrange for the taking of, such steps as appear to him or her to be immediately necessary to alleviate the animal's suffering.

(2) Subsection (1)(a) does not authorise destruction of an animal but a person under subsection (1)(b) may destroy an animal where the animal is under severe distress and the person is able to carry out the destruction.

(3) If the Senior Veterinary Officer certifies that the condition of a domestic animal is such that it should in its own interests be destroyed, an inspector or a police officer may —

(a) destroy the animal where it is or take it to another place and destroy it there; or

(b) arrange for the doing of any of the things mentioned in paragraph (a).

(4) An inspector or a police officer may act under subsection (3) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the condition of the animal is such that there is no reasonable alternative to destroying it; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(5) An inspector or a police officer may take a domestic animal into possession if the Senior Veterinary Officer certifies that it is —

(a) suffering; or

(b) likely to suffer if its circumstances do not change.

(6) An inspector or a police officer may act under subsection (5) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the animal is suffering or that it is likely to do so if its circumstances do not change; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) If an animal is taken into possession under subsection (5), an inspector or a police officer may —

(a) remove it, or arrange for it to be removed, to a place of safety;

(b) care for it, or arrange for it to be cared for —

(i) on the premises where it was being kept when the decision was made that it should be taken into possession; or

(ii) at any other place the inspector or officer thinks fit;

(c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision, may make use of any equipment on the premises.

(10) The Senior Veterinary Officer may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person ('A') exercises a power under this section otherwise than with the knowledge of a person ('B') who is responsible for the animal concerned, A must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of B.

(12) A person who intentionally obstructs another person in the exercise of a power conferred by this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(13) The Magistrate's Court or the Summary Court may, on application by a person who incurs expenses in acting under this section, order that the person be reimbursed by such other person as the court thinks fit.

(14) A person affected by a decision under subsection (13) may appeal against the decision to the Supreme Court.

*[UK Animal Welfare Act 2006 s.18]*

### **13. Power of entry for section 12 purposes**

(1) An inspector or a police officer may enter premises for the purpose of searching for a domestic animal and of exercising any power under section 12 in relation to it if the inspector or officer reasonably believes that —

(a) there is a domestic animal on the premises; and

(b) the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer.

(2) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling.

(3) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(4) An inspector or a police officer may (if necessary) use reasonable force in exercising the power conferred by subsection (1), if it appears to the inspector or officer that entry is being refused and is required before a warrant under section 38 can be obtained and executed.

*[UK Animal Welfare Act 2006 s.19]*

#### **14. Orders in relation to animals taken under section 12(5)**

(1) The Magistrate's Court or the Summary Court may order in relation to an animal taken into possession under section 12(5) that —

- (a) specified treatment be administered to the animal;
- (b) possession of the animal be given up to a specified person;
- (c) the animal be sold;
- (d) the animal be disposed of otherwise than by way of sale; or
- (e) the animal be destroyed.

(2) If an animal is taken into possession under section 12(5) when it is pregnant, the power conferred by subsection (1) is also exercisable in relation to any offspring that results from the pregnancy.

(3) The power conferred by subsection (1) is exercisable on application by —

- (a) the owner of the animal; or
- (b) any other person appearing to the court to have a sufficient interest in the animal.

(4) A court must not make an order under subsection (1) unless it —

- (a) has given the owner of the animal an opportunity to be heard; or
- (b) is satisfied that it is not reasonably practicable to communicate with the owner.

(5) If a court makes an order under subsection (1), it may —

- (a) appoint a person to carry out, or arrange for the carrying out, of the order;
- (b) give directions with respect to the carrying out of the order;
- (c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(d) order a person to reimburse the expenses of carrying out the order.

(6) In determining how to exercise its powers under this section, the court must have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person might be ordered to reimburse.

(7) A person who intentionally obstructs a person in the exercise of any power conferred by virtue of this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(8) If the owner of the animal is subject to a liability by virtue of section 12(13) or subsection (5)(d) above, any amount to which the owner is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

*[UK Animal Welfare Act 2006 s.20]*

## **15. Orders under section 14: Appeals**

(1) If a court makes an order under section 14(1), the owner of the animal to which the order relates may appeal against the order to the Supreme Court.

(2) Nothing may be done under an order under section 14(1) unless —

(a) the period for giving notice of appeal against the order has expired; and

(b) if the order is the subject of an appeal, the appeal has been determined or withdrawn.

(3) If the effect of an order is suspended under subsection (2) —

(a) no directions given in connection with the order have effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under subsection (3)(b) may, in particular —

(a) appoint a person to carry out, or arrange for the carrying out, of the directions;

(b) require any person who has possession of the animal to deliver it up for the purposes of the directions;

(c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;

(d) provide for the recovery of any expenses which are reasonably incurred in carrying out the directions.

(5) If a court decides on an application under section 14(3) not to exercise the power conferred by subsection (1) of that section, the applicant may appeal against the decision to the Supreme Court.

(6) If a court makes an order under section 14(5)(d), the person against whom the order is made may appeal against the order to the Supreme Court.

*[UK Animal Welfare Act 2006 s.21]*

### **PART 3 - PROTECTION OF ANIMALS**

#### *Poison, etc.*

#### **16. Poisoning, etc. of domestic animals**

(1) A person who, without lawful authority or reasonable excuse —

(a) administers any poisonous or injurious drug or substance to a domestic animal, knowing it to be poisonous or injurious; or

(b) causes any poisonous or injurious drug or substance to be taken by a domestic animal, knowing it to be poisonous or injurious,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if —

(a) A is responsible for an animal;

(b) without lawful authority or reasonable excuse, another person ('B') administers a poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance; and

(c) A permitted that to happen or, knowing the drug or substance to be poisonous or injurious, failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

*[UK Animal Welfare Act 2006 s.7]*

#### **17. Other offences in connection with poisons**

(1) A person who —

(a) sells, or offers or exposes for sale, or gives away;

(b) causes or procures any person to sell or offer or expose for sale or give away; or

(c) knowingly is a party to the sale or offering or exposing for sale or giving away,

of any grain or seed which has been rendered poisonous, except for genuine use in agriculture, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(2) A person who —

(a) knowingly puts or places;

(b) causes or procures any person to put or place; or

(c) knowingly is a party to the putting or placing,

in or upon any land or building, of any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) In any proceedings under subsection (2), it is a defence that the poison was placed by the defendant for the purpose of destroying insects and other invertebrates, rats, mice, or other small ground vermin, if that is reasonably necessary —

(a) in the interests of public health, agriculture, or the preservation of other animals, domestic or wild and that the defendant took all reasonable precautions to prevent injury from the poison or other matter to dogs, cats, fowls, or other domestic animals and wild birds; or

(b) for the purpose of conservation or restoration of habitats as provided for under guidance issued by the Environmental and Planning Department.

(4) Subject to section 18, a person is not guilty of an offence under this section by reason only that the person uses poisonous gas in a rabbit hole, or places in a rabbit hole a substance which, by evaporation or in contact with moisture generates poisonous gas.

*[UK Protection of Animals Act 1911 s.8; Prevention of Damage by Rabbits Act 1939 ss.1 and 5]*

## **18. Prohibited or restricted use of poisons**

(1) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations under section 54, the fact that the poison was used as mentioned in section 17(4) is not a defence in proceedings under that section if the poison was used in contravention of the regulations.

(2) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations made under section 54, any person convicted in such proceedings of an offence committed by or in connection with the use of the poison in contravention of the regulations commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 1 on the standard scale.

*[UK Animals (Cruel Poisons) Act 1962 ss.1 and 2]*

### *Traps*

#### **19. Inspection of traps**

(1) Any person who sets, or causes or procures to be set, any spring trap for the purpose of catching any animal, or which is so placed as to be likely to catch any animal, must inspect, or cause some competent person to inspect, the trap at reasonable intervals of time and at least once every day between sunrise and sunset.

(2) A person as mentioned in subsection (1) who fails to comply with that subsection commits an offence.

Penalty: A fine at level 1 on the standard scale.

*[UK Protection of Animals Act 1911 s.10]*

#### **20. Restriction on type of trap**

(1) Subject to this section, a person who —

(a) for the purpose of killing or taking animals, uses, or knowingly permits the use of, any trap other than a humane spring cage trap;

(b) sells, or exposes or offers for sale, any trap other than a humane spring cage trap;  
or

(c) has any in possession any animal trap other than a humane spring cage trap,

commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 21, a fine at level 5 on the standard scale.

(2) Subsection (1) does not apply to traps of any description adapted solely for the destruction of rats, mice or other small ground vermin.

*[UK Pests Act 1954 s.8 adapted]*

#### **21. Open trapping of hares and rabbits**

Subject to this section, a person who, for the purpose of killing or taking hares or rabbits, uses, or knowingly permits the use of, a spring trap elsewhere than in a hare form or rabbit hole, commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 20, a fine at level 5 on the standard scale.

*[UK Pests Act 1954 s.9]*

## *Performing animals*

### **22. Prohibition of exhibiting and training performing animals**

(1) No person may exhibit or train any performing animal in the Falkland Islands.

(2) Any inspector and any police officer may enter at all reasonable times and inspect any premises in which the inspector or police officer reasonably suspects that animals are being trained or exhibited, or kept for training or exhibition, and any such animals found on the premises.

(3) A person who —

(a) exhibits or trains any performing animal;

(b) obstructs or wilfully delays any inspector or police officer in the execution of powers under subsection (2) as to entry or inspection;

(c) conceals any animal with a view to avoiding such inspection,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) This section does not apply to the training of animals for genuine military, police, agricultural or sporting purposes, or the exhibition of any animals so trained.

*[UK Performing Animals (Regulation) Act 1925 ss.3 to 5]*

## *Films*

### **23. Prohibition of films involving cruelty to domestic animals**

(1) It is an offence for a person ('A') to exhibit to the public, or supply to any other person for public exhibition (whether by A or by another person), any cinematograph film (whether produced in the Falkland Islands or elsewhere) if in connection with the production of the film any scene represented in the film was organised or directed in such a way as to involve—

(a) the cruel infliction of pain or terror on any domestic animal; or

(b) the cruel goading of any such animal to fury.

(2) In any proceedings under this section in respect of any film —

(a) the court may (without prejudice to any other mode of proof) infer from the film as exhibited to the public or supplied for public exhibition, as the case may be, that a scene represented in the film as so exhibited or supplied was organised or directed in such a way as to involve the cruel infliction of pain or terror on an animal or the cruel goading of an animal to fury; but

(b) (whether the court draws such an inference or not) it is a defence for A to prove that A believed, and had reasonable cause to believe, that no scene so represented was so organised or directed.

(3) A person who contravenes this section commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

#### **24. Section 23: Supplementary**

(1) In section 23, “film” means any medium on which moving images are recorded so that they can be replayed.

(2) For the purposes of section 23, a cinematograph film is deemed to be exhibited to the public when, it is exhibited in a place to which for the time being members of the general public as such have access, whether on payment of money or otherwise, and the expression “public exhibition” is to be construed accordingly.

(3) Nothing in section 23 applies to a film of a steer-riding competition in the Falkland Islands.  
[UK Cinematograph Films (Animals) Act 1937 s.1]

#### *Mutilation of domestic animals*

#### **25. Mutilation**

(1) Subject to subsection (3), a person other than a veterinary surgeon who —

(a) carries out a surgical procedure on a domestic animal; or

(b) causes such a procedure to be carried out on a domestic animal,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) Subject to subsection (3), a person (‘A’) commits an offence if —

(a) A is responsible for a domestic animal;

(b) another person (‘B’), not being a veterinary surgeon, carries out a surgical procedure on the animal; and

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) If —

(a) the animal is livestock; and

(b) the surgical procedure is carried out in conformity with a relevant code of practice,

the procedure may be carried out by a person other than a veterinary surgeon.

(4) A veterinary surgeon may carry out a surgical procedure on an animal other than in conformity with a relevant code of practice if the procedure is —

- (a) necessary for the purpose of the medical treatment of the animal; and
- (b) carried out under appropriate anaesthesia.

(5) For the purpose of this section —

(a) a “surgical procedure” on an animal is a procedure which involves interference with the sensitive tissues or bone structure of the animal;

(b) a “relevant code of practice” is a code of practice for the welfare of livestock issued under section 55, or under the Livestock and Meat Products Ordinance.

*[UK Animal Welfare Act 2006 ss.5 and 6 (part) adapted]*

## **26. Docking of dogs’ tails**

(1) A veterinary surgeon may only remove the whole or part of a dog’s tail under appropriate anaesthesia.

(2) Contravention of subsection (1) is an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person commits an offence if the person –

(a) shows a dog at an event to which members of the public are admitted on payment of a fee;

(b) the dog’s tail has been wholly or partly removed (in the Falkland Islands or elsewhere) in contravention of this section; and

(c) removal took place on or after the commencement of this section.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

*[UK Animal Welfare Act 2006 s.6 (part) adapted]*

## *Animals fighting*

## **27. Fighting, etc.**

(1) It is an offence for a person to —

(a) cause an animal fight to take place, or attempt to do so;

(b) knowingly receive money for admission to an animal fight;

(c) knowingly publicise a proposed animal fight;

(d) provide information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;

(e) make or accept a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;

(f) take part in an animal fight;

(g) have in the possession of the person anything designed or adapted for use in connection with an animal fight with the intention of its being so used;

(h) keep or train an animal for use for or in connection with an animal fight; or

keep any premises for use for an animal fight.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person who, without lawful authority or reasonable excuse, is present at an animal fight commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person who, without lawful authority or reasonable excuse —

(a) knowingly supplies a digital recording of an animal fight;

(b) knowingly publishes a digital recording of an animal fight;

(c) knowingly shows a digital recording of an animal fight to another; or

(d) possesses a digital recording of an animal fight, knowing it to be such a recording, with the intention of supplying it,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(4) Subsection (3) does not apply if the digital recording is of an animal fight that took place —

(a) outside the Falkland Islands; or

(b) before the commencement of this section.

(5) Subsection (3) does not apply —

(a) in the case of paragraph (a), to the supply of a digital recording for inclusion in a programme service;

(b) in the case of paragraph (b) or (c), to the publication or showing of a video recording by means of its inclusion in a programme service;

(c) in the case of paragraph (d), by virtue of intention to supply for inclusion in a programme service.

(6) In this section —

“animal fight” means an occasion on which a domestic animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting;

“programme service” has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014;

“digital recording” means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image.

(7) In this section —

(a) references to supplying or publishing a digital recording are to supplying or publishing a digital recording in any manner, including, in relation to a digital recording in the form of data stored electronically, by means of transmitting such data;

(b) references to showing a digital recording are to showing a moving image reproduced from any device capable of digital recording.

*[UK Animal Welfare Act 2006 s.8]*

## **28. Seizure of animals involved in fighting offences**

(1) An inspector or a police officer may seize an animal if it appears to the inspector or officer that it is one in relation to which an offence under section 27(1) or (2) has been committed.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) In this section, references to an animal in relation to which an offence under section 31(1) or (2) has been committed include an animal which took part in an animal fight in relation to which such an offence was committed.

*[UK Animal Welfare Act 2006 s.22]*

**29. Reimbursement of expenses relating to animals involved in fighting offences**

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the offender or another person to reimburse any expenses incurred by the Crown in connection with the keeping of an animal in relation to which the offence was committed.

(2) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed.

(3) If an order is made under this section for reimbursement of expenses incurred by the Crown—

(a) the expenses are recoverable summarily as a civil debt;

(b) the person against whom the order is made may appeal against the order to the Supreme Court.

*[UK Animal Welfare Act 2006 s.39]*

**30. Destruction of animals involved in fighting offences**

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.

(2) A court may not make an order under subsection (1) unless —

(a) it has given the owner of the animal an opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

(a) appoint a person to carry out, or arrange for the carrying out of, the order;

(b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;

(c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);

(d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may appeal against the order to the Supreme Court.

(5) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

*[UK Animal Welfare Act 2006 s.38]*

### *Non-native and unsuitable animals*

#### **31. Prohibition of importing or keeping unsuitable animals**

(1) It is an offence for a person to import, for the purpose of keeping, selling or transferring any non-native or unsuitable animal without a licence from the Department of Natural Resources.

Penalty: Imprisonment for 6 months or a fine at level 6 on the standard scale.

*[UK Dangerous Wild Animals Act 1976 s.1 adapted]*

(2) In this section —

(a) “non-native animal” means any animal which is not indigenous or native to the Falkland Islands;

(b) “unsuitable animal” means an animal prescribed by the Director by order as unsuitable for keeping in the Falkland Islands.

(3) The Director may include in an order under subsection (2)(b) any animal of a species that is invasive and could become predatory in the Falkland Islands, and any animal of any other species that could represent a danger to wildlife or people.

#### **32. Inspection of premises**

(1) An inspector or a police officer may inspect any premises where the inspector or officer reasonably suspects that an unsuitable animal is held.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) A person who wilfully obstructs or delays any person in the exercise of a power of entry or inspection under this section commits an offence.

Penalty: A fine at level 5 on the standard scale.  
[UK Dangerous Wild Animals Act 1976 s.3]

### **33. Power to seize and to dispose of animals without compensation**

(1) If an unsuitable animal is being kept in any place, an inspector or a police officer may seize the animal and deal with it in any manner the Governor directs, including the destruction of the animal, and neither the Crown, the Governor nor any public officer is, subject to the provisions of the Constitution, liable to pay any compensation to any person in respect of the exercise of powers under this subsection.

(2) Any expenditure incurred in the exercise of powers under subsection (1) is recoverable by the Crown as a civil debt from the person who was at the time of the seizure a keeper of the animal concerned.

[UK Dangerous Wild Animals Act 1976 s.4 adapted]

### *Dogs and cats*

### **34. Identification of dogs and cats**

(1) The Governor may by order require any or any specified class or breed of dog or cat to have implanted in it an approved identification device.

(2) A veterinary surgeon may, at the request of the owner or keeper of a dog or cat, whether for compliance with an order under subsection (1) or otherwise, implant in the dog or cat an approved identification device and may for that service charge a fee approved by the Director.

(3) The Director must maintain a register and enter in it particulars —

(a) of every dog and cat in which an approved identification device has been implanted under subsection (1) or (2), whether before or after the commencement of this section;

(b) of the owner and keeper (if any) of the animal; and

(c) of any changes in the owner or keeper of the animal notified to the Director.

(4) The register may, if the Director so determines, be kept in electronic form.

(5) In this section, “approved identification device” means —

(a) a microchip, enabling the animal in which it is implanted to be identified by being electronically scanned by a suitable scanning device; and

(b) any other device, approved by the Director, implanted in an animal, whereby the animal may readily be identified by the use of suitable equipment.

[Animals (Amendment) Ordinance ss.2 (part) and 3]

### **35. Seizure and destruction of stray dogs and cats**

(1) The Director and any inspector or police officer may seize any dog or cat which is a stray, that is to say, and dog or cat —

(a) that is found by any person wandering abroad and not apparently under the control of any other person; and

(b) that the Director or inspector or police officer reasonably believes to have been abandoned or neglected by its owner or keeper or to be feral, i.e. existing in a wild state,

and take it to a place authorised by the Director for its detention.

(2) A stray may be detained in an authorised place until —

(a) it is claimed by a person who shows himself or herself to be the animal's owner or keeper; or

(b) it is —

(i) allocated to a new keeper; or

(ii) humanely destroyed in accordance with subsection (8), (9) or (10).

(3) As soon as possible after it has been seized, a stray must be examined by the person seizing it to ascertain whether its owner or keeper can be identified, whether by means of an approved identification device, collar or tag that it bears or otherwise.

(4) If as a result of the examination of a stray in accordance with subsection (3) the owner or keeper of the stray is identified, the person examining the stray must notify, or ensure that some other public officer notifies, the owner or keeper of the detention of the stray.

(5) Notification under subsection (4) must be done by the quickest means which is both practicable and reasonable at any place in the Falkland Islands where the owner or keeper of the stray is known to be likely to be found and otherwise at that person's last known address in the Falkland Islands.

(6) If the stray is a dog the owner or keeper of which is not identified on examination under subsection (3), the person examining the dog must cause, or ensure that some other public officer causes, notification of the seizure of the dog to be made through any appropriate media.

(7) A notification under subsection (6) must include —

(a) a description of the dog;

(b) a statement of the place where and time at which it was seized; and

(c) a statement as to where and how, and the time within which, the dog may be claimed.

(8) A dog may be —

(a) allocated a new keeper; or

(b) humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon,

if its owner or keeper does not claim it within 72 hours of the notification under subsection (4) or (6), whichever in the circumstances of the case is appropriate.

(9) A cat —

(a) the owner or keeper of which is not identified on examination of the cat in accordance with subsection (3); or

(b) which is not claimed by its owner or keeper or his or her agent within 72 hours of notification under subsection (4),

may be humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon.

(10) Notwithstanding the previous subsections, a stray may be humanely destroyed at once by or on the authority of a veterinary surgeon if the veterinary surgeon reasonably believes that the stray is, or may be, suffering from —

(a) rabies; or

(b) any other disease that is —

(i) communicable to human beings;

(ii) if so communicated, may be fatal; and

(iii) has been specified for the purposes of this subsection by an order under subsection (11).

(11) The Governor may, by order under this section, extend the application of subsection (10) so that the power to humanely destroy a stray at once in circumstances specified in that subsection in relation to rabies extends also to any disease specified in the order; but an order under this section may only specify a disease which the Governor believes may be fatal to a human being if communicated to him or her.

(12) A person claiming a dog or cat which has been seized as a stray may be required by the Director to pay to the Crown a sum that represents the reasonable cost of seizure of the animal and of detaining it and the sum so required is recoverable by the Crown as a civil debt due to the Crown.

*[Animals (Amendment) Ordinance ss.4 and 6]*

**36. Dogs and cats: Inspection powers**

(1) An inspector may at any reasonable time on 48 hours' notice to the occupier of any premises in which the inspector reasonably believes that any dog or cat is in need of treatment or is being caused unnecessary suffering —

- (a) enter and inspect the premises;
- (b) cause any dog or cat kept on the premises to be produced to the inspector;
- (c) on the premises treat any such animal if the inspector considers it to be in need of treatment;
- (d) take away any such animal if the inspector considers that, in the circumstances of the case, it ought sensibly to be treated elsewhere; and
- (e) humanely destroy any such animal on those premises which the inspector reasonably believes has any disease or affliction which —
  - (i) cannot practicably be treated; and
  - (ii) is causing the animal substantial pain or suffering.

(2) An inspector may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

*[Animals (Amendment) Ordinance s.5 adapted]*

**PART 4 – ENFORCEMENT POWERS**

*Inspection*

**37. Inspection powers generally**

(1) An inspector may require the holder of a licence issued under this Ordinance to produce for inspection any records which the holder is required to keep as a condition of the licence.

(2) If records which a person is required to keep are stored in electronic form, the power under subsection (1) includes power to require the records to be made available for inspection in —

- (a) a visible and legible form; or
- (b) a form from which they can readily be produced in a visible and legible form.

(3) An inspector may inspect and take copies of any records produced for inspection pursuant to a requirement under this section.

(4) An inspector may carry out an inspection in order to check compliance with —

- (a) the conditions subject to which a licence is granted;
  - (b) provision made by or under this Ordinance which is relevant to the carrying on of an activity to which a licence relates.
- (5) An inspector may, for the purpose of carrying out an inspection under subsection (4), enter —
- (a) premises specified in a licence as premises on which the carrying on of an activity is authorised;
  - (b) premises on which the inspector reasonably believes an activity to which a licence relates is being carried on.
- (6) Subsection (5) does not authorise entry to any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier.
- (7) An inspector may carry out an inspection in order to —
- (a) check compliance with regulations which relate to animals bred or kept for farming purposes;
  - (b) ascertain whether any offence under or by virtue of this Ordinance has been or is being committed in relation to such animals.
- (8) An inspector may enter premises which he or she reasonably believes to be premises on which animals are bred or kept for farming purposes in order to carry out an inspection under subsection (7).
- (9) Subsection (8) does not authorise entry to any part of premises which is used as a private dwelling.
- (10) An inspector or police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.  
*[UK Animal Welfare Act 2006 ss.25, 26 and 28]*

### **38. Entry and search under warrant in connection with offences**

- (1) Subject to subsection (2), a justice of the peace may, on the application of an inspector or a police officer, issue a warrant authorising an inspector or a police officer to enter premises, at any reasonable hour, accompanied by any person or persons authorised by the warrant, and if necessary using reasonable force, in order to search for evidence of the commission of an offence under this Ordinance.
- (2) The power to issue a warrant under subsection (1) is exercisable only if the justice of the peace is satisfied that —
- (a) there are reasonable grounds for believing that —

- (i) an offence under this Ordinance has been committed on the premises; or
- (ii) evidence of the commission of an offence under this Ordinance is to be found on the premises; and

(b) section 39 is satisfied in relation to the premises.

(3) Section 22 of the Criminal Procedure and Evidence Ordinance 2014 (power of police officer to enter and search premises for purpose of arresting a person) applies to an offence under this Ordinance as if this Ordinance were expressly added to the list of provisions in that section.

(4) A person who wilfully hinders or obstructs the lawful execution of a warrant issued under subsection (1) by an inspector or police officer or any person authorised by that warrant to accompany the inspector or police officer, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[UK Animal Welfare Act 2006 ss.23 and 24 adapted]*

### **39. Conditions for issue of warrant**

(1) This section is satisfied in relation to premises if any of the following 4 conditions is met.

(2) The first condition is that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant.

(3) The second condition is that any part of the premises is not used as a private dwelling and that the occupier of the premises has —

- (a) been informed of the decision to seek entry to the premises and of the reasons for that decision;

- (b) failed to allow entry to the premises on being requested to do so by an inspector or a police officer; and

- (c) been informed of the decision to apply for a warrant.

(4) The third condition is that —

- (a) the premises are unoccupied or the occupier is absent; and

- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(5) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because —

- (a) it would defeat the object of entering the premises; or

- (b) entry is required as a matter of urgency.

*[UK Animal Welfare Act 2006 s.52]*

*Disqualification and deprivation*

**40. Orders with respect to licences**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order —

- (a) cancelling any licence held by the person;
- (b) disqualifying the person, for a period it thinks fit, from holding a licence.

(2) The court by which an order under subsection (1)(b) is made may —

- (a) specify a period during which the offender may not make an application under section 42(1) for termination of the order;
- (b) suspend the operation of the order pending an appeal.

*[UK Animal Welfare Act 2006 s.42; Dangerous Wild Animals Act 1976 s.6]*

**41. Disqualification generally**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order disqualifying the person for a period the court thinks fit.

(2) Disqualification may be imposed on a person from taking part in one or more, or all, of the following (as specified in the order) —

- (a) owning animals;
- (b) keeping animals;
- (c) participating in the keeping of animals;
- (d) being party to an arrangement under which the person is entitled to control or influence the way in which animals are kept;
- (e) dealing in animals;
- (f) transporting animals; or
- (g) arranging for the transport of animals.

(3) Disqualification under subsection (1) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.

(4) The court by which an order under subsection (1) is made may specify a period during which the offender may not make an application under section 42 (1) for termination of the order.

(5) The court by which an order under subsection (1) is made may —

(a) suspend the operation of the order pending an appeal; or

(b) if it appears to the court that the offender owns or keeps an animal to which the order applies - suspend the operation of the order for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.

(6) If a court decides not to make an order under subsection (1) in relation to an offender, it must—

(a) give its reasons for the decision in open court; and

(b) cause them to be entered in the register of its proceedings.

(7) A person who breaches a disqualification imposed by an order under subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

*[UK Animal Welfare Act 2006 s.34 adapted]*

#### **42. Termination of disqualification under section 40 or 41**

(1) A person who is disqualified by virtue of an order under section 40 or 41 may apply to the appropriate court for the termination of the order.

(2) No application under subsection (1) may be made —

(a) within a year of the order being made;

(b) if a previous application under that subsection has been made in relation to the same order - within a year of the previous application being decided.

(c) before the end of any period specified under subsection (5) in relation to the order.

(3) On an application under subsection (1), the court may —

(a) terminate the disqualification;

(b) vary the disqualification so as to make it less onerous; or

(c) refuse the application.

(4) When deciding an application under subsection (1), the court must have regard to the character of the applicant, the applicant's conduct since the imposition of the disqualification and any other circumstances of the case.

(5) If the court refuses an application under subsection (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.

(6) The court may order an applicant under subsection (1) to pay all or part of the costs of the application.

(7) In subsection (1), the reference to the appropriate court is to —

(a) the court which made the order under section 40 or 41; or

(b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.  
*[UK Animal Welfare Act 2006 s.43 adapted]*

#### **43. Seizure of animals in connection with disqualification**

(1) If —

(a) a court makes an order under section 41(1); and

(b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,

the court may order that all animals the person owns or keeps contrary to the disqualification be taken into possession.

(2) If a person is convicted of an offence under section 41(7) because of owning or keeping an animal in breach of disqualification under section 41(1), the court by or before which the person is convicted may order that all animals the person owns or keeps in breach of the disqualification be taken into possession.

(3) An order under subsection (1) or (2), so far as relating to any animal owned by the person subject to disqualification, has effect as an order for the disposal of the animal.

(4) Any animal taken into possession pursuant to an order under subsection (1) or (2) that is not owned by the person subject to disqualification must be dealt with in the manner the appropriate court may order.

(5) A court may not make an order for disposal under subsection (4) unless it —

(a) has given the owner of the animal an opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the owner.

(6) If a court makes an order under subsection (4) for the disposal of an animal, the owner may appeal against the order to the Supreme Court.

(7) In subsection (4), the reference to the appropriate court is to —

- (a) the court which made the order under subsection (1) or (2); or
- (b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.

(8) In this section, references to disposing of an animal include destroying it.  
*[UK Animal Welfare Act 2006 s.35]*

#### **44. Deprivation orders**

(1) If the person convicted of an offence under this Ordinance is the owner of an animal in relation to which the offence was committed, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order depriving the person of ownership of the animal and for its disposal.

(2) If the animal in respect of which an order under subsection (1) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

(3) If a court makes an order under subsection (1) or (2), it may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender to reimburse the expenses of carrying out the order.

(4) Directions under subsection (3)(c) may —

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (3)(a).

(5) If a court decides not to make an order under subsection (1) or (2) in relation to an offender, it must —

- (a) give its reasons for the decision in open court; and
- (b) cause them to be entered in the register of its proceedings.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27, an animal which took part in an animal fight in relation to which the offence was committed.

(7) In this section, references to disposing of an animal include destroying it.  
*[UK Animal Welfare Act 2006 s.33]*

#### **45. Destruction in the interests of the animal**

(1) The court by or before which a person is convicted of any offence under this Ordinance may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by the Senior Veterinary Officer, that it is appropriate to do so in the interests of the animal.

(2) A court may not make an order under subsection (1) unless it —

- (a) has given the owner of the animal an opportunity to be heard; or
- (b) is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
- (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1), the offender and, if different, the owner of the animal may appeal against the order to the Supreme Court;

(5) Subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27(1) or (2) (fighting), an animal which took part in an animal fight in relation to which the offence was committed.

*[UK Animal Welfare Act 2006 s.37]*

#### **46. Sections 43 to 45: Supplementary provisions**

(1) The court by which an order under any of sections 43 to 45 is made may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

(2) Directions under subsection (1)(c) may —

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).

(3) In deciding how to exercise its powers under sections 43 to 45 and this section, the court must have regard, amongst other things, to —

- (a) the desirability of protecting the value of any animal to which the order applies; and
- (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.

(4) In deciding how to exercise a power delegated under subsection (2)(b), a person must have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).

(5) If the owner of an animal ordered to be disposed of under section 43, 44 or 45 is subject to a liability by virtue of subsection (1)(e), any amount to which the person is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

*[UK Animal Welfare Act 2006 s.36]*

#### **47. Forfeiture of equipment used in offences**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be —

- (a) forfeited; and
- (b) destroyed or dealt with in a manner specified in the order.

(2) The reference in subsection (1) to a qualifying item is —

(a) in the case of a conviction for an offence under section 6 - to anything designed or adapted for causing suffering to an animal;

(b) in the case of a conviction for an offence under any of sections 16 to 18 - to anything designed or adapted for administering any poison or drug or substance to an animal;

(c) in the case of a conviction for an offence under section 25 - to anything designed or adapted for carrying out a surgical procedure on an animal;

(d) in the case of a conviction for an offence under section 26 in relation to a dog's tail - to anything designed or adapted for removing the whole or any part of a dog's tail;

(e) in the case of a conviction for an offence under section 27(1) or (2) - to anything designed or adapted for use in connection with an animal fight;

(f) in the case of a conviction for an offence under section 27(3) - to a video recording of an animal fight, including anything on or in which the recording is kept.

(3) The court must not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the person has been given an opportunity to show cause why the order should not be made.

(4) An expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

(5) This section does not limit the power of a court to make a deprivation order under section 44 of this Ordinance or under section 617 of the Criminal Procedure and Evidence Ordinance 2014. *[UK Animal Welfare Act 2006 s.40]*

#### **48. Orders under sections 43 to 47: Pending appeals**

(1) Nothing may be done under an order under any of sections 43 to 47 with respect to an animal, unless —

(a) any period for giving notice of appeal against the order has expired;

(b) the period for giving notice of appeal against the conviction on which the order was made has expired; and

(c) if the order or conviction is the subject of an appeal - the appeal has been determined or withdrawn.

(2) If the effect of an order is suspended under subsection (1) —

(a) no requirement imposed or directions given in connection with the order has effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(3) Directions under subsection (3)(b) may, in particular —

- (a) authorise the animal to be taken into possession;
- (b) authorise the removal of the animal to a place of safety;
- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

(5) Any expenses a person is directed to pay under subsection (4)(g) are recoverable summarily as a civil debt.

(6) If the effect of an order under section 44 (Deprivation) is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

(7) A person who fails to comply with subsection (6) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

*[UK Animal Welfare Act 2006 s.41]*

#### *Enforcement generally*

#### **49. Time limits for prosecutions**

A prosecution for an offence under this Ordinance must be brought —

- (a) within 3 years after the commission of the offence; and
- (b) within 6 months after the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the knowledge of the prosecution.

*[UK Animal Welfare Act 2006 s.31; Game Act 1831 s.41]*

#### **50. Power to stop and detain vehicles**

(1) A police officer in uniform or, if accompanied by such a police officer, an inspector may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred in relation to premises —

- (a) by section 13(1); or

(b) by a warrant under section 48.

(2) A police officer in uniform may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred by —

(a) section 28(1); or

(b) a warrant under section 38.

(3) If accompanied by a police officer in uniform, an inspector may stop and detain a vehicle for the purpose of entering it and carrying out an inspection in the exercise of a power conferred by—

(a) section 37; or

(b) a warrant under section 38.

(4) A vehicle may be detained for as long as is reasonably required to permit a search or inspection to be carried out (including the exercise of any related power under this Ordinance either at the place where the vehicle was first detained or nearby.

*[UK Animal Welfare Act 2006 s.54]*

## **51. Power to detain vessels and aircraft**

(1) If an inspector or a police officer certifies in writing that he or she is satisfied that an offence under this Ordinance is being or has been committed on board a vessel in port or a landed aircraft, the vessel or aircraft may be detained.

(2) A certificate under subsection (1) must —

(a) specify each offence to which it relates; and

(b) set out the inspector's or officer's reasons for being satisfied that each offence to which it relates is being or has been committed.

(3) An officer who detains a vessel or aircraft in reliance on a certificate under subsection (1) must as soon as reasonably practicable give a copy of it to the master or person in charge of the vessel or aircraft.

(4) A vessel or aircraft may be detained under subsection (1) until the Governor otherwise directs.

(5) The Governor may by regulations make such other provision for the detention of vessels or aircraft in relation to offences under or by virtue of this Ordinance as the Governor thinks fit.

*[UK Animal Welfare Act 2006 s.55 adapted]*

## **52. Obtaining of documents in connection with carrying out orders, etc.**

(1) If —

(a) an order is made or directions are given under this Ordinance for the deprivation, taking into possession, seizure or destruction of an animal is in effect; and

(b) documents which are relevant to the carrying out of the order or directions are in the possession or under the control of the owner of the animal,

the owner must, if so required by a person authorised to carry out the order, deliver the documents to that person as soon as practicable and in any event within 10 days after the owner is notified of the requirement.

(2) A person who fails without reasonable excuse to comply with subsection (1) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

*[UK Animal Welfare Act 2006 s.56 adapted]*

## **PART 5 – MISCELLANEOUS PROVISIONS**

### **53. 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.

(4) This section does not affect section 9 of the Interpretation and General Clauses Ordinance relating to service by post.

### **54. Regulations**

(1) The Governor may by regulations make further provision about any matter provided for in this Ordinance.

(2) The regulations may include, but are not limited to, provisions regulating —

- (a) the functions and powers of inspectors;
  - (b) the use of poisons to destroy animals;
  - (c) the need for and issuing of licences for prescribed purposes.
- (3) If the regulations include provisions relating to licences, they may include provisions —
- (a) to require persons to hold a licence for specified activities in relation to animals;
  - (b) to prescribe —
    - (i) the form of an application for a licence;
    - (ii) the particulars to be provided in an application for a licence;
    - (iii) the fees payable for the issue of licences; or
    - (iv) the conditions that may be attached to a licence; or
  - (c) that breach of a condition of a licence or of the regulations is an offence.
- (4) Power to make regulations under this section includes power —
- (a) to provide that breach of a regulation is an offence carrying a maximum penalty of 6 months imprisonment or a fine at level 5 on the standard scale, or both;
  - (b) to apply relevant post-conviction powers in relation to convictions for an offence under the regulations;
  - (c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
  - (d) to make different provision for different cases or areas;
  - (e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;
  - (f) to provide for any other matter needed to give effect to this Ordinance;
  - (g) to make incidental, supplementary, consequential or transitional provision or savings.
- (5) Before making regulations under this section, the Governor must publish a draft of the regulations for public consultation.  
*[UK Animal Welfare Act 2006 ss.6 and 12 (part)]*

## **55. Codes of practice**

(1) The Director may issue, and from time to time revise, one or more codes of practice for the purpose of providing practical guidance in respect of any provision made by this Ordinance or by regulations made under it.

(2) The Director must —

- (a) keep the codes of practice under review; and
- (b) issue new or revised codes when necessary.

(3) If the Director proposes to issue (or revise) a code of practice, the Director must publish a draft of the code for public consultation, specifying —

- (a) whether it is a new code or a replacement for an existing one; and
- (b) the date on which the code comes into force.

(4) If after consulting as required by subsection (3) the Director decides to proceed with a draft (either in its original form or with any modifications as the Director thinks fit), the Governor must lay a copy of it before the Legislative Assembly.

(5) A code (or revised code) —

- (a) comes into force on a day the Director by order appoints; and
- (b) may be published in any manner the Director considers appropriate.

(6) A person's failure to comply with a provision of a code of practice issued under this section does not of itself render the person liable to proceedings of any kind, but in any proceedings against a person for an offence under this Ordinance —

- (a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability; and
- (b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability.

*[UK Animal Welfare Act 2006 s.14 and reg. 4 of the Livestock & Meat Products (Welfare of Livestock) Regulations]*

## **56. Amendment of Schedule**

(1) The Governor may by order amend the Schedule to this Ordinance.

(2) An order under subsection (1) —

- (a) may make such transitional and consequential provision as appears to the Governor to be necessary or expedient; and

(b) requires the approval of the Legislative Assembly.  
*[UK Dangerous Wild Animals Act 1976 s.8]*

### **57. Repeal of laws**

The Animals (Amendment) Ordinance (“the repealed Ordinance”) is repealed.

### **58. Savings**

(1) Subject to subsection (4), all items of subsidiary legislation made under the repealed Ordinance continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(2) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (1) could be made or the item is repealed, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal provided by section 59.

(3) Any legislative instrument made by a person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

(4) Any delegation, direction, exemption, notice or other non-legislative instrument made or issued by any person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

### **59. Transitional provisions**

(1) A disqualification of a person convicted of cruelty to animals imposed under the Protection of Animals Act 1911 as amended, and as applied to the Falkland Islands before the commencement of this Part, is deemed to be a disqualification imposed under section 41 of this Ordinance and section 42 applies to such a disqualification.

(2) Any criminal or civil proceedings under the repealed Ordinance that were in progress at the date of commencement of this Part must continue as if this Part had not been enacted.

(3) The Governor may by order make such other transitional provision or savings as the Governor considers necessary or expedient in connection with the coming into force of any provision of this Ordinance.

(4) The power under subsection (1) includes power to make different provision for different cases.

*[UK Animal Welfare Act 2006 s.58 adapted]*

### **60. Consequential amendments – Schedule**

(1) The Ordinance listed in column 1 of the Schedule is amended in the manner set out in column 2 of the Schedule.

(2) A reference in any other enactment to the repealed Ordinance is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

#### **61. Crown application**

(1) Subject to the provisions of this section, this Ordinance binds the Crown.

(2) No contravention by the Crown of any provision of or under this Ordinance makes the Crown criminally liable; but the Supreme Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (1), the provisions of this Ordinance apply to persons in the service of the Crown as they apply to other persons.

(4) If the Governor certifies that it appears to him or her appropriate in the interests of national security that powers of entry conferred by or under this Ordinance should not be exercisable in relation to premises held or used by or on behalf of the Crown and specified in the certificate, those powers are not exercisable in relation to those premises.

(5) In this section, “national security” has the meaning given to that term in section 2 of the Criminal Procedure and Evidence Ordinance 2014;  
*[UK Animal Welfare Act 2006 s.60]*

### **SCHEDULE** (section 60)

#### **CONSEQUENTIAL AMENDMENTS**

Conservation and Wildlife Ordinance  
section 10(4)

Delete “section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances) in its application to the Falkland Islands” and substitute “section 16(1) of this Ordinance (Poisoning, etc. of domestic animals)”.

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#### **OBJECTS AND REASONS**

##### **Introduction**

This Bill makes new provision about the welfare and protection of animals. It replaces some of the UK laws about animals that at present apply to the Falkland Islands by virtue of Schedule 1 to the Crimes Ordinance. That Schedule will cease to apply when the Crimes Ordinance 2014 comes into force, as it repeals the existing Crimes Ordinance (including Schedule 1 which contains a list of UK laws on animals).

The Bill's provisions about the welfare of animals are derived from the UK Animal Welfare Act 2006. Most of the UK animal protection laws have been consolidated in that Act and this Bill is in effect a local version of that Act. The 2006 Act does not apply to the Falkland Islands, but its provisions complement the UK laws about animals that do apply in the Falkland Islands. It repeals or amends some of those laws and creates a new concept of a duty to avoid unnecessary suffering to animals and to promote their welfare.

Part 2 of the Bill is derived from the Animal Welfare Act 2006, while Part 3 localises the UK laws on animals that apply to the Falkland Islands. It seeks to protect animals from exploitation and various types of cruel treatment. Part 4 on enforcement is derived from the Animal Welfare Act 2006, and Part 5 contains miscellaneous provisions to complete the legislative scheme.

Some UK enactments that were applied to the Falkland Islands have since been repealed in the UK and are no longer applicable. The present Bill therefore modernises provisions about animal welfare generally, and introduces new provisions about fighting by animals (especially dogs), mutilation of animals, and distressed animals generally. It provides extensive powers of search and seizure.

The Bill also includes the provisions of the Animals (Amendment) Ordinance which is about identification of cats and dogs and seizure of strays – see clauses 34 to 36.

To avoid a lacuna in the laws about animals, it will be necessary to ensure that the Crimes Ordinance 2014 will not come into operation until this Bill has been enacted. It would be appropriate for the commencement dates of the two Ordinances to be synchronised.

### **Other FI animals laws**

This Bill must be read in conjunction with other FI legislation dealing with animals, including the Animal Health Ordinance (which applies to FI the UK Animal Health Act of 1981), and the Livestock and Meat Products Ordinance, which implements various EU directives governing the slaughtering of animals for export.

The Livestock and Meat Products (Welfare of Livestock) Regulations have been made under the Livestock and Meat Products Ordinance, and Codes of Practice have been issued under them. However, these regulations and codes apply only to livestock, whereas this Bill applies principles of welfare to all animals.

Other Falkland Islands laws on animals include –

- Conservation of Wildlife and Nature Ordinance which protects wild animals from being killed or stolen;
- Dogs Ordinance which is about licensing of dogs and liability for damage by dogs;
- Livestock Ordinance which is about the marking of sheep of cattle and infected livestock;
- Animals and Food (Miscellaneous Provisions) Ordinance which govern the transport and export of fresh meat;
- the Slaughtering and Inspection Ordinance which is about the inspection of slaughterhouses etc. which has been repealed as this is covered under the Livestock and Meat Products Ordinance.

## **UK statutes**

The UK laws on unlawful taking of wild animals, birds and fish (in England referred to as ‘game’) and trespassing for the purpose of killing wild animals, etc. (commonly called ‘poaching’) are not included in the Bill, as there are adequate provisions about unlawful killing of wildlife in the Conservation of Wildlife and Nature Ordinance. The UK laws concerned are –

- Night Poaching Acts 1828 and 1844
- Poaching Prevention Act 1862
- Game Act 1831
- Ground Game Act 1880
- Game Law (Amendment) Act 1960.

The UK laws that have been included in the Bill in whole or part are –

- Protection of Animals Act 1911
- Performing Animals (Regulation) Act 1925
- Cinematograph Films (Animals) Act 1937
- Docking and Nicking of Horses Act 1949
- Animals (Cruel Poisons) Act 1962
- Prevention of Damage by Rabbits Act 1939
- Pests Act 1954
- Dangerous Wild Animals Act 1976

There are other laws about animals in the UK – kennels, riding establishments, breeding, etc. but they have not been applied to the Falkland Islands and are not specifically required at this time in the Falklands.

The Bill shows at the foot of each clause the UK derivation.

## **Notes on clauses**

Clause 1 confers a short title and empowers the Governor to specify a commencement date. The commencement will need to be synchronised with that of the Crimes Ordinance 2014 to avoid a lacuna in the animals laws.

Clause 2 defines various terms used in the Bill that are not defined in the Interpretation and General Clauses Ordinance. It provides that Inspectors for the purposes of the Ordinance will be appointed by the Governor, as is the case under other animals laws. They will normally be veterinary officers.

Clause 3 states who is responsible for the welfare of animals, who might be the owner, the person in possession, the keeper etc.

Clause 4 explains the meaning of “animal” for the purposes of the Bill as being any vertebrate other than a human (not ‘man’ to avoid any gender-specific connotations.) The Governor can extend the definition to non-vertebrates if satisfied that they can experience pain and suffering.

Clause 5 explains the scope of the Bill, as applying to all animals, including livestock. Some provisions apply only to domestic animals, as defined in sub-clause (3). Sub-clause (2) makes it clear that other animals laws are not affected – see the notes above. The term ‘enactment’ includes UK laws that apply to the Falkland Islands. The UK Act specifically excludes scientific research activities from these regulations as the Animals (Scientific Procedures) Act 1986 exists. This Bill does not exempt scientific research procedures as there is not specific legislation to cover in detail such activities. The term ‘protected’ is used for all animals protected by the UK 2006 act but this was not upheld in the FI Bill as it may have caused confusion with animals that are protected under Conservation laws. Instead all animals are covered in the FI Bill and types of animals (eg domestic versus wild) are specified where relevant.

Clauses 6 to 15 are derived from the UK Animal Welfare Act 2006 and are new to Falkland Islands law but are clauses that are up to date and deliver what is now expected from people and society in the area of animal welfare and preventing cruelty.

Clause 6 prohibits people responsible for domestic animals from causing them unnecessary pain or suffering and defines those terms. This clause is a modernised version of what would have existed in the 1911 Protection of Animals Act that was applied to the Falkland Islands.

Clauses 7 to 11 create positive obligation to promote the welfare of all animals.

Clause 7 makes it an offence for a person responsible for any animal to fail to take steps reasonable in the circumstances to ensure that the needs of the animal are met to the extent required by good practice. In clause 7(2)(c) the word ‘exhibit’ in the UK Act is replaced by ‘show’.

Clause 8 empowers an inspector to issue an improvement notice on any person who appears to be in breach of the obligation in clause 7. The notice must specify how the person is failing to comply, what steps should be taken to comply, and a period within which that must be done. There is a similar power in the Livestock and Meat Products (Welfare of Livestock) Regulations, but limited to livestock.

Clause 9 prohibits the transfer of animals by way of sale or prize to a person under 16. There are exceptions, including giving an animal as a prize or gift to a close relative. In the UK Act the term ‘family context’ is used, but sub-clause (6) spells out the relationship, similar to that in section 228 of the Crimes Ordinance 2014. This is a new legislative clause for the Falkland Islands but as it is part of the UK 2006 Act it was included in the FI Bill as it prevents selling or gifting animals to minors that are not under the direct care or supervision of the adult doing the selling or giving. This clause will ensure that an adult family member that does give or sell an animal to a minor is still responsible for that animal’s welfare.

Clause 10 enables the Governor to make regulations to promote welfare. The power to make regulations is in clause 54, but this clause relates the power to this Part of the Bill.

Clause 11 contemplates that regulations under clause 54 will include the power to issue licences for specified activities under this Part. They would include, for example, scientific research or applying anaesthesia etc. The Governor can rule (presumably under advice from the Veterinary Service) that some activities involving animals may require that the persons carrying out the activities are licensed to do so. The clause does not specify what sort of activities may require a

licence. The UK 2006 act also specifies registration but it was felt that such activities requiring licensing or registration are few in the Falklands and that simplifying the requirements to just licensing would be sufficient.

Clauses 12 to 15 relate to domestic animals in distress.

Under clause 12, an inspector or a police officer who reasonably believes that a domestic animal is suffering may take steps to alleviate the suffering, including taking the animal into possession, or having it destroyed. The power to take into possession extends to offspring of the animal. The person responsible for the animal must be notified, and might be ordered to repay the costs of action taken under the clause. This clause is included as if a person does not obey an improvement notice, or the animal(s) is/are suffering to the extent that the time taken to issue and await response to an improvement notice would further detrimentally affect the animal(s), someone must have the power to relieve this suffering as soon as possible. Clause 12 also allows any person outside of Stanley to destroy an animal in severe distress or take steps to alleviate the animal's suffering.

Clauses 13 to 15 make ancillary provisions about action taken under clause 12, including powers of entry and rights of appeal.

Clauses 16 to 26 replace the UK laws that apply to the Falkland Islands as noted above and that are still extant in the UK.

Clauses 16 to 18 regulate the use of poisons for controlling animals. Clause 16 is derived from the UK Animal Welfare Act 2006, while clause 17 and 18 replace existing laws. As these clauses replace section 8(b) of the Protection of Animals Act 1911, the reference to that Act in section 10(4) of the Conservation of Wildlife and Nature Ordinance can be deleted, and that is done by Schedule 2.

Clauses 19 to 21 regulate the use of traps for catching animals. Clause 20 specifies the type of trap that is approved as being a humane spring trap. This section has been simplified and generalised as old legislation gave quite some detail regarding trapping hares and rabbits which is not a frequent habit in the Falklands. It is more likely that cats will be trapped to then be humanely destroyed. These clauses thus refer to the trapping of any animal and ensure that only the spring cage traps are used which can then lead to humane destruction. Snares and other traps that may cause an animal to be trapped by an extremity are prohibited (apart from trapping rodents and other small vermin but these traps must still be inspected and any catch dealt with daily). These clauses are not part of the UK 2006 Act but rather the older Pests Acts and amendments but fit rather well with the FI Welfare Bill so are included.

Clause 22 prohibits the exhibiting and training performing animals. There are exceptions for agricultural or sporting purposes, which would include e.g. sheep dog trials and cattle shows, racing horses and for military or police purposes. This clause is much simplified for the FI Bill as there is not a culture of circuses or animal acts.

Clauses 23 and 24 prohibit the showing or supplying of films involving cruelty to domestic animals.

Clauses 25 and 26 regulate the mutilation of animals except by a veterinary surgeon, or in accordance with a code of practice in respect of livestock (which could be issued under clause 55 if not already issued under the Livestock and Meat Products Ordinance.) The surgical procedures/mutilations that can be carried out by people other than vets on animals of specific ages have not been changed. Any tail docking of dogs is prohibited unless by a vet under suitable anaesthesia.

In the UK there are exemptions for working dogs but this was felt unnecessary for the Falklands as there are no brambles or undergrowth that dogs work in that would cause the issues that led to the exemption in UK. Tail docking of collie pups (as opposed to working spaniels in UK) is not a recognised practice and does not occur in the Falklands. The section regarding prohibition of docking horses tails and banning the import of docked horses was deleted as docking of horses tails does not occur in the Falklands and if it did it would fall under the ‘mutilations’ and ‘unnecessary suffering’ clauses to allow prosecution. If we wished to prohibit docked horses being imported (to reduce the incidence of this occurring elsewhere) this could be incorporated into import protocols.

Clauses 27 to 30 prohibit the promotion of animal fighting. They are derived from the UK Animal Welfare Act 2006. There is power to destroy animals that have been involved in fighting, and a power to order reimbursement of the costs by the offender.

Clauses 31 to 33 are derived from the UK Dangerous Wild Animals Act 1976. They use the term ‘unsuitable’ rather than ‘dangerous’ as not all the animals to be imported will be dangerous per se but some might be unsuitable for importing into or keeping in the Falkland Islands because they have specific and specialised husbandry and veterinary needs which may not be able to be met. Therefore it is better to not allow them to be imported and kept here than deal with illness or welfare issues because specialised food or equipment is not available. The clauses are not limited to wild animals, as in the UK Act. The Director is given the power to make a list of unsuitable animals by Order under clause 31.

Clause 32 confers a power to inspect premises, and clause 33 confers a power to seize and dispose of animals without compensation.

Clauses 34 to 36 replace the provisions of the Animals (Amendment) Ordinance which is repealed. These are regulations regarding seizure, re-homing and destruction of stray animals and are not part of the UK Welfare 2006 act but were existing rules in the Falklands and were thought to be relevant enough to be included in this legislation.

Clause 34 relates to the identification of dogs and cats and empowers the Governor to require an identification device to be attached to any specified class or breed of dog or cat. The power is not limited to the purposes of hydatid control as in the Hydatid Control (Dogs) Order. The fees that can be charged are as approved by the Director of Natural Resources. Currently any microchipping is voluntary done by the owner or keeper of animals but this clause will allow an order to be made for compulsory chipping if it is ever felt necessary for welfare or disease control reasons.

Clause 35 empowers an inspector or police officer to seize and destroy stray dogs and cats. The section also allows for a stray to be allocated a new keeper where this is appropriate.

Clause 36 confers on inspectors powers of entry and inspection of premises if they suspect any dog or cat on the premises is in need of treatment or is being caused unnecessary suffering.

Clauses 37 to 52 provide enforcement powers for inspectors and police officers derived from the UK Animal Welfare Act 2006. There are powers of entry, search, seizure and arrest in the Criminal Procedure and Evidence Ordinance 2014, based on the UK Police and Criminal Evidence Act 1984 ('PACE Act'). However, some of those are limited to imprisonable offences, and not all offences under this Bill are imprisonable, which is why the UK Act 2006 includes these powers. These clauses also replace various enforcement powers contained in individual UK Acts that at present apply in the Falkland Islands, as explained above.

Clauses 37 to 39 confer powers of inspection, including powers of entry under a warrant issued by a justice of the peace if there is a suspected offence. The UK Act specifies inspection and entry onto farms separately but farms can be counted as 'premises' in the FI Welfare Bill and various regulations made under the LMPO allow inspection and entry onto farms.

Clauses 40 to 48 confer powers of disqualification and deprivation on a court which convicts a person of an offence under this Bill. The disqualification may be in respect of a licence, or more generally in respect of the right to keep an animal etc. Animals may be seized if kept in breach of a disqualification, and convicted people can be deprived of property used in connection with an offence.

Clauses 49 to 52 are additional provisions about enforcement generally.

Clause 49 sets an overall time limit of 3 years after the offence for bringing a prosecution; but a limit of only 6 months after evidence of an offence comes to light.

Clause 50 confers power to stop and detain vehicles as if they are premises if there would be a right to enter premises under clause 13 or 48.

Clause 51 confers power to detain vessels and aircraft (but not hovercraft) if an inspector or police officer is satisfied that an offence under the Ordinance is being or has been committed on board a vessel in port or a landed aircraft. This provision would allow for application of UK merchant shipping and civil aviation law.

Clause 52 requires a person who has documents relevant to an offence under the Ordinance to deliver them up.

Clauses 53 to 61 are miscellaneous and final provisions common to many Bills.

Clause 53 specifies how documents are to be served, in addition to the provisions in the Interpretation and General Clauses Ordinance.

Clause 54 enables the Governor to make regulations to implement the Ordinance. They would be made after consulting the Executive Council (as required by the Interpretation and General Clauses Ordinance) and would then be laid on the table of the Legislative Assembly but be subject only to a negative resolution.

Clause 55 enables the Director of Natural Resources to issue Codes of Practice as guidelines to owners etc. of animals. There are existing Codes of Practice issued under the Livestock and Meat Products (Welfare of Livestock) Regulations. These will run in parallel with any codes issued under this Bill in relation to other animals.

Clause 56 enables the Governor to amend the Schedule by order. Unlike regulations under clause 54, an order amending the Schedule requires the positive approval of the Legislative Assembly.

Clause 57 repeals the Animals (Amendment) Ordinance.

Clauses 58 and 59 make savings and transitional provisions about things done under the repealed laws or that need to be done under the new law. They are standard provisions in a Bill that replaces existing laws.

Clause 60 provides that items in the Schedule are amended as a consequence of the enacting of the Bill.

Clause 61 makes it clear that the Crown is bound by the provisions of the Ordinance. This avoids any suggestion that the public service is not covered by the legislation in view of section 66 of the Interpretation and General Clauses Ordinance.

The Schedule 1 lists consequential amendments as provided by clause 60. There is only one item. If other consequential changes come to light, they can be added by the Governor using the power in clause 56.

# Communications Bill 2016

(No:            of 2016)

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SCHEDULE - EXCLUSIVE LICENCE FEE



(f) Part 7 makes provision about the grant of an exclusive licence for the provision of telecommunications services;

(g) Part 8 makes general provision about fees;

(h) Part 9 makes provision about consumer standards and protection in relation to services provided in accordance with this Ordinance;

(i) Part 10 makes provision about the public control of electronic communications services;

(j) Part 11 creates offences in connection with provisions of this Ordinance, and makes general provision about offences created by other Parts;

(k) Part 12 makes provision about the use of land in connection with electronic communications services;

(l) Part 13 makes provision about public interest retention and interception of data and surveillance;

(m) Part 14 establishes, and makes provision about the functions of, the Telecommunications Appeals Panel.

#### **4. Interpretation**

In this Ordinance —

“apparatus” includes any equipment, machinery or device (including, in particular, wire and cable and the casing or coating of wire or cable);

“audio-visual media service” means a service for the communication of material to be displayed as a combination of sounds and pictures;

“broadcasting station” means an installation for making broadcasts;

“carriage service” means a service consisting wholly or partly of transmitting signals by means of a network and the expression —

(a) does not include a content service, and

(b) does include the provision of services ancillary to the conveyance of signals and conditional access or other services to enable customers to access a content service;

“class licence” means the licence referred to in section 39;

“content service” means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audio-visual media service;

“domain name” has the meaning given by section 88(3);

“electronic communications objectives” means the objectives set out in section 5;

“electronic communications” means the conveyance of signals by the use of electrical, magnetic or electromagnetic energy;

“electronic communications data” means data relating to electronic communications;

“electronic communications equipment” means equipment designed or intended to be used in connection with electronic communications;

“electronic communications network” means a network of electronic communications services;

“electronic communications services” includes the provision of a carriage service or a content service, including both public and private, mobile and fixed (unless otherwise stated) voice telephony, data and internet services;

“individual licence” has the meaning given by section 35;

“interfere”, in relation to a communication, includes fail to deliver, delay delivery, intercept, divert, monitor, and make personal use of the communication;

“the licence requirement” has the meaning given by section 21(2);

“licensee” includes any subsidiary undertaking included within the scope of a licence in accordance with section 38(1);

“message” means any communication, whether oral, written, printed or displayed or conveyed by any means;

“network” means a system used or designed to be used to send signals of any kind, including anything (including data) required to make the system operate;

“numbering plan” means the plan made by the Regulator under section 87;

“programme” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an audio-visual media service provider and whose form and content is comparable to the form and content of television broadcasting;

“radio” means the transmission or reception over any distance without connecting wires of images and other visual matter and of sounds, signs or signals by electrical means;

“the Regulator” means the Communications Regulator appointed under section 7;

“the regulatory principles” means the principles specified in section 6;

“signal” includes —

(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the communication of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus;

“radio spectrum licence” means a licence issued under the terms of section 56;

“spectrum plan” means the spectrum plan published pursuant to section 55;

“state assets” means any radio spectrum, national telephone numbers and domain names;

“television broadcast” means an audio-visual media service provided by an audio-visual media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“universal service” means those services specified pursuant to section 65; and

“wireless telegraphy” means the emission or receipt of signals over a path of electromagnetic energy of a frequency not exceeding 3000 gigahertz where that path —

(a) serves for the conveyance of messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or

(b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of object; and

“with lawful authority” means in accordance with a provision of this Ordinance or any other enactment, in accordance with a provision of a licence issued under this Ordinance, in connection with or in the course of activities licensed under this Ordinance, in accordance with a warrant, notice or requirement issued under this Ordinance, or in accordance with an order of a court.

## **PART 2 OBJECTIVES AND PRINCIPLES**

### **5. Electronic communications objectives**

The electronic communications objectives for the purposes of this Ordinance are —

(a) to promote the public interest generally in relation to electronic communications;

(b) to facilitate effective communication between the people of the Falkland Islands and the rest of the world;

(c) to ensure effective regulation of the supply and operation of electronic communications services;

- (d) to enhance the efficiency of the Falkland Islands' commercial electronic communications sector;
- (e) to support the growth and development of the Falkland Islands' economy;
- (f) to promote investment and innovation in electronic communications networks and services;
- (g) to promote optimal use of radio spectrum;
- (h) to provide affordable access to high quality networks and carriage services in all regions of the Falkland Islands so far as reasonably practicable;
- (i) to maintain public safety and security;
- (j) to contribute to the protection of personal privacy;
- (k) to avoid public nuisance through electronic communications so far as reasonably practicable;
- (l) to limit adverse impact of networks and carriage services on the environment so far as reasonably practicable;
- (m) to ensure access to all key electronic communications services;
- (n) to encourage infrastructure investment into the Falkland Islands;
- (o) to provide continued growth in international capacity to support increasing usage levels, so far as economically feasible;
- (p) to support the delivery of public sector services (including education and healthcare);
- (q) to strengthen the regulatory environment that supports development of the Falkland Islands' electronic communications sector; and
- (r) to promote innovative services to support the needs of the people of the Falkland Islands.

## **6. Regulatory principles**

The regulatory principles for the purposes of this Ordinance are —

- (a) that public policy in relation to electronic communications should aim to pursue the electronic communications objectives;
- (b) that the needs of the people of the Falkland Islands are the paramount consideration in operating the licensing regimes under this Ordinance;
- (c) that additional regulatory or administrative measures should be introduced only —

- (i) where the Regulator is satisfied that the existing licensing regimes are insufficient for the efficient and effective pursuit of the electronic communications objectives;
- (ii) having regard to the costs and impact of those measures on affected parties (including consumers, licensees and other undertakings);
- (iii) if the Regulator is satisfied that the measures are proportionate, transparent, accountable, fair and non-discriminatory.

### **PART 3**

## **THE COMMUNICATIONS REGULATOR**

#### *Nature and status*

### **7. Appointment**

- (1) The Governor must appoint a person as the Communications Regulator (“the Regulator”) to perform functions conferred by this Ordinance and any other enactment.
- (2) The Regulator may be an individual or a body corporate.

### **8. Independence**

- (1) No public authority may give general or specific directions to the Regulator.
- (2) Subsection (1) is subject to section 54(2).

### **9. Supplemental**

The Governor may by regulations make provision for —

- (a) the appointment of staff of the Regulator;
- (b) remuneration and allowances; and
- (c) the conduct of the Regulator’s proceedings (which may include provision for delegation).

#### *Functions*

### **10. General duties**

- (1) In carrying out its functions the Regulator must —
  - (a) aim to pursue the electronic communications objectives,
  - (b) have regard to the regulatory principles; and
  - (c) have regard to any other principles which appear to the Regulator to represent best practice (having regard to all the circumstances of the Falkland Islands).

(2) Where two or more electronic communications objectives or other principles conflict in relation to a matter or class of matters, the Regulator must aim to strike an appropriate balance.

(3) In introducing or developing a regulatory or administrative measure the Regulator must publish a document —

(a) specifying the electronic communications objectives that are advanced by the measure; and

(b) demonstrating how the regulatory principles have been complied with.

## **11. Specific duties**

The Regulator has the following functions —

(a) to regulate the electronic communications sector by exercising powers under this Ordinance (in particular, to issue licences and exemption determinations);

(b) to manage state assets in accordance with this Ordinance;

(c) to administer the licence fee system under this Ordinance;

(d) if requested by the Governor or the Government, to represent the Falkland Islands in relation to international organisations or obligations connected with electronic communications;

(e) to exercise functions conferred on it by this Ordinance or any other enactment; and

(f) to undertake other functions connected with electronic communications at the request of the Government (but this paragraph is subject to section 8(1)).

## **12. General powers**

(1) The Regulator may do anything it considers necessary or desirable for the purpose of pursuing the electronic communications objectives in accordance with the regulatory principles.

(2) In particular, the Regulator may —

(a) exercise the powers given to it under this Ordinance;

(b) issue or approve codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards;

(c) publish and maintain registers or lists;

(d) institute civil or criminal proceedings;

(e) conduct inquiries, investigations under section 13 and hearings;

- (f) conduct market investigations and reviews;
- (g) require the provision of documents and information;
- (h) publish the results of action taken under paragraph (e) or documents or information provided under paragraph (f); and
- (i) make awards of compensation (in accordance with any relevant law) in respect of loss or damage suffered by consumers, and make provision for the enforcement of awards.

(3) Failure to have regard to or comply with codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards issued or approved by the Regulator does not of itself give rise to civil or criminal liability; but —

(a) a court or tribunal (including an arbitral tribunal) may have regard to any of those instruments issued or approved by the Regulator that appears to the court or tribunal to be relevant to a matter before it; and

(b) licences and other instruments under this Ordinance may require parties to have regard to, or comply with, a specified instrument or class of instrument issued or approved by the Regulator (which may include instruments issued or approved after the grant of the licence).

(4) Failure to comply with a requirement of the Regulator under subsection (2) does not give of itself give rise to civil or criminal liability; but —

(a) a court or tribunal (including an arbitral tribunal) may have regard to a failure that appears relevant to a matter before it; and

(b) licences and other instruments under this Ordinance may require parties to comply with requirements of the Regulator.

(5) The Regulator may delegate a function under this Ordinance to a public body.

(6) Subsection (5) does not apply to a power to issue licences.

#### *Enforcement powers*

### **13. Compliance investigations**

(1) The Regulator may investigate an actual, alleged or suspected contravention of —

(a) a provision made by or by virtue of this Ordinance, or

(b) a licence issued under this Ordinance.

(2) For the purposes of an investigation the Regulator may —

(a) require the provision of information or documents; or

(b) enter premises and inspect, copy and retain documents, in accordance with a warrant issued under section 100.

(3) The Regulator may, with the approval of the Governor, appoint an agent —

(a) to conduct an investigation, and

(b) to exercise the Regulator's powers under this section in respect of that investigation.

(4) The Governor may not approve the appointment of an agent under subsection (3) unless satisfied that —

(a) the agent has appropriate qualifications, experience and competence, and

(b) all necessary safeguards and mechanisms for transparency and accountability are in place.

#### **14. Enforcement orders**

(1) This section applies where the Regulator thinks that a person (whether a licensee or not) has failed to comply with a provision of —

(a) this Ordinance, or

(b) a licence or other instrument issued under this Ordinance.

(2) The Regulator may by order in writing require the person to —

(a) take action specified in the order, or

(b) refrain from taking any action specified in the order.

(3) The Regulator may by order in writing require the person to pay a penalty.

(4) The Governor must make regulations for penalties under this section; and the regulations must, in particular, make provision —

(a) for notice to be given of intent to impose a penalty;

(b) for an opportunity to make representations to be given before the imposition of a penalty;

(c) for the form and content of orders;

(d) setting a maximum penalty (or different maximums for different classes of cases);

(e) for the calculation of the amount of penalty to be paid (which may include provision for the exercise of a discretion by reference to criteria specified in regulations, and may include

provision for calculation by reference to a percentage of a business' turnover or in any other manner specified in the regulations);

(f) requiring notice of orders to be given to persons specified in the order;

(g) for the publication of orders.

(5) An order is enforceable as if it were an order of the Supreme Court.

(6) If an order is made under this section otherwise than as a result of an investigation under section 13 —

(a) it must be made only if the Regulator considers it necessary by reason of urgency;

(b) it must be expressed to last only until an investigation has been concluded; and

(c) as soon as reasonably practicable the Regulator must commence an investigation.

(7) Failure to comply with an order under this section —

(a) is an offence; and

(b) may result in revocation of a licence in accordance with section 45.

## **15. Determinations of licence and other obligations**

(1) The Regulator may make a determination about —

(a) the nature and extent of an obligation imposed on a person by or by virtue of a provision of this Ordinance or of a licence or other instrument under this Ordinance;

(b) the effect of any other provision of or by virtue of this Ordinance or of a licence or other instrument under this Ordinance.

(2) A determination may be made —

(a) on an application by a person who appears to the Regulator to have a sufficient interest in the matter to be determined, or

(b) on the Regulator's own motion.

(3) Before making a determination in respect of an obligation imposed on a person, the Regulator must consult that person and any other person who appears to the Regulator to have a legitimate interest.

(4) Before making any other determination the Regulator must consult such persons as appear to the Regulator to have a legitimate interest.

- (5) The Regulator must issue a determination in writing giving its reasons.
- (6) The Regulator must publish a determination on its website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).
- (7) Where the matter is urgent, the Regulator may issue an interim determination on such terms as it considers appropriate.
- (8) The Governor may make regulations about the procedure to be followed in relation to the making of determinations.
- (9) A determination shall be conclusive for all purposes as to the matters stated in it (subject to appeal under Part 14).

#### *General procedure*

### **16. Consultation**

- (1) Before taking regulatory or administrative action under this Ordinance the Regulator must consult any person directly affected by the action and any other person who appears to the Regulator to have a legitimate interest.
- (2) This section is without prejudice to any specific procedures provided by or under a provision of this Ordinance.
- (3) This section —
  - (a) does not apply in relation to determinations under section 15; and
  - (b) is subject to section 18.

### **17. Publication**

- (1) The Regulator must make arrangements for the publication of regulatory or other action taken under this Ordinance if the Regulator believes that —
  - (a) the action is of public significance, and
  - (b) publication is in accordance with the regulatory principles.
- (2) In particular, the Regulator must —
  - (a) publish regulatory and other action on its website as soon as reasonably practicable;
  - (b) provide arrangements for persons to register through the website to receive notice of new action;
  - (c) maintain its website; and

(d) ensure that copies of documents are made available at its principal office for inspection by the public on request during normal business hours without charge.

(3) The Regulator must also consider whether to publish notice of action taken or to be taken in a newspaper.

(4) This section is subject to section 18.

(5) Action is of public significance for the purposes of this section if it is likely —

(a) to have a significant impact on the public;

(b) to have a significant impact on persons or activities in respect of which the Regulator exercises functions; or

(c) to result in a significant change in the Regulator's activities.

## **18. Confidentiality**

(1) The Regulator must not publish or disclose information acquired in the course of the exercise of the Regulator's functions which it considers —

(a) is commercially confidential, or

(b) is or includes personal data.

(2) Subsection (1) does not apply to publication or disclosure to, or in accordance with an order of, a court.

(3) Information which is provided to the Regulator on the express understanding that it is to be treated as commercially confidential or as being or including personal data, must be treated by the Regulator accordingly for the purposes of subsection (1).

(4) Subsection (1) is subject to the preceding provisions of this Part; but the Regulator may not make a disclosure to which subsection (1) applies in accordance with a provision of this Part unless the Regulator is satisfied that the provision cannot be properly complied with unless the disclosure is made.

## **19. Alternative Dispute Resolution**

(1) The Regulator may —

(a) establish one or more alternative dispute resolution schemes ("ADR schemes") for resolving disputes between licensees, and between licensees and consumers, or

(b) approve one or more ADR schemes proposed by licensees.

(2) Before establishing an ADR scheme the Regulator must consult licensees.

- (3) An ADR scheme may involve —
- (a) mediation (which may be conducted by the Regulator, a person appointed by the Regulator or a person appointed by the parties to a dispute or by a third party);
  - (b) arbitration of specified matters by an expert appointed by the Regulator, the parties or a third party;
  - (c) any other method of alternative dispute resolution which the Regulator is satisfied conforms to best practice in dispute resolution.
- (4) The Regulator may approve an ADR scheme proposed by licensees only if satisfied that it is —
- (a) fair (including non-discriminatory) and transparent;
  - (b) to be administered by persons who are independent of any licensee to which it will apply;
  - (c) to be administered in accordance with the electronic communications objectives; and
  - (d) designed to ensure that individuals exercising functions under the scheme have appropriate qualifications and experience.
- (5) Where the Regulator approves an ADR scheme —
- (a) the Regulator must require persons responsible for the management of the scheme to report to the Regulator at specified intervals (of not more than a year) about its operation; and
  - (b) if the Regulator is not satisfied that the scheme satisfies the conditions in subsection (4) it must withdraw its approval; and a withdrawal may include incidental and transitional provision.
- (6) An ADR scheme established or approved under this section —
- (a) may provide for decisions (including interim and ancillary decisions) to be binding on the parties; and
  - (b) must specify whether participation in the scheme prejudices rights under any other provision of this Ordinance or any other enactment or law.

## **20. Procedural regulations**

- (1) The Governor may make regulations on the procedure to be followed by the Regulator in connection with the performance of its functions.
- (2) The regulations may, in particular, make provision for —
- (a) the preparation and promulgation of instruments under section 12(2)(b);

- (b) the preparation of lists under section 12(2)(c);
  - (c) the conduct of inquiries, investigations, hearings and reviews under section 12(2)(e) and (f);
  - (d) the calculation and payment of compensation under section 12(2)(i).
- (3) Before making regulations under this section the Governor must consult —
- (a) any licensee affected, and
  - (b) such other persons as the Governor thinks appropriate.

## **PART 4 ELECTRONIC COMMUNICATIONS LICENCES**

### *Requirement for licence*

#### **21. Activities requiring licence**

- (1) The following activities require a licence under this Part —
- (a) owning an electronic communications network;
  - (b) operating an electronic communications network;
  - (c) providing electronic communications services;
  - (d) importing electronic communications apparatus.
- (2) In this Ordinance “the licence requirement” means the requirement under subsection (1).

### *Exemptions*

#### **22. Exclusive licence**

The licence requirement does not apply to anything —

- (a) done in reliance on and in accordance with an exclusive telecommunications licence granted under Part 7, or
- (b) exempted from a requirement for a licence under that Part.

#### **23. Broadcasting**

The licence requirement does not apply to anything —

- (a) done in reliance on and in accordance with a broadcasting station licence granted under Part 5, or

(b) exempted from a requirement for a licence under that Part.

#### **24. Crown and Government**

(1) The licence requirement does not apply to anything done by or on behalf of —

(a) the Government, or

(b) any other public body.

(2) The licence requirement does not apply to anything done by or on behalf of —

(a) Her Majesty's Government;

(b) Her Majesty's armed forces for operational purposes;

(c) the providers of the British Forces Broadcasting Services;

(d) the British Antarctic Survey.

(3) An exemption under this section does not apply to the provision of electronic communications services to the public at a time when services of that kind are provided by a licensee.

#### **25. Private facilities**

(1) Private electronic communications facilities are excluded from the licence requirement (but not from a radio spectrum requirement by virtue of section 56(1)(a)).

(2) For the purposes of this section “private electronic communications facilities” means electronic communications services which —

(a) are provided by a person by means of local land-based network facilities or local transport-based network facilities;

(b) are accessible only on that person's property;

(c) are operated independently (in every sense) of electronic communications networks operated by any other person; and

(d) are not operated in the course of an electronic communications service business or otherwise for commercial gain (except as an indirect and incidental part of a person's business that does not involve the provision of electronic communications services).

(3) In subsection (2)(a) —

(a) “local land-based network facilities” means network facilities which are situated on, and operated in, a single area of land in the Falkland Islands occupied by the person who is providing the electronic communications services; and

(b) “local transport-based network facilities” means network facilities which are situated on and operated in one or more vehicles, vessels, aircraft or hovercraft.

## **26. Transmission stations**

Networks are exempt from the licence requirement if they are used to receive sounds or visual images transmitted by wireless telegraphy —

(a) from a transmitting station for general reception direct from that station, or

(b) through the medium of a relay service licensed under this Ordinance.

## **27. Foreign transport**

(1) Networks and carriage services are exempt from the licence requirement if they are operated on a foreign vessel or aircraft —

(a) passing through Falkland Islands territorial waters or skies, or

(b) berthing or landing in a Falkland Islands port or airport.

(2) Subsection (1) does not permit the making of a broadcast while in Falkland Islands territorial waters or skies or while at a Falkland Islands port or airport.

(3) In subsection (1) “foreign” means not registered in the Falkland Islands.

## **28. Emergency services**

(1) The licence requirement does not apply to network facilities which are designed and used only for the provision of any of the following services in accordance with an enactment —

(a) police services;

(b) ambulance services;

(c) fire and rescue services;

(d) other emergency services; and

(e) helplines designated by the Governor by Order.

(2) Before making an Order under subsection (1)(e) the Governor must consult —

(a) any licensee affected, and

(b) such other persons as the Governor thinks appropriate.

## **29. Radio spectrum use**

- (1) The licence requirement does not apply to anything —
  - (a) done in reliance on and in accordance with Part 6, or
  - (b) exempted from a requirement for a licence under that Part.
- (2) The use of radio spectrum is also exempt from the licence requirement if the Regulator notifies the user in writing that the Regulator is satisfied that —
  - (a) the equipment used does not, and is not likely to, cause significant interference to networks or carriage services operated or provided by a licensee;
  - (b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public from permitting usage on an unlicensed basis; and
  - (c) the exemption is compatible with any relevant international recommendations and standards.
- (3) A notice —
  - (a) must be published by the Regulator;
  - (b) must specify the period for which it applies;
  - (c) may be varied or revoked by the Regulator.

## **30. Maritime and aviation satellite systems**

- (1) The licence requirement does not apply to anything done in the territorial sea in accordance with the provisions of any international convention or agreement relating to maritime satellite communications.
- (2) The licence requirement does not apply to anything done on an aircraft in accordance with an enactment of the State in which it is registered relating to aviation satellite communications.

## **31. Broadcasting licensees**

The licence requirement does not apply to anything done —

- (a) by a person licensed to provide services under the Wireless Telegraphy Ordinance 1994 or the Broadcasting Ordinance 2004, and
- (b) in accordance with that licence.

## **32. Power to confer additional exemptions**

- (1) The Governor may by regulations confer exemptions from the licence requirement.

- (2) Regulations may confer exemption —
- (a) on a specified person or class of persons;
  - (b) in relation to specified activities or classes of activity;
  - (c) in relation to specified equipment or classes of equipment.
- (3) Before conferring an exemption in accordance with this section the Governor must give the Regulator an opportunity to make representations.
- (4) Before making representations the Regulator must consult as the Regulator thinks appropriate.

#### *Grant of licences*

### **33. Power to grant licences**

- (1) The Regulator may grant licences permitting persons to —
- (a) own an electronic communications network;
  - (b) operate an electronic communications network;
  - (c) provide electronic communications services;
  - (d) import electronic communications apparatus.
- (2) A licence may —
- (a) apply in relation to all or any specified part of Falkland Islands territory;
  - (b) be exclusive or non-exclusive; and
  - (c) be granted on terms and conditions.
- (3) The Regulator may vary the conditions attached to a licence.
- (4) In attaching or varying conditions the Regulator must have regard to the electronic communications objectives.
- (5) A licence may be granted under this section only in so far as it is compatible with an exclusive licence granted under Part 7.

### **34. Individual and class licences**

A licence issued under section 33 must state that it is either —

- (a) an individual licence, or

- (b) a class licence.

### *Individual licences*

#### **35. Nature of individual licence**

- (1) An individual licence is issued to a specified licensee.
- (2) An individual licence comes into force in accordance with its terms.

#### **36. Conditions**

- (1) The Regulator may attach conditions to an individual licence.
- (2) The Regulator may add to, remove or vary conditions attached to an individual licence.
- (3) When attaching, adding, removing or varying a condition the Regulator must—
  - (a) have regard to the electronic communications objectives,
  - (b) have regard to the regulatory principles, and
  - (c) in particular, ensure that conditions do not unfairly discriminate between licensees in respect of the same or similar networks or services.
- (4) Before attaching, adding, removing or varying a condition the Regulator must —
  - (a) consult the licensee, and
  - (b) allow a period of at least 28 days for the licensee to respond to the consultation.

#### **37. Licensee's installations**

- (1) Each individual licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each individual licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

#### **38. Subsidiary undertakings**

- (1) The licensee under an individual licence is —

- (a) the person who applies for the licence (“the principal licensee”), and
  - (b) any subsidiary undertaking of the applicant listed in the application.
- (2) The principal licensee may apply in writing to the Regulator —
- (a) to add a subsidiary undertaking to the licence, or
  - (b) to remove a subsidiary undertaking from the licence.
- (3) The Regulator must as soon as is reasonably practicable —
- (a) determine an application under subsection (2);
  - (b) notify the principal licensee of the Regulator’s determination; and
  - (c) take any action necessary as a result.
- (4) The Regulator may remove a subsidiary undertaking from an individual licence without an application under subsection (2) if the subsidiary undertaking applies for an individual licence.

*Class licences*

**39. Nature of class licence**

- (1) A class licence is issued by means of a determination of the Regulator.
- (2) The determination must specify —
- (a) the terms and conditions of the licence, and
  - (b) any qualification criteria required to be satisfied by a person relying on the licence.
- (3) A class licence may be relied upon by any person who —
- (a) satisfies the qualification criteria (if any), and
  - (b) complies with the specified terms and conditions.
- (4) A class licence comes into force with respect to a person at whichever is the later of —
- (a) the time when the person registers in accordance with section 40 (if registration is required),
  - (b) the time when the person satisfies any terms or conditions specified as requiring to be satisfied before reliance on the licence, and

(c) any commencement time specified in the licence.

#### **40. Registration**

(1) When issuing a class licence the Regulator must specify whether —

(a) it requires persons to register for it (a “registration licence”), or

(b) it does not require persons to register for it (a “non-registration licence”).

(2) A person who satisfies the specified qualification criteria for a non-registration licence may rely on the licence to provide the services specified in it, in accordance with its specified terms and conditions.

(3) The Regulator must publish —

(a) a standard registration form for registration licences, and

(b) guidance on registration and deregistration for registration licences.

(4) A person (“the registration applicant”) who satisfies the specified qualification criteria for a registration licence may send to the Regulator —

(a) a completed registration form, and

(b) any prescribed registration fee.

(5) A registration applicant becomes a registered person in respect of the registration licence at the end of the period of 45 days beginning with the date on which the Regulator receives the registration form (subject to subsection (6)).

(6) But a registration applicant does not become a registered person if during the period specified in subsection (5) the Regulator notifies the registration applicant in writing that —

(a) the person does not satisfy relevant qualification criteria,

(b) the registration form is incomplete, incorrect or unsigned, or

(c) the prescribed fee has not been paid.

(7) The Regulator may not restrict the number of persons that may register for a class licence.

(8) A registered person remains registered for a registration licence unless and until the Regulator notifies the person in writing that —

(a) the person has ceased to satisfy the specified qualification criteria, or

- (b) any prescribed requirements for annual or other fees have not been complied with.

*Implied condition*

**41. Licensee's installations**

- (1) A class licence is subject to an implied provision requiring each person relying on it ("the licensee") to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) A class licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

*Duration*

**42. Duration of licence**

An individual or class licence may be expressed —

- (a) to continue in force unless and until the Regulator gives at least 2 years' written notice of its termination;
- (b) to continue in force for a specified period of not more than 10 years; or
- (c) to continue in force for a specified period of not more than 20 years and to continue after that unless and until the Regulator gives at last 2 years' written notice of its termination (and the notice cannot be given during the initial fixed term).

*Procedure*

**43. Licensing procedure**

The Regulator may by regulations —

- (a) prescribe procedures to be followed in relation to applications for individual licences;
- (b) prescribe information to be provided in connection with applications for individual licences;
- (c) prescribe procedures to be followed in relation to registration for class licences;
- (d) prescribe information to be provided in connection with registration for class licences;

- (e) specify factors to be considered in determining whether a person satisfies specified qualification criteria;
- (f) in particular, specify factors to be considered in determining whether a person is fit and proper where that is a specified qualification criterion; and
- (g) prescribe periods within which the Regulator must aim to determine applications in connection with individual or class licences.

*Remedies for non-compliance*

**44. Administrative penalty**

- (1) This section applies where a licensee fails to comply with the terms and conditions of the licence.
- (2) The Regulator may require the licensee to pay a penalty.
- (3) In the case of an individual the amount of the penalty may not exceed an amount equivalent to level 10 on the standard scale.
- (4) In any other case the amount of the penalty may not exceed 10% of the licensee's annual turnover and annual turnover is calculated as the licensee's annual turnover —
  - (a) for the year preceding that in which the penalty is imposed, and
  - (b) in respect of the licensee's business carried on in reliance on the licence.
- (5) The Regulator must publish criteria to be applied in determining the amount of a penalty.
- (6) Before imposing a requirement under this section the Regulator must —
  - (a) give the licensee written notice that the Regulator is considering imposing a requirement (including reasons), and
  - (b) give the licensee an opportunity to make representations.
- (7) Before imposing a requirement under this section the Regulator must give the licensee an opportunity to avoid the imposition of a requirement by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (8)).
- (8) The Regulator may impose a requirement without complying with subsection (7) if —
  - (a) the Regulator gave notice to the licensee of intention to impose a requirement under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and

(b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid the imposition of a requirement, having regard to the previous failure or failures.

(9) A requirement under this section must —

(a) be imposed in writing;

(b) specify the failure of compliance in respect of which it is imposed;

(c) give the Regulator's reasons for imposing the requirement;

(d) give details of the application of the criteria for determination of the level of penalty;

(e) be published on the Regulator's website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).

(10) A penalty imposed under this section —

(a) is enforceable as a debt due to the Regulator, and

(b) carries interest at such rate as the Governor may specify by notice in the Gazette.

#### **45. Variation or revocation of licence**

(1) This section applies where a licensee fails to comply with the terms and conditions of the licence.

(2) The Regulator may —

(a) vary the terms or conditions of the licence (which may include adding or removing a term or condition);

(b) suspend the licence for a specified period; or

(c) revoke the licence.

(3) Before taking action under this section the Regulator must —

(a) give the licensee written notice that the Regulator is considering taking action, and

(b) give the licensee an opportunity to make representations (including a period of at least 28 days for the making of written representations).

(4) Before taking action under this section the Regulator must give the licensee an opportunity to avoid action under this section by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (5)).

(5) The Regulator may take action under this section without complying with subsection (4) if —

(a) the Regulator gave notice to the licensee of intention to take action under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and

(b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid action under this section, having regard to the previous failure or failures.

(6) Action under this section must —

(a) be taken by giving notice in writing to the licensee (at the address specified in the licence, if any);

(b) specify the failure of compliance in respect of which it is imposed;

(c) specify the date on which the action takes effect (which the regulator shall set having regard to all the circumstances, including the seriousness and urgency of the results of the failure to comply with the terms and conditions of the licence);

(d) give the Regulator's reasons for imposing the requirement; and

(e) be published on the Regulator's website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).

(7) The application of this section to an exclusive licence under Part 7 is subject to the provisions of section 74.

## **PART 5 BROADCASTING STATION LICENCES**

### *Licences*

#### **46. Requirement for licence**

It is unlawful to operate a broadcasting station except in accordance with a licence granted under—

(a) this Part;

(b) the Wireless Telegraphy Ordinance 1994; or

(c) the Broadcasting Ordinance 2004.

#### **47. Grant of licence**

(1) The Governor may grant a broadcasting station licence to a person.

- (2) A licence may be granted on conditions.
- (3) The provisions of Part 4 apply to broadcasting station licences as they apply to licences under that Part —
  - (a) subject to any provision of this Part, and
  - (b) with any necessary modifications.

#### *Exemptions*

#### **48. Crown and Government**

Section 24 applies in relation to section 46 as in relation to section 21.

#### **49. Amateurs**

- (1) Section 46 does not apply to anything done by an amateur.
- (2) In this section “amateur” means a person who has no commercial or financial interest or motive.

#### *Implied condition*

#### **50. Licensee’s installations**

- (1) Each broadcasting station licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each broadcasting station licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

#### *Enforcement*

#### **51. Offence**

- (1) It is an offence to carry on an activity which requires a licence in accordance with section 44 otherwise than in accordance with a licence.
- (2) A person who is guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 8 on the standard scale.

## **52. Forfeiture**

- (1) Where a person is convicted of an offence under section 51 the court may order the forfeiture of any equipment which appears to the court likely to have been used in connection with the commission of the offence.
- (2) A forfeiture order may include provision about the treatment and disposal of the equipment forfeited.

## **53. Penalties for non-compliance with licence**

Sections 44 and 45 apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

# **PART 6 RADIO SPECTRUM MANAGEMENT**

## **54. Management of the radio spectrum**

- (1) The Regulator must —
  - (a) have general responsibility for the management of the radio spectrum in the Falkland Islands, and
  - (b) in particular, be responsible for allocation of frequencies in the radio spectrum in the Falkland Islands by way of licence under this Part.
- (2) The Regulator must carry out functions under this section in accordance with any general or specific directions given to it by the Governor.

## **55. Spectrum plan**

- (1) The Regulator must publish a plan for the use of the radio spectrum within the Falkland Islands (“the spectrum plan”).
- (2) The first spectrum plan must be published during the period of 2 years beginning with the date of the commencement of this section.
- (3) In preparing and maintaining the spectrum plan the Regulator must aim —
  - (a) to ensure consistency with any applicable international obligations or standards (including those of the International Telecommunications Union), and
  - (b) to take into account any relevant international recommendations.
- (4) The spectrum plan must —
  - (a) specify frequency bands that are premium spectrum bands; and
  - (b) specify the consequences, for licensees and others, of specification as a premium band.

- (5) The Regulator must revise and re-publish the spectrum plan —
- (a) before the end of the period of 3 years beginning with the date of publication of the initial plan; and
  - (b) before the end of the period of 3 years beginning with the date of each re-publication.

## **56. Radio spectrum licence**

- (1) The Regulator may —
- (a) impose a requirement for a licence for the use of frequencies on the spectrum;
  - (b) assign a specified frequency to a person by granting a licence to that person to use that frequency.
- (2) A licence may be granted on conditions.
- (3) Conditions may relate, in particular, to authorisation of and standards or specifications for radio equipment.
- (4) A licence must require a licensee to comply with directions given by the Regulator in relation to use of the frequency.
- (5) A direction under subsection (4) may, in particular, be designed to avoid or reduce interference.
- (6) The Regulator must have regard to the spectrum plan before determining an application for a licence under this section.
- (7) The Governor may by regulations provide for the procedures to be followed in connection with licences and applications for licences.

## **57. Licensee's installations**

- (1) Each radio spectrum licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each radio spectrum licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

## **58. Exemptions**

The Governor may by regulations provide for exemptions from the requirement for a licence under this Part.

## **59. Vacation of radio spectrum**

(1) If the Regulator is satisfied that a radio spectrum that has been assigned by licence to a person under section 56 should be un-assigned, the Regulator may —

- (a) declare the spectrum vacant;
- (b) pay such compensation (if any) as it thinks should be paid to the previous licensee, or any other person who is affected by the declaration;
- (c) make any other arrangements it thinks necessary or desirable.

(2) In taking action under subsection (1), or determining whether to take action, the Regulator must have regard to the electronic communications objectives.

(3) A declaration under subsection (1)(a) must specify that the Regulator believes the radio spectrum should no longer be assigned to the previous licensee either —

- (a) because the previous licensee has made insufficient use of the radio spectrum, or
- (b) for another specified reason.

## **60. Spectrum trading**

(1) The Governor may make regulations for the transfer of radio spectrum rights by a licensee to another person.

(2) The regulations may make provision for permanent or temporary transfers (or both).

(3) Subject to regulations under this section, a licensee may not assign the use of the licensed radio spectrum to another person (and any purported assignment is of no effect).

## **61. Saving for existing licences**

(1) In this section “pre-commencement licence” means a licence for the operation of radio spectrum issued before the commencement of this section by —

- (a) the Falkland Islands Maritime Authority, or
- (b) the Civil Aviation Department.

(2) A pre-commencement licence continues to have effect until it —

- (a) is cancelled by the authority that issued it, or
- (b) lapses or expires in accordance with its terms.

(3) Nothing in this Ordinance renders unlawful activity that was carried on in reliance on and in accordance with a pre-commencement licence.

*Enforcement*

**62. Penalties for non-compliance with licence**

Sections 44 and 45 (penalty, variation and revocation) apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

**PART 7  
EXCLUSIVE TELECOMMUNICATIONS LICENCE**

*Nature of licence*

**63. Grant of exclusive licence**

(1) The Governor may grant an exclusive licence to a telecommunications operator (“the exclusive licensee”) to —

- (a) operate an electronic communications network in the Falkland Islands,
- (b) provide electronic communications services in the Falkland Islands, and
- (c) do anything else for which a licence is required under section 21(1).

(2) The Governor may enter into an agreement in writing with the exclusive licensee providing obligations to be observed by it in connection with the provision of telecommunications services and the provisions of an agreement under this subsection (whenever concluded) shall be treated as terms of the exclusive licence.

(3) No more than one licence under this section may have effect at any time and a reference in this Part to the exclusive licence is to a licence granted under this section.

(4) Section 74 makes provision for revocation of the exclusive license, and other remedies, for non-compliance.

(5) Before taking action under this section the Governor must have regard to the electronic communications objectives and the regulatory principles.

(6) A licence under this section —

- (a) may provide for specified activities to be capable of being licensed under other provisions of this Ordinance, subject to any conditions or modifications specified in the licence;
- (b) may be combined with one or more licences under this Ordinance (and provisions of this Ordinance referring to the exclusive licence do not refer to the non-exclusive components of the licence).

#### **64. Terms and conditions**

- (1) The exclusive licence must include terms and conditions —
  - (a) requiring the submission of accounts in accordance with subsection (2);
  - (b) for the duration of the licence;
  - (c) providing for cost recovery by the exclusive licensee;
  - (d) imposing, or providing for the imposition of, price controls;
  - (e) imposing universal service obligations in accordance with section 65;
  - (f) for the transfer of data on termination of the licence.
- (2) The accounts specified in subsection (1)(a) are the following in respect of the licensed activities —
  - (a) a profit and loss statement;
  - (b) a revenue breakdown for principal lines of business (including, for domestic services, line access, fixed international, mobile, broadband, enterprise data and other matters);
  - (c) a balance sheet showing the book value of capital assets used in the delivery of the licensed activities and the level of depreciation applied.
- (3) The exclusive licence may include terms and conditions —
  - (a) requiring or allowing the licensee to share infrastructure, facilities and networks for the provision of electronic communications services on specified terms or conditions;
  - (b) specifying criteria for technical compatibility of and access to conditional access networks used in the provision of content;
  - (c) dealing with any other matters that the Governor thinks necessary or desirable.
- (4) Before setting the terms and conditions of the exclusive licence the Governor must —
  - (a) review the market in which the licensee operates or proposes to operate;
  - (b) consider the electronic communications objectives; and
  - (c) consider the regulatory principles.
- (5) In particular, the Governor —

(a) must ensure that any cost recovery mechanism or pricing methodology imposed by way of terms or conditions is designed to promote efficiency and to maximise consumer benefits;

(b) must take account of the investment made by the licensee and aim to allow the licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved and to the desirability of sharing the benefits of efficiency;

(c) must ensure that, where implementation of a cost accounting system is required by terms or conditions in order to support price controls, a determination of the cost accounting system is published, showing at least the main categories under which costs are grouped and, where appropriate having regard to the scale of services provided, the rules used for the allocation of costs; and

(d) may take account of prices available in comparable markets where the Governor is satisfied, having consulted the prospective exclusive licensee, that comparison is relevant.

(6) The exclusive licence must include provision requiring the exclusive licensee —

(a) not to discriminate against any person or classes of person in the provision of or in connection with electronic communications services offered by the licensee;

(b) to provide technical specifications or other technical information on request by a person who reasonably requires the information for the purpose of the lawful provision of electronic communications and who cannot reasonably easily obtain the information from other sources; and

(c) to ensure that the technical specifications of any network operated by the licensee is not incompatible with networks operated by other persons licensed under, or operating in accordance with the provisions of, this Ordinance.

(7) The provisions of the exclusive licence relating to price control (whether by price cap or otherwise) —

(a) may include provision allowing the Regulator to direct the exclusive licensee to employ specific cost accounting methods, or to apply the Regulator's preferred cost accounting methods;

(b) must include provision allowing the Regulator to require the exclusive licensee to provide justification for its prices in accordance with criteria specified by the Regulator (but where the price control provisions take the form of a price cap, the justification for prices required in accordance with this paragraph is limited to demonstrating compliance with the cap);

(c) may include provision allowing the Regulator to direct a price adjustment for the purpose of compliance with the price control provisions of the licence, at such times and intervals as may be specified in the exclusive licence;

(d) may operate by imposing a ceiling on the average change in prices for regulated services over a specified period of time;

(e) may include provision for a review of the operation of any price cap from time to time, with the results of the review determining the continuing operation of the price control by reference to specified criteria; and

(f) may include provision limiting a weighted average of the changes in retail prices for services to which any price cap applies by reference to a specified controlling percentage.

(8) In determining the provisions of the exclusive licence about price control the Governor must aim (without prejudice to the generality of subsection (4)) —

(a) to protect consumers from monopoly excess;

(b) to encourage the exclusive licensee to invest in services that benefit consumers;

(c) to allow the exclusive licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved; and

(d) to share the benefits of innovation and efficiency.

#### *Performance*

### **65. Universal service obligation**

(1) The exclusive licence must include provision requiring the exclusive licensee to comply with any obligations under regulations made by the Governor under this section (“Universal Service Regulations”).

(2) Universal Service Regulations must —

(a) specify services which are to be provided;

(b) specify the classes of user by whom the services must be accessible (and classes may be specified by reference to geographical area, possession of equipment, or otherwise).

(3) The Regulator must —

(a) publish on its website a description of services to be provided under Universal Service Regulations;

(b) monitor the provision of services in accordance with the Universal Service Regulations; and

(c) publish information on its website about the results of monitoring under paragraph (b).

(4) In making and amending Universal Service Regulations the Governor must have regard to —

- (a) the electronic communications objectives;
- (b) the regulatory principles;
- (c) any representations made by a person who is, or may become, an exclusive licensee.

#### **66. Obligations to subscribers**

(1) The exclusive licence must include provision setting out the obligations of the licensee to persons who use or wish to use the services provided in accordance with the licence.

(2) In particular, the licence must —

- (a) provide for applications for the provision of a service under the licence;
- (b) permit the licensee to require the provision of information and undertakings in connection with the provision of a service under the licence;
- (c) prohibit the licensee from refusing to provide a service except in specified circumstances or on specified grounds;
- (d) provide for the payment of specified costs by persons applying for the provision of a service;
- (e) impose obligations on the licensee in respect of service provision;
- (f) impose obligations on the licensee in respect of the maintenance of equipment;
- (g) provide for liability of the licensee to persons in respect of loss or damage incurred in connection with the provision of services under the licence or otherwise (which may include provision dealing with failures in service, and provision limiting liability or permitting the licensee to limit its liability);
- (h) require the licensee to offer equipment for sale, hire or use;
- (i) require the licensee to permit service-users to use specified classes of equipment provided by the service-users in specified circumstances or subject to specified conditions;
- (j) allow the licensee to require service-users to provide power and other installations and facilities;
- (k) allow the licensee to impose obligations on service users in respect of the protection or use of equipment or otherwise;

- (l) allow the licensee to discontinue, or impose conditions on, the provision of services in specified circumstances;
- (m) provide for notice periods for discontinuance of service at the option of the service-user;
- (n) provide for assignment or transfer of service contracts;
- (o) allow the licensee to require service-users to accept liability for use made irrespective of the identity of the user, or in other specified circumstances;
- (p) allow the licensee to require or permit service-users to pay deposits, to pay charges in instalments, to make payments in advance or on account, and to accept the installation of metering or charging apparatus;
- (q) provide for access to service-users' premises;
- (r) provide for user directories; and
- (s) exclude liability in cases of force majeure (as defined by the licence).

#### **67. Key performance indicators**

(1) The exclusive licence must require the exclusive licensee to monitor its performance in the provision of services in accordance with the licence against —

- (a) any key performance indicators specified in the licence, and
- (b) any key performance indicators specified by the Regulator.

(2) The exclusive licence must include provision requiring the exclusive licensee to comply with any request by the Regulator to —

- (a) publish its performance against any of the key performance indicators referred to in subsection (1) in the manner required by the Regulator;
- (b) provide details of its performance against those key performance indicators in the manner required by the Regulator.

#### **68. Complaint handling and dispute resolution**

(1) The exclusive licence must include provision requiring the licensee to —

- (a) establish and maintain a Code of Practice about complaint handling and dispute resolution;
- (b) obtain the Regulator's approval of the form and content of the Code (and if necessary vary the Code until the Regulator approves); and

(c) include in all contracts for the provision of services in accordance with the licence a provision requiring customers to follow any applicable procedures set out in the Code before taking legal proceedings.

(2) A court must enforce subsection (1)(c) by staying or dismissing proceedings, except if and in so far as the court thinks that the proceedings should not be stayed or dismissed having regard to special circumstances of the case.

#### **69. Interception and data retention capability**

(1) The exclusive licensee must maintain capability to retain subscriber details and call and data records (including records for mobile services and fixed line services, broadband user authentication records and mobile short message content).

(2) The Governor may by Order amend subsection (1) to require the exclusive licensee to maintain specified capability to intercept, retain or otherwise interfere with electronic communications data.

(3) Before making an Order under subsection (2) the Governor must consult the exclusive licensee.

(4) Anything done in reliance on capability maintained in accordance with subsection (1) is done with lawful authority for the purposes of this Ordinance.

(5) A requirement imposed under this Ordinance (by warrant, notice or otherwise) to do anything in reliance on the capability mentioned in subsection (1) is subject to agreement between the exclusive licensee and the Governor as to —

(a) costs, and

(b) timing.

(6) Any question arising in relation to the effect of subsections (1), (4) or (5) may be referred by the Governor or the exclusive licensee to the Magistrates' Court, whose decision shall be final; and the Regulator has no jurisdiction to determine a question to which this subsection applies.

(7) The exclusive licence must include provision requiring the licensee to take all reasonable steps to ensure that its staff are aware of the rules of secrecy relating to telecommunications set out in the International Convention of Nairobi 1982 and any later Convention amending or replacing the same to which the United Kingdom or the Falkland Islands is a party (including any General and Administrative Regulations from time to time in force under the Convention that extend to the Falkland Islands).

(8) Nothing done under Part 13 may (explicitly or impliedly) require the exclusive licensee to maintain a capability not required by this section.

**70. Regulator's requests for information**

(1) The exclusive licence must include provision requiring the exclusive licensee to comply with any request of the Regulator for the provision of information or documents reasonably required by the Regulator in connection with the performance of its functions, subject to any exemptions or qualifications specified in the licence.

(2) A request under this section must specify —

- (a) the information or documents required;
- (b) that the request is made in accordance with this section;
- (c) the purpose for which the information or documents are required;
- (d) the time by which the information or documents are to be provided;
- (e) the consequences of failure to comply with the request.

(3) If the exclusive licensee considers that the burden of complying with a request in accordance with this section would be disproportionate to the public benefit of compliance —

- (a) the licensee may, within 20 working days from the date of receipt of the request, send a notice to the Regulator explaining the reasons for, and extent of, the licensee's wish not to comply with the request;
- (b) the Regulator must respond to the notice within 20 working days from the date of receipt of the licensee's request;
- (c) the request is suspended until the Regulator responds;
- (d) the Regulator must modify the request if and to the extent that the Regulator accepts the licensee's representations, in which case the Regulator must issue a new request under this section (and subsections (1) and (2) apply).

**71. Failure to provide information**

(1) This section applies if an exclusive licensee fails without reasonable excuse to comply with the condition required by section 70.

(2) The Regulator may —

- (a) require the licensee to pay a penalty not exceeding an amount equivalent to level 10 on the standard scale;
- (b) revoke the exclusive licence in accordance with section 74; or

- (c) take action under both paragraph (a) and paragraph (b).
- (3) Before taking action under subsection (2) the Regulator must —
  - (a) serve a warning notice on the licensee; and
  - (b) give the licensee a reasonable opportunity to make representations.
- (4) A penalty under this section may be enforced as a debt due to the Regulator.
- (5) The licensee may appeal to the Supreme Court against a requirement imposed by the Regulator to pay a penalty under this section and the Supreme Court may make any order it thinks appropriate (including increasing the amount of a penalty and making ancillary provision as to costs or otherwise).

## **72. Licensee's installations**

- (1) The exclusive licence must include provision requiring the exclusive licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the provision of services in accordance with the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the provision of services in accordance with the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) The exclusive licence must include provision requiring the exclusive licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

### *Change of control of licensee*

## **73. Approval for change of control**

- (1) The exclusive licence must include provision requiring the exclusive licensee to comply with the provisions of this section.
- (2) A change of control may not be implemented without prior written approval of the Governor.
- (3) The Governor may by regulations make provision about procedure in connection with applications for approval for change of control; and the regulations may include, in particular —
  - (a) information to be provided;
  - (b) timing;

- (c) the conduct of an investigation into a proposed change of control.
- (4) The Governor must be notified in writing before the end of the period of 7 days beginning with —
  - (a) the licensee’s entering into an agreement that would result in a change of control, or
  - (b) the announcement of a public bid for control of the licensee.
- (5) Any request made by the Governor for information about an event specified in subsection (3) or any other event likely to result in a change of control must be complied with —
  - (a) in the manner specified by the Governor, and
  - (b) in accordance with any requirements as to timing specified by the Governor.
- (6) For the purposes of this section a reference to change in control includes a reference to any person —
  - (a) acquiring control over the affairs of the licensee;
  - (b) acquiring control of more than 30% of the voting shares in the licensee; or
  - (c) taking other action of a kind specified by the Governor by regulations.

*Enforcement*

**74. Penalties for non-compliance with licence**

- (1) Sections 44 and 45 apply in relation to an exclusive licence under this Part as they apply in relation to a licence under Part 4 subject to subsection (2).
- (2) An exclusive licence under this Part may not be revoked unless the Regulator has obtained the leave of the Supreme Court to revoke the licence.
- (3) Before applying to the Supreme Court for permission the Regulator must give at least 6 weeks’ notice of the intention to apply for permission.
- (4) The decision of the Supreme Court on an application for permission is final.

**PART 8  
FEES**

*General fees*

**75. Fees Regulations**

- (1) The Governor may by regulations (“Fees Regulations”) —

(a) require the payment of fees in respect of the application for, or the issue, renewal or maintenance of, or otherwise in connection with, a licence under this Ordinance;

(b) specify the amount of a fee;

(c) make provision about timing, manner of payment and other ancillary matters in connection with fees.

(2) Fees Regulations must, in particular, make provision —

(a) for fees to be charged for or in connection with licences under Parts 4 to 6;

(b) for fees to be charged in respect of the performance of the Governor's functions in relation to change of control of an exclusive licensee under Part 7.

(3) Fees Regulations may —

(a) make provision for exemptions, waivers and reductions;

(b) confer a discretion on the Governor, the Regulator or another specified person;

(c) make provision that applies generally or only for specified purposes;

(d) make different provision for different purposes.

(4) This section does not apply to anything in respect of which a fee is chargeable under a later provision of this Part.

#### *Specific fees*

### **76. Exclusive licence fee**

The Schedule makes provision about fees to be paid for and in connection with an exclusive licence under Part 7.

### **77. Services by Regulator**

(1) The Regulator may charge fees for or in connection with —

(a) the performance of a function under this Ordinance or under a licence issued under this Ordinance;

(b) the performance of any service offered by the Regulator (including the supply of information or documents).

(2) This section is subject to any express provision of a licence under this Ordinance.

(3) A fee charged under this section may be expressed to be calculated —

- (a) as an annual amount,
  - (b) as a proportion of a business' turnover in respect of activities provided in accordance with a licence, or
  - (c) in any other specified way (which may involve conferring a function on a specified person).
- (4) In determining and charging fees under this section the Regulator —
- (a) must have regard to the regulatory principles; and
  - (b) in particular, must ensure transparency, objectivity, proportionality and non-discrimination.
- (5) In setting the amounts of fees under this section the Regulator must apply an estimated cost-recovery approach so that —
- (a) they are designed to cover the annual costs of performance by the Regulator of its functions in relation to the regulation of the electronic communications sector;
  - (b) deficits from one year are recovered over one or more years as appears to the Regulator to be appropriate having regard to the impact on the electronic communications sector;
  - (c) surpluses from one year are returned over one or more years as appears to Regulator to be appropriate; and
  - (d) each licensee or other fee-payer is contributing a proportionate share of the Regulator's costs having regard to all the circumstances (including the nature of the relevant function, the benefits to the fee-payer and the resources and other circumstances of the fee-payer).
- (6) Fees to be charged by the Regulator, together with any criteria for determining their amounts and any rules as to timing of payment, must be published —
- (a) on the Regulator's website, and
  - (b) in other ways that the Regulator considers appropriate.

*Enforcement and administration*

**78. Collection and destination**

Fees under this Part must —

- (a) be collected and administered by the Regulator, and
- (b) be paid into the Consolidated Fund.

## **79. Recovery**

A fee under this Part which is due and unpaid is recoverable as a debt due to the Regulator.

## **80. Interest**

- (1) Interest accrues on overdue fees and is to be calculated by the Regulator on a daily basis.
- (2) Interest is recoverable in the same manner as the principal.
- (3) The rate of interest is the Bank of England base rate from time to time plus 2%.

## **81. Offences**

- (1) It is an offence to do anything in respect of which a fee is payable under this Ordinance without paying the fee.
- (2) The offence in subsection (1) may be charged in addition to any other offence committed by the same activity.
- (3) A person who takes any action for the purpose of evading all or part of a fee under this Part, or who assists another for that purpose, commits an offence.
- (4) A person who is guilty of an offence under this section is liable on conviction —
  - (a) to imprisonment for a term not exceeding 6 months,
  - (b) to a fine not exceeding level 10 on the standard scale, or
  - (c) to both.

## **PART 9 CONSUMER STANDARDS AND PROTECTION**

### *Consumer protection*

## **82. Regulator to enforce consumer protection provisions**

The Regulator must monitor compliance with any provision of a licence under this Ordinance —

- (a) which is described in the licence as a consumer protection provision, or
- (b) which in the Regulator's opinion is designed (wholly or partly) to protect interests of the users or potential users of electronic communications services.

## **83. Consumer Protection Regulations**

- (1) The Governor may make regulations for the purposes of protecting users and potential users of electronic communications services ("Consumer Protection Regulations").
- (2) Consumer Protection Regulations may include provision about, in particular —

- (a) standards of service;
- (b) quality of service;
- (c) safety;
- (d) handling of complaints;
- (e) the use of a network or service to make unsolicited communications;
- (f) confidentiality of user information;
- (g) telephone directories and similar publications (which may include provision requiring the publication of directories, and provision about the disclosure or use of information for the purpose of directories).

(3) A licence under this Ordinance may make provision by reference to Consumer Protection Regulations, including references to those Regulations as they may have effect from time to time.

(4) Consumer Protection Regulations may not, except in accordance with subsection (3) —

- (a) impose obligations on licensees, or
- (b) change the effect of a provision of a licence.

(5) Before making Consumer Protection Regulations the Governor must consult —

- (a) all relevant licensees, and
- (b) such other persons as the Governor thinks appropriate.

#### **84. Programme content**

(1) The Regulator may issue codes of practice about the content of media services under the control of licensees under this Ordinance.

(2) A code may, in particular, include provision designed —

- (a) to protect young persons from exposure to harmful material;
- (b) to protect users from offensive material;
- (c) to promote accuracy and impartiality in news and current affairs material;
- (d) to avoid misleading or alarming service users.

(3) Provision made in pursuance of subsection (2)(a) or (b) may, in particular, include provision about material which includes —

- (a) physical or psychological violence;
- (b) sexual activity or nudity;
- (c) the use of alcohol, tobacco and drugs;
- (d) anything likely to incite hatred or discrimination on grounds of race, religion, disability, age, gender or sexual orientation;
- (e) offensive language;
- (f) anything of an indecent, obscene, offensive or defamatory nature.

(4) A code may include provision about procedure to be followed in making, handling and determining complaints about matters in subsection (2) and (3).

(5) A code relating to broadcasting services may, in particular, include provision about —

- (a) the amount of time devoted to advertising;
- (b) the presentation of advertising material;
- (c) sponsorship announcements;
- (d) the use of captions and sub-titles;
- (e) teletext and other ancillary services;
- (f) party political broadcasts;
- (g) broadcasting of sporting and national events;
- (h) broadcasting in relation to national emergencies; and
- (i) public service announcements.

(6) A licence under this Ordinance may make provision by reference to codes under this section, including references to those codes as they may have effect from time to time.

(7) A code of practice may not, except in accordance with subsection (6) —

- (a) impose obligations on licensees, or
- (b) change the effect of a provision of a licence.

(8) Nothing in this Ordinance or in a licence under this Ordinance obliges a licensee to accept for transmission material of a kind described in subsection (3)(d) to (f).

*Equipment on service users' premises*

**85. Service users' premises**

(1) A licence under this Ordinance must include provision that applies where the licensee has sited equipment on property belonging to a user or prospective user of the licensee's services.

(2) The licence must include provision requiring the licensee to maintain the equipment (subject to subsection (4)).

(3) The licence must (subject to subsection (4)) include provision allowing the licensee to authorise persons to enter the property for the purpose of monitoring or maintaining the equipment —

(a) at reasonable times,

(b) after giving reasonable notice, and

(c) on presentation of appropriate identification.

(4) Subsections (2) and (3) may be varied by any specific provision of —

(a) the licence;

(b) any agreement between the licensee and the owner of the property.

(5) A licensee who is refused access under a provision specified in subsection (3) or (4)(a) or (b) may apply to a court for a warrant authorising access and the court may grant a warrant on such terms and conditions as it thinks appropriate.

(6) A licence under this Ordinance must include provision enabling the licensee, so far as reasonable, to make the provision of any service under the licence conditional on the provision of power, in such form and to such specifications as the licence may specify, by an actual or prospective user of the service.

**86. Equipment standards**

(1) The Regulator may publish —

(a) standards for equipment to be used for the purposes of electronic communications;

(b) conditions to be satisfied in using equipment for the purposes of electronic communications;

(c) conditions or standards for the manufacture or import of equipment designed to be used for the purposes of electronic communications.

- (2) The Regulator may require its approval to be obtained for equipment before it is used for the purposes of electronic communications; and —
- (a) a requirement must be published in a manner designed to ensure that it comes to the attention of persons using equipment for those purposes, and
  - (b) a licence under this Ordinance may identify a class of equipment in respect of which a requirement under this subsection may or may not be imposed on or in respect of the licensee.
- (3) The Regulator may set standards and conditions, and impose requirements, under this section only if satisfied that they are necessary or desirable for the purposes of —
- (a) preventing or limiting damage to networks or services provided in accordance with this Ordinance;
  - (b) protecting public health and safety;
  - (c) protecting the environment.
- (4) Conditions under this section may include provision as to testing of equipment.
- (5) In setting standards or conditions under this section the Regulator may make provision by reference to standards or conditions having effect outside the Falkland Islands (including such standards and conditions as they may have effect from time to time).
- (6) A licence under this Ordinance must include provision requiring the licensee to comply with any standards, conditions and requirements under this section.
- (7) It is an offence to —
- (a) use equipment which does not comply with any relevant standards under this section;
  - (b) use equipment without complying with any relevant conditions under this section;
  - (c) manufacture equipment which does not comply with any relevant standards or conditions under this section;
  - (d) import equipment which does not comply with any relevant standards or conditions under this section;
  - (e) use equipment without obtaining approval required under this section.
- (8) A person who is guilty of an offence under subsection (7) is liable on conviction to a fine not exceeding level 7 on the standard scale.
- (9) Before issuing standards or conditions under this section the Regulator must consult —

- (a) any relevant licensee, and
- (b) such other persons as the Regulator thinks appropriate.

*Telephone numbers and domain names*

**87. Numbering plan**

- (1) The Regulator must publish a numbering plan for telephone numbers or other similar designations.
- (2) The numbering plan must set out rules for the —
  - (a) allocation of numbers or series of numbers to licensee;
  - (b) assignment of numbers to service users.
- (3) A licence under this Ordinance must include a requirement to comply with any relevant requirements of the numbering plan.
- (4) In preparing the numbering plan the Regulator shall aim —
  - (a) to comply with any relevant international standards;
  - (b) to ensure a sufficient supply of numbers for expected usage; and
  - (c) to promote the efficient use of numbering.
- (5) The numbering plan may require licensees to provide specified kinds of number for emergency purposes.

**88. Domain names**

- (1) It is the responsibility of the Regulator to manage, allocate and assign domain names.
- (2) A licence under this Ordinance must include provision requiring the licensee to comply with any rules or direction made or given by the Regulator in respect of the use of domain names.
- (3) In this Ordinance “domain name” —
  - (a) means a name allocated under the global name system assigned to the Falkland Islands according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision), and
  - (b) includes any second or subsequent level domain name.

**89. Access by public bodies**

Nothing in this Ordinance, Consumer Protection Regulations or a licence under this Ordinance affects any right of a public body to access information.

**PART 10  
PUBLIC CONTROL OF SERVICES**

**90. Interception**

(1) A licence under this Ordinance must include provision requiring the licensee to maintain the capability required by section 69 (to be used in accordance with an authorisation issued by the Governor under Part 13).

(2) The Governor may issue a written exemption from the requirements of subsection (1) to a specified licensee in respect of a specified network, subject to any specified terms and conditions.

(3) Before issuing an exemption the Governor must consult —

(a) the Attorney General, and

(b) the Chief Police Officer.

**91. War and emergencies**

(1) If the Governor considers it necessary in the interests of defence, public safety or public order, the Governor may —

(a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);

(b) issue directions to a licensee or any other person who controls a network or services for the provision of electronic communications for the purposes of steps under paragraph (a);

(c) appoint staff to act for the purposes of paragraph (a).

(2) The Governor may pay compensation in respect of action taken under subsection (1).

**92. Other public service acquisition of control**

(1) This section applies where —

(a) an exclusive licence under Part 7 has been revoked and another exclusive licence for the same services has not yet been granted;

(b) an exclusive licensee ceases to operate or in the opinion of the Governor is about to cease to operate; or

(c) for any other reason the Governor considers that it is necessary in the public interest to acquire control of the provision of telecommunications services.

(2) The Governor may —

(a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);

(b) by order provide for specified assets to vest in the Governor for the purposes of use in pursuance of paragraph (a);

(c) appoint staff to act for the purposes of paragraph (a).

(3) Compensation is payable in respect of assets to which an order under subsection (2)(b) applies and the Governor must make regulations about the determination of compensation under this subsection.

(4) Regulations under subsection (3) must be made in accordance with the advice of the Regulator.

(5) Compensation due and payable under this section must be charged on the Consolidated Fund.

## **PART 11 OFFENCES**

### *Specific offences*

#### **93. False statements**

(1) A person who makes a statement or provides information or documents to the Regulator or any other public body in pursuance of a provision of this Ordinance commits an offence if —

(a) the person knows that the statement, information or documents are false in a material respect;

(b) is reckless as to whether the statement, information or documents are false in a material respect.

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 12 on the standard scale.

#### **94. Obstructing Regulator**

(1) It is an offence to obstruct the Regulator or a person authorised by the Regulator in the exercise of a function under this Ordinance or under a licence issued under this Ordinance.

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 7 on the standard scale.

### **95. Misleading messages**

- (1) It is an offence to use electronic communications to send or attempt to send a message which is false or misleading and is likely to threaten the efficiency or safety of any person, vehicle, vessel or aircraft (whether by issuing a false distress call or otherwise).
- (2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 10 on the standard scale.

### **96. Other improper communications**

- (1) It is an offence to use electronic communications to send or attempt to send material that is —
  - (a) grossly offensive,
  - (b) indecent or obscene,
  - (c) threatening, or
  - (d) designed to cause distress or inconvenience without reasonable excuse.
- (2) A person providing electronic communications in accordance with a licence under this Ordinance may —
  - (a) refuse to transmit a message containing material of a kind described in subsection (1);
  - (b) terminate provision of services to a person on the grounds of habitual use to send or attempt to send messages containing material of a kind described in subsection (1).
- (3) A person who is guilty of an offence under this section is liable on conviction to —
  - (a) imprisonment for a term not exceeding 6 months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.

### **97. Interfering with communications**

- (1) It is an offence to —
  - (a) do anything designed to obtain from the operator of a network information about the content, sender or addressee of an electronic communication, or
  - (b) disclose that information.
- (2) It is an offence for the operator of a network, or a person employed by or otherwise working for the operator of a network, to —

(a) interfere with an electronic communication; or

(b) disclose the existence, nature or content (including sender or addressee) of an electronic communication.

(3) Subsections (1) and (2) do not apply to anything done —

(a) with the consent of the persons sending and receiving the communication; or

(b) with lawful authority.

(4) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

(5) Where the Falkland Islands is party to an international agreement relating to the provision of mutual assistance in relation to interference with electronic communications, a request for assistance may not be made by any person in or on behalf of the Falkland Islands except with the authority of the Attorney General.

### **98. Deliberate interference**

(1) A person who uses any apparatus for the purpose of interfering with electronic communications commits an offence.

(2) Subsection (1) does not apply to anything done —

(a) with the consent of the persons sending and receiving the communication; or

(b) with lawful authority.

(3) A person who is guilty of an offence under subsection (1) is liable on conviction to —

(a) imprisonment for a term not exceeding 3 months,

(b) a fine not exceeding level 3 on the standard scale, or

(c) both.

### **99. Damage to infrastructure**

(1) A person who damages any part of the infrastructure of an electronic communications network must report the damage to a police officer as soon as is reasonably practicable.

(2) Failure to comply with subsection (1) is an offence.

(3) A person who is guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding level 3 on the standard scale.

### *Enforcement powers*

#### **100. Power of entry**

(1) If a court is satisfied that there are reasonable grounds to suspect that evidence of the commission of an offence under this Ordinance is to be found on premises, the court may issue a warrant authorising a person authorised by the Regulator —

(a) to enter the premises;

(b) to require the provision of a copy of any information or documents stored on the premises (including information stored electronically);

(c) to test equipment;

(d) to remove any article that may be or provide evidence of the commission of the offence.

(2) Subsection (1) applies to a vehicle, vessel or aircraft as it applies to premises.

(3) It is an offence —

(a) to obstruct a person exercising powers under a warrant under this section, or

(b) to fail to provide reasonable assistance on request to a person exercising powers under a warrant under this section.

(4) A person who is guilty of an offence under subsection (3) is liable on conviction to —

(a) imprisonment for a term not exceeding 3 months,

(b) a fine not exceeding level 3 on the standard scale, or

(c) both.

### *Supplementary*

#### **101. Jurisdiction**

The Magistrates' Court has jurisdiction for the purposes of this Ordinance (subject to any provision to the contrary).

#### **102. Maritime and Aviation**

(1) This section applies where an offence under this Ordinance is committed —

(a) by, using or in relation to equipment on board a ship or aircraft, or

- (b) by anything done on a ship or aircraft.
- (2) The captain or other person for the time being in charge of the ship or aircraft is guilty of the offence (whether or not anyone else is also guilty of the offence).
- (3) Subsection (2) does not apply where the captain or other person in charge can show that the offence was committed only by reason of action —
  - (a) which was taken by a passenger, and
  - (b) which the captain or other person in charge could not reasonably have been expected to take action to prevent.

## **PART 12**

### **LAND**

#### **103. Compulsory purchase**

For the purposes of any law relating to compulsory acquisition of land for public purposes —

- (a) the functions of an exclusive licensee under the licence are public purposes; and
- (b) the licensee or the Governor may exercise powers under that law for a purpose in connection with the performance of those functions.

#### **104. Entering land for construction and operational purposes**

- (1) A person authorised by an exclusive licensee may enter land for the purposes of constructing, installing, operating, monitoring or removing apparatus required in connection with functions under the licence.
- (2) The Governor must by regulations make provision —
  - (a) prescribing procedure to be followed in the exercise of the power under subsection (1);
  - (b) specifying conditions to be satisfied in relation to the exercise of the power under subsection (1);
  - (c) imposing limitations on the exercise of the power under subsection (1).
- (3) The regulations may, in particular —
  - (a) make different provision in respect of land owned and occupied by a public body and land owned or occupied by a private person;
  - (b) require the service of notices;
  - (c) require consultation;

- (d) make provision for the payment of compensation;
  - (e) require the approval of a specified public body in specified circumstances;
  - (f) confer a discretion on a specified person;
  - (g) make exercise of a power under subsection (1) dependent on obtaining a court order in specified circumstances;
  - (h) make provision for ancillary activities that may be carried out in the exercise of the power under subsection (1) (including, in particular, cutting down trees and similar activity);
  - (i) make provision for the laying of equipment underneath streets or other places;
  - (j) make provision for obtaining or creating a licence or easement in specified circumstances and for specified purposes in relation to maintenance of equipment or otherwise;
  - (k) make provision for varying or overriding a licence or easement in specified circumstances and for specified purposes;
  - (l) impose duties designed to protect the property or safety of persons, or to protect the environment;
  - (m) provide for a right of challenge or appeal to a court in specified circumstances.
- (4) The regulations must make separate provision in respect of works carried out on the shore or seabed.

## **PART 13 DATA**

### *Interpretation*

#### **105. Public interest grounds**

For the purposes of this Part the “public interest grounds” are —

- (a) the interests of national security;
- (b) prevention or detection of crime;
- (c) prevention of disorder;
- (d) national security in relation to economic well-being;
- (e) public safety;
- (f) public health;

- (g) collection or administration of taxes and other money payable to the Government;
- (h) preventing or reducing deaths or injuries as a result of a public emergency;
- (i) any other matter specified for the purposes of this section by the Governor by regulations.

*Retention of data*

**106. Retention notices**

- (1) The Governor in discretion may by notice (a “retention notice”) require the exclusive licensee under an exclusive licence issued under Part 7 to retain electronic communications data.
- (2) The Governor in discretion may give a retention notice if satisfied that —
  - (a) it is necessary on public interest grounds, and
  - (b) it is proportionate to the purpose for which it is required.
- (3) A retention notice —
  - (a) must specify the classes of data to be retained;
  - (b) must specify the period for which data is to be retained;
  - (c) may specify the form in which it is to be retained;
  - (d) may include other provision as to the retention of the data;
  - (e) may make provision for data whether or not in existence at the time when the notice is given;
  - (f) may make provision which applies generally or only for specified purposes;
  - (g) may make different provision for different purposes.
- (4) The Governor may by regulations make further provision for the retention of electronic communications data and the regulations may, in particular, make provision for—
  - (a) the process to be followed before giving a retention notice;
  - (b) the maximum period for which data is to be retained under a retention notice;
  - (c) the content, giving, commencement, review, variation and revocation of a retention notice;
  - (d) the storage of data in accordance with a retention notice;

- (e) access to and disclosure of data retained in accordance with a retention notice;
  - (f) destruction of data retained in accordance with a retention notice;
  - (g) monitoring and enforcement of compliance with a retention notice;
  - (h) payments by the Governor in discretion in respect of expenses of complying with a retention notice.
- (5) A retention notice may not require data to be retained for more than 24 months.
- (6) The exclusive licensee may disclose data retained in accordance with a retention notice only —
- (a) in accordance with regulations under this section,
  - (b) in accordance with a provision of this Ordinance, or
  - (c) pursuant to, or in accordance with an order of, a court.
- (7) When an exclusive licence comes to an end (for whatever reason) —
- (a) a retention notice issued to the licensee continues to have effect in accordance with its terms; but
  - (b) if provision is made for the transfer of data to a new exclusive licensee, the Governor in discretion may vary or revoke the retention notice.

### *Disclosure*

#### **107. Disclosure requirements**

- (1) The Governor in discretion or a court may grant an authorisation allowing a specified person or class of person to require the exclusive licensee to disclose electronic communications data.
- (2) The Governor in discretion or a court may require the exclusive licensee —
- (a) to obtain electronic communications data;
  - (b) to disclose electronic communications data.
- (3) The Governor or a court may grant an authorisation under subsection (1) or impose a requirement under subsection (2) only if satisfied that —
- (a) it is necessary on public interest grounds, and
  - (b) it is proportionate to the purpose for which it is required.

(4) The exclusive licensee must comply with a requirement imposed under or by virtue of this section.

(5) A requirement imposed under or by virtue of this section is enforceable as if it were an order of the Supreme Court.

(6) The Governor may make regulations for authorisations and requirements under this section and the regulations may, in particular, make provision for —

- (a) form;
- (b) content;
- (c) procedure;
- (d) conditions and limitations;
- (e) timing;
- (f) variation and revocation;
- (g) appeal; and
- (h) other ancillary matters.

### *Interception and surveillance*

#### **108. Interception warrants**

(1) The Governor in discretion or a court may issue a warrant authorising or requiring a person to take specified steps to —

- (a) intercept an electronic communication or class of communications;
- (b) disclose the intercepted material.

(2) The Governor in discretion or a court may grant a warrant only if satisfied that —

- (a) it is necessary on public interest grounds, and
- (b) it is proportionate to the purpose for which it is required.

(3) The Governor may make regulations for —

- (a) the form and content of warrants;
- (b) procedure for application for and issue of warrants;

- (c) procedure to be followed in implementing a warrant;
  - (d) terms and conditions;
  - (e) duration, renewal, variation and revocation;
  - (f) any other ancillary matters.
- (4) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (5) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.
- (6) A person who is guilty of an offence under this section is liable on conviction to —
- (a) imprisonment for a term not exceeding 2 years,
  - (b) a fine not exceeding level 12 on the standard scale, or
  - (c) both.

**109. Directed surveillance**

- (1) In this section “directed surveillance” means electronic surveillance which —
- (a) is covert and non-intrusive, and
  - (b) is intended to support an investigation by obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).
- (2) The Governor in discretion or a court may grant a warrant for directed surveillance.
- (3) The Governor in discretion or a court may grant a warrant only if satisfied that —
- (a) it is necessary on public interest grounds, and
  - (b) it is proportionate to the purpose for which it is required.
- (4) The Governor may make regulations for —
- (a) the form and content of warrants;
  - (b) procedure for application for and issue of warrants;
  - (c) procedure to be followed in implementing a warrant;
  - (d) terms and conditions;

(e) duration, renewal, variation and revocation; and

(f) any other ancillary matters.

(5) A warrant under this section is enforceable as if it were an order of the Supreme Court.

(6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.

(7) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

### **110. Intrusive surveillance**

(1) For the purposes of this section “intrusive surveillance” means covert electronic surveillance of activity on residential premises or in a private vehicle (and does not include the use of devices to provide information only about the location of a vehicle).

(2) The Governor in discretion or a court may grant a warrant for intrusive surveillance.

(3) The Governor in discretion or a court may grant a warrant only if satisfied that —

(a) it is necessary on public interest grounds, and

(b) it is proportionate to the purpose for which it is required.

(4) The Governor may make regulations for —

(a) the form and content of warrants;

(b) procedure for application for and issue of warrants;

(c) procedure to be followed in implementing a warrant;

(d) terms and conditions;

(e) duration, renewal, variation and revocation; and

(f) any other ancillary matters.

(5) A warrant under this section is enforceable as if it were an order of the Supreme Court.

(6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.

(7) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

(8) In this section a reference to a vehicle includes a reference to a vessel, hovercraft or aircraft.

### *Encrypted data*

#### **111. Requirement to disclose**

(1) This section applies where encrypted electronic data has come into the possession of a public body —

(a) in the exercise of a function under this Ordinance, or

(b) in the exercise of a function under another enactment.

(2) A public body who believes that a person is likely to possess the key to the encryption may require that person to disclose the key to the public body.

(3) A requirement may be imposed only if the public body is satisfied that —

(a) it is necessary on public interest grounds, and

(b) it is proportionate to the purpose for which it is imposed.

(4) The Governor may make regulations for —

(a) the form and content of requirements;

(b) procedure for application for and issue of requirements;

(c) terms and conditions; and

(d) any other ancillary matters.

(5) A requirement under this section is enforceable as if it were an order of the Supreme Court.

(6) A requirement under this section may not require the disclosure of a key which is designed to be used, and has been used, only for generating electronic signatures.

(7) A requirement under this section may include a provision prohibiting any person from communicating the fact or nature of the requirement to any other person (except for the purposes of complying with the requirement).

(8) It is an offence for a person to fail without reasonable excuse to comply with a requirement under this section.

(9) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

## **112. General**

(1) Nothing in this Part, or done under this Part, requires the exclusive licensee under Part 7 or any other person to do anything that is not practicable for the licensee or other person, having regard to all the circumstances.

(2) Where a person on whom a warrant, notice or requirement under this Part is served or proposed to be served is of the opinion that the warrant, notice or requirement requires the person to do something that is not practicable —

(a) the person may refer the question to the Magistrates' Court,

(b) the decision of the Magistrates' Court shall be final to determine the question, and

(c) the Magistrates' Court may make any ancillary order it thinks fit (including modifying or imposing a condition to or limitation on the warrant, notice or requirement).

(3) In the case of a warrant, notice or requirement served on a person by the Governor —

(a) the person may not refer the question to the Magistrates' Court without giving the Governor such notice as is reasonably practicable, and

(b) the warrant, notice or requirement has no effect until the question has been determined by (or withdrawn from) the Magistrates' Court (and then has effect subject to the determination).

(4) Nothing in this Ordinance prohibits the doing of anything in accordance with lawful authority.

(5) Where a warrant, notice or requirement under this Part is served on a person —

- (a) the person may comply with the warrant, notice or requirement wholly or partly by arranging for another person to take the required action; and
- (b) the person may disclose the warrant, notice or requirement for that purpose.

**PART 14**  
**TELECOMMUNICATIONS APPEALS PANEL**

**113. The panel**

- (1) There must be a Telecommunications Appeals Panel (“the Panel”).
- (2) The Panel must consist of 3 members, appointed by the Governor.
- (3) The Governor must appoint one member of the Panel as its Chair.
- (4) In making appointments under this section the Governor must —
  - (a) have regard to the importance of members of the Panel having relevant experience and knowledge;
  - (b) have regard to the importance of members of the Panel being, and appearing to be, independent of the Government and of licensees;
  - (c) consult, in respect of the appointment criteria, persons appearing to the Governor to represent the interests of users of electronic communications services, persons appearing to represent the interests of licensees, and such other persons as the Governor thinks appropriate.
- (5) Decisions of the Panel must be taken by a majority (subject to provision of regulations under section 114 allowing specified matters to be determined by one or two Panel-members).

**114. Regulations**

- (1) The Governor must make regulations for the constitution and proceedings of the Panel.
- (2) The Regulations may, in particular, include provision for —
  - (a) the qualification and disqualification of members of the Panel;
  - (b) the tenure of members, and other terms and conditions of appointment;
  - (c) the removal or retirement of members of the Panel;
  - (d) conflicts of interest;
  - (e) the functions of the Chair;

- (f) the provision of staff of the Panel;
  - (g) the payment of remuneration and allowances to members of the Panel or staff;
  - (h) the sittings of the Panel;
  - (i) the service of notice;
  - (j) setting time limits within which specified action (including commencement of appeals) must be taken;
  - (k) evidence;
  - (l) specific classes of proceedings to be dealt with wholly or partly without a hearing;
  - (m) allowing specific classes of proceedings to be dealt with wholly or partly by a single Panel-member sitting alone, or by two Panel-members;
  - (n) saving the validity of proceedings of the Panel in specified circumstances;
  - (o) conferring a discretion on a specified person.
- (3) Before making regulations under this section the Governor must consult —
- (a) persons appearing to represent the interests of users of electronic communications services,
  - (b) persons appearing to represent the interests of the electronic communications industry, and
  - (c) such other persons as the Governor thinks appropriate.

### **115. Functions**

- (1) The Panel must determine appeals against decisions of the Regulator under this Ordinance.
- (2) The Panel may not determine an appeal against a decision of the Regulator to initiate civil or criminal proceedings.

### **116. Annual report**

- (1) The Chair of the Panel must make a written report to the Governor about the exercise of the Panel's functions during each calendar year.
- (2) A report must be made as soon as reasonably practicable after the end of the year to which it relates.
- (3) The Governor must —

- (a) lay a copy of each report before the Legislative Assembly; and
- (b) publish each report.

## **SCHEDULE**

### **EXCLUSIVE LICENCE FEE**

Fee to be paid for exclusive licence under Part 7 – £10,000.

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### **OBJECTS AND REASONS**

This Bill makes provision about the development, operation and regulation of telecommunications and electronic communication services in the Falkland Islands.

Clause 1 specifies the short title.

Clause 2 provides for the Ordinance to come into force in accordance with provision to be made by the Governor.

Clause 3 provides an overview of the content of the Ordinance.

Clause 4 defines expressions.

Clause 5 identifies key objectives to be known as the electronic communications objectives.

Clause 6 identifies regulatory principles for the purposes of the Ordinance.

Clause 7 provides for the appointment of a Communications Regulator.

Clause 8 protects the Communications Regulator's independence by prohibiting a public authority from giving the Regulator directions.

Clause 9 allows the Governor to make regulations about supplementary matters relating to the Communications Regulator.

Clause 10 sets the Communications Regulator's general duties.

Clause 11 sets the Communications Regulator's specific duties.

Clause 12 gives the Communications Regulator general powers.

Clause 13 allows the Communications Regulator to investigate compliance failures under the Ordinance.

Clause 14 allows the Communications Regulator to make orders to remedy compliance failures.

Clause 15 allows the Communications Regulator to make determinations about obligations under the Ordinance or licences and other instruments under it.

Clause 16 requires the Communications Regulator to consult before taking regulatory or administrative action.

Clause 17 requires the Communications Regulator to publish details of certain regulatory and other action under the Ordinance.

Clause 18 imposes duties of confidentiality on the Communications Regulator.

Clause 19 allows the Communications regulator to set up alternative dispute resolution schemes to resolve disputes in relation to the Ordinance.

Clause 20 allows the Governor to make procedural regulations about the functions of the Communications Regulator.

Clause 21 sets out activities requiring an electronic communications licence.

Clause 22 exempts anything done under a Part 7 exclusive licence from the need for an electronic communications licence.

Clause 23 exempts anything done under a Part 5 broadcasting licence from the need for an electronic communications licence.

Clause 24 exempts Crown and Government activities from the need for an electronic communications licence.

Clause 25 gives limited exemption from the need for an electronic communications licence to the use of certain private facilities.

Clause 26 gives limited exemption from the need for an electronic communications licence to the use of certain transmission stations.

Clause 27 gives exemption from the need for an electronic communications licence to certain foreign transport services.

Clause 28 exempts emergency services from the need for an electronic communications licence.

Clause 29 exempts radio spectrum use from the need for an electronic communications licence.

Clause 30 exempts certain maritime and aviation satellite systems from the need for an electronic communications licence.

Clause 31 exempts certain broadcasting activities from the need for an electronic communications licence.

Clause 32 allows the Governor to confer additional exemptions from the need for an electronic communications licence.

Clause 33 allows the Communications Regulator to grant electronic communications licences.

Clause 34 distinguishes between individual licences and class licences.

Clause 35 explains the nature of an individual licence.

Clause 36 allows conditions to be attached to an individual licence.

Clause 37 sets an implied condition of individual licences giving the Communications Regulator certain rights of entry.

Clause 38 deals with the position of subsidiary undertakings in relation to individual licences.

Clause 39 explains the nature of a class licence.

Clause 40 distinguishes between licences that require registration and those that can be relied on automatically.

Clause 41 sets an implied condition of class licences giving the Communications Regulator certain rights of entry.

Clause 42 makes provision for the duration of individual and class licences.

Clause 43 allows the Communications Regulator to make provision about licensing procedure.

Clause 44 allows the Communications Regulator to impose non-compliance penalties on licensees.

Clause 45 allows the Communications Regulator to vary or revoke licences for non-compliance.

Clause 46 sets the requirements for broadcasting station licences.

Clause 47 allows the Governor to grant broadcasting station licences.

Clause 48 exempts Crown and Government activities from the need for a broadcasting station licence.

Clause 49 exempts amateurs from the need for a broadcasting station licence.

Clause 50 imposes an implied condition in broadcasting station licences giving the Communications Regulator certain powers of entry.

Clause 51 creates an offence of breaching the requirement for a broadcasting station licence.

Clause 52 allows a court to order forfeiture of illegally used broadcasting equipment.

Clause 53 applies to broadcasting station licences enforcement provisions relating to electronic communications licences.

Clause 54 requires the Communications Regulator to manage the radio spectrum.

Clause 55 requires the Communications Regulator to publish a plan for the use of the radio spectrum.

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**ELIZABETH II**



**FALKLAND ISLANDS**

COLIN ROBERTS C.V.O.,  
*Governor.*

**Criminal Procedure and Evidence Ordinance 2014**

(No: 12 of 2014)

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**ELIZABETH II**



**FALKLAND ISLANDS**

COLIN ROBERTS C.V.O.,  
*Governor.*

**CRIMINAL PROCEDURE AND EVIDENCE ORDINANCE 2014**

(No: 12 of 2014)

*(assented to: 9 November 2016)*  
*(commencement on: in accordance with section 1)*  
*(published: 23 November 2016)*

**AN ORDINANCE**

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

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;

“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 buildings;

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

(c) any airport;

- (d) any offshore installation;
- (e) any renewable energy installation;
- (f) any stall, tent or moveable structure; and

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

*[UK PACE Act 1984 s.23 am. CJP 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 Sched. 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.

(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 PACE Act 1984 s.118]*

(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.

*[UK Crime & Security Act 2010]*

(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.

(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).

*[UK YJCE Act 1999 s.53]*

### **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 Traffic 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).

(9) This subsection applies to every article in relation to which a person has committed, or is committing or is going to commit an offence under section 169 of the Crimes Ordinance 2014 (having an article with a blade or point in a public place).

*[CJ Ord. s.168; UK PACE Act 1984 s.1; CJ 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(8) or (9), as appropriate.

(5) A police officer need not bring the effect of section 8(8) or (9) 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 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.  
*[CJ 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 CJPO Act 1994 s.60 (part) and s.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 CJPO 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.

*[CJ 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 prohibited 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.

*[CJ Ord. ss.179]*

#### **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.

*[CJ Ord. ss.180]*

#### **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.

*[CJ Ord. ss.181]*

#### **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.

*[CJ Ord. ss.182]*

#### **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.

*[CJ Ord. ss.183]*

**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.

*[CJ Ord. ss.184]*

**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.

*[CJ Ord. ss.185]*

## **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.

*[CJ Ord. ss.186]*

## **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.  
[CJ Ord. ss.187]

*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.

*[CJ Ord. ss.188]*

### **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.

*[CJ Ord. ss.189]*

#### *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 unlawfully 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 carried 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.

*[UK PACE Act 1984 ss.8 to 18]*

### **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 CJP 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 CJP 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.

*[CJ 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.

*[CJ 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.

*[CJ Ord. s.192; 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).

[CJ 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 CJP Act 2001 s.50]*

### **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 CJP 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 CJP 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 CJP 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 CJP 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 CJP 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 CJP 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 CJP 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 CJP 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 CJP 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 CJP Act 2001 s.60]*

#### **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 CJP 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 CJP 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.

*[CJ Ord. ss.198 & 199; UK PACE Act 1984 s.24]*

#### **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; common law]*

**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.

*[CJ 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]*

**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.

*[CJ 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.

*[CJ 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 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]*

#### *Police detention - Miscellaneous*

### **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 consent if 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 (acting in his or her discretion in consideration of any such application) 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 order being so laid, 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 the 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 and 158.

(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 carries a maximum penalty in excess of six months imprisonment.

(4) A prosecution for a summary offence that carries a maximum penalty of six months imprisonment or less or that is not an imprisonable offence must be commenced within 6 months of the date of commission 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 judgment 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 court for the trial**

(1) On the first appearance of a defendant, whether in response to a summons or warrant or after arrest (other than on an application for an adjournment or remand) the court must, after hearing representations from the prosecution and the defence, decide the most appropriate court 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 allocated to the Magistrate's Court for trial if the 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 trial 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 or by the direction of a judge of the Supreme Court; or

(b) by an individual 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(1);
- (e) if appropriate, the effect of section 325(2);
- (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 served in accordance with the provisions of section 784.

(3) A written summons served 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 served if it has been served in accordance with the provisions of section 784.

(2) 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.

### **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 that 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. Discretionary refusal**

(1) 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).

(2) 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 that 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 empanelled 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 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 negating 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 disabled 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 disabled; 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 disabled”, 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 385**

(1) In sections 372 to 385 —

“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 373 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]*

### *Hearsay: Supplementary*

#### **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 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 foreseeably 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 cost of different sentences and their relative effectiveness in preventing re-offending;

(c) the need to promote public confidence in the criminal justice system; and

(d) 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 as 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 sentence 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 it 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 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 the 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 or 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 Part 12 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;

“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;

(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; and

(c) must take account of any scale of costs set by the Criminal Justice Council.

(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 Magistrate's 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 Magistrate's Court or Summary Court was given.

(2) For the purpose of subsection (1), the day on which the decision of the Magistrate's 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 Magistrate's 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 Magistrate’s 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 Magistrate's 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 lawfully 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 Magistrate's 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 Magistrate’s Court or Summary Court**

When an appeal against a conviction, special finding or order of the Magistrate’s 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 Magistrate’s 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 Magistrate's 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 Magistrate's 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 Magistrate's 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 Magistrate's 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 Magistrate's Court or Summary Court, as the case may be, and not by the Supreme Court; and

(b) the Magistrate's 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 34 (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 Magistrate's 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 Magistrate’s 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 Magistrate's 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 Magistrate's 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 Magistrate's 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 Magistrate's 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]*

### **PART 32 – RETRIALS, REFERENCES, ETC.**

#### *Prosecution application for retrial*

#### **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.

#### **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 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 reversed 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 out 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.

*[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.

**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 724(6) 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 level 3 on the standard scale.

(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 level 3 on the standard scale.

(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 level 3 on the standard scale;

(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.

**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.

*[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 composition and procedure of the Council are as set out in Part ‘A’ of Schedule 13.

(3) 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 necessary 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 on any matter, when called upon to do so;

(f) to advise the Chief Justice on any matter when called upon to do so;

(g) at the beginning of each calendar year to prepare an action plan setting out a programme for continuing review and development of the criminal justice system in the Falkland Islands;

(h) 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) require the approval of the Chief Justice;
  - (b) must be included in the Committee's annual report required by section 778(2);
  - (c) must be included in the annual report of the Council published pursuant to section 778(5);  
and
  - (d) 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 calendar 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 calendar 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 calendar 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 calendar year.

**779. Rules and 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.

## PART 36 – MISCELLANEOUS AND TRANSITIONAL

### **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 a published email address or has registered with the court an email address for service.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served at the registered office or upon the secretary or Director of the body.

(3) For the purposes of this section, the proper address of any person is, in the case of a body corporate, that of the registered or principal office of that body, and in any other case the last known address of the person to be served.

#### **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 Imperial enactments 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 an Imperial 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 disappplied 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 disappplied 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 disappplied Acts which could be taken by an equivalent person under this Ordinance continues to have effect as if taken by that person under this Ordinance.

### **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 disappplied Act is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

(2) A reference in any other enactment to the Governor or Chief Justice exercising legislative functions in relation to criminal offences is, to the extent possible, to be read as a reference to the Governor or Chief Justice, as the case may be, exercising equivalent functions under this Ordinance after consulting the Criminal Justice Council.

(3) The Governor, after consulting the Criminal Justice Council, may by order make such modifications or adaptations of any enactment as the Governor considers necessary or expedient in consequence of the repeal of the repealed Ordinances and the disapplication of the disappplied 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 Access to special procedure material or excluded material
- Schedule 2 Fingerprinting and samples: Attendance at a place of lawful custody
- Schedule 3 Codes of Practice
  - Code A – Stop and search
  - Code B – Search and seizure
  - Code C – Detention, treatment and questioning of persons
  - Code D – Identification
  - Code E – Tape recording of interviews
  - Code F – Visual recording of interviews
  - Code G – Arrest
  - Code on interviews with defence witnesses ('Defence Witnesses Code')
  - Code on retention and disclosure of material ('Disclosure Code')
- Schedule 4 Disclosure applications
- Schedule 5 Forms for guilty plea in absence
- Schedule 6 Ineligibility and disqualification for and excusal from jury service
- Schedule 7 Categories of offences that establish a propensity
- Schedule 8 Standard scale of fines for offences
- Schedule 9 Maximum periods of imprisonment or detention in default of payment
- Schedule 10 Table of rehabilitation periods
- Schedule 11 Exceptions to rehabilitation
- Schedule 12 Offences against youths to which protective provisions apply
- Schedule 13 Criminal Justice Council & Sentencing Guidelines Committee
- Schedule 14 Repealed and disapplied laws
- Schedule 15 Consequential amendments

## **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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## **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.

#### Intelligence or information

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 it 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 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

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## **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.

B6.3. 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.

B6.3A. 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.

B6.3B. 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.

#### B. Sections 31 to 43: Specific procedures for seize and sift powers

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.

C1.02. 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 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 place 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, Consulate or a representative of their national government 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, Consulate or a representative of their national government 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.

#### B. Detained persons – special groups

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.

C3.12A 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, Consulate or a representative of their national government 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;

*(Note: 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, Consulate or a representative of their national government. 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, Consulate or a representative of their national government 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, Consulate or a representative of their national government 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, Consulate or a representative of their national government, 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, Consulate or a representative of their national government. 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, Consulate or a representative of their national government;

(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 367 or 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.

#### B. Written by a police officer

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

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**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; (section 91(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 D4.3(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).

#### B. Non-intimate samples

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 unfitnes 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 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 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 in 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 cooperate 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

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#### **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 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

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#### **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 tape, 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 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

F6.3. 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**

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#### **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 —

- (a) 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;
- (b) 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;
- (c) the date and time of the interview will take account of the person’s circumstances

and the needs of the investigation; and

(d) 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.

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CODE OF PRACTICE FOR ARRANGING AND CONDUCTING INTERVIEWS WITH  
WITNESSES NOTIFIED BY THE DEFENDANT  
(‘DEFENCE WITNESSES CODE’)

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## **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.

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## CODE OF PRACTICE ON THE RECORDING, RETENTION AND DISCLOSURE OF MATERIAL OBTAINED IN A CRIMINAL INVESTIGATION (‘DISCLOSURE CODE’)

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10. Disclosure of material to the accused

## **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**

7.0. 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
2. Prosecutor's application for public interest ruling
3. Defence disclosure
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**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.

If the summons indicates you must send your driving license to the court, please ensure you do so.

If the court orders your license to be endorsed you must surrender it to the court within 7 days of the date of conviction. Failure to do so may result in the commission of a further offence.

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 charge 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  
Law Courts  
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.**

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**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

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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

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**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:

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**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

*Group B - The judiciary and the courts*

The President and Justices of the Court of Appeal

The Chief Justice

The Senior Magistrate

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 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.

The Registrar General

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 for a matter which would be recognised as a criminal offence within 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 —

- (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

in respect of a matter which would be recognised as a criminal offence within the Falkland Islands.

**SCHEDULE 7**  
(section 377)

**CATEGORIES OF OFFENCES THAT ESTABLISH A PROPENSITY**

**Part A**

*Theft category*

1. An offence under section 347 of the Crimes Ordinance 2014 (Theft).
2. An offence under section 353 of that Ordinance (Robbery).
3. An offence under section 354 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 354 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 355 of that Ordinance (Aggravated burglary) if the offender committed a burglary described in paragraph 3 or 4.
6. An offence under section 356 of that Ordinance (Going equipped for stealing).
7. An offence under section 359 of that Ordinance (Handling stolen goods).
8. An offence under section 363 of that Ordinance (Aggravated vehicle-taking).
9. An offence under section 365 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 sections 203 to 206 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 207 to 210 of that Ordinance (Rape, etc. against children under 13).
3. An offence under section 211 of that Ordinance (Sexual activity with a child).
4. An offence under section 212 of that Ordinance (Causing or encouraging a child to engage in sexual activity).
5. An offence under section 216 of that Ordinance if doing it will involve the commission of an offence under section 211 or 212 of that Ordinance (Arranging or facilitating the commission of a child sex offence).
6. An offence under any of sections 218 to 221 of that Ordinance (Abuse of position of trust) if the child is under 16.
7. An offence under section 226 of that Ordinance (Sexual activity with a child family member) if the child is under 16.
8. An offence under section 227 of that Ordinance (Encouraging a family member to engage in sexual activity) if the family member is under 16.
9. An offence under section 231 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 232 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 235 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 236 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 239 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 240 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:

<i>Level</i>	<i>Amount £</i>
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**

<u>Sentence</u>	<u>End of rehabilitation period for adults</u>	<u>End of rehabilitation period for youths</u>
A custodial sentence of more than 30 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 to 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. Legal Practitioner
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 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 persons performing the duties of the following offices—
  - 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. Members of the Council will not be remunerated but may claim reasonable expenses in accordance with the rules of the Council.
7. The President must appoint one member as Chair and one member as Deputy Chair of the Council for such terms as the President deems appropriate.
8. 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.
9. The Council may set its own rules of procedure.

*Conduct of members*

10. 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.

11. 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*

12. 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.

13. 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.

14. Minutes of the decisions of the Council must be kept.

15. 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 and subject to paragraph 16 of this Part.

16. Of the 7 members for a quorum at least 3 members must be from the groups referred to in paragraph 3 of this Part.

17. The Council will seek to make decisions by consensus but, in the absence of consensus, decisions of the Council must be by a majority of those so present and voting.

18. If there is an equality of votes, the Chair, or in the absence of the Chair the Deputy Chair, has a casting vote.

19. (1) The President does not sit on the Council, but all recommendations of the Council made in accordance with either section 776 or 778 (except paragraphs (e) and (f) of section 776) require the approval of the President.

(2) If the Council does not have the approval of the President on any matter falling under section 776(f), the Council must state the President's view on the matter in its record of the decision.

20. The Council may appoint sub-committees of its members to report to the Council on specific topics.

21. The Council and any sub-committee of the Council may invite advisors to attend its meetings in a non-voting capacity.

21. 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;

(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 fulfils the Council's aims;

(c) if there is any material disagreement among Council members regarding the content of the annual report – specify the nature of the disagreement, identify the members who disagree, and give details of their views; and

(d) if the President has not approved any recommendation in the annual report, including any sentencing guideline – indicate that the recommendation is not approved, and is therefore of no effect.

**PART 'B' –**  
**SENTENCING GUIDELINES COMMITTEE**  
*Procedure of the Committee*

23. Meetings of the Sentencing Guidelines Committee must be designated as such and held separately from meetings of the Council.

24. At a meeting of the Committee, the procedure is as for the Council, except that the Senior Magistrate and the justices of the peace each have 3 votes.

25. The Committee's annual report must include —

(a) a summary of the sentencing guidelines that have been recommended during the calendar year;

(b) a summary of the resources and budget allocations that have been employed by the Committee during the calendar year; and

(c) a summary of the operation and effect of the sentencing guidelines as a whole, with an assessment of their effectiveness.

26. 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.

27. The Committee, having considered the responses to the consultation required by paragraph 26, and after making any amendments of the guidelines which it considers appropriate, may, if the Chief Justice approves the guidelines, recommend them to the Council for publication as definitive guidelines.

28. 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.

29. The Committee may, in accordance with the procedure set out in paragraphs 26 and 27, review the sentencing guidelines and may, with the approval of the Chief Justice, recommend the Council to publish revised guidelines from time to time.

#### *Sentencing guidelines principles*

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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;

(d) the effect of the guidelines on the promotion of public confidence in the criminal justice system; and

(e) the effectiveness of the imposition of non-custodial sentences as alternatives to custody.

## **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**  
(section 791)

**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”.

Passed by the Legislature of the Falkland Islands on 30 October 2014.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

# CRIMINAL PROCEDURE AND EVIDENCE ORDINANCE 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 the 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 was a companion Ordinance to the Crimes Ordinance and was 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 Ordinance 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 Ordinance was presented to the Legislative Assembly in the summer of 2014 and was subsequently enacted on 30<sup>th</sup> October 2014.

The Ordinance consolidates 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.

## **Derivation**

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

The Ordinance 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
- Magistrate’s 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 Ordinance 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 Sections below highlight the changes.

The origins of each section, whether a Falkland Islands law or a UK law, or both, are shown at the foot of the section 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 Ordinance 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 Ordinance omits some existing features of the Falkland Islands criminal justice system which are no longer required, such as probation orders. It does not replace 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 Ordinance does not include emergency powers provisions.

Provisions relating to international co-operation and proceeds of crime have also been omitted from the Ordinance. These areas of criminal law are extensive and complex 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 Ordinance confers several functions on the Governor – sometimes acting in discretion and sometimes having consulted one or multiple bodies.

In accordance with s.66 of the Constitution, the Governor must consult the Executive Council before performing functions. This convention is confirmed by the Interpretation and General Clauses Ordinance which confirms that the term ‘Governor’ means the Governor after consulting Executive Council, therefore any reference in the Ordinance to ‘the Governor’ alone means the Governor after consulting Executive Council.

S66(2)(c) of the Constitution states that if the Governor is required to consult with any person or authority other than the Executive Council, the Governor's obligation to consult with the Executive Council is displaced:

*'The Governor shall not be obliged to consult with the Executive Council.....when exercising any function conferred on the Governor by this Constitution or any other law where it is provided, either expressly or by necessary implication, that the Governor exercise such function in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council'*

Some provisions within the Ordinance require the Governor to consult some other person or body, such as the Criminal Justice Council, the Advisory Committee or the Chief Justice, and the requirement to consult Executive Council is therefore displaced, as per s66(2)(c) of the Constitution, above.

Having carefully considered the need in some instances for the Governor to have the benefit of advice both from the Judicial and Executive branches of Government, there are some provisions which require the Governor to consult both the Executive Council and some other person or body. This, in effect requires consensus of the two bodies unless the Governor chooses to disregard the advice in accordance with Article 67 of the Constitution. In order to preserve the role of Executive Council as a required consultee, the term 'Governor in Council' is used to ensure clarity that the obligation to consult with Executive Council has not been displaced but is in addition to the obligation to consult with the stated body.

The Governor must report to the Legislative Assembly any disagreement with the advice given, as provided by section 788. The obligation under section 67 of the Constitution to report to Secretary of State any disagreement with Executive Council's advice remains.

### **Style and structure**

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

After the preliminary sections, the Ordinance follows as closely as possible the sequence of events in a criminal case. It first sets out the 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 from the criminal justice system. The Ordinance 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 Ordinance 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 Sections**

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

Section 2 contains definitions of terms used throughout the Ordinance; 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 section 785. The section also has other interpretative provisions including sub-section (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.

Section 3 defines ‘criminal proceedings’ and says when they start and finish.

Section 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

Section 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 – Sections 8 and 9. It also includes amendments made by the Crime & Security Act 2010 section 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 section 6(7).

Following changes in the UK law, the Part replaces the concept of an ‘arrestable offence’ by an ‘imprisonable’ offence as defined in section 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 Parts dealing with police powers as well.

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 3 justices of the peace. A similar formulation is adopted for the power to order return of material under Part 3 – see section 40 and the definition in section 25(3).

### **Notes on Sections**

Section 6 confers powers on police officers to stop and search persons and vehicles for stolen or prohibited articles if they have reasonable suspicion that 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.

Section 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 section 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’ within the Interpretation section – see section 2.

Section 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.

Section 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 *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.”

This is a different, narrower wording to the UK legislation under section 60 Criminal Justice and Public Order 1994 which states that a senior police officer may authorise the use of stop and search powers 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 Legislative Assembly considered the current UK wording and the issues surrounding this section in the UK, which is controversial. The Honourable members also considered the issues raised in the UK case (*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) which was an unsuccessful challenge to the provision of section 60. 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, but no amendments have been tabled. However the Legislative Assembly took the view that a more restrictive approach was appropriate in the Falkland Islands.

Section 9 contains provisions supplementing section 8.

Section 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 this requirement was in the Criminal Justice Ordinance and it was appropriate to retain – sub-Sections (2) to (5).

Section 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.

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

Section 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 reasonable grounds for believing an imprisonable offence has been committed. The warrant may be for specific premises, or for all premises 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 Sections 15, 16, and 19 respectively.

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

Section 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. (The abolition of other powers of search of premises in section 180(2) of the Criminal Justice Ordinance have not been repeated as it has had effect).

Section 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 section 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.

Section 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.

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

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

Section 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.

Section 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 section 13, the warrant may be for specific premises, or for all premises occupied and controlled by a specified person.

Section 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.

Section 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.

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 has not been repeated as it has had effect).

Section 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.

Section 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 police powers 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 section 14. The Schedule is also referred to in later Parts of the Ordinance. 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.

### 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 as well as on or in premises, including a ship or aircraft (see the definition of 'premises' in section 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.

Sections 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 Sections are based on sections 50 to 62 of the 2001 Act. Sections 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 Ordinance.

Sections 190 to 193 of the Criminal Justice Ordinance are reproduced in Sections 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 Sections 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 was considered appropriate that the additional powers in Sections 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 section 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 CIPA 2001 provisions are annotated at paras.51-103 to 51-126.

### **Notes on Sections**

Section 25 defines terms that are used in this Part but are not defined in section 2, including the ‘relevant time’ when something is in a person’s possession. It is based on s.66 CIPA 2001.

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.”

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

Section 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 section 15 i.e. communications between a lawyer and a client.

The section 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.

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

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 section 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.

Section 34 regulates the examination and return of property that has been seized under the additional powers conferred by Sections 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 section 27) must be separated from suspect items if that is reasonably practicable.

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

Section 36 regulates the return of items that are excluded or consist of special procedure material, as defined in Sections 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 section 37.

Section 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 section 27).

Section 38 limits the power of retention in relation to property seized under the additional powers in Sections 31 and 32. Such property can only be retained if the item itself could be seized under the powers in section 27 i.e. it is itself evidence of an offence etc. In the CIPA there is a list of UK laws that also confer powers of retention of seized property. This section 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.

Section 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.

Section 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.

Sections 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 section 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.

Section 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.

Section 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.

Section 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 Sections 31 and 32 but which has been retained, even though not itself suspect in terms of section 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 sections 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**

An issue raised by this Part was 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 this was thought to be problematical in the Falkland Islands context. The Assembly agreed that 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’. It is defined in section 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 Sections**

Section 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-section (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-section (5)(f).

Section 45 empowers persons other than police officers to arrest without a warrant, but the grounds are narrower, so that the offence in question 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-section (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 tension by removing the right of the public to arrest someone for e.g. a race hate speech.

Section 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.

Section 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 section 95(11). The Schedule refers to powers to take fingerprints contained in Part 6.

Section 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.

Section 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.

Section 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 designating a police station are replaced by the concept of a place of lawful custody.

Sections 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 known as ‘street bail’).

Section 51 says that a police officer may release on bail a person who is arrested elsewhere than at a place of lawful custody and may impose as conditions of the bail any requirement that appears to the officer to be necessary to secure that the person surrenders to custody, does not commit an offence on bail, does not interfere with witnesses or obstruct the course of justice or for the person’s own protection or welfare.

Section 52 requires a notice to be given setting out the conditions of bail.

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

Section 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.

Section 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.

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

Section 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.

Section 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 section 47 and is also applied by section 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 UK Crown Prosecution Service on whether detained persons should be charged or released. This requirement becomes a requirement to consult the Attorney General of the Falkland Islands.

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 (known as the ‘custody clock’). 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 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 section 2 by reference to the Legal Practitioners’ Ordinance.

As with other Parts of the Ordinance relating to police powers, there is a Code of Practice governing the detention of arrested persons. (See Code C in Schedule 3).

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 Sections**

Section 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.

Section 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.

Section 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 section 69(2).

Section 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 to the Attorney General the power to decide upon the sufficiency of evidence and formulation of any charges. The Attorney General can issue guidelines as to the information required for such decisions to be made and can delegate the decision-making power as appropriate.

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

Section 64 makes further provisions about release on bail under section 61 or 63. Decisions under this section and Sections 65 and 66 are made by the custody officer. Under sub-section (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 section 77 makes clear). This further condition must be made in writing and does not otherwise affect the conditions of bail. Sub-Sections (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.

Section 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 section 2. “Imprisonable offence” is defined in section 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.

Section 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.

Section 67 requires reviews of detention to be carried out at regular intervals 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.

Section 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.

Section 69 provides that a person cannot be detained for longer than 24 hours without being charged, unless the period is extended by authorisation under section 70 or order of a court under section 71. The custody clock 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-section (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.

Section 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 section

71.

Section 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 section 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-section (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.

Section 72 allows for further detention on a warrant by the court in certain circumstances. See section 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).

Section 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 section requires the courts to sit on weekdays and public holidays for hearing an application under section 71 or 72. The section further says that any reference to a period of time or a time of day is to be treated as approximate only.

Section 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-Sections (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.

Section 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.

Section 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 section 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.

Section 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.

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

Section 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.

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

Section 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. Sections 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 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.

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 section 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. The preferred approach for the Falkland Islands was 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 Sections 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’s 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 section 117.

This Part, and the police powers 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 Sections**

Section 82 defines various terms used in the Part that are not defined in section 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.

Section 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 common law powers are also abolished.

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.

Section 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 wherever practicable and must be of the same gender for intimate searches.

Section 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 section 115 for further rules on photographing suspects.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 Ordinance 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 change.

Section 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 fingerprints 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-section (16) provides for electronic fingerprinting by a device approved by the Governor in Council.

Section 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 section 82.

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

Section 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 section 82. Sub-section (18) provides for electronic taking of impressions by a device approved by the Governor in Council.

Section 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.

Section 96 provides additional powers for the taking of urine samples or non-intimate samples from a person who has been arrested for or charged with an offence under the Misuse of Drugs 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 section 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 section 82 by reference to the Misuse of Drugs Ordinance.

Section 97 is supplementary to section 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

Sections 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.

Section 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.

Sections 106 and 113 use the term 'national security'. This is defined in section 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).

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

Section 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-section (4).

Section 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.

Section 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 section 47 and is also applied by section 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 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 those 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 Executive Council Paper 42/14) which are now replaced by the provisions in this Ordinance.

Part III of the Criminal Procedure & Investigations Ordinance (Title 24.4) is based on sections 23 and 24 of the UK Criminal Procedure and Investigations (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 section 120.

This Part includes provisions similar to sections 66 and 67 of UK PACE Act. 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 Ordinance. 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 Ordinance.

### **Notes on Sections**

Section 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.

Section 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 Section 116 for codes of practice in relation to tape recording and visual recording of interviews.

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

Section 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 Sections 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.

Section 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 of the amendment being laid).

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.

Section 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-section (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).

Section 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 has issued 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, based upon 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).

Provision is made in the Part for both types of caution to become spent although this is limited in certain circumstances (see Part 29). 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 section 136.

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

Part 29 contains provisions about the use of spent cautions in court – see Sections 637 and 638. Section 372 allows spent cautions to be adduced as evidence of bad character in court. These are exceptions provided for by section 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 UK DPP's guidelines and various Home Office circulars and to the Falkland Islands Attorney General's Guidelines.

### **Notes on Sections**

Section 125 contains definitions of terms used in the Part that are not defined elsewhere in the Ordinance or in the Interpretation & General Clauses Ordinance.

Section 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 Attorney General. Sub-section (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.

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

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

Section 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.

Section 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.

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

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

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

Section 134 makes various modifications to the police powers provisions of the Ordinance so that an arrest under section 132 is treated as an arrest for all purposes.

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

Section 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 section 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.

Section 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 Sections 51 to 53 in Part 4. There are linkages to Part 5 in relation to persons granted bail by the police; see e.g. section 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 Sections 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 were 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 police powers provisions and is dealt with in Part 5. Section 3A of the Bail Act is at section 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 repealed.

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 was anticipated that the electronic monitoring equipment will be readily available for use by the police in the very near future.

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 would not be enforceable upon a defendant if they abscond. 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 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 Sections**

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

Section 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-section (6) provides for bail decision by the Supreme Court or a judge to be made on the papers if necessary.

Section 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 section also provides for the continuation of bail if a person is remanded because of illness or accident.

Section 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 section 142.

There are exceptions for cases involving treason and murder, and offences involving the misuse of drugs call for special consideration.

Section 142 sets out the grounds on which a court can refuse bail. Sub-Sections (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.

Section 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.

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

Section 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.

Section 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.

Section 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 Sections 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.

Section 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 Sections 54 and 55).

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.)

Section 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.

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

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

Section 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.

Section 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, a British Overseas Territory 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.

Section 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").

Section 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 Part 19 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 Public 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-section (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-section (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-section 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 Sections**

Section 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. Section 166 provides that any police officer, or any public officer who has power to initiate proceedings, may prosecute cases in the Magistrate’s 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.

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

Section 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 section 165(5).

Section 169 sets out the time limits for the commencement of prosecutions. 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).

Section 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. The section provides that if the time-limits are exceeded, the defendant must be released on bail, with or without conditions.

Section 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.

Section 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.

Section 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.

Section 174 provides for discontinuance of proceedings in the Magistrate's 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.

Section 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 Ordinance.

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 section 178 by reference to the UK Extradition Act 2003. It also includes offshore jurisdiction in section 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 section 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 for training purposes only. The existing justices of the peace were consulted on this change and were content in the light of their extended role in the Summary Court which will result in them sitting much more frequently than before.

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 section 183. Cases may also be transferred from the Summary Court to the Magistrate's Court and vice versa – see Sections 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 were 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 provisions for all summary matters to be first listed in the Summary Court to determine venue are in Part 16.

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

### **Notes on Sections**

Section 176 sets out the criminal jurisdiction of the Supreme Court. There is a reference to the practice and procedures 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).

Section 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 magistrates' 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).

Section 178 sets out the criminal jurisdiction of the Summary Court and provides that the practice and procedure are equated to that of a Magistrate's 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.

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

Section 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.

Section 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 Falkland Islands 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.

Section 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. This Ordinance provides that there is no time limit for indictment-only offences and those summary offences which carry a maximum penalty in excess of 6 months imprisonment. For summary offences carrying a maximum penalty of up to 6 months imprisonment there will be a time limit in which proceedings can be brought of 6 months from the date of the commission of the offence.

Section 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.)

Section 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. recorded, if facilities are available.

Sections 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.

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

## 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 since 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 Section 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 Sections**

Section 189 states the extent of the application of the Part and defines some terms that are not defined elsewhere in the Ordinance.

Section 190 states the power and obligation of the lower 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 section 181 above.

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

Most of the remaining sections 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 sections, see the Objects and Reasons note to the Administration of Justice (Amendment) Ordinance.

Section 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.

Section 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.

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

Section 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.

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

Section 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.

Section 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.

Section 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.

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

Section 201 restricts the reporting of applications for dismissal.

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

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

Section 206 creates offences for a breach of the reporting restrictions and specifies the maximum penalty (a fine at level 5).

[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].

Section 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.

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

Section 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.

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 were not included as they were not considered appropriate for the Falkland Islands.

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 take place 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 Sections**

Section 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).

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

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

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

Section 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 omitted sections that were no longer relevant (e.g. as to commencement dates) or which were based on UK sections that have been repealed.

The Part includes sections based on ones added by the CJ Act 2003 – see Sections 219 to 223. It also includes provisions of the Sexual Offences (Protected Material) Act 1997 to sexual offences; that Act came into force in the UK in 2012.

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 Part 7.

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 Sections**

Section 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.

Sections 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.

Sections 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.

Section 221 imposes an obligation on the defence to disclose the names of its witnesses. A Code of Practice regulating the interviewing of defence witnesses by the police is in Schedule 3 – the ‘Defence Witnesses Code’.

Section 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.

Section 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.

Sections 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.

Section 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).

Sections 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 section 2.

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

Sections 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).

Section 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.

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

Section 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).

Section 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. It is anticipated that the forms will be included in criminal procedure rules made under section 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 summary 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.

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 could do so, as well as a judge. The Part 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 section 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 section 183.

The Part incorporates the rule-making power into Section 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 Sections**

Section 243 says how the Part applies and defines certain terms. The term ‘imprisonable offence’ is defined in section 2 to mean punishable by imprisonment. The term ‘linked offence’ is also defined in section 2.

Section 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.

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

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

Section 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.

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

Section 249 enables any court to make rulings on points of evidence and law before a trial begins.

Section 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.

Section 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.

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

Section 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 were no equivalent provisions in the previous Falkland Islands laws and no Ordinance specifically dealing with the lower courts. The Administration of Justice Ordinance made a few jurisdictional provisions, but otherwise incorporated into Falkland Islands law provisions of the UK Magistrates' Courts Act 1980. (Precisely which provisions of the Act as amended it was difficult to ascertain).

English procedure as contained in the 1980 Act therefore governed the lower courts. This Part sets out the key features of that procedure and thus reduced the need for reliance on the 1980 Act, except where there remained 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.

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 repeats the previous system, but the provisions are clarified and made more consistent and includes corporations. A power to order the payment of costs is included, and the scheme can apply to corporations as well as individuals.

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

### **Notes on Sections**

Sections 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.

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

Section 258 sets out that once an information has been laid a JP may if the requirements of 258(3) are satisfied either issue a summons requiring the accused to attend court to answer the summons or issue a warrant for the accused's arrest (known as a 'first instance warrant').

Section 258(5) makes it clear that a warrant can only be issued if the accused is over 18 and either the offence is imprisonable or that the accused's address cannot be ascertained for the purpose of serving a summons.

There is no power for a court to issue a first instance warrant for a person under 18 as it is not considered an appropriate method of commencing proceedings against a youth. Usually either a summons would be issued, or a police officer will have arrested the youth without a warrant and charged him to come before the court either in custody or on bail, as per section 257(1)(b) or (c).

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

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

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

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

Section 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.

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

Sections 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.

Sections 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.

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

Sections 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.

Sections 284 and 285 relate to proceedings against corporations.

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

Section 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 section 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 Administration of Justice Ordinance 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 section 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 Attorney General 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 FI 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 Sections**

Section 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 section 298. For the details of jury selection and jury trial, see Part 18.

Section 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 Section 183.

Sections 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.

Section 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”).

Section 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.

Sections 295 to 297 provide for the various kinds of plea that can be entered. Section 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*.

Sections 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.

Section 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.

Section 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.

Sections 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 were part of existing Falkland Islands laws by virtue of s.48(3) of the AOJO which adopted 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 section 306 is dealt with in Part 18 (Judicial proceedings) of the Crimes Ordinance 2014.

Section 308 makes explicit provision for the payment of expenses to a witness which is currently only an administrative practice. See section 279(6) for expenses in the lower courts.

Sections 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.

Section 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.

Section 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.

Section 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.

Section 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 section 266.

Section 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 Ordinance 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 sections was varied from that in the Jury Ordinance. Some sections were combined. Section 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) was omitted following consultation.

The Part includes a requirement for the Governor, after consulting the CJC, to issue a code of practice about the summoning of jurors, to ensure fairness and that undue hardship is not caused - see section 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 section 339 gives the Chief Justice power to make rules about views by the jury.

### **Notes on Sections**

Section 315 defines some terms used in the Part. Other terms are defined in the Interpretation & General Clauses Ordinance or in section 2 of the Ordinance.

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

Section 317 requires certain information to be provided by immigration officers to the Registrar.

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

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

Section 320 says how notices are to be served.

Section 321 provides for the empanelling of jurors.

Section 322 provides for excusal for previous jury service.

Section 323 provides for discretionary refusal.

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

Section 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.

Section 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.

Section 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 section states the fact. The right of the prosecution to ask jurors to ‘stand by’ for the Crown is not included.

Section 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).

Section 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.

Section 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 section also enables the judge to allow jurors to have refreshment at the court's expense.

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

Section 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.

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

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

Section 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.

Section 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 was a common law offence and was included in the Crimes Ordinance 2014.

Section 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.

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

Section 339 is new; it gives the Chief Justice power to make criminal procedure rules and give directions as contemplated by earlier sections. 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 or disqualified from jury service. The Legislative Assembly made a number of changes to those categories which has reduced the number of occupations ineligible and narrowed the group of people ineligible on grounds of mental disorder so that people receiving treatment for e.g., depression, bi-polar disorder and possibly epilepsy will be eligible for jury service if capable of doing so.

**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. These are noted as ‘case law summarised’.

The Part includes new material based on 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 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 section in this Part as all relevant terms are defined in section 2.

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 Sections**

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

Section 340 sets out the principles for the admission of statements. Sub-section (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-section (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.

Section 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.

Section 342 retains the rule that a defendant must prove an exception, etc., which has been held by the UK Supreme Court to be not inconsistent with the right to a fair trial.

#### Summoning and calling of witnesses

Sections 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.

Section 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-section (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.

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

Section 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.

Section 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 Section 366 below.

Section 347 states when a defendant is to give 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.

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

### Competence and compellability

Sections 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.

Section 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-section (2) makes an exception for persons who cannot understand questions put to them and give understandable answers. Sub-section (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 section 2(7).

Section 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.

Section 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.

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

Section 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 themselves 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 section will not affect trials or proceedings which began before its commencement.

Section 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-section (4) says that nothing in this Part compels a spouse to disclose any communications made during the marriage by the other spouse. Sub-section (5) allows for incriminating questions to be put to a defendant.

Sections 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 section 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 section 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

Section 357 provides that in the Magistrate’s 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.

Section 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.

Section 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.

Sections 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.

Section 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.

#### Admissions and confessions

Sections 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 section 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.

Section 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.)

Section 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 inadmissible anything discovered as a result of it 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).

Section 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.

Section 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

Sections 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 was not the case in Falkland Islands law prior to this Ordinance. The provisions are derived from the UK Criminal Justice & Public Order Act 1994 as amended by the Youth Justice & Criminal Evidence Act 1999. These Sections 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.

Section 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.

The provisions have now been in daily use in the UK for some 20 years. 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.

Section 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.

Sections 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.

Section 369 is an interpretation and saving provision for the previous Sections about inferences from silence.

Section 370 is about inferences in homicide cases, where the offence of causing or allowing the death of a child or vulnerable adult has been preferred in respect of the same death. Sub-section (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 section 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

Sections 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 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.

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

Section 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 Sections 374 to 385.

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

Section 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.

Section 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.

Section 376 defines the term "important explanatory evidence".

Section 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.

Section 378 defines the term “matter in issue between the defendant and a co-defendant”.

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

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

Section 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.

Section 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.

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

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

Section 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

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

Section 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.

Section 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.

Section 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

Section 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 section 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 were part of the practice of the courts in the Falkland Islands (Sections 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 Ordinance.

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 section 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 Sections**

Section 391 provides definitions of terms that are not defined in section 2.

#### Hearsay: Main provisions

Section 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

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

Section 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 section 429 below).

Section 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.

Section 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.

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

Under section 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.

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

Section 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

Section 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.

Sections 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 section 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 section 2(7).

Section 403 enables the credibility of a hearsay witness to be tested in the same way as that of a witness giving oral evidence.

Section 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.

Section 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.

Section 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.

Section 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

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

Under section 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.

Section 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-section (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 section 417 preserves these provisions.)

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

Section 411 allows 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.

Section 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.

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

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

### Video recordings

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

Under section 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.

Section 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 CPR 2013 Part 29 has some provisions on live link evidence.

### **Notes on Sections**

Section 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 section 446.

Section 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.

Section 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.

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

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

Section 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.)

Section 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 section 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 CPR 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 section 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 Sections**

Section 425 defines certain terms used in the Part that are not defined in section 2 or in the Interpretation and General Clauses Ordinance. It also makes general interpretative provisions for the Part.

### Special measures

Sections 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.

Sections 426 and 427 set out the criteria for eligibility.

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

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

Sections 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 section 2 to mean offences in Schedule 3 and 4 respectively to the Crimes Ordinance 2014).

Sections 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.

Section 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.

Section 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 for a pilot evaluation in the Crown Court at Liverpool, Leeds and Kingston upon Thames. Following a successful pilot, it is anticipated that section 28 will be applied across England and Wales by the end of 2015.

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

Sections 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.

Sections 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.

Section 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 unrepresented. Criminal procedure rules to implement this obligation will be needed.

#### Reporting restrictions

Sections 455 to 467 restrict the reporting 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.

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

Sections 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. 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 was 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. The Bill Select Committee considered whether it was appropriate in this legislation to include such a change and concluded that anonymity should not be extended to defendants in sex offence cases.

#### Anonymity of witnesses

Sections 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.

Section 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.

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

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

#### Savings

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

## **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 section 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 Sections 489 to 492. Section 10 of the Criminal Justice Ordinance is repeated in section 492.

The Part includes powers to take into account aggravating factors as in sections 145 and 146 of the 2003 Act. Those factors are racial or religious aggravation and aggravation related to disability or sexual orientation which the legislature considered to be of sufficient seriousness to merit the court having the power to impose sentence uplift in such cases.

The Part also includes 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 Sections 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 section 485 and Part 35 in due course. There are various UK Practice Directions on the use of antecedents etc.

### **Notes on Sections**

Sections 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.

Section 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.

Section 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-sections (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 546 to 550 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 Section 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.

Section 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).

Section 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.

Section 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 section 2, as is 'mentally disordered offender'. The section 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.

Section 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 section 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; 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.

Section 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 section 482.

If a custodial sentence is imposed, the court must say why the rule against a custodial sentence in section 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.

Sections 484 to 486 deal with derogatory assertions about a person by a 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.

Section 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.

Section 486 makes it an offence to publish an assertion in breach of an order under section 484.

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

Section 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).

Sections 489 to 492 on deferment of sentence are all based on section 17 of the Criminal Justice Ordinance. That in 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.

Section 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 section and section 490.

Section 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.

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

Under section 492, when a defendant appears on a summons or warrant under the previous 2 sections, 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.

Section 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. This is an extension of the previous provision in s.61 of the Criminal Justice Ordinance which enabled the Governor by regulations to require reports to be produced for specified proceedings. There is also s.32 of the

Criminal Justice Ordinance which required a social inquiry report to be produced before a court imposed a custodial sentence (as to which see section 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 section 273.

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

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

Section 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 has been increased from 17 in the Criminal Justice Ordinance to 18 which is consistent with other age limits in the Ordinance.

Section 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.

Sections 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.

Section 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 Ordinance 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 has been replaced by community sentences (i.e. community orders and youth rehabilitation orders). Sections 18 to 24 and Schedule 1 of the Criminal Justice Ordinance were repealed upon commencement of this Ordinance and the provisions about discharges were 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.’)

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

### **Notes on Sections**

Section 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.

Section 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.

Section 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.

Section 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 section 372. ‘Forfeiture’ was not mentioned in Criminal Justice Ordinance but is mentioned in section 505

Section 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.

Section 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 Ordinance ‘community sentences’,

although that term includes other types of sentences in the UK law e.g. ‘custody plus’ and ‘custody minus’ etc., which have not been adopted in this Ordinance.

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 Ordinance 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 have been 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 years 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 enactment 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 section 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 section 557.

### **Notes on Sections**

Section 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 section 2. A 'community sentence' is defined as a community order or youth rehabilitation order.

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

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

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

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

Sections 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.

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

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

Section 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. It makes clear that the provision has no effect on section 76 Licensing Ordinance (the power to prohibit a person from consuming alcohol etc. under that Ordinance).

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

Section 526 defines the supervision requirement.

Section 527 defines the electronic monitoring requirement

Section 528 makes additional provision about youth rehabilitation orders. Any of the adult requirements can be imposed on a youth. It is similar to section 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 available in the UK.

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

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

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

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

Section 532 sets out the duties of the probation officer.

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

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

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

Sections 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. Section 541 imposes restrictions on the powers of the courts when treatment is required.

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

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

Sections 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.

Sections 551 to 557 make supplementary provisions about community sentences.

Section 551 sets out some general restrictions on imposing community sentences.

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

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

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

Section 555 regulates hearings by the Magistrate's Court or Summary Court about relevant orders.

Section 556 enables the courts to review relevant orders.

Section 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 were 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 Part needs to be read in conjunction with section 71 of the Constitution; the Remit and Rules of the Advisory Committee on the Prerogative of Mercy, and the Prison Ordinance relating to remission of sentence.

The Part includes provision for extended sentences for persistent offenders – see section 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 Sections**

Sections 558 to 562 impose restrictions on the impositions of custodial sentences in various circumstances.

Section 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 sentence with requirements would justify a custodial sentence. The court must state the reason and explain it to the offender.

Section 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 section 558 are both derived from s.31 of the Criminal Justice Ordinance, but with modifications, as that section does not mention legal representation.

Section 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 section 493 which is based on s.61 of the Criminal Justice Ordinance. Both Sections find echoes in s.156 of the CJ Act 2003.

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

Section 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.

Sections 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 section 487.

Under section 563, time spent in custody or in police detention before conviction counts towards a sentence. Time spent in custody before the imposition of a probation order or conditional discharge or suspended sentence subsequently breached and resulting in a custodial sentence does not count towards the sentence.

Under section 564, time spent in custody pending an appeal counts towards a sentence unless the court directs otherwise.

Sections 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 section 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.

Sections 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 section 2 to mean the Registrar or the Clerk of the court, as the case may be.

Section 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.

Section 569 specifies which court is to deal with the breach of a suspended sentence.

Section 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.

Section 571 provides 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 section 2). Section 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.

Section 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.

Section 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 section 178 the Summary Court has power to impose consecutive sentences but the aggregate of the term cannot exceed 6 months. The maximum sentence of detention on a person under 21 is 24 months under section 726].

Section 574 says how partly suspended sentences are to be dealt with in the context of consecutive sentences.

Sections 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 sections.

Sections 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 Sections 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. The legislature was aware of the ECHR ruling in the case of *Bamber* in respect of a whole life tariff as well as the UK Court of Appeal decision in the case of *McLoughlin* and debated the issue in some detail during the Select Committee stage of the Bill. The Select Committee recommended to the Legislative Assembly that the maximum starting point should be 40 years rather than 'whole life' and this was accordingly enacted.

These sections provide that life prisoners can apply to the Governor for release on licence, once the minimum tariff period has been served. The Governor must consult with the Advisory Committee on the Prerogative of Mercy. Any recommendation made by a court under section 577 would be one of the factors considered by the Advisory Committee.

Section 577 requires the court to determine a starting point. For a very serious offence the starting point is 40 years. 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.

Section 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.

Section 579 requires the court to state its reasons for deciding on the order made.

Sections 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 sections govern release on licence of young offenders, with any modifications made under section 726(7) and (8).

Section 585 specifies the terms of a warrant ordering imprisonment.

Section 586 says that imprisonment must be served in prison in the Falkland Islands unless otherwise directed by the Governor. If a person is to serve imprisonment outside the Falkland Islands, e.g. in the UK, the Governor can so direct, subject to the provisions of the Colonial Prisoners Removal Acts 1869 and 1884, the accompanying regulations and the UK Prison Service Order number 6650.

These provisions provide for the transfer of prisoners between Overseas Territories and the UK. A prisoner can be transferred to the UK for various reasons set out in section 2 of the 1884 Act, one of which is for 'more efficiently carrying his sentence into effect'. The regulations may provide for varying the conditions of a sentence passed in the OT where they differ in order to conform to the UK conditions but the prisoner cannot receive a longer sentence than he would have in the OT:

Regulation 1 of 'The Colonial Prisoners Removal Order in Council 1907 states that a prisoner being removed to the UK will be dealt with as if he had been sentenced in the UK for the same period. The Act and the regulations are both silent about the topic of remission per se but are clear in the wording, 'in the same manner as if he had been sentenced in the United Kingdom to imprisonment' – which would seem to include the period of remission for good behaviour.

The UK Prison Service Order no. 6650 'Sentence Calculation' confirms this:

**'10.5 Transfers under the Colonial Prisoners Removal Act 1884:** *Prisoners transferred to England and Wales under this Act must have their release dates calculated as if they had been*

*sentenced by a court in this jurisdiction. Credit must be given for any time spent in custody (including police detention) before sentence only if that time has been allowed in the jurisdiction in which the prisoner was sentenced, as with prisoners transferred under the Crime (Sentences) Act 1997.*

The decision to move the prisoner to the UK is taken by the ‘removing authority’; which is defined in section 5 of the 1884 Act as, ‘*a Secretary of State acting with the concurrence of the Government of every British possession concerned*’.

Section 6 of the 1884 Act explains further, ‘The concurrence of the Government of a British possession, and any requisition by the Government of a British possession, **may be given or made by the Governor in Council or such other authority as may be from time to time provided by the law of that possession**, but shall be signified by writing under the hand of the Governor or of the Colonial Secretary or of any other officer appointed in this behalf by the law of that possession’.

Section 587 is based on section 96 Criminal Justice Ordinance and says that a person’s release can be ordered even if the person is not in detention.

Section 588 is based on section 97 Criminal Justice Ordinance and provides for warrants for the arrest of escaped prisoners.

## 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 Magistrate’s 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 sought to retain useful features of the UK legislative scheme, duly adapted for the Falkland Islands. In doing so it replaced 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 imprisonment to the Magistrate’s Court and Summary Court as well as to the Supreme Court. The Part includes a provision of the

Administration of Justice Ordinance 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 section 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 section 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 Sections**

Section 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). 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.

Section 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 section 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 section 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.

Section 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.

Section 592 says that fines must reflect the seriousness of the offences and requires courts to take into account the financial circumstances of the offender.

Section 593 enables a court to make a financial circumstances order on an individual offender. The offender must comply with the order.

Section 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.

Section 596 enables a court to allow time for payment of a fine, to permit payment by instalments, or to reduce or remit a recognisance.

Sections 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.

Section 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.

Section 605 says how monies 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.

Section 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 thousands, 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 section 599.

## PART 28 – COMPENSATION, RESTITUTION, DEPRIVATION, ETC.

### **Introduction**

This Part deals with a number of ancillary issues that arise on conviction. 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 section 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 empowered 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 Sections 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 Sections**

Section 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 filled 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 section is based on a provision in the Gibraltar CPE Act which was also adopted in the St Helena CPE Ordinance. This formulation was preferred to that in s.9 of the Criminal Justice Ordinance which gave the power directly to the Legislative Assembly, used the term ‘moral or legal duty’ and enabled the award to be varied even after being paid.

Sections 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 section 609(6) means that any increase in the UK becomes part of Falkland Islands law automatically.

Section 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 section 494(1).

Section 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.

Section 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 Court of Appeal Ordinance except s.87 re abatement).

Section 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.

Section 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-section (10) says that the powers in sub-sections (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.

Section 616 provides for appeals in respect of restitution orders at every level of the appellate system.

Section 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 section 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 extends to any offence. A vehicle is included in the scope of property that can be confiscated under this section.

Section 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.)

Sections 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.

Section 621 provides for the return to a defendant of property taken from them 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.

Section 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.

Section 623 is a general statement, similar to that in section 653(6), that orders must not be enforced while an appeal is pending.

Section 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.

Section 625 gives the Governor, after consulting the Criminal Justice Council, power to vary any monetary limits stated in the Part.

Section 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 replaced 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 were incorporated, and came into force on 10<sup>th</sup> 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 section 637 and in section 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 Sections 639 to 645.

There is a commentary at Archbold 2013 Ed. paras. 13-120 to 13-137.

### **Notes on Sections**

Section 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 (section 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 (section 630(4)).

The reference in section 627(8) to probation orders will become historic on the commencement of Part 25 which replaces such orders with community sentences; see also section 630(5) on this point.

Section 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 section 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 (section 628(2)).

Section 629 lists the excepted sentences.

Section 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 48 months for an adult and 24 months 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.

Section 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 section 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.

Section 632 is a saving section 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.

Section 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.

Section 634 contains various definitions etc. for the purposes of section 633.

Section 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.

Section 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.

Section 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 section 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).

Section 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-section (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.

Sections 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 are not 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.

Section 639 states the basic principle.

Section 640 says how applications for a decision to disregard are made and processed.

Section 641 states the effect on police records of a decision to disregard.

Section 642 states the effect of disregard for disclosure and other purposes

Section 643 contains supplementary provisions.

Section 644 provides a right of appeal to the Supreme Court against the Governor’s decision.

Section 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.

Prior to enactment of this Ordinance there was little local legislative provision in the Falkland Islands on the award of costs in criminal proceedings. The Criminal Justice Ordinance only mentioned costs in passing and in relation to enforcement, and the Administration of Justice Ordinance 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 was due to the fact that sections 16 to 21 of the UK Prosecution of Offences Act 1985 which deal with the issue of costs in criminal proceedings and the Costs in Criminal Cases (General) Regulations 1986 both applied in the Falkland Islands by virtue of the Administration of Justice Ordinance (Title 22.1) as part of the practice and procedure applicable in English courts.

This Part therefore applied sections 16 to 21 of the UK Prosecution of Offences Act 1985 as amended. Section 647 is based on the Gibraltar CPE Act and the St Helena CPE Ordinance and is a simplified statement of the UK provisions.

The amendments made by the Legal Aid, Sentencing & Punishment of Offences Act 2012 were not included as they deal mainly with public funding of legal aid. Section 16A of the Prosecution of Offences Act 1985 as inserted by LASPOA was not therefore included. As 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 sections 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 extends to an award of costs by the Judicial Committee – see section 647(1)(d) and (e).

Much of the UK law on criminal costs is contained in Practice Directions, in the Criminal Procedure 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 Sections

Section 646 defines terms that are not defined elsewhere in the CPE Ordinance 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.

Section 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-section (6) provides that costs against a youth must not exceed the fine imposed, or the limit prescribed by section 733 i.e. £250 for a child, or level 3 on the Standard Scale for a youth or the maximum fine for the offence in the Supreme Court.

Section 648 provides for costs orders in relation to two special sets of circumstances.

Sub-sections (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 section gives a substantive power).

Sub-section (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.

Section 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 section gives a substantive power).

Section 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 section gives a substantive power, except as to types of misconduct).

Section 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.

Section 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.

Section 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.

Section 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.

Section 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-section (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 was 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 was no need to reproduce it in this Ordinance. That Ordinance goes into some detail on the procedure, and there are Court of Appeal Rules. Section 48(2) of the Administration of Justice Ordinance 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 was more appropriate to refer to them, and Section 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 it was anticipated that in due course new rules will be made by the Chief Justice after consulting the Criminal Justice Council.

The Court of Appeal Ordinance omits some provisions that have been included 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 Section 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 by adding more provisions to the CA Ordinance, and

(possibly as consequential amendments in this Ordinance) 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 Magistrate's 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 sections some provisions of the Criminal Procedure Rules 2012. Some of the sections 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 section 250 in Part 15.

Section 670 therefore gives the prosecution a right to appeal against a ruling of the Supreme Court including a terminating ruling which did not exist in Falkland Islands law previously. The section 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.

Section 671 similarly gives the prosecution a limited right to appeal against a ruling of the Magistrate's Court which also did not exist in Falkland Islands law previously. This was not extended to the Summary Court because the provisions in the UK only apply to the Crown Court; the Summary Court is unlikely to deal with complex matters leading to a terminating ruling on a serious case (as this is a criterion for allocating the case to the Magistrate's Court in the first instance).

The section 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) was 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 section 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 Magistrate's 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 section 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 continue to be governed by the UK Judicial Committee Act 1915 and rules made under it.

Transitional provisions in Part 36 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: Magistrate's 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 Sections**

Section 656 describes the scope of the right to appeal from the Magistrate's Court or Summary Court to the Supreme Court against conviction or sentence.

Section 657 says how and when a notice of appeal must be filed.

Section 658 provides for the abandonment of appeal before it has begun.

Section 659 sets out some of the duties of the Registrar of the Supreme Court in relation to an appeal to that court.

Section 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.

Section 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 section 183 are met (i.e. parties have an opportunity to make representations etc.).

Section 662 says what the Supreme Court can do on hearing an appeal.

Section 663 says how the Supreme Court should make a decision on an appeal against conviction.

Section 664 makes additional provision about appeals against sentence, based on provisions in the CA Ordinance.

Section 665 says that the Magistrate's Court or Summary Court must be notified of the result of an appeal.

Section 666 says how decisions on an appeal are to be enforced i.e. as if they were the decision of the lower court.

Section 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.

Section 668 provides for appeals against a finding of a lower court that a person was not guilty by reason of mental disorder. These two sections are different from the provisions in the CA Ordinance on insanity cases, but have the same overall effect.

Section 669 provides for appeals in cases concerning youths, in particular against fines imposed on parents and other ancillary decisions concerning youths.

Section 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.

Section 671 provides for a similar right in respect of rulings in the Magistrate's Court and against over-lenient sentences imposed by that court.

Sections 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.

Section 673 says that the Supreme Court can send the case back for amendment.

Section 674 says how the question is to be determined and how the decision is enforced.

Section 675 enables the Supreme Court to enlarge the time for the doing of anything required by the Part.

Section 676 enables the Supreme Court to correct errors or omissions in the records of the lower courts.

Section 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.

Sections 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 Sections are based on provisions of the UK Criminal Appeals Act 1968.

Section 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.

Section 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.

Section 681 is a saving for appeals from the Supreme Court to the Court of Appeal, which are governed by the Court of Appeal Ordinance.

Sections 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.

Section 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.

Section 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.

Section 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 were not set out in a local statute.

One procedure (Sections 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 (Sections 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 (Sections 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 Sections 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 Sections 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 previous power, in section 56 of the Administration of Justice Ordinance was 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 appeared 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-section (2) seems to imply that the rehearing would be only on an interlocutory issue, but sub-section (1) is not so limited).

No English authority is identified as the source of this section, and the power was too wide in the context of criminal trials, where a rehearing exposes the defendant to a double jeopardy. This Part therefore did not reproduce section 56 of the AOJO but limited 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 section 181.

References by Attorney General

Sections 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 sections 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

Sections 713 to 718 reproduce most of the Criminal Justice (Amendment) (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.) That Ordinance gave the power of reference to the Governor and these sections 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 Sections 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 Attorney Generals' 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 Sections**

### Retrials

Sections 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.

Sections 695 to 703 regulate the procedure on a retrial, including the evidence that may be given and the granting of bail.

Section 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-section (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 Section 2 as an offence listed in Section 181.

Section 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 Section 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.

Section 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 section 6(6) of the Constitution.

Section 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.

Section 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.

Section 691 sets out the procedure as to notice, presence at the hearing, etc. in relation to an application for a retrial.

Section 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.

Sections 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 section 2.

Sections 695 to 703 regulate the procedure on a retrial, including the evidence that may be given and the powers relating to bail.

Section 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.

Section 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 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.

Section 697 provides for investigations into the qualifying offence. Such an investigation (subject to Section 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. 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.

Section 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.

Section 699 applies with modifications the police powers provisions of the Ordinance dealing with arrest and detention to proceedings under this Part.

Sections 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

Sections 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 sections 686 to 703.

#### References by Attorney General

Section 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.

Section 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.)

Section 710 regulates the procedure on a review of sentence and enables criminal procedure rules to be made as to court fees and other matters.

Section 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.

Section 710 provides for a right of appeal to the Judicial Committee of the Privy Council from an opinion given under section 709.

#### References by the Governor

Section 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.

Section 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.

Section 715 requires a person who wishes a reference to be made to 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.

Section 716 sets out the procedure for a petition to the Governor, including the role of the Attorney General.

Section 717 makes further provisions about references, including the criteria for reversing a conviction, verdict or finding.

Section 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 section 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 detention of youths 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. The sentence will be one of detention, and the Governor, after consulting the CJC, must designate the place for detention. The place can be a discrete area of the prison building.

The Part has not retained 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. 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 Sections 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 Sections**

Section 719 defines some terms that are used in the Part but not defined elsewhere. There are also savings for other provisions of the Ordinance that deal with sentencing of youths and young offenders.

Section 720 makes general statements of principle about sentencing of youths and young offenders.

Sections 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 sections provide for the remitting of cases to and from the Youth Court.

Section 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 section is based on part of s.33 of the Criminal Justice Ordinance.

Sections 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 sections 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.

Sections 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.

Section 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.

Section 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.

Sections 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.

Section 733 prescribes the maximum amount that a child or young person can be fined by the Youth Court, but gives the Governor, after consulting the CJC, power to amend the figures.

Section 734 requires a court to order a parent or guardian to pay a fine, costs and compensation ordered on a conviction of a youth.

Section 735 enables a financial circumstances order to be made against a parent or guardian.

Section 736 adapts section 592 as to the fixing of the level of fine.

Sections 737 and 738 enable a court to bind over the parent or guardian of a youth offender.

Section 738 enables a court to require the attendance of a parent or guardian at court.

Sections 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.

Sections 743 to 748 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 are included in the Crimes Ordinance 2014.

There is a presumption about age in section 745 and a power to proceed with a case in the absence of a youth in section 746.

Section 750 enables a warrant to be issued to search for a missing youth. The equivalent UK provisions are found in ss.44 and 102 of the Children Act 1989, but the older Children and Young Persons Act 1933 provision was considered to be more appropriate in Falkland Islands and is replicated in this section.

Sections 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.

Sections 755 and 756 relate to publication of certain matters in newspapers and by programme services (i.e. radio or TV or internet broadcast). Section 755 is a total prohibition in relation to certain proceedings, while section 756 gives a court power to prohibit publication in all types of proceedings.

Sections 757 to 760 are miscellaneous provisions.

Section 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.

Section 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.

Section 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.

Section 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 sections 745 to 750.

## **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 section 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 section 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 sections 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 Ordinance 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 Sections**

Section 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.

Sections 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.

Section 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.

Section 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).

Section 767 provides that if the person is fit to be tried, the trial must proceed in the normal way.

Sections 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 two years. They may be reviewed by the court that made them.

Section 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 section 763 provides for an appeal to the Court of Appeal on the question of fitness to be tried. See also Sections 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.

Section 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. It is an innovation and brings together in a single body the functions found in a range of bodies in other common law jurisdictions. In summary, its role is 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 serves as part of the judicial branch of the Falkland Islands constitutional system of government and therefore is free of constraint or interference by the executive and legislative branches in its operation. It is not a corporate body and has no separate legal personality. It will include representatives of the judiciary (including JPs), government departments, legal practitioners working in criminal defence and members representing civil society, selected in accordance with the Nolan principles of public service (which already apply in the Falkland Islands under the Management Code and the Legislative Assembly Standing Rules and Orders). The Council's 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 has been 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 Ordinance.

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 Sections**

Section 775 establishes the Council and requires the Government to provide funding for it. Details of its composition and procedure are set out in Part 'A' of Schedule 13.

Section 776 sets out the aims and activities of the Council. The aim is 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.

Section 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.

Section 778 requires the Council to make an annual report to the Governor, who must lay the report before the Legislative Assembly. The Council's report must include a report from the Committee with any sentencing guideline it has published. The report is to be made public.

Section 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 Sections**

Section 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-section (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.

Sections 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 Ordinance.

Section 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 it was considered appropriate to include in the Ordinance. It does not replace the common law rules on self-defence.

Section 783 makes it clear that the Ordinance is capable of applying to corporate bodies, whatever they are called. It states that corporate liability applies to all offences capable of being committed by a corporate body, or by an individual officer on behalf of a body. The rule is stated in various ways in the UK Acts where it appears, and is of general application. The rule is sometimes stated separately, as in section 429 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 503 of that Ordinance as to bribery by corporate bodies.

Sub-section (5) states that gender-specific wording of a provision does not preclude the application of the provision to a corporation.

Section 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, but, recognising that often people have multiple email addresses, a caveat was provided to ensure that an inference of good service can only be drawn where service has been to an email address which has been published or advertised. It is reasonable to expect a person to check their post and email on a regular basis and to make suitable arrangements for the collection of post at times of absence. Sub-section (2) governs service on corporations.

Section 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.

Section 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.

Section 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 section 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.

Section 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 Executive Council 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.

Section 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 section 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 Ordinance.

UK statutes since the 'cut-off' date of 31 July 2004 are not included (see section 78(7) of the IGCO).

Section 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.

Section 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 section 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.

Section 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.

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## APPENDIX 1

The main new or updated provisions of the Ordinance 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)
- 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
- Prosecution able to appeal refusal of bail
- Electronic monitoring of persons on bail and as part of a sentence– ‘curfew tags’

### **Jurisdiction**

- First appearance of all cases in the Summary Court (Section 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 – (section 183).
- All types of pre-trial review and case management hearings rationalised into preliminary hearings (Part 15)
- Time limits for commencement of prosecutions simplified (Section 182)
- The Chief Justice and Criminal Justice Council (CJC), to issue a code of practice about the summoning of jurors. (Part 18).
- Exclusion of groups for jury service narrowed in line with UK practice (Part 18)
- The courts given wider 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**

- Automatic and discretionary disqualification from working with vulnerable groups; introduced. (Part 28)
- Sentencing provision overhauled, including the introduction of community sentences. Custodial sentences for youths and young offenders simplified. 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)
- Type of community orders (requirements) increased. (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)
- Falkland Island sentencing guidelines to be introduced. (Part 23)
- Changes to the rehabilitation of offenders. (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)

#### **Criminal Justice Council established (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 was due to the problems historically in empanelling a jury. However the population is increasing and so is the jury pool. The legislature decided that it was 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 carrying life imprisonment were reviewed, and in some cases the maximum penalty was reduced e.g. robbery and assault with intent to rob to 18 years. The remaining offences carrying life imprisonment became indictment-only offences.

Given that the list of indictment-only offences is now larger than before, there was no particular merit in listing the sexual offences and the criminal damage offences, as before in the CJO. Accordingly, when section 181 of the CPE Ordinance was drafted, which defines indictment-only offences; the offences have not been listed.

**The following offences are now indictment-only offences by reference to sections of the Crimes Ordinance**

These, other than the sexual offences, were selected on the basis that they are all offences which involve either a fatality or a high risk of one:

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 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 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 sections –

- 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: Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.
- 237: Engaging in sexual activity in the presence, procured by inducement etc., of a person with a mental disorder
- 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 16 (Treason)

442(1) and (2): Treason

Part 22 (Hate crimes)

548: Aggravated criminal damage or arson, with racial aggravation

**Offences remaining summary offences with the maximum penalty reduced to 18 years:**

115(1): Kidnapping

353(1): Robbery and Assault with intent to rob

355(1): Aggravated burglary

**Offences remaining summary offences with the maximum penalty reduced to 14 years:**

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

178: Causing grievous harm by explosion

179: Causing explosion, etc. with intent to cause GBH etc.

The two categories were formulated on the basis that these are offences where the risk to life is lower and based upon current sentencing practice/sentencing guidelines in the UK where life sentences for these offences are rarely handed down.

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 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 – 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. (R v Turner 1975)

# CRIMINAL PROCEDURE AND EVIDENCE ORDINANCE 2014

## DERIVATION TABLE

### CHAPTER 1 - PRELIMINARY

#### PART 1 - PRELIMINARY

<i>Clause</i>	<i>Derivation</i>
1	--
2(1)	
'criminal investigation'	UK CPI Act 1996 s.22
'premises'	UK PACE Act 1984 s.23 am.CJP Act 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.50 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  
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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)  
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80 CJ Ord. s.163; UK PACE Act 1984 s.51  
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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  
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128	UK CJ Act 2003 ss.22 and 23 (part) adapted
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136	UK Rehabilitation of Offenders Act 1974 s.8A and Sched. 10 (part) adapted
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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
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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
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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
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159	CJ Ord. s.149; UK Bail Act 1976 s.9
160	UK Senior Courts Act 1981 s.81 (part); CPR Rule 68.8
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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
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239 CPI Ord. s.18; UK CPI Act 1996 s.16  
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256 UK MC Act 1980 s.121 (part) adapted  
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259 UK MC Act 1980 s.14  
260 UK MC Act 1980 s.123  
261 UK MC Act 1980 ss.124 & 125  
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263 UK Criminal Proc. Rules adapted  
264 UK MC Act 1980 ss.17C & 18 adapted  
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347	CJ Ord. s.106; UK PACE Act 1984 s.79
348	UK MC Act 1980 s.98 adapted
349	CJ (Evidence) Ord. ss.3(3) and 40; UK YJCE Act 1999 s.53
350	CJ (Evidence) Ord. s.41; UK YJCE Act 1999 s.54
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353	CJ Ord. s.106A; UK Criminal Justice Act 1982 s.72
354	UK Criminal Evidence Act 1898 s.1 (part)
355	CJ Ord. s.107 (part); UK PACE Act 1984 s.80
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357	UK MC Act 1980 s.104
358	CJ Ord. s.101; UK PACE Act 1984 s.73; Evidence Act 1851 s.7
359	CJ Ord. s.102; UK PACE Act 1984 ss.74 and 75
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361	UK Criminal Justice Act 1967 s.10
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370	UK DVCV Act 2004 s.6 adapted
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481	UK CJ Act 2003 s.166 adapted
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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)
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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  
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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
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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
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573	Gibraltar CPE Act s.174; SH CPE Bill; Common law
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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  
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608 CJ Ord. s.53 (part); UK PCC (S) 2000 s.130 (part)  
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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  
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618 CJ Ord. s.60; UK PCC (S) Act 2000 s.147  
619 UK Safeguarding Vulnerable Groups Act 2006 ss.3 and  
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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

## **CHAPTER 9 - COSTS**

### **PART 30 – COSTS IN CRIMINAL CASES**

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  
655 --

## **CHAPTER 10 - APPEALS**

### **PART 31 – APPEALS TO AND FROM THE SUPREME COURT**

656 UK MC Act 1980 s.108  
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 Act]  
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 678 679 to 681	UK Criminal Appeals Act 1968 s.44A adapted --
682	SH Criminal Procedure Ord. s.261
683	SH Criminal Procedure Ord. s.262
684	SH Criminal Procedure Ord. ss.263 & 264
685	UK Senior Courts Act 1981 s.31

#### PART 32 – RETRIALS, REFERENCES, ETC.

686	UK CJ Act 2003 ss.75 and 95
687 to 694	UK CJ Act 2003 ss.76 to 83
695	UK CJ Act 2003 s.84 (part)
696	UK CJ Act 2003 s.84 (part); Criminal Appeals Act 1968 Sched.2 para.1
697 to 702 703	UK CJ Act 2003 ss.85 to 90 --
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
715	CJ (Am) (Miscarriages of Justice Ord. s.4 modified
716	--
717	CJ (Am) (Miscarriages of Justice Ord. s.5
718	CJ (Am) (Miscarriages of Justice Ord. s.6

### CHAPTER 11 – YOUTHS AND YOUNG OFFENDERS

#### PART 33 – YOUNG OFFENDERS AND YOUTH PROTECTION

719	--
720	UK CYP Act 1933 ss.44 & 59; Crime & Disorder Act 1998 s.37; CJ Act 2003 s.142A
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)
759	Common law
760	--

## CHAPTER 12 – MENTALLY DISORDERED OFFENDERS

### PART 34 – MENTALLY DISORDERED OFFENDERS

761	UK Crim. Proc. (Insanity) Act 1964 s.8; Mental Health Act 1983 s.55 etc.
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)
767	--

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)
773	--
774	UK Crim. Proc. (Insanity) Act 1964 s.6

### CHAPTER 13 - SUPPLEMENTARY PROVISIONS

#### PART 35 – CRIMINAL JUSTICE COUNCIL

775 to 779	--
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#### PART 36 – MISCELLANEOUS AND TRANSITIONAL PROVISIONS

780	UK PACE Act 1984 s.114; CJPO Act 1994 s.36 adapted
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	Criminal Justice Ordinance Rehabilitation of Offenders (Exception) 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) (No.2) Ord. 2013	Administration of Justice (Amendment) (No.2) Ordinance 2013
Jury Ord	Jury Ordinance
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 ORDINANCE 2014  
DESTINATION TABLE**

Most of the criminal procedure laws of the Falkland Islands are to be repealed or disapplied by the CPE Ordinance. 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 Ordinance.

The second column below shows where in the CPE Ordinance 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 Ordinance.

The destination of disappplied 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                          |

22.	--	Discharge and amendment of probation orders
23.	--	Breach of requirement of probation order
24.	Part 24	Absolute and conditional discharge
25.	-do-	Commission of further offence by probationer or person conditionally discharged
26.	-do-	Breach of conditional discharge by young offender
27.	--	Substitution of conditional discharge for probation
28.	Part 24	Supplementary provision as to probation and discharge
29.	-do-	Effect of probation and discharge
30.	Part 26	General power to impose sentence of imprisonment
31.	-do-	Restrictions on imposing sentences of imprisonment on persons who have not previously served prison sentences
32.	-do-	Social inquiry report for purposes of section 31
33.	-do-	General restriction on custodial sentences
34.	Part 33	Detention in a young offender institution
35.	-do-	Special provisions
36.	-do-	Accommodation of offenders sentenced to detention in a young offender institution
37.	-do-	Application of sections 31 and 32 in respect of persons under the age of twenty-one years
38.	Part 26	Custody for life
39.	Part 33	Punishment of grave offences committed by persons under eighteen
40.	-do-	Detention of persons aged eighteen to twenty for default or contempt
41.	Part 25	Community service orders in respect of convicted persons
42.	-do-	Obligation of person subject to community service order
43.	-do-	Breach of requirements of community service order
44.	-do-	Amendment and revocation of community service order and substitution of other sentences
45.	Part 26	Suspended sentences of imprisonment and partly suspended sentences of imprisonment
46.	-do-	Power of court on conviction of further offence to deal with suspended sentences
47.	-do-	Court by which suspended sentence may be dealt with
48.	-do-	Procedure where court convicting of further offence does not deal with suspended sentence
49.	--	Suspended sentence supervision orders
50.	--	Breach of requirement of suspended sentence supervision order
51.	Part 26	Punishment of persistent offenders
52.	-do-	Supplementary provisions as to persistent offenders
53.	Part 28	Compensation orders against convicted persons
54.	-do-	Enforcement and appeals
55.	-do-	Review of compensation orders
56.	-do-	Effect of compensation order on subsequent award of damages in civil proceedings

- 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**

*Note: 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. Section 33 (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 41 relate to criminal proceedings they are replaced by provisions in Parts 11 and 16. Section 39 (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 Ordinance

**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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## Supplement

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The following are published in this Supplement –

**Crimes Ordinance 2014 (No 13 of 2014);**

**Explanatory Memorandum to the Crimes Ordinance 2014;**

**Derivation Table to the Crimes Ordinance 2014; and**

**Destination Table to the Crimes Ordinance 2014.**

**ELIZABETH II**



**FALKLAND ISLANDS**

---

COLIN ROBERTS C.V.O.,  
*Governor.*

**Crimes Ordinance 2014**

(No. 13 of 2014)

ARRANGEMENT OF PROVISIONS

**CHAPTER 1 – PRELIMINARY**

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Section

1. Title and commencement
2. Interpretation

PART 2 – GENERAL PRINCIPLES

*Criminal liability*

3. Age of criminal responsibility
4. Inferences as to intent
5. Automatism

*Offences committed outside the Falkland Islands*

6. Offences committed partly outside the Falkland Islands
7. Offences to which sections 8 to 13 apply
8. Jurisdiction in respect of Group A offences
9. Questions immaterial to jurisdiction in the case of certain offences
10. Rules relating to the location of events
11. Conspiracy and encouraging
12. Extended jurisdiction in relation to certain attempts
13. Relevance of external law

*Alternative verdicts*

14. Conviction of offence other than that charged
15. Person tried for offence may be convicted of ancillary offence

*Miscellaneous*

16. Proceedings by and against spouses
17. Application of Ordinance to corporations
18. No requirement for corroboration

PART 3 – ANCILLARY OFFENCES

*Attempts*

19. Attempts generally
20. Application of procedural and other provisions to offences of attempt
21. Procedural rules
22. Effect of sections 19 to 21 on common law

*Conspiracy*

23. Conspiracy
24. Conspiracy to commit offences outside the Falkland Islands
25. Exemptions from liability
26. Penalties
27. Restrictions on the commencement of proceedings
28. Conspiracy under other enactments
29. Effect of acquittal of other defendant
30. Abolitions, savings, transitional provisions

*Encouragement of offences*

31. Offence of encouragement
32. Proving an offence under section 31
33. Supplemental provisions
34. Defences
35. Jurisdiction
36. Extended jurisdiction in certain cases
37. Commencement of proceedings, etc. for an offence
38. Persons who may be convicted
39. Alternative verdicts and guilty pleas
40. Penalties
41. Abolition of common law offence of incitement

*Accessories*

42. Aiding and abetting
43. Assisting offenders
44. Concealing offences and false information

*Miscellaneous*

45. Consequences of conviction for ancillary offence

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### PART 4 – OFFENCES AGAINST THE PERSON

#### *Causing and threatening death*

- 46. Murder
- 47. Abolition of constructive malice
- 48. Diminished responsibility
- 49. Loss of self-control
- 50. Manslaughter
- 51. Murder or manslaughter outside the Falkland Islands
- 52. Soliciting murder
- 53. Threats to kill
- 54. Suicide pacts
- 55. Complicity in suicide
- 56. Infanticide
- 57. Child destruction

#### *Termination of pregnancy*

- 58. Administering drugs or using instruments to procure abortion
- 59. Supplying drugs, etc. to procure abortion
- 60. Medical termination of pregnancy
- 61. Conscientious objection to participation in treatment

#### *Concealing the birth of a child*

- 62. Concealing the birth of a child

#### *Endangering life*

- 63. Impeding rescue from shipwreck
- 64. Wounding, etc. with intent to do grievous bodily harm
- 65. Malicious wounding
- 66. Attempting to choke, etc. with intent to facilitate a serious offence
- 67. Using drugs to facilitate a serious offence
- 68. Administering poison
- 69. Setting spring guns, etc.

#### *Assaults*

- 70. Common assault
- 71. Assault occasioning actual bodily harm
- 72. Assaulting police officer
- 73. Assault to prevent arrest
- 74. Assaulting persons when preserving wrecks
- 75. Obstructing or assaulting clergyman
- 76. Certificate of dismissal

#### *Endangering the life of a child or vulnerable adult*

- 77. Causing or allowing the death of or harm to a child or vulnerable adult

- 78. Inferences in murder and manslaughter cases
- 79. Inferences in cases of serious physical harm
- 80. Abandoning young child
- 81. Being drunk while in charge of a child
- 82. Cruelty to or neglect of person under 16
- 83. Illegal tattooing of youths

*Child abduction, etc.*

- 84. Offence of abduction of child by parent, etc.
- 85. Offence of abduction of child by other persons
- 86. Child abduction: Supplementary
- 87. Trafficking people for labour exploitation

*Female genital mutilation*

- 88. Offence of female genital mutilation
- 89. Female genital mutilation: Related offences

*Forced marriages: Offence*

- 90. Offence of forced marriage
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*Forced marriages: Protection orders*

- 92. Forced marriage protection orders
- 93. Contents of orders
- 94. Applications and other occasions for making orders
- 95. Orders without notice
- 96. Undertakings instead of orders
- 97. Duration and variation or discharge of orders
- 98. Attachment of power of arrest to orders
- 99. Exercise of power of arrest
- 100. Remand
- 101. Forced marriage protection orders: Supplementary

*Domestic violence protection*

- 102. Power to issue a domestic violence protection notice
- 103. Contents and service of a DVPN
- 104. Breach of a DVPN
- 105. Application for a domestic violence protection order
- 106. Conditions for and contents of a DVPO
- 107. Breach of a DVPO
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*Human organ transplants*

- 109. Prohibition of commercial dealings in human organs
- 110. Restriction on transplants between persons not genetically related
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**ELIZABETH II**



**FALKLAND ISLANDS**

COLIN ROBERTS C.V.O.,  
*Governor.*

**CRIMES ORDINANCE 2014**

(No. 13 of 2014)

*(assented to: 9 November 2016)*  
*(commencement on: in accordance with section 1)*  
*(published: 23 November 2016)*

**AN ORDINANCE**

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

ENACTED by the Legislature of the Falkland Islands —

## **CHAPTER 1 - PRELIMINARY**

### **PART 1 – PRELIMINARY AND INTERPRETATION**

#### **1. Title and commencement**

- (1) This Ordinance may be cited as the Crimes Ordinance 2014.
- (2) This Ordinance comes into operation on a day or days appointed by the Governor by notice in the *Gazette*.
- (3) Different dates may be appointed under subsection (2) for different provisions and for different purposes.

#### **2. Interpretation**

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

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

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

- (a) the person appointed as Chief Justice under section 88 of the Constitution; or
- (b) if an acting judge has been appointed under section 89 of the Constitution - the person appointed to perform the relevant function for the time being;

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

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

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

“Criminal Justice Council” means the body of that name established by section 775 of the Criminal Procedure and Evidence Ordinance 2014;

“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;

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

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

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

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

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

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

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

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

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

“family proceedings” means any proceedings —

(a) under the Children Ordinance 2014; or

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

“firearm” has the same meaning as in section 2 of the Firearms and Ammunition Ordinance 1987;

“highway” has the meaning given to that term in section 2 of the Road Traffic Ordinance 1948;

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

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

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

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

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

“installation” includes an installation in transit;

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

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

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

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

“offence” means —

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

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

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

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

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

“picture” includes a likeness however produced;

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

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

“play”, when used as a noun, means —

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

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

“police force” means the Royal Falkland Islands Police established under the Police Ordinance 2000;”

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

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

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

“premises” includes —

- (a) land and buildings;
- (b) any vehicle, vessel, aircraft or hovercraft;
- (c) any airport;
- (d) any offshore installation;
- (e) any renewable energy installation;
- (f) any stall, tent or moveable structure; and
- (g) any other place whatever, whether or not occupied as land;

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

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

“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;

“public place” means —

- (a) any highway (as defined in the Road Traffic Ordinance); and
- (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

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

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

“road” has the meaning given to that term in section 2 of the Road Traffic Ordinance;

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

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

“spouse” includes a civil partner;

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

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

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

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

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

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

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

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

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

“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) of the Criminal Procedure and Evidence Ordinance 2014.

(2) Terms used in this Ordinance that are not defined in this Ordinance but are defined in the Criminal Procedure and Evidence Ordinance 2014 have the same meaning in this Ordinance as in that Ordinance unless otherwise stated.

(3) A reference in this Ordinance to the Magistrate’s Court or the Summary Court includes either of those courts when sitting as a Youth Court, but subject to any limitation on the jurisdiction and powers of a Youth Court.

(4) Subject to section 756 of the Criminal Procedure and Evidence Ordinance 2014 as regards the ascertainment of the age of a person who appears to the court to be a youth, the age of a person is to be taken as that which it appears to the court to be after considering any available evidence.

(5) For the purposes of this Ordinance, a reference to a person being convicted of an offence under the law of a place outside the Falkland Islands includes —

(a) a finding by a court exercising jurisdiction under the law of that place in respect of such an offence equivalent to a finding that the person is not guilty by reason of mental disorder; and

(b) a finding by such a court in respect of such an offence equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.

*[UK Theatres Act 1968 s.18; PACE Act 1984 s.23; Criminal Justice & Police Act 2001 s.66(1); Broadcasting Act 1990 s.201; Gibraltar Criminal Offences Act s.2]*

## PART 2 – GENERAL PRINCIPLES

### *Criminal liability*

#### **3. Age of criminal responsibility**

(1) There is a conclusive presumption that no child under the age of 10 years can be guilty of any offence.

(2) The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is abolished.

*[Crimes Ord. s.37; UK Children & Young Persons Act 1933 s.50 am. by Children & Young Persons Act 1963 s.16; UK Crime and Disorder Act 1998 s.34]*

#### **4. Inferences as to intent**

A court or jury, in determining whether a person has committed an offence —

(a) is not bound in law to infer that the person intended or foresaw a result of the person’s actions by reason only of its being a natural and probable consequence of those actions; but

(b) must decide whether the person did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

*[UK CJ Act 1967 s.8]*

## **5. Automatism**

(1) This section applies in the case of a person who is not mentally disordered within the meaning of section 2 of the Mental Health Ordinance.

(2) A person must not be found guilty of an offence if —

(a) the person acts in a state of automatism;

(b) the act —

(i) is a reflex, spasm or convulsion; or

(ii) occurs while the person is in a condition (whether of sleep, unconsciousness, impaired consciousness or otherwise) depriving the person of effective control of the act; and

(c) the act or condition is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

(3) A person must not be found guilty of an offence by virtue of an omission to act if —

(a) the person is physically incapable of acting in the way required; and

(b) his or her being so incapable is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

*[Crimes Ord. s.26; UK case law]*

### *Offences committed outside the Falkland Islands*

## **6. Offences committed partly outside the Falkland Islands**

(1) An offence begun outside the Falkland Islands and completed in the Falkland Islands may be treated as having been committed in the Falkland Islands.

(2) If —

(a) a person dies in the Falkland Islands in consequence of any act or omission outside the Falkland Islands; and

(b) the person committing that act or making that omission would, if the act or omission had been in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

(3) If a person —

(a) dies outside the Falkland Islands in consequence of any act or omission in the Falkland Islands; and

(b) the person committing the act or making the omission would, if the death had occurred in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

*[Common law]*

## **7. Offences to which sections 8 to 13 apply**

(1) Sections 8 to 13 apply to Group A offences and Group B offences.

(2) The Group A offences are —

(a) an offence under any of the following provisions of Part 12 —

347 - Offence of theft

359 - Handling stolen goods

367 - Blackmail

368 - Offence of fraud

369 - Fraud by false representation

370 - Fraud by failing to disclose information

371 - Fraud by abuse of position

374 - Participating in fraudulent business carried on by sole trader, etc.

375 - Obtaining services dishonestly

378 - False accounting

379 - False statements by company directors, etc.

380 - Suppression, etc. of documents

381 - Dishonestly retaining a wrongful credit

382 - Cheating the public revenue

(b) an offence under any of the following provisions of Part 13 —

390 - Forgery

391 - Copying a false instrument

392 - Using a false instrument

393 - Using a copy of a false instrument

394 - Offences relating to money orders, share certificates, passports, etc.

401 - Reproducing currency notes

402 - Making, etc. imitation protected coins

(3) The Group B offences are —

(a) conspiracy to commit an offence listed in subsection (2)(a) or (b);

(b) attempting to commit an offence listed in subsection (2)(a) or (b);

(c) encouraging, or aiding and abetting, the commission of an offence listed in subsection (2)(a) or (b).

(4) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2) or (3) by adding or removing any offence.

*[UK CJ Act 1993 ss.1 to 6]*

## **8. Jurisdiction in respect of Group A offences**

(1) A person may be convicted of a Group A offence if any of the events which are relevant events in relation to the offence occurred in the Falkland Islands.

(2) For the purposes of subsection (1), “relevant event” means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(3) In relation to an offence under section 368, “relevant event” includes —

(a) if the fraud involved an intention to make a gain and the gain occurred - that occurrence;

(b) if the fraud involved an intention to cause a loss or expose another to a risk of loss and the loss occurred - that occurrence.

(4) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

*[UK CJ Act 1993 ss.1 to 6]*

## **9. Questions immaterial to jurisdiction in the case of certain offences**

(1) A person may be convicted of a Group A or Group B offence whether or not the person had Falkland Islands status at any material time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Falkland Islands, a person may be convicted of the offence whether or not —

(a) the person became a party to the conspiracy in the Falkland Islands;

(b) any act or omission or other event in relation to the conspiracy occurred in the Falkland Islands.

(3) On a charge of attempting to commit a Group A offence, a person may be convicted of the offence whether or not —

(a) the attempt was made in the Falkland Islands;

(b) it had an effect in the Falkland Islands.

(4) Subsection (1) does not apply in relation to an offence if a different rule about national status of the defendant is included in the provision which creates the offence.

(5) Subsection (2) does not apply in relation to a charge of conspiracy brought by virtue of section 24.

(6) Subsection (3) does not apply in relation to a charge of attempt brought by virtue of section 36.

*[UK CJ Act 1993 ss.1 to 6]*

## **10. Rules relating to the location of events**

In relation to a Group A or Group B offence —

(a) there is an obtaining of property in the Falkland Islands if the property is either despatched from or received at the Falkland Islands;

(b) there is a communication in the Falkland Islands of any information, instruction, request, demand or other matter if it is sent by any means —

(i) from the Falkland Islands to a place elsewhere; or

(ii) from a place elsewhere to the Falkland Islands.

*[UK CJ Act 1993 ss.1 to 6]*

## **11. Conspiracy and encouraging**

(1) A person may be convicted of conspiracy to defraud if —

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation; or

(b) a party to it became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of it,

and the conspiracy would be triable in the Falkland Islands but for the fraud which the parties to it had in view not being intended to take place in the Falkland Islands.

(2) A person may be convicted of encouraging the commission of a Group A offence if the encouragement —

(a) takes place in the Falkland Islands; and

(b) would be triable in the Falkland Islands but for what the defendant had in view not being an offence triable in the Falkland Islands.

(3) Subsections (1) and (2) are subject to section 12.

*[UK CJ Act 1993 ss.1 to 6]*

## **12. Extended jurisdiction in relation to certain attempts**

(1) If this section applies to an act, what the person doing the act had in view is to be treated as an offence to which section 19 (Attempts generally) applies.

(2) This section applies to an act if —

(a) it is done in the Falkland Islands; and

(b) it would fall within section 19(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in the Falkland Islands.

(3) Subsection (1) is subject to section 13.

(4) If a person does any act to which this section applies, the offence which the person commits is to be treated for all purposes as the offence of attempting to commit the relevant Group A offence.

*[UK CJ Act 1993 ss.1 to 6]*

## **13. Relevance of external law**

(1) A person commits an offence triable by virtue of section 11(1) only if pursuing the agreed course of conduct would at some stage involve —

(a) an act or omission by one or more of the parties; or

(b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person commits an offence triable by virtue of section 11(2) only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

- (c) requiring the prosecution to show that it is satisfied.
- (5) In subsection (4) “the relevant conduct” means —
  - (a) if the condition in subsection (1) is in question - the agreed course of conduct; and
  - (b) if the condition in subsection (2) is in question - what the defendant had in view.
- (6) The court may, if it thinks fit, permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).
- (7) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.  
[UK CJ Act 1993 ss.1 to 6]

#### *Alternative verdicts*

#### **14. Conviction of offence other than that charged**

- (1) A person who is charged with an offence may plead not guilty of the offence charged but guilty of another offence of which the person might be found guilty on that charge.
- (2) If, pursuant to subsection (1), a defendant pleads not guilty of an offence charged but guilty of some other offence of which the person might be found guilty on that charge, and the person is convicted on that plea of guilty without trial for the offence of which the person has pleaded not guilty, then (whether or not the 2 offences are separately charged in distinct counts) the person’s conviction of the one offence is an acquittal of the other.
- (3) If, on a person’s trial for any offence except treason or murder, the court, or the jury if there is one, finds the person not guilty of the offence specifically charged, but the allegations amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court, the court or jury, as the case may be, may find the person guilty of that other offence or of an offence of which the person could be found guilty on a charge for that other offence.
- (4) For the purposes of subsection (3) —
  - (a) an allegation of an offence is to be taken as including an allegation of attempting to commit that offence;
  - (b) if a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the court to permit the bringing of a charge or the preferment of an indictment for the completed offence) the person may be convicted of the offence charged notwithstanding that the person is shown to be guilty of the completed offence.

(5) Subsections (1) and (3) apply to charge containing more than one offence as if each offence were a separate charge.

(6) On an indictment for murder a person found not guilty of murder may be found guilty —

(a) of manslaughter, or of causing grievous bodily harm with intent to do so; or

(b) of any offence of which the person may be found guilty under an enactment specifically so providing, or under section 15; or

(c) of an attempt to commit murder, or of an attempt to commit any other offence of which the person might be found guilty;

but may not be found guilty of any offence not included in this subsection.

(7) Nothing in this section excludes the application of any law which —

(a) restricts the power of a court to imprison;

(b) authorises an offender to be dealt with in a way not authorised by the enactment specially relating to the offence; or

(c) authorises a person to be found guilty of an offence other than that with which the person is charged.

*[Crimes Ord. s.8; UK Criminal Law Act 1967 s.6]*

### **15. Person tried for offence may be convicted of ancillary offence**

If on a trial for an imprisonable offence the court, or the jury if there is one —

(a) is satisfied that the offence charged (or some other offence of which the defendant might on that charge be convicted) was committed; but

(b) finds the defendant not guilty of that offence,

the court or jury, as the case may be, may convict the defendant of an offence under any of sections 31 (Offence of encouragement), 42 (Aiding and abetting) or 43 (Assisting offenders) if it is satisfied that the defendant committed such an offence in relation to the offence charged (or that other offence).

*[Criminal Law Act 1967 s.4(2)]*

### *Miscellaneous*

### **16. Proceedings by and against spouses**

(1) This Ordinance applies in relation to the parties to a marriage, and to property belonging to either of them, whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) A person has the same right to bring proceedings against that person's spouse for any offence (whether under this Ordinance or otherwise) as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (5), proceedings may not be commenced against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or encouraging, or aiding and abetting, the commission of such an offence, except by, or with the consent of, the Attorney General.

(4) In subsection (3), the term "proceedings" includes —

(a) an arrest without warrant made by the spouse; and

(b) a warrant of arrest issued on an information laid by the spouse.

(5) Subsection (3) —

(a) does not apply to proceedings against another person charged with committing the offence jointly with the person;

(b) does not apply if by virtue of any judicial decree or order (wherever made) the person and the spouse are at the time of the offence under no obligation to cohabit;

(c) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, if the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by someone other than the spouse of the person.

(6) In this section, a reference to a spouse includes a reference to a civil partner as defined in section 2 and a reference to a marriage includes a reference to a civil partnership as so defined.

*[UK Theft Act 1968 s.30 adapted; Common law]*

## **17. Application of Ordinance to corporations**

(1) This Ordinance applies in relation to a corporation as if —

(a) the corporation were an individual aged 18 or over;

(b) the words "he or she" or grammatical variations of those words were "it" or the corresponding grammatical variation of "it"; and

(c) the words "in custody or on bail" were omitted wherever they appear.

(2) If an offence under this or any other Ordinance is committed by a corporate body and it is proved —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (2) “officer”, in relation to a corporate body, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a corporate body are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body.

(5) A reference in this Ordinance to a defendant or other person by a gender-specific term does not preclude the application of that provision to a corporation.

*[Crimes Ord. s.51; UK Public Order Act 1986 s.28; UK Knives Act 1997 s.10 etc.]*

## **18. No requirement for corroboration**

(1) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a person merely because that person is —

- (a) an alleged accomplice of the defendant; or
- (b) if the offence charged is a sexual offence – the person in respect of whom it is alleged to have been committed.

(2) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a child.

(3) Unsworn evidence admitted by virtue of section 352 or 353 of the Criminal Procedure and Evidence Ordinance 2014 may corroborate evidence (sworn or unsworn) given by any other person.

(4) This section does not affect —

- (a) any requirement for a warning to the tribunal of fact about convicting a defendant on uncorroborated evidence imposed by this Ordinance or any other written law;
- (b) any rule of law that requires the tribunal of fact to be warned to exercise caution or to look for supporting material before acting on the unsupported evidence of a certain type of witness;
- (c) any rule of law relating to —

- (i) confessions by mentally disabled persons;
- (ii) identification evidence;
- (iii) evidence relating to sudden unexplained infant deaths; or
- (iv) unconvincing hearsay evidence.

*[Crimes Ord. s.49; UK CJ Act 1988 s.34; Criminal Justice & Public Order Act 1994 s.32]*

## PART 3 – ANCILLARY OFFENCES

### *Attempts*

#### **19. Attempts generally**

(1) A provision in any written law of the Falkland Islands which creates or results in the creation of an offence (other than an offence created by this Part), whether indictment-only or summary, is deemed to include a provision that an attempt to commit such an offence itself constitutes an offence which may, subject to section 21(1) in respect of the penalty for attempted murder, be dealt with and punished in the same way as if the offence had been committed.

(2) A person charged with an offence may be convicted of having attempted to commit that offence although the person was not charged with the attempt.

(3) In this Part, an attempt means any act done with intent to commit an offence which is more than merely preparatory to the commission of the offence.

(4) A person may be convicted of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(5) In any case where —

(a) apart from this subsection a person’s intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as the person believed them to be, the person’s intention would be so regarded,

then, for the purposes of subsection (1), the person is to be regarded as having had an intention to commit that offence.

*[Crimes Ord. s.10; UK Criminal Attempts Act 1981 s.1 (part)]*

#### **20. Application of procedural and other provisions to offences of attempt**

(1) A provision to which this section applies has effect with respect to an offence under section 19 as it has effect with respect to the offence attempted.

(2) This section applies to provisions of any enactment, whenever coming into operation —

- (a) whereby proceedings may not be commenced or carried on otherwise than by, or on behalf or with the consent of, any person;
- (b) conferring power to commence proceedings;
- (c) as to the venue of proceedings;
- (d) whereby proceedings may not be commenced after the expiration of a time limit;
- (e) conferring a power of arrest or search;
- (f) conferring a power of seizure and detention of property;
- (g) whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than 2 credible witnesses);
- (h) conferring a power of forfeiture or deprivation, including any power to deal with anything liable to be forfeited;
- (i) whereby, if an offence committed by a corporate body is proved to have been committed with the consent or connivance of another person, that person also commits the offence.

*[UK Criminal Attempts Act 1981 s.2 adapted]*

## **21. Procedural rules**

(1) The maximum penalty on conviction for an offence of attempted murder is life imprisonment.

(2) In any case in which a court may proceed to trial of an indictment or charge charging a person with an offence and an indictment or charge charging the person with an offence under section 19 of attempting to commit that offence, the court may, without the person's consent, try the indictments or charges together.

(3) If, in proceedings against a person for an offence under section 19, there is evidence sufficient in law to support a finding that the person did an act falling within subsection (1) of that section, the question whether or not the act fell within that subsection is a question of fact.

*[UK Criminal Attempts Act 1981 s.4]*

## **22. Effect of sections 19 to 21 on common law**

(1) The offence of attempt at common law and any offence at common law of procuring materials for crime are abolished for all purposes not relating to acts done before the commencement of this Part.

(2) Except as regards offences committed before the commencement of this Part, references in any enactment coming into operation before the commencement of this Part which fall to be

construed as references to the offence of attempt at common law are to be construed as references to the offence under section 19.

*[UK Criminal Attempts Act 1981 s.6]*

### *Conspiracy*

#### **23. Conspiracy**

(1) Subject to the following provisions of this Part, a person who agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions, either —

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

commits the offence of conspiracy to commit the offence or offences in question.

Penalty: As provided in section 26.

(2) Even if liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person does not commit conspiracy to commit that offence by virtue of subsection (1) unless that person and at least one other party to the agreement intend or know that that fact or circumstance will exist at the time when the conduct constituting the offence is to take place.

(3) In this Part “offence” —

(a) means an offence triable in the Falkland Islands; and

(b) includes murder even if the murder in question would not be triable in the Falkland Islands, if it was committed in accordance with the intentions of the parties to the agreement.

*[UK Criminal Law Act 1977 s.1 am. by Criminal Attempts Act 1981]*

#### **24. Conspiracy to commit offences outside the Falkland Islands**

(1) If each of the following conditions is satisfied in the case of an agreement, this Part has effect in relation to the agreement as it has effect in relation to an agreement falling within section 23(1).

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve —

(a) an act by one or more of the parties; or

(b) the happening of some other event,

intended to take place outside the Falkland Islands.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that place.

(4) The third condition is that the agreement would fall within section 23(1) as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in the Falkland Islands if committed in accordance with the parties' intentions.

(5) The fourth condition is that —

(a) a party to the agreement, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation; or

(b) a party to the agreement became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to the agreement, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of the agreement.

(6) In the application of this Part to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in the Falkland Islands.

(7) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(8) Subject to subsection (9), the second condition is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8).

(10) In the Supreme Court, the question whether the second condition is satisfied is to be decided by the judge alone, and treated as a question of law.

(11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in the Falkland Islands if the message is sent or received in the Falkland Islands.

(12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial whether or not the defendant had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(13) References in any enactment, instrument or document (except those in this Part) to an offence of conspiracy to commit an offence include an offence triable in the Falkland Islands as such a conspiracy by virtue of this section (without affecting subsection (6)).

*[UK Criminal Law Act 1977 s.1A ins. by Criminal Justice (Terrorism & Conspiracy) Act 1998]*

## **25. Exemptions from liability**

(1) A person does not by virtue of section 23 commit conspiracy to commit any offence if the person is an intended victim of that offence.

(2) A person does not by virtue of section 23 commit conspiracy to commit any offence or offences if the only other person or persons with whom the person agrees are (both initially and at all times during the currency of the agreement) —

(a) the person's spouse or civil partner;

(b) a person under the age of criminal responsibility; or

(c) an intended victim of that offence or of each of those offences.

*[UK Criminal Law Act 1977 ss.2 to 5]*

## **26. Penalties**

(1) The maximum penalty on conviction for conspiracy by virtue of section 23 is —

(a) in a case falling within subsection (3) or (4) of this section - imprisonment for a term related in accordance with the respective subsection to the gravity of the offence or offences in question (referred to in this section as the relevant offence or offences);

(b) in any other case - a fine.

(2) Subsection (1)(a) does not affect the application of section 565 of the Criminal Procedure and Evidence Ordinance 2014 (Suspended sentences of imprisonment) in a case falling within subsection (3) or (4).

(3) If the relevant offence or any of the relevant offences is —

(a) an offence of murder, or any other offence the sentence for which is fixed by law;

(b) an offence for which a sentence extending to imprisonment for life is provided; or

(c) an indictment-only offence punishable with imprisonment for which no maximum term of imprisonment is provided,

the maximum penalty on conviction for conspiracy is imprisonment for life.

(4) If, in a case other than one to which subsection (3) applies, the relevant offence or any of the relevant offences is punishable with imprisonment, the maximum penalty on conviction for conspiracy is imprisonment for a term not exceeding the maximum term provided for that offence or (if more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

*[UK Criminal Law Act 1977 ss.2 to 5]*

## **27. Restrictions on the commencement of proceedings**

(1) Proceedings under section 23 for conspiracy to commit any offence or offences may not be commenced against any person except by, or with the consent of, the Attorney General.

(2) If —

(a) an offence has been committed in pursuance of any agreement; and

(b) proceedings may not be commenced for that offence because any time limit applicable to the commencement of any such proceedings has expired,

proceedings under section 23 for conspiracy to commit that offence may not be commenced against any person on the basis of that agreement.

*[UK Criminal Law Act 1977 ss.2 to 5]*

## **28. Conspiracy under other enactments**

Sections 23 and 25 apply for determining whether a person commits an offence of conspiracy under any enactment other than section 23 but conduct which is an offence under any such other enactment is not also an offence under section 23.

*[UK Criminal Law Act 1977 ss.2 to 5]*

## **29. Effect of acquittal of other defendant**

(1) The fact that the person or persons who, so far as appears from the indictment or charge on which any person has been convicted of conspiracy, were the only other parties to the agreement on which the conviction was based have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) is not a ground for quashing the conviction unless under all the circumstances of the case the conviction is inconsistent with the acquittal of the other person or persons in question.

(2) Any rule of law or practice inconsistent with subsection (1) is abolished.

*[UK Criminal Law Act 1977 ss.2 to 5]*

### **30. Abolitions, savings, transitional provisions**

(1) Subject to the following provisions, the offence of conspiracy at common law is abolished.

(2) Subsection (1) does not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which —

(a) tends to corrupt public morals or outrages public decency; but

(b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.

(3) Subsection (1) does not affect —

(a) any proceedings commenced before the time when this Part comes into force;

(b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time; or

(c) subject to subsection (5), any proceedings commenced after that time in respect of a trespass committed before that time.

(4) A person convicted of conspiracy to trespass in any proceedings brought by virtue of subsection (3)(c) is not in respect of that conviction liable to imprisonment for a term exceeding 6 months.

(5) Incitement to commit the offence of conspiracy (whether the conspiracy incited would be an offence at common law or under this Part or any other enactment) ceases to be an offence.

*[UK Criminal Law Act 1977 ss.2 to 5]*

#### *Encouragement of offences*

### **31. Offence of encouragement**

(1) A person who —

(a) does an act capable of encouraging the commission of an offence; and

(b) intends to encourage its commission,

commits an offence.

Penalty: As provided in section 40.

(2) A person is not to be taken to have intended to encourage the commission of an offence under subsection (1) merely because such encouragement was a foreseeable consequence of the person's act.

(3) A person who —

does an act capable of encouraging the commission of an offence; and

(a) believes that —

- (i) the offence will be committed; and
- (ii) the act will encourage its commission,

commits an offence.

Penalty: As provided in section 40.

(4) A person who —

(a) does an act capable of encouraging the commission of one or more of a number of offences; and

(b) believes that —

- (i) one or more of those offences will be committed; and
- (ii) the act will encourage the commission of one or more of them,

commits an offence.

Penalty: As provided in section 40.

(5) It is immaterial for the purposes of subsection (4)(b) whether the person has any belief as to which offence will be encouraged.

(6) If a person is charged with an offence under subsection (4) the charge —

(a) must specify the offences alleged to be the “number of offences” mentioned in subsection (4)(a); but

(b) need not specify all the offences potentially comprised in that number.

(7) In relation to an offence under subsection (4), any reference in this Part to the offences specified in the charge is to the offences specified by virtue of subsection (6)(a).

*[UK Serious Crime Act 2007 ss.44, 45 and 46 adapted]*

### **32. Proving an offence under section 31**

(1) Section 31 is to be read in accordance with this section.

(2) If it is alleged under section 31(1) that a person (‘A’) intended to encourage the commission of an offence, it is sufficient to prove that A intended to encourage the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 31(3) that A believed that an offence would be committed and that A's act would encourage its commission, it is sufficient to prove that A believed that —

(a) an act would be done which would amount to the commission of that offence; and

(b) A's act would encourage the doing of that act.

(4) If it is alleged under section 31(4) that A believed that one or more of a number of offences would be committed and that A's act would encourage the commission of one or more of them, it is sufficient to prove that A believed that —

(a) one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and

(b) A's act would encourage the doing of one or more of those acts.

(5) In proving for the purposes of this section whether an act done by A is one which, if done, would amount to the commission of an offence —

(a) if the offence is one requiring proof of fault, it must be proved that —

(i) A believed that, if the act were done, it would be done with that fault;

(ii) A was reckless as to whether or not it would be done with that fault; or

(iii) A's state of mind was such that, if A were to do it, it would be done with that fault;

(b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that A —

(i) believed that, if the act were done, it would be done in those circumstances or with those consequences; or

(ii) was reckless as to whether or not it would be done in those circumstances or with those consequences.

(6) For the purposes of subsection (5)(a)(iii), A is to be assumed to be able to do the act in question.

(7) In the case of an offence under section 31(1) —

(a) subsection (5)(b)(i) is to be read as if the reference to "A believed" were a reference to "A intended or believed"; but

(b) A is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of A's act of encouragement or assistance.

(8) A reference in this section to the doing of an act includes a reference to —

(a) a failure to act;

(b) the continuation of an act that has already begun;

(c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).

(9) In this Part (unless otherwise provided) a reference to the anticipated offence is —

(a) in relation to an offence under section 31(1) - a reference to the offence mentioned in subsection (2); and

(b) in relation to an offence under section 31(3) - a reference to the offence mentioned in subsection (3).

(10) In relation to an offence under section 31(4) —

(a) it is sufficient to prove the matters mentioned in subsection (5) by reference to one offence only; but

(b) the offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment or charge.

(11) Subsection (10) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 39 (Alternative verdicts and guilty pleas).

*[UK Serious Crime Act 2007 ss.47 and 48 adapted]*

### **33. Supplemental provisions**

(1) A person may be convicted of an offence under section 31 whether or not any offence capable of being encouraged by the person's act is committed.

(2) If a person's act is capable of encouraging the commission of a number of offences —

(a) section 31(1) applies separately in relation to each offence that the person intends to encourage to be committed; and

(b) section 31(2) applies separately in relation to each offence that the person believes will be encouraged to be committed.

(3) A person may, in relation to the same act, commit an offence under more than one provision of section 31.

(4) In reckoning whether —

(a) for the purposes of section 31(2), an act is capable of encouraging the commission of an offence; or

(b) for the purposes of section 31(3), an act is capable of encouraging the commission of one or more of a number of offences,

an offence under section 31 and any other offence of encouraging, assisting, inciting, soliciting, inducing or conspiring with another person to commit an offence (whether any of those words is used in the description of that other offence or not) is to be disregarded.

(5) For the purposes of section 31(3)(b)(i) and 31(4)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

*[UK Serious Crime Act 2007 s.49 and Schedule 3 adapted]*

#### **34. Defences**

(1) A person ('A') is not guilty of an offence under section 31 if A proves that —

(a) A knew certain circumstances existed; and

(b) it was reasonable for A to act as A did in those circumstances.

(2) A person ('A') is not guilty of an offence under section 31 if A proves that —

(a) A believed certain circumstances to exist;

(b) A's belief was reasonable; and

(c) it was reasonable for A to act as A did in the circumstances as A believed them to be.

(3) Factors to be considered in determining whether it was reasonable for the purposes of subsections (1) and (2) for a person to act as the person did include —

(a) the seriousness of the anticipated offence (or, in the case of an offence under section 31(4) the offences specified in the charge);

(b) any purpose for which the person claims to have been acting;

(c) any authority by which the person claims to have been acting.

(4) A person is not guilty of an offence under section 31 by reference to a protective offence if the person —

(a) falls within the protected category; and

(b) is the person in respect of whom the protective offence was committed or would have been if it had been committed.

(5) In subsection (4) “protective offence” means an offence that exists (wholly or in part) for the protection of a particular category of persons (“the protected category”).

*[UK Serious Crime Act 2007 ss.50 and 51 adapted]*

### **35. Jurisdiction**

(1) If a person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person can be convicted of an offence under section 31 no matter where the person was at any relevant time.

(2) If it is not proved that the person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person cannot be convicted of an offence under section 31 unless subsection (1), (3) or (8) of section 36 applies.

(3) A reference in this section (and in any of those paragraphs) to what a person anticipated —

(a) in relation to an offence under section 31(1) or (3) - is to the act which would amount to the commission of the anticipated offence;

(b) in relation to an offence under section 31(4) - is to an act which would amount to the commission of any of the offences specified in the indictment or charge.

(4) Nothing in this section or section 40 restricts the operation of any enactment by virtue of which an act constituting an offence under section 31 is triable under the law of the Falkland Islands.

*[UK Serious Crime Act 2007 s.52 adapted]*

### **36. Extended jurisdiction in certain cases**

(1) This subsection applies if —

(a) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;

(b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) either —

(i) the anticipated offence is one that would be triable under the law of the Falkland Islands if it were committed there; or

- (ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions.
- (2) In this subsection (1) “relevant condition” means a condition that —
- (a) determines (wholly or in part) whether an offence committed outside the Falkland Islands is nonetheless triable under the law of the Falkland Islands; and
  - (b) relates to the citizenship, nationality or residence of the person who commits it.
- (3) This subsection applies if —
- (a) subsection (1) does not apply;
  - (b) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;
  - (c) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and
  - (d) what the person anticipates would amount to an offence under the law in force in force in that place.
- (4) The condition in subsection (3)(d) is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —
- (a) stating that on the facts as alleged the condition is not in their opinion satisfied;
  - (b) showing their grounds for that opinion; and
  - (c) requiring the prosecution to show that it is satisfied.
- (5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under subsection (4).
- (6) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.
- (7) An act punishable under the law in force in any place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.
- (8) This subsection applies if —
- (a) any relevant behaviour of a person takes place wholly outside the Falkland Islands;
  - (b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) the person could be tried under the law of the Falkland Islands if he or she committed the anticipated offence in that place.

(9) For the purposes of subsection (8)(c), the person is to be assumed to be able to commit the anticipated offence.

(10) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to any of the offences specified in the indictment or charge.

*[UK Serious Crime Act 2007 Schedule 4]*

### **37. Commencement of proceedings, etc. for an offence**

(1) Any provision to which this section applies has the same effect with respect to an offence under section 31 as it has with respect to the anticipated offence.

(2) This section applies to any provision in or under an enactment (whenever coming into operation) that —

(a) provides that proceedings may not be commenced or carried on except by, or with the consent of, the Attorney General;

(b) confers power to commence proceedings;

(c) confers power to seize and detain property;

(d) confers a power of forfeiture or deprivation, including a power to deal with anything liable to be forfeited.

(3) In relation to an offence under section 31(4) —

(a) the reference in subsection (1) to the anticipated offence is a reference to any offence specified in the indictment or charge; and

(b) each of the offences specified in the indictment or charge must be an offence in respect of which the prosecutor has power to commence proceedings.

(4) Any consent to proceedings required as a result of this section is in addition to any consent required by subsection (6).

(5) Proceedings for an offence triable by reason only of a provision of section 36 may not be commenced except by, or with the consent of, the Attorney General.

*[UK Serious Crime Act 2007 ss.53, 54 (part) and 55, with s.34 definitions]*

### **38. Persons who may be convicted**

(1) In proceedings for an offence under section 31, a person can be convicted if —

(a) it is proved that the person must have committed that offence or the anticipated offence; but

(b) it is not proved which of those offences the person committed.

(2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because the person aided, abetted, counselled or procured its commission.

(3) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to an offence specified in the indictment or charge.

*[UK Serious Crime Act 2007 ss. 56 to 59]*

### **39. Alternative verdicts and guilty pleas**

(1) If in proceedings for an offence under section 31(1) or (3) a person is not found guilty of that offence by reference to the specified offence, the person may be found guilty of that offence by reference to an alternative offence.

(2) If in proceedings for an offence under section 31(4) a person is found not guilty of that offence by reference to any specified offence, the person may be found guilty of that offence by reference to one or more alternative offences.

(3) If in proceedings for an offence under section 31(4) a person is found guilty of the offence by reference to one or more specified offences, the person may also be found guilty of it by reference to one or more other alternative offences.

(4) For the purposes of this section, an offence is an alternative offence if —

(a) it is an offence of which, on a trial for the specified offence, a defendant may be found guilty; and

(b) condition in subsection (5) is satisfied.

(5) The condition referred to in subsection (4)(b) is that the indictment or charge under section 31 includes allegations which amount to or include (expressly or by implication) an allegation of that offence by reference to it.

(6) Subsection (4) does not apply if the specified offence, or any of the specified offences, is murder or treason.

(7) In the application of subsection (5) to proceedings for an offence under section 31(1), the allegations in the indictment or charge are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.

(8) Section 33(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.

(9) In this section —

(a) in relation to a person charged with an offence under section 31(1) or (3), “the specified offence” means the offence specified in the indictment or charge as the one alleged to be the anticipated offence;

(b) in relation to a person charged with an offence under section 31(4), “specified offence” means an offence specified in the indictment or charge (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.

(10) A person being tried for an offence under section 31 may plead guilty to an offence of which the person could be found guilty under this section on the same indictment or charge.

(11) This section applies to an indictment or charge containing more than one offence as if each offence were the subject of a separate count or allegation.

(12) This section does not affect section 14 (Conviction of offence other than that charged).  
[UK Serious Crime Act 2007 ss. 56 to 59]

#### **40. Penalties**

(1) Subsections (2) and (3) apply if a person is convicted —

(a) of an offence under section 31(1) or (3); or

(b) of an offence under section 31(4) by reference to only one offence (“the reference offence”).

(2) The maximum penalty on conviction of a person for encouragement is —

(a) if the anticipated or reference offence is murder - imprisonment for life;

(b) in any other case - any penalty for which the person would be liable on conviction of the anticipated or reference offence.

(3) Subsections (4) to (7) apply if a person is convicted of an offence under section 31(4) by reference to more than one offence (“the reference offences”).

(4) If one of the reference offences is murder, the convicted person is liable to imprisonment for life.

(5) The maximum penalty on conviction of a person for encouragement, if none of the reference offences is murder, but one or more of them is punishable with imprisonment, is imprisonment for the maximum term prescribed for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph if the terms prescribed differ).

(6) The maximum penalty on conviction of a person for encouragement in any other case is a fine.

(7) Subsections (2)(b), (5) and (6) are subject to any contrary provision made by or under any other enactment.

*[UK Serious Crime Act 2007 ss. 56 to 59]*

#### **41. Abolition of common law offence of incitement**

(1) The common law offence of inciting the commission of another offence is abolished.

(2) A reference in any enactment to the offence of incitement is to be read as a reference to the offence of encouragement under section 31(1), (3) or (4), according to the circumstances of the case, and the offender may be prosecuted and punished in accordance with sections 31 to 40.

*[UK Serious Crime Act 2007 ss. 56 to 59]*

### *Accessories*

#### **42. Aiding and abetting**

(1) A person who aids, abets, counsels, procures, suborns or commands the commission of an offence is guilty of the offence of aiding and abetting the principal offence and is liable to be dealt with, tried and punished as a principal offender.

(2) A person may be charged with and tried for an offence of aiding and abetting another person even if that other person is not charged as a principal.

*[UK Accessories & Abettors Act 1861 am. by Criminal Law Act 1977; Magistrates' Courts Act 1980 s.44]*

#### **43. Assisting offenders**

(1) If a person ('A') has committed an imprisonable offence, any other person who, knowing or believing A to be guilty of the offence or of some other imprisonable offence, does without lawful authority or reasonable excuse any act with intent to impede A's arrest or prosecution, commits an offence.

Penalty: (i) if the offence is one for which the person must or may be sentenced to imprisonment for life – imprisonment for 12 years;  
(ii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 18 years – imprisonment for 9 years;  
(iii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 14 years – imprisonment for 7 years;  
(iv) if the offence is not one included above but for which a person (not previously convicted) may be sentenced to imprisonment for 10 years – imprisonment for 5 years;  
(iv) in any other case – imprisonment for 3 years.

(2) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

(3) Subsection (2) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.

*[UK Criminal Law Act 1967 s.4(1) and (3) adapted]*

#### **44. Concealing offences and false information**

(1) If a person ('A') has committed an imprisonable offence, any other person ('B') who, knowing or believing that —

(a) the offence or some other imprisonable offence has been committed; and

(b) B has information which might be of material assistance in securing the prosecution or conviction of an offender for it,

accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who causes any wasteful employment of the police by knowingly making to any person a false report tending to —

(a) show that an offence has been committed;

(b) give rise to fear for the safety of any persons or property; or

(c) show that the person has information material to any police inquiry,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(4) The compounding of an offence other than treason is not an offence otherwise than under this section.

*[UK Criminal Law Act 1967 s.5]*

#### *Miscellaneous*

#### **45. Consequences of conviction for ancillary offence**

(1) If —

(a) any written law of the Falkland Islands confers a power or imposes a duty which must or may be exercised or performed consequent upon a conviction of an offence or in relation to a person who is detained in custody for an offence; or

(b) a reference is otherwise made in any written law of the Falkland Islands to an offence, that power or duty or that reference is deemed to be also exercisable or performable consequent upon a conviction of, or include a reference to, as the case may be —

- (i) an attempt to commit that offence;
- (ii) a conspiracy to commit that offence;
- (iii) encouraging that offence;
- (iv) aiding and abetting that offence.

(2) The powers and duties to which subsection (1) applies include, but are not limited to powers—

- (a) to authorise search and seizure and detention of property;
- (b) to order forfeiture or deprivation of property;
- (c) to award costs;

(d) to cancel, suspend or refuse to issue any licence, permit or other authorisation.

*[Crimes Ord. s.11 modified]*

## CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

### PART 4 – OFFENCES AGAINST THE PERSON

#### *Causing and threatening death*

#### **46. Murder**

(1) A person who with intent to kill or to cause grievous bodily harm to any person causes the death of another person by an unlawful act or omission commits the offence of murder.

Penalty: As provided in subsection (2).

(2) A person convicted of murder must be sentenced to life imprisonment, but —

(a) sections 577 and 582 of the Criminal Procedure and Evidence Ordinance 2014 apply in relation to the recommendation of a minimum term; and

(b) section 729 of the Criminal Procedure and Evidence Ordinance 2014 applies if the person convicted is a youth.

(3) In relation to murder and other fatal offences there is no requirement that the death should occur within a year and a day after the infliction of injury, but no prosecution for murder or any other fatal offence may be commenced except by, or with the consent of, the Attorney General if—

(a) the injury alleged to have caused the death was sustained more than 3 years before the death occurred; or

(b) the accused person has previously been convicted of an offence alleged to be connected with the death.

(4) In subsection (3) “fatal offence” means —

(a) murder, manslaughter, infanticide or any other offence of which one of the elements is causing a person’s death; or

(b) the offence of encouraging, or aiding and abetting, a person’s suicide.

(5) The offence of murder is triable on indictment only.

*[Common law; Crimes Ord. ss.22 and 23B; UK Murder (Abolition of Death Penalty) Act 1965 s.1 adapted]*

#### **47. Abolition of constructive malice**

(1) If a person kills another in the course or furtherance of some other offence, the killing does not amount to murder unless done with the same intention as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of subsection (1), a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, is to be treated as a killing in the course or furtherance of an offence.

*[Crimes Ord. s.23 modified; UK Homicide Act 1957 s.1]*

#### **48. Diminished responsibility**

(1) A person (‘A’) who kills or is a party to the killing of another is not to be convicted of murder if A was suffering from an abnormality of mental functioning which —

(a) arose from a recognised medical condition;

(b) substantially impaired A’s ability to do one or more of the things mentioned in subsection (2); and

(c) provides an explanation for A’s acts and omissions in doing or being a party to the killing.

(2) The things referred to in subsection (1)(b) are to —

(a) understand the nature of A’s conduct;

(b) form a rational judgment;

(c) exercise self-control.

(3) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for A's conduct if it causes, or is a significant contributory factor in causing, A to carry out that conduct.

(4) On a charge of murder, it is for the defence to prove that the defendant is by virtue of this section not liable to be convicted of murder.

(5) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder is liable instead to be convicted of manslaughter.

(6) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

*[Crimes Ord. s.24 modified; UK Homicide Act 1957 s.2 am. by Coroners & Justice Act 2009 s.52]*

#### **49. Loss of self-control**

(1) If a person ('A') kills or is a party to the killing of another ('B'), A is not to be convicted of murder if —

(a) A's acts and omissions in doing or being a party to the killing resulted from A's loss of self-control;

(b) the loss of self-control had a qualifying trigger; and

(c) a person of A's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of A, might have reacted in the same or in a similar way to A.

(2) For the purposes of subsection (1)(a), it is irrelevant whether or not the loss of self-control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of A" is a reference to all of A's circumstances other than those whose only relevance to A's conduct is that they bear on A's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, A acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the court, or jury if there is one, must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

(9) A loss of self-control had a qualifying trigger if —

(a) A's loss of self-control was attributable to A's fear of serious violence from B against A or another identified person;

(b) A's loss of self-control was attributable to a thing or things done or said (or both) which —

(i) constituted circumstances of an extremely grave character; and

(ii) caused A to have a justifiable sense of being seriously wronged; or

(c) A's loss of self-control was attributable to a combination of the matters mentioned in paragraphs (a) and (b).

(10) In determining whether a loss of self-control had a qualifying trigger —

(a) A's fear of serious violence is to be disregarded to the extent that it was caused by a thing which A incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if A incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(11) The common law defence of provocation is abolished.

*[Crimes Ord. s.25 modified; Coroners and Justice Act 2009 ss.54 & 55]*

## **50. Manslaughter**

(1) A person who kills another by an unlawful act likely to cause bodily harm commits the offence of manslaughter.

(2) A person who kills another by gross negligence commits the offence of manslaughter.

(3) The maximum penalty on conviction for manslaughter, whether the conviction is under subsection (1) or (2) of this section, or under section 48(5), 49(7), 54(1) or 56, is imprisonment for life.

(4) If manslaughter is committed in the course of driving a motor vehicle, the driver must upon conviction be disqualified from driving for a minimum period of 2 years.

(5) The offence of manslaughter is triable on indictment only.

*[Common law; UK OAP Act 1861 s.5 adapted; Road Traffic Offences Act 1988]*

### **51. Murder or manslaughter outside the Falkland Islands**

(1) An offence of murder or manslaughter committed on land anywhere outside the Falkland Islands by a person who has Falkland Islands status may be dealt with, inquired of, tried, determined, and punished in the Falkland Islands.

(2) This section does not prevent any person from being tried in any place outside the Falkland Islands for any murder or manslaughter committed outside the Falkland Islands.

*[UK OAP Act 1861 s.9]*

### **52. Soliciting murder**

(1) A person who solicits, encourages, persuades or endeavours to persuade or proposes to any person, to murder any other person in the Falkland Islands or elsewhere, commits an offence. Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting murder, but not for both offences arising out of the same facts.

*[UK OAP Act 1861 s.4 am by Criminal Law Act 1977]*

### **53. Threats to kill**

A person ('A') who without lawful excuse makes to another person ('B') a threat, intending that B would fear it would be carried out, to kill B or a third person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK OAP Act 1861 s.16 subst. by Criminal Law Act 1977]*

### **54. Suicide pacts**

(1) A person ('A') who, in pursuance of a suicide pact between A and another person ('B') —

(a) kills B; or

(b) is party to the killing of B by a third person,

commits the offence of manslaughter.

(2) If it is shown that a person ('A') charged with the murder of another person ('B') killed B or was a party to B's being killed, it is for the defence to prove that A was acting in pursuance of a suicide pact between A and B.

(3) For the purposes of this section —

(a) "suicide pact" means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life; but

(b) nothing done by a person who enters into a suicide pact is to be treated as done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.

*[UK Homicide Act 1957 s.4 am. by Suicide Act 1961]*

## **55. Complicity in suicide**

(1) A person ('A') commits an offence if —

(a) A does an act capable of encouraging, or aiding and abetting, the suicide or attempted suicide of another person; and

(b) A's act was intended to encourage, or aid and abet, suicide or an attempt at suicide.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, A.

(3) A may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(4) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the defendant committed an offence under subsection (1) in relation to that suicide, the court, or jury if there is one, may find the defendant guilty of the offence under subsection (1).

(5) If A arranges for a person ('B') to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and B does that act, A is to be treated for the purposes of this Part as having done it.

(6) If the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this section it is to be treated as so capable if the act would have been so capable had the facts been as A believed them to be at the time of the act; or had subsequent events happened in the manner A believed they would happen, or both.

(7) A reference in this section to a person doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to the person's doing so by

threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

(8) A reference in this section to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.

(9) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

*[UK Suicide Act 1961 s.2 am. by Coroners and Justice Act 2009 s.59]*

## **56. Infanticide**

(1) If a woman by any wilful act or omission causes the death of her child, being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of —

(a) her not having fully recovered from the effect of giving birth to a child; or

(b) the effect of lactation consequent upon the birth of the child,

then, if the circumstances were such that but for this section the offence would have amounted to murder or manslaughter, she commits the offence of infanticide

(2) If on the trial of a woman for the murder of her child, being a child under the age of 12 months, the court, or jury if there is one, are of the opinion that she by any wilful act or omission caused the death of the child, but that at the time of the act or omission the balance of her mind was disturbed as described in paragraph (a) or (b) of subsection (1), the court or jury as the case may be may, if the circumstances were such that but for the provisions of this section they might have returned a verdict of murder or manslaughter, return instead a verdict of infanticide.

(3) A woman convicted of infanticide may be dealt with and punished as if she had committed the offence of manslaughter of the child.

(4) This section does not affect the power of the court or jury, as the case may be, upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of not guilty by reason of mental disorder.

(5) An offence under subsection (1) is triable on indictment only.

*[UK Infanticide Act 1938 s.1 am. by Coroners and Justice Act 2009 s.57]*

## **57. Child destruction**

(1) Subject to this section, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, commits the offence of child destruction.

Penalty: Imprisonment for life.

(2) A person is not to be found guilty of an offence against this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more is *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

(4) No offence under this section is committed by a registered medical practitioner who terminates a pregnancy in accordance with section 60.

(5) For the purposes of the law relating to abortion —

(a) anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 60; and

(b) in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if —

(i) the ground for termination of the pregnancy specified in subsection 60(1)(d) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or

(ii) any of the other grounds for termination of the pregnancy specified in section 60 applies.

(6) If on the trial of a person for the murder or manslaughter of a child, or for infanticide, or for an offence under section 58 (Administering drugs or using instruments to procure abortion), the court, or jury if there is one, are of opinion that the defendant is not guilty of murder, manslaughter or infanticide, or of an offence under section 58 as the case may be, but that the defendant is guilty of child destruction —

(a) the court or jury, as the case may be, may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under this section.

(7) If on the trial of a person for child destruction the court, or jury if there is one, are of opinion that the defendant is not guilty of that offence, but that the person is guilty of an offence under section 58 —

(a) the court or jury, as the case may be, may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under that section.

(8) An offence under subsection (1) is triable on indictment only.  
[UK Infant Life Preservation Act 1929 ss.1 and 2; Abortion Act 1967 s.5]

### *Termination of pregnancy*

#### **58. Administering drugs or using instruments to procure abortion**

(1) A pregnant woman who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any other means with that intent, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.58 am. by CJ Act 1948 s.1]

#### **59. Supplying drugs, etc. to procure abortion**

A person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of a woman, whether she is or is not with child, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK OAP Act 1861 s.59 am by CJ Act 1948 s.1]

#### **60. Medical termination of pregnancy**

(1) Subject to this section, a person does not commit an offence under section 58 or 59 when a pregnancy is terminated by a registered medical practitioner if 2 medical practitioners are of the opinion, formed in good faith that —

(a) the pregnancy has not exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family;

(b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;

(c) the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4), any treatment for the termination of pregnancy must be carried out in the King Edward VII Hospital or in a place approved for the purposes of this section by the Governor.

(4) Subsection (3), and so much of subsection (1) as relates to the opinion of 2 registered medical practitioners, do not apply to the termination of a pregnancy by a registered medical practitioner in a case where he or she is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

(5) An opinion as referred to in subsection (1) must be certified by the practitioners concerned in the form and at the time prescribed.

(6) Certificates made for the purposes of this section must be preserved and disposed of in the prescribed manner.

(7) A registered medical practitioner who terminates a pregnancy must give notice of the termination and other prescribed information relating to the termination to the Attorney General within 14 days of the termination.

(8) The disclosure, except to prescribed persons or for prescribed purposes, of notices given or information furnished pursuant to this section, is prohibited.

(9) In this section “prescribed” means prescribed by regulations made by the Secretary of State under the UK Abortion Act 1967 or any replacement of that Act.

(10) A person who wilfully contravenes or wilfully fails to comply with the requirements of this section or of regulations made under it commits an offence.

Penalty: A fine at level 5 on the standard scale.

*[UK Abortion Act 1967 ss.1 and 2 as amended and adapted]*

## **61. Conscientious objection to participation in treatment**

(1) Subject to subsections (2) and (3), no person is under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 60 to which the person has a conscientious objection.

(2) In any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

(3) Subsection (1) does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

*[UK Abortion Act 1967 s.4 am. by the Human Fertilisation & Embryology Act 1990]*

*Concealing the birth of a child*

**62. Concealing the birth of a child**

If a woman gives birth to a child, any person who, by any secret disposition of the dead body of the child, whether the child died before, at, or after its birth, endeavours to conceal the birth of it, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK OAP Act 1861 s.60]*

*Endangering life*

**63. Impeding rescue from shipwreck**

A person ('A') who unlawfully and maliciously prevents or impedes any person ('B') who is on board of or has abandoned any ship or vessel that is in distress, wrecked, stranded or cast on shore, and who is endeavouring —

- (a) to save B's own life; or
- (b) to save the life of any other person in such peril,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK OAP Act 1861 s.17 adapted]*

**64. Wounding, etc. with intent to do grievous bodily harm**

A person who unlawfully and maliciously by any means wounds or causes any grievous bodily harm to any person, with intent —

- (a) to do some grievous bodily harm to any person; or
- (b) to resist or prevent the lawful apprehension or detainer of any person,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK OAP Act 1861 s.18 am. by Criminal Law Act 1967]*

**65. Malicious wounding**

A person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK OAP Act 1861 s.20]*

**66. Attempting to choke, etc. with intent to facilitate a serious offence**

A person ('A') who, by any means —

- (a) attempts to choke, suffocate or strangle another person ('B'); or

(b) by any means calculated to choke, suffocate or strangle, attempts to render B insensible, unconscious or incapable of resistance,

with intent to enable A or any other person to commit, or to assist any other person in committing, a serious offence, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK OAP Act 1861 s.21 am. by CJ Act 1948 and Criminal Law Act 1967]*

#### **67. Using drugs to facilitate a serious offence**

A person ('A') who —

(a) unlawfully applies or administers to another person ('B');

(b) causes to be taken by, or attempts to apply or administer to another person ('B'); or

(c) attempts to cause to be administered to or taken by, another person ('B'),

any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent to enable A or any other person to commit, or to assist in committing, a serious offence, commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK OAP Act 1861 s.22 am. by CJ Act 1948]*

#### **68. Administering poison**

(1) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing so as to endanger the life of the other person or cause that person any grievous bodily harm commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy that other person commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If, on the trial of a person for an offence under subsection (1) the court (or the jury, if there is one) is not satisfied that the person is guilty of that offence, but is satisfied that the person is guilty of the offence under subsection (2), the court or jury, as the case may be, may acquit the person of the offence under subsection (1) and convict him or her of an offence under subsection (2).

*[UK OAP Act 1861 ss.23 to 25 am. by CJ Act 1948 and Criminal Law Act 1967]*

#### **69. Setting spring guns, etc.**

(1) A person who sets or places, or causes to be set or placed, any spring gun, man trap or other device calculated to destroy human life or inflict grievous bodily harm, with the intent that it should or whereby it might destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person ('A') who knowingly and wilfully permits any such spring gun, man trap or other device which has been set or placed by another person in a place that subsequently comes into A's possession or occupation to continue so set or placed, is deemed to have set and placed it with the intention mentioned in subsection (1).

(3) Nothing in this section makes it illegal to set or place any gin or trap such as is usually set or placed to destroy vermin.

*[UK OAP Act 1861 s.31 am. by CJ Act 1948]*

### *Assaults*

#### **70. Common assault**

(1) A person who unlawfully assaults or beats any other person commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) In addition to or instead of imposing any penalty the court may order the offender to enter into a recognisance, with or without sureties, to keep the peace and to be of good behaviour for a period not exceeding 12 months.

(3) In this Part —

(a) an assault occurs when a person intentionally or recklessly causes another person to apprehend immediate unlawful violence, whether or not physical contact is made;

(b) a battery occurs when a person intentionally or recklessly applies unlawful force to another person.

*[Common law; UK OAP Act 1861 s.42 replaced by CJ Act 1988 s.39]*

#### **71. Assault occasioning actual bodily harm**

A person who commits an assault occasioning actual bodily harm commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

*[UK OAP Act 1861 s.47]*

#### **72. Assaulting police officer**

(1) A person who assaults —

(a) a police officer in the execution of the officer's duty; or

(b) a person assisting a police officer in the execution of the officer's duty,

commits an offence.

Penalty: As provided in subsections (3) to (5).

(2) A person who resists or wilfully obstructs —

(a) a police officer in the execution of the officer's duty; or

(b) a person assisting a police officer in the execution of the officer's duty,

commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

(3) Subject to subsection (4), the maximum penalty on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(4) If a person convicted of an offence under subsection (1) is shown to have had a firearm or an imitation firearm in his or her possession at the time of the offence, unless the person shows that he or she had it in possession for a lawful object, then, subject to subsection (5), the person is liable to imprisonment for 7 years or a fine, or both.

(5) A person is not liable to the increased penalty provided by subsection (4) unless, before the person enters a plea in respect of the alleged offence, the person is notified in writing that the prosecution intend to show that he or she was in possession of a firearm or imitation firearm at the time of the offence.

*[Crimes Ord. s.33; Police Ord. s.55; UK Police Act 1996 s.89 adapted]*

### **73. Assault to prevent arrest**

A person ('A') who assaults another person ('B') with intent to resist or prevent the lawful arrest or detention of A or of any other person for any offence, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK OAP Act 1861 s.38 am. by Criminal Law Act 1967]*

### **74. Assaulting persons when preserving wrecks**

A person who assaults and strikes or wounds any justice of the peace, police officer or other authorised person who is exercising a duty concerning the preservation of —

(a) a vessel in distress; or

(b) any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK OAP Act 1861 s.37 am. by CJ Act 1948]*

### **75. Obstructing or assaulting clergyman**

(1) A person who by threats or force —

(a) obstructs or prevents; or

(b) endeavours to obstruct or prevent,

any clergyman or other Minister of religion in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house or other place of divine worship, or in or from the performance of that person's duty in the lawful burial of the dead in any burial place, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

(a) strikes or offers any violence to; or

(b) upon any civil process, or under the pretence of executing any civil process, arrests,

any clergyman or other Minister of religion who is engaged in any rites or duties, or who to the knowledge of the offender is about to engage in, is going to perform or is returning from the performance of, any rites or duties, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK OAP Act 1861 s.36]*

#### **76. Certificate of dismissal**

(1) If the Magistrate's Court or Summary Court, upon hearing on its merits any case of assault or battery in which the complaint was preferred by or on behalf of the party aggrieved, finds the offence not proved, or the assault or battery to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, the court must forthwith issue a certificate stating the fact of such dismissal to the party against whom the complaint was preferred.

(2) If a person, against whom a complaint for an offence of assault or battery has been preferred by or on behalf of the party aggrieved, has —

(a) obtained a certificate under subsection (1); or

(b) having been convicted and sentenced to imprisonment or a fine, or both, has served the term of imprisonment or paid the fine, or both,

no further or other proceedings, civil or criminal, may be brought against the person for the same cause.

*[UK OAP Act 1861 ss.44 and 45 am. by CJ Act 1988 and Courts Act 2003]*

#### *Endangering the life of a child or vulnerable adult*

#### **77. Causing or allowing the death of or harm to a child or vulnerable adult**

(1) A person ('A') commits an offence if —

(a) a child or vulnerable adult ('B') dies or suffers serious physical harm as a result of the unlawful act of a person who —

(i) was a member of the same household as B; and

(ii) had frequent contact with B;

(b) A was such a person at the time of the act;

(c) at that time there was a significant risk of serious physical harm being caused to B by the unlawful act of such a person; and

(d) either A was the person who caused the death or serious physical harm, or —

(i) A was, or ought to have been, aware of the risk mentioned in paragraph (c);

(ii) A failed to take such steps as A could reasonably have been expected to take to protect B from the risk; and

(iii) the act occurred in circumstances of the kind that A foresaw or ought to have foreseen.

Penalty: As provided in subsection (7).

(2) The prosecution does not have to prove whether it is paragraph (i) in subsection (1)(d) that applies, or paragraphs (ii) and (iii) that apply.

(3) If A was not the mother or father of B —

(a) A cannot be charged with an offence if A was under the age of 16 at the time of the act that caused the death or serious physical harm;

(b) for the purposes of subsection (1)(d)(ii), A could not have been expected to take any such step as is there referred to before attaining that age.

(4) For the purposes of this section —

(a) A is to be regarded as a member of a particular household, even if A does not live in it, if A visits it so often and for such periods of time that it is reasonable to regard A as a member of it;

(b) if B lived in different households at different times, "the same household as B" in subsection (1)(a)(i) means the household in which B was living at the time of the act that caused the death or serious physical harm.

(5) For the purposes of this section, an unlawful act is one that —

- (a) constitutes an offence; or
- (b) would constitute an offence but for being the act of a person other than A who is —
  - (i) under the age of 10; or
  - (ii) entitled to rely on a defence of insanity.

(6) In this section —

“act” includes a course of conduct and an omission;

“child” means a person under the age of 16;

“serious physical harm” means harm that amounts to grievous bodily harm for the purpose of section 64.

(7) The maximum penalty on conviction for an offence under this section is —

- (a) for causing or allowing a person’s death - imprisonment for 14 years;
- (b) for causing or allowing a person to suffer serious physical harm - imprisonment for 10 years.

(8) An offence under subsection (7) is triable on indictment only.

*[UK Domestic Violence, Crime & Victims Act 2004 s.5 am. by DVCV (Am) Act 2012]*

## **78. Inferences in murder and manslaughter cases**

(1) Subsections (2) to (4) apply if a person (“the defendant”) is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 77 in respect of the same death (“the section 77 offence”).

(2) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant’s failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty —

- (a) of murder or manslaughter; or
- (b) of any other offence of which the defendant could lawfully be convicted on the charge of murder or manslaughter,

even if there would otherwise be no case for the defendant to answer in relation to that offence.

(3) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or a jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(4) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

(5) An offence under section 77 is, for the purposes of section 722 of the Criminal Procedure and Evidence Ordinance 2014 an offence of homicide.

*[UK Domestic Violence, Crime and Victims Act 2004 s.6 am. by DVCV (Am) Act 2012 and adapted]*

### **79. Inferences in cases of serious physical harm**

(1) Subsections (3) to (5) apply if a person ("the defendant") is charged in the same proceedings with a relevant offence and with an offence under section 77 in respect of the same harm ("the section 77 offence").

(2) In this section "relevant offence" means —

(a) an offence under section 64 or 65 (grievous bodily harm etc);

(b) an offence under section 19 of attempting to commit murder.

(3) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.

(4) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

*[UK Domestic Violence, Crime and Victims Act 2004 s.6A ins. by DVCV (Am) Act 2012 and adapted]*

### **80. Abandoning young child**

A person who unlawfully abandons or exposes any child under the age of 5 years, with the result that —

- (a) the life of the child is endangered; or
- (b) the health of the child is or is likely to be permanently injured,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

*[UK OAP Act 1861 s.27 am by CJ Act 1948]*

### **81. Being drunk while in charge of a child**

A person who is drunk in any highway or other public place, whether a building or not, or on any licensed premises, while having the charge of a child under the age of 7 years, commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 2 on the standard scale, or both.

*[UK Licensing Act 1902 s.2]*

### **82. Cruelty to or neglect of person under 16**

(1) A person ('A') of or over the age of 16 years who has responsibility for any person under that age ('B') and who intentionally or recklessly subjects B, or allows B to be subjected to maltreatment, whether by act or omission, such that B child suffers, or is likely to suffer, significant harm, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) For the purposes of this section —

“harm” means the impairment of —

- (a) physical or mental health; or
- (b) physical, intellectual, emotional, social or behavioural development;

“recklessly” means that A foresaw a risk that an act or omission regarding B would be likely to result in significant harm to B, but nonetheless unreasonably took that risk;

“maltreatment” includes —

- (a) neglect (including abandonment);
- (b) physical abuse;
- (c) sexual abuse;
- (d) exploitation; and
- (e) emotional abuse.

(3) If the question of whether harm suffered by B is significant turns on B's health or development, B's health or development is to be compared with that which could reasonably be expected of a similar person of that age.

(4) For the purposes of this section, a parent or other person who is legally liable to maintain a person under the age of 16 years ('B'), or the legal guardian of B, is deemed to have neglected B in a manner likely to cause injury to B's health if —

(a) the parent or other person or legal guardian has failed to provide adequate food, clothing, medical aid or lodging for B; or

(b) having been unable otherwise to provide such food, clothing, medical aid or lodging, has failed to take steps to procure it from any relevant Government department.

(5) For the purposes of this section, if it is proved that —

(a) the death of a child under the age of 3 years was caused by suffocation while the child was in bed with some other person ('A') who has attained the age of 16 years;

(b) the death was not caused by suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child; and

(c) A was, when he or she went to bed, under the influence of drink,

A is deemed to have neglected the child in a manner likely to cause injury to its health.

(6) A person may be convicted of an offence under this section —

(a) even if actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person; and

(b) even if the child or young person has died.

*[UK Children & Young Persons Act 1933 s.1 as amended; Child Maltreatment Bill 2014]*

### **83. Illegal tattooing of youths**

(1) Subject to subsection (2), it is an offence for a person to tattoo a youth except when the tattoo is performed for medical reasons by a medical practitioner or by a person working under such a practitioner's direction.

Penalty: A fine at level 3 on the standard scale.

(2) It is a defence for a person charged with an offence under subsection (1) to show that at the time the tattoo was performed the defendant had reasonable cause to believe that the person tattooed was of or over the age of 18 and did in fact so believe.

(3) In this section, "tattoo" means the insertion into the skin of any colouring material designed to leave a permanent mark.

*Child abduction, etc.*

**84. Abduction of child by parent, etc.**

(1) Subject to subsections (5) and (8), a person ('A') connected with a child under the age of 18 commits an offence if A takes or sends the child out of the Falkland Islands without the appropriate consent.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A is connected with a child for the purposes of this section if —

(a) A is a parent of the child;

(b) in the case of a child whose parents were not married to each other at the time of the child's birth - there are reasonable grounds for believing that A is the father of the child;

(c) A is a guardian of the child;

(d) A is a person in whose favour a residence order is in force with respect to the child; or

(e) A has custody of the child.

(3) In this section, "the appropriate consent" in relation to a child means —

(a) the consent of each of the following —

(i) the child's mother;

(ii) the child's father, if the father has parental responsibility for the child;

(iii) any guardian of the child;

(iv) any person in whose favour a residence order is in force with respect to the child;

(v) any person who has custody of the child;

(b) the leave of the court granted under or by virtue of any provision of the Children Ordinance 2014; or

(c) if any person has custody of the child - the leave of the court which awarded custody to that person.

(4) A person ('A') does not commit an offence under this section by taking or sending a child out of the Falkland Islands without obtaining the appropriate consent if —

(a) A is a person in whose favour there is a residence order in force with respect to the child;  
and

(b) A takes or sends the child out of the Falkland Islands for a period of less than one month.

(5) Subsection (4) does not apply if the person taking or sending the child out of the Falkland Islands does so in breach of an order under the Children Ordinance 2014.

(6) A person ('A') does not commit an offence under this section by doing anything without the consent of another person (B) whose consent is required under the foregoing provisions if A —

(a) does it in the belief that B —

(i) has consented; or

(ii) would consent if B was aware of all the relevant circumstances; or

(b) has taken all reasonable steps to communicate with B but has been unable to communicate with B; or

(c) B has unreasonably refused to consent.

(7) Subsection (6)(c) does not apply if —

(a) the person who refused to consent is a person —

(i) in whose favour there is a residence order in force with respect to the child; or

(ii) who has custody of the child; or

(b) the person taking or sending the child out of the Falkland Islands is, by so acting, in breach of an order made by a court in the Falkland Islands.

(8) If, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (6), it is for the prosecution to prove that that subsection does not apply.

*[UK Child Abduction Act 1984 s.1 am. by Children Act 1989]*

## **85. Abduction of child by other persons**

(1) Subject to subsection (3), a person, other than one mentioned in subsection (2), commits an offence if, without lawful authority or reasonable excuse, the person takes or detains a child under the age of 16 so as to —

(a) remove the child from the lawful control of any person having lawful control of the child;  
or

(b) keep the child out of the lawful control of any person entitled to lawful control of the child.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) The persons referred to in subsection (1)(b) are —

(a) if the father and mother of the child in question were married to each other at the time of the child's birth - the child's father and mother;

(b) if the father and mother of the child in question were not married to each other at the time of the child's birth - the child's mother; and

(c) any other person mentioned in section 84(2)(c) to (e).

(3) In proceedings against A person ('A') for an offence under this section, it is a defence for A to prove —

(a) if the father and mother of the child in question were not married to each other at the time of the child's birth —

(i) that A is the child's father; or

(ii) that, at the time of the alleged offence, A believed, on reasonable grounds, that A was the child's father; or

(b) that, at the time of the alleged offence, A believed that the child had attained the age of 16.

*[UK Child Abduction Act 1984 s.2 am. by Children Act 1989]*

## **86. Child abduction: Supplementary**

(1) In section 84 —

“guardian of a child” means a person appointed as a guardian under the Children Ordinance 2014;

“residence order” means an order settling the arrangements to be made as to the person with whom a child is to live.

(2) For the purposes of section 84, a person is to be treated as having custody of a child if there is in force —

(a) an order of a Falkland Islands court; or

(b) an order of a court outside the Falkland Islands recognised by the Falkland Islands courts as having effect in the Falkland Islands,

and awarding the person (whether solely or jointly with another person) custody, legal custody or care and control of the child.

(3) In the case of a child who is in the care of the Crown pursuant to the Children Ordinance 2014, section 84 has effect as if —

(a) the reference in subsection (1) to the appropriate consent were a reference to the consent of the Crown; and

(b) subsection (3) were omitted.

(4) In the case of a child who is —

(a) detained in a place of safety under the Criminal Procedure and Evidence Ordinance 2014; or

(b) remanded to secure accommodation under the provision of any Ordinance,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference to the leave of the court that makes the order; and

(ii) subsection (3) were omitted.

(5) In the case of a child who is the subject of —

(a) a pending application for an adoption order; or

(b) an order under the UK Adoption Act 1976 as applied to the Falkland Islands relating to adoption abroad, or of a pending application for such an order,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference —

(A) in a case within paragraph (5)(a) above - to the leave of the court to which the application was made; and

(B) in a case within paragraph (5)(b) above - to the leave of the court which made the order or, as the case may be, to which the application was made; and

(ii) subsection (3) were omitted.

(6) For the purposes of sections 84 and 85, a person ('A') —

(a) takes a child if A causes or induces the child to accompany A or any other person, or causes the child to be so taken;

(b) sends a child if A causes the child to be sent;

(c) detains a child if A causes the child to be detained or induces the child to remain with A or any other person;

(7) References in those sections to a child's parents and to a child whose parents were (or were not) married to each other at the time of the child's birth are to be construed in accordance with any law of the Falkland Islands that extends their meaning.

(8) No prosecution for an offence against either section 84 or 85 may be commenced except by, or with the consent of, the Attorney General.

*[UK Child Abduction Act 1984 ss.3, 4 and 105 and Schedule am. by Children Act 1989]*

### **87. Trafficking people for labour exploitation**

(1) A person ('A') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('B');

(b) the travel of B within the Falkland Islands or another country, or

(c) the departure of B from the Falkland Islands or another country,

with a view to the exploitation of B.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purposes of subsection (1)(a) and (c) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world; or

(b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(3) For the purposes of subsection (1)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, during or after the journey and in any part of the world; or

(b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.

(4) For the purposes of this section B is exploited if (and only if) B —

(a) is the victim of behaviour that contravenes Article 4 of the European Convention on Human Rights (Prohibition of slavery and forced labour);

(b) is encouraged, required or expected to do anything as a result of which B or another person would commit an offence;

(c) is subjected to force, threats or deception designed to induce B —

(i) to provide services of any kind;

(ii) to provide another person with benefits of any kind;

(iii) to enable another person to acquire benefits of any kind; or

(d) is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that —

(i) B is mentally or physically ill or disabled, or is young or has a family relationship with a person; and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

(5) A person who has Falkland Islands status commits an offence under this section regardless of —

(a) where the arranging or facilitating takes place; or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(6) A person who does not have Falkland Islands status commits an offence under this section if —

(a) any part of the arranging or facilitating takes place in the Falkland Islands; or

(b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(7) In this section, “country” includes any territory or other part of the world.

*[UK Immigration & Asylum (Treatment of Claimants) Act 2004 am. by Protection of Freedoms Act 2012 s.110]*

*Female genital mutilation*

**88. Offence of female genital mutilation**

(1) Subject to subsections (2) and (4), a person who excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both

(2) No offence is committed by an approved person who performs —

(a) a surgical operation on a girl which is necessary for her physical or mental health; or

(b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons —

(a) in relation to an operation falling within subsection (2)(a) - a registered medical practitioner;

(b) in relation to an operation falling within subsection (2)(b) - a registered medical practitioner, a person registered as a midwife under the Medical Practitioners, Midwives and Dentists Ordinance, or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) No offence is committed by a person who —

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the Falkland Islands; and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

(6) In this section, "girl" means a female person of any age.

*[UK Female Genital Mutilation Act 2003 ss.1 and 5 replacing Prohibition of Female Circumcision Act 1985]*

**89. Female genital mutilation: Ancillary offences**

(1) A person who encourages, or aids and abets, a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who encourages, or aids and abets, a person to do a relevant act of female genital mutilation outside the Falkland Islands commits an offence.

Penalty: Imprisonment for 14 years.

(3) An act is a relevant act of female genital mutilation for the purpose of subsection (2) if —

(a) it is done in relation to a United Kingdom national or person with Falkland Islands status, and

(b) it would, if done by such a person, constitute an offence under section 88.

(4) Sections 88 and this section extend to any act done outside the Falkland Islands by a person with Falkland Islands status.

*[UK Female Genital Mutilation Act 2003 ss.2, 3 and 4]*

#### *Forced marriages: Offence*

### **90. Offence of forced marriage**

(1) It is an offence for a person ('A') to use violence, threats or any other form of coercion for the purpose of causing another person ('B') to enter into a marriage, if A believes, or ought reasonably to believe, that the conduct may cause B to enter into the marriage without free and full consent.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In relation to a victim B who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing B to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form coercion).

(3) It is an offence for a person ('A') to practise any form of deception with the intention of causing another person ('B') to leave the Falkland Islands, if A intends B to be subjected to conduct outside the Falkland Islands that is an offence under subsection (1) or would be an offence under that subsection if B were in the Falkland Islands.

Penalty: Imprisonment for 7 years.

(4) In this section —

“marriage” means any religious or civil ceremony of marriage, whether legally binding or not;

“lacks capacity” means lacks capacity within the meaning of section 91.

(5) For purposes of this section it is irrelevant whether the conduct mentioned in subsection (1) is directed at B or another person.

(6) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception —

- (a) A and B are both in the Falkland Islands;
- (b) neither A nor B is in the Falkland islands but at least one of them is habitually resident in the Falkland Islands; or
- (c) neither A nor B is in the Falkland Islands but at least one of them has Falkland Islands status.

*[UK Anti-social Behaviour, Crime & Policing Act 2014 s.121]*

### **91. Lack of capacity**

(1) For the purposes of section 90, a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether permanent or temporary.

(2) A lack of capacity is to be established on the balance of probabilities and cannot be established merely by reference to —

- (a) a person's age or appearance; or
- (b) a condition or an aspect of behaviour that might lead others to make unjustified assumptions about the person's capacity.

(3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given in a way that is appropriate to the circumstances (using simple language, visual aids or any other means).

(4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent the person from being regarded as able to make the decision.

*[UK Mental Capacity Act 2005 ss.1 and 2 adapted]*

### *Forced marriages: Protection orders*

### **92. Forced marriage protection orders**

(1) The court may make an order for the purposes of protecting —

- (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
- (b) a person who has been forced into a marriage.

(2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

(3) In ascertaining that person’s well-being, the court must, in particular, have such regard to the person’s wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person’s age and understanding.

(4) For the purposes of this Part a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A’s free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part —

“force”, as a verb, includes to coerce by threats or other psychological means (and related expressions are to be read accordingly); and

“forced marriage protection order” means an order under this section.

(7) In this section and sections 93 to 101, “the court” means the Magistrate’s Court, unless the Supreme Court or the Summary Court is able, by virtue of section 94(6), to make an order without an application being made, in which case it means the Supreme Court or the Summary Court, as the case may be.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

### **93. Contents of orders**

(1) A forced marriage protection order may contain —

(a) such prohibitions, restrictions or requirements; and

(b) such other terms,

as the court considers appropriate for the purposes of the order.

(2) The terms of such orders may, in particular, relate to —

(a) conduct outside the Falkland Islands as well as (or instead of) conduct within the Falkland Islands;

(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;

(c) other persons who are, or may become, involved as accessories in any respect as well as respondents of any kind.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

**94. Applications and other occasions for making orders**

- (1) The court may make a forced marriage protection order —
  - (a) on an application being made to it; or
  - (b) without an application being made to it but in the circumstances mentioned in subsection (6).
- (2) An application may be made by —
  - (a) the person who is to be protected by the order; or
  - (b) the Attorney General.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including —
  - (a) the applicant’s connection with the person to be protected;
  - (b) the applicant’s knowledge of the circumstances of the person to be protected; and
  - (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person’s age and understanding, to have regard to them.
- (5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where —
  - (a) any other family proceedings are before the court (“the current proceedings”);
  - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and
  - (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

**95. Orders without notice**

- (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by criminal procedure rules.

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

(a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;

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

(c) whether there is reason to believe that —

(i) the respondent is aware of the proceedings but is deliberately evading service; and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.

(3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1).

(4) The opportunity must be —

(a) as soon as just and convenient; and

(b) at a hearing of which notice has been given to all the parties in accordance with criminal procedure rules.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

#### **96. Undertakings instead of orders**

(1) The court may, subject to subsection (3), accept an undertaking from the respondent to proceedings for a forced marriage protection order if it has power to make such an order.

(2) No power of arrest may be attached to an undertaking given under subsection (1).

(3) The court may not accept an undertaking under subsection (1) instead of making an order if a power of arrest would otherwise have been attached to the order.

(4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking.

(5) This section does not affect the powers of the court apart from this section.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

#### **97. Duration and variation or discharge of orders**

(1) A forced marriage protection order may be made for a specified period or until varied or discharged.

(2) The court may vary or discharge a forced marriage protection order on an application by —

(a) any party to the proceedings for the order;

(b) the person being protected by the order (if not a party to the proceedings for the order); or

(c) any person affected by the order.

(3) The court may also vary or discharge a forced marriage protection order made by virtue of section 92(1)(b) even though no application under subsection (1) above has been made to the court.

(4) Section 93 applies to a variation of a forced marriage protection order as it applies to the making of such an order.

(5) Section 94 applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.

(6) Accordingly, references in sections 93 and 94 to making a forced marriage protection order are to be read for the purposes of subsections (2) and (3) above as references to varying such an order.

(7) Subsection (8) applies if a power of arrest has been attached to provisions of a forced marriage protection order by virtue of section 98.

(8) The court may vary or discharge the order under this section so far as it confers a power of arrest (whether or not there is a variation or discharge of any other provision of the order).

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

## **98. Attachment of power of arrest to orders**

(1) Subsection (2) applies if the court —

(a) intends to make a forced marriage protection order otherwise than by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(2) The court must attach a power of arrest to one or more provisions of the order unless it considers that, in all the circumstances of the case, there will be adequate protection without such a power.

(3) Subsection (4) applies if the court —

(a) intends to make a forced marriage protection order by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(4) The court may attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately.

(5) The court may provide for a power of arrest attached to any provisions of an order under subsection (4) to have effect for a shorter period than the other provisions of the order.

(6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.

(7) In this section “respondent” includes any person who is not a respondent but to whom an order is directed.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

#### **99. Exercise of power of arrest**

(1) Subsection (2) applies if a power of arrest is attached to provisions of a forced marriage protection order under section 98.

(2) A police officer may arrest without warrant a person whom the officer has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.

(3) A person arrested under subsection (2) must be brought before the relevant court within 24 hours after the person’s arrest (ignoring Christmas Day, Good Friday and any Sunday.)

(4) Subsection (5) applies if the court has made a forced marriage protection order but —

(a) no power of arrest is attached to any provision of the order under section 98;

(b) such a power is attached only to certain provisions of the order; or

(c) such a power was attached for a shorter period than other provisions of the order and that period has expired.

(5) An interested party may apply to the relevant court for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) The relevant court must not issue a warrant on an application under subsection (5) unless —

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(7) In this section “interested party”, in relation to a forced marriage protection order, means —

- (a) the person being protected by the order;
- (b) (if a different person) the person who applied for the order; or
- (c) any other person,

but no application may be made under subsection (5) by a person falling within paragraph (c) without the leave of the relevant court.

(8) In this section, “relevant court” means the court which made the forced marriage protection order.

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

#### **100. Remand**

(1) The court before which an arrested person is brought to court under or by virtue of section 99 may, if the matter is not then disposed of immediately, remand the person concerned in custody or on bail as provided by subsections (4) and (5).

(2) The decision whether to remand in custody or on bail must be taken in accordance with Part 9 (Bail in Criminal Proceedings) of the Criminal Procedure and Evidence Ordinance 2014.

(3) If a person remanded under this section is granted bail, the person may be required by the court to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

(4) The power to remand a person under subsection (1) may only be exercised for the purpose of enabling a medical examination and report to be made and only if the court has reason to consider that a medical report will be required.

(5) A remand under subsection (1) must not be for more than 4 weeks at a time unless the court remands the accused in custody, in which case the adjournment must not be for more than 3 weeks at a time.

(6) If there is reason to suspect that a person who has been arrested under or pursuant to section 99 is suffering from mental disorder, the court has the same power to make an order under section 48 of the Mental Health Ordinance (Remand to hospital for report) as the court has under that section in the case of an accused person (within the meaning of that section.)

*[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]*

### **101. Forced marriage protection orders: Supplementary**

(1) A forced marriage protection order may be the subject of an appeal —

- (a) to the Supreme Court if made by the Magistrate's Court or the Summary Court; or
- (b) to the Court of Appeal if made by the Supreme Court.

(2) The Chief Justice may by criminal procedure rules provide for —

- (a) the application of the Court of Appeal Ordinance, or of Part 31 of the Criminal Procedure Ordinance 2014 as the case may be, to appeals under this section;
- (b) any other matter necessary or appropriate to regulate the making and enforcement of forced marriage protection orders.

(3) The powers in relation to contempt of court arising out of a person's failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the court which made the order.

(4) The Governor, after consulting the Criminal Justice Council, may issue guidance to such persons or classes of persons as the Governor considers appropriate about —

- (a) the making and effect of a forced marriage protection order; or
- (b) other matters relating to forced marriages,

but this section does not permit the Governor to give guidance to any court or tribunal.

(5) If the Governor issues guidance under subsection (4), a person exercising public functions to whom guidance is given must have regard to it in the exercise of those functions.

(6) The provisions of this Part relating to forced marriage protection orders do not affect any other protection or assistance available to a person who —

- (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or
- (b) has been forced into a marriage.

In particular, but without limiting that statement, the provisions do not affect —

- (i) the inherent jurisdiction of the Supreme Court;
- (ii) any criminal liability;
- (iii) any civil remedies relating to protection from harassment;

(iv) any protection or assistance under the Children Ordinance 2014;

(v) any claim in tort; or

(vi) the law of marriage.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

### *Domestic violence protection*

#### **102. Power to issue a domestic violence protection notice**

(1) A police officer of the rank of inspector or above (“the authorising officer”) may issue a domestic violence protection notice (a ‘DVPN’) under this section.

(2) A DVPN may be issued to a person (‘P’) aged 18 years or over if the authorising officer has reasonable grounds for believing that —

(a) P has been violent towards, or has threatened violence towards, an associated person; and

(b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

(3) Before issuing a DVPN, the authorising officer must, in particular, consider —

(a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person);

(b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN;

(c) any representations made by P as to the issuing of the DVPN; and

(d) in the case of provision included by virtue of subsection (8) - the opinion of any other associated person who lives in the premises to which the provision would relate.

(4) The authorising officer —

(a) must take reasonable steps to discover the opinions mentioned in subsection (3); but

(b) may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.

(5) A DVPN must contain provision to prohibit P from molesting the person for whose protection it is issued.

(6) Provision required to be included by virtue of subsection (5) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain provision —

- (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPN is issued;
- (b) to prohibit P from entering the premises;
- (c) to require P to leave the premises; or
- (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPN.

(8) In this section, “associated person” means either of 2 persons who —

- (a) are or have been married to each other;
- (b) are or have been civil partners of each other;
- (c) are cohabitants or former cohabitants;
- (d) live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
- (e) are relatives;
- (f) have agreed to marry one another (whether or not that agreement has been terminated);
- (g) have or have had an intimate personal relationship with each other which is or was of significant duration;
- (h) in relation to any child, are both parents of the child (including by adoption), or have or have had parental responsibility for the child; or
- (i) are parties to the same family proceedings (other than proceedings under this Part).

*[UK Crime & Security Act 2010 s.24; Family Law Act 1996 s.62]*

### **103. Contents and service of a DVPN**

(1) A DVPN must state —

- (a) the grounds on which it has been issued;
- (b) that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the DVPN;

(c) that an application for a DVPO will be heard within 48 hours of the time of service of the DVPN and a notice of the hearing will be given to P;

(d) that the DVPN continues in effect until that application has been determined; and

(e) the provisions that a court may include in a DVPO.

(2) A DVPN must be in writing and must be served on P personally by a police officer.

(3) On serving P with a DVPN, the police officer must ask P for an address for the purposes of being given the notice of the hearing of the application for the domestic violence protection order.

*[UK Crime & Security Act 2010 ss. 25 to 31]*

#### **104. Breach of a DVPN**

(1) A police officer may arrest P without a warrant if the officer has reasonable grounds for believing that P is in breach of the DVPN.

(2) A person arrested under subsection (1) for a breach of a DVPN must be held in custody and brought before the Summary Court, or, if that court is not sitting, the Magistrate's Court —

(a) within 24 hours of the time of the arrest (excluding Christmas Day, Boxing Day and any Sunday); or

(b) if earlier, at the hearing of that application.

(3) If the person is brought before the court by virtue of subsection (2)(a), the court may remand the person in custody or on bail (applying to that decision the principles set out in Part 9 of the Criminal Procedure and Evidence Ordinance 2014.)

*[UK Crime & Security Act 2010 ss. 25 to 31]*

#### **105. Application for a domestic violence protection order**

(1) If a DVPN has been issued, the Attorney General may apply for a domestic violence protection order ('a DVPO').

(2) The application must be made by complaint to the Summary Court or, if that court is not sitting, to the Magistrate's Court.

(3) The court must hear the application within 48 hours after the DVPN was served pursuant to section 103(2) (ignoring Christmas Day, Boxing Day and any Sunday).

(4) A notice of the hearing of the application must be given to P, but is deemed to be given if it has been left at the address given by P under section 103(3).

(5) But if the notice has not been given because no address was given by P under section 103(3), the court may hear the application for the DVPO if satisfied that the Attorney General has made reasonable efforts to give P the notice.

(6) The court may adjourn the hearing of the application, in which case —

(a) section 104(3) applies;

(b) the DVPN continues in effect until the application has been determined.

(7) On the hearing of an application for a DVPO, section 279 of the Criminal Procedure and Evidence Ordinance 2014 (relating to the summoning of witnesses) does not apply in relation to a person for whose protection the DVPO would be made, unless that person has given oral or written evidence at the hearing.

*[UK Crime & Security Act 2010 ss. 25 to 31]*

#### **106. Conditions for and contents of a DVPO**

(1) The court may make a DVPO if —

(a) the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person; and

(b) the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.

(2) Before making a DVPO, the court must, in particular, consider —

(a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person); and

(b) any opinion of which the court is made aware —

(i) of the person for whose protection the DVPO would be made; and

(ii) in the case of provision included by virtue of subsection (5), of any other associated person who lives in the premises to which the provision would relate.

(3) The court may however make a DVPO even if the person for whose protection it is made does not consent to the making of the DVPO.

(4) A DVPO must contain provision to prohibit P from molesting the person for whose protection it is made, expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(5) If P lives in premises which are also lived in by a person for whose protection the DVPO is made, the DVPO may also contain provision —

(a) prohibiting P from evicting or excluding from the premises the person for whose protection the DVPO is made;

(b) prohibiting P from entering the premises;

(c) requiring P to leave the premises; or

(d) prohibiting P from coming within a distance of the premises specified in the DVPO.

(6) A DVPO must state that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the DVPO.

(7) A DVPO must state the period for which it is to be in force, which must be —

(a) not less than 14 days beginning with the day on which it is made; and

(b) not more than 28 days beginning with that day.

*[UK Crime & Security Act 2010 ss. 25 to 31]*

#### **107. Breach of a DVPO**

(1) A person in respect of whom a DVPO has been made and who contravenes the order in any respect commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) A person arrested for an offence under subsection (1) must be held in custody and brought before the court that made the order within 24 hours, (ignoring Christmas Day, Boxing Day and any Sunday).

(3) The court may adjourn the hearing of the application, in which case —

(a) section 104(3) applies;

(b) the DVPO continues in effect until the application has been determined.

(4) If the court has reason to suspect that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(5) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.

(6) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.

(7) If the court has reason to suspect that the person is suffering from a mental disorder, the court has the same power to make an order under section 48 of the Mental Health Ordinance

(Remand to hospital for report) as it has under that section in the case of an accused person (within the meaning of that section).

(8) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

*[UK Crime & Security Act 2010 ss. 25 to 31]*

### **108. Guidance**

(1) The Governor, after consulting the Criminal Justice Council, may from time to time issue guidance relating to the exercise by police officers of functions under sections 102 to 109.

(2) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

*[UK Crime & Security Act 2010 ss. 25 to 31]*

### *Human organ transplants*

### **109. Prohibition of commercial dealings in human organs**

(1) A person who —

(a) makes or receives any payment for the supply of, or for an offer to supply, an organ which has been or is to be removed from a dead or living person and which is intended to be transplanted into another person whether in the Falkland Islands or elsewhere;

(b) seeks to find a person willing to supply for payment such an organ as is mentioned in paragraph (a), or to offer to supply such an organ for payment;

(c) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, such an organ; or

(d) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements,

commits an offence.

Penalty: Imprisonment for 3 years.

(2) Without limiting subsection (1)(b), a person who causes to be published or distributed, or knowingly publishes or distributes in the Falkland Islands an advertisement —

(a) inviting persons to supply for payment any such organs as are mentioned in subsection (1)(a) or offering to supply any such organs for payment; or

(b) indicating that the advertiser is willing to initiate or negotiate any such arrangement as is mentioned in subsection (1)(c),

commits an offence.

Penalty: Imprisonment for 3 years or a fine, or both.

(3) In this section “payment” means payment in money or money’s worth but does not include any payment for defraying or reimbursing —

(a) the cost of removing, transporting or preserving the organ to be supplied; or

(b) any expenses or loss of earnings incurred by a person reasonably and directly attributable to the person’s supplying an organ from his or her body.

(4) In this section “advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons.

*[UK Human Organs Transplant Act 1989 ss.1 to 3]*

#### **110. Restriction on transplants between persons not genetically related**

(1) A person who —

(a) removes from a living person an organ intended to be transplanted into another person; or

(b) transplants an organ removed from a living person into another person,

commits an offence unless the person into whom the organ is to be or, as the case may be, is transplanted is genetically related to the person from whom the organ is removed.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section a person is genetically related to —

(a) his or her natural parents and children;

(b) his or her brothers and sisters of the whole or half blood;

(c) the brothers and sisters of the whole or half blood of either of his or her natural parents;  
and

(d) the natural children of his or her brothers and sisters of the whole or half blood or of the brothers and sisters of the whole or half blood of either of his or her natural parents,

but a person is not in any particular case to be treated as related in any of those ways unless the fact of the relationship has been established by means specified by regulations made by the Governor.

(3) The prohibition in subsection (1) does not apply if —

(a) the authority constituted under section 111(1)(a) is satisfied —

- (i) that no payment has been or is to be made in contravention of section 109; and
- (ii) that any other conditions specified in the regulations are satisfied; and

(b) any other requirements specified in the regulations under that section are complied with.  
*[UK Human Organs Transplant Act 1989 ss.1 to 3]*

### **111. Human organ transplants: Supplementary**

(1) The Governor may make regulations —

(a) constituting or designating an authority to exercise powers under section 110 and this section;

(b) requiring the persons specified in the regulations to supply to the authority information so specified with respect to transplants that have been or are proposed to be carried out in the Falkland Islands using organs removed from dead or living persons;

(c) providing for other matters for which regulations are required by section 110.

(2) The authority must keep a record of information supplied to it pursuant to the regulations made under this section.

(3) A person who without reasonable excuse fails to comply with regulations made under subsection (1)(b) commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) A person who, in purported compliance with such regulations, knowingly or recklessly supplies information which is false or misleading in a material respect commits an offence.

Penalty: A fine at level 5 on the standard scale.

(5) The power to make regulations under this section and section 110 is exercisable by the Governor in Council after consulting the Criminal Justice Council.

(6) The expenses of the authority must be defrayed by the Governor out of money provided by the Legislative Assembly.

*[UK Human Organs Transplant Act 1989 ss.1 to 3]*

### *Crimes against humanity*

### **112. Genocide, crimes against humanity and war crimes**

(1) It is an offence against the law of the Falkland Islands for a person to commit genocide, a crime against humanity or a war crime.

Penalty: As provided in subsections (3) and (4).

(2) It is an offence against the law of the Falkland Islands for a person to engage in conduct ancillary to an offence under subsection (1).

Penalty: As provided in subsections (3) and (4).

(3) A person convicted of —

- (a) an offence under this section involving murder; or
- (b) an offence ancillary to an offence involving murder,

must be sentenced as for an offence of murder.

(4) In any other case a person convicted of an offence under this section is liable to imprisonment for 30 years.

(5) An offence under subsection (1) or (2) is triable on indictment only.

*[UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57]*

### **113. Genocide, etc.: Supplementary provisions**

(1) For the purposes of this Part —

“crime against humanity” means a crime against humanity as defined in Article 7 of the Statute;

“genocide” means an act of genocide as defined in Article 6 of the Statute;

“war crime” means a war crime as defined in Article 8.2 of the Statute; and

“the Statute” means the Rome Statute of the International Criminal Court which entered into force on 1 July 2002, as amended from time to time.

(2) In interpreting and applying the provisions of the Articles mentioned in subsection (1) a court must take into account —

- (a) any relevant Elements of Crimes adopted in accordance with Article 9 of the Statute; and
- (b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30 June 2000.

(3) The Articles referred to in subsection (1) are for the purposes of this Part to be construed subject to and in accordance with any relevant reservation or declaration made by the United Kingdom when ratifying any treaty or agreement relevant to the interpretation of those Articles.

(4) In interpreting and applying the provisions of the Articles referred to in subsection (1) the court must take into account any relevant judgment or decision of the International Criminal Court. Account may also be taken of any other relevant international jurisprudence.

(5) Section 112(1) and (2) apply to acts committed —

(a) in the Falkland Islands; or

(b) outside the Falkland Islands by a person who has Falkland Islands status or a person ordinarily resident in the Falkland Islands.

(6) Subsection (5) applies to an act that if committed in the Falkland Islands would constitute an offence under section 112 (1) or (2) but which, being committed (or intended to be committed) outside the Falkland Islands, does not constitute such an offence.

(7) No proceedings for an offence under section 112 may be commenced except by, or with the consent of, the Attorney General.

(8) In section 112(3) “murder” means the killing of a person in such circumstances as would, if committed in the Falkland Islands, constitute murder.

*[UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57]*

#### *Miscellaneous offences*

#### **114. Piracy endangering life**

(1) A person who, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel —

(a) assaults, with intent to murder, any person who is on board of or belongs to the ship or vessel;

(b) stabs, cuts, or wounds any such person; or

(c) unlawfully does any act by which the life of any such person may be endangered,

commits an offence.

Penalty: Life imprisonment.

(2) For purposes of this Part, “piracy” means piracy *jure gentium* as understood in the courts of England and Wales, and includes, but is not limited to, piracy as defined in Articles 101 to 103 United Nations Convention on the Law of the Sea.

(3) An offence under this section is triable on indictment only.

*[UK Piracy Act 1837 s.2 adapted]*

#### **115. Kidnapping and false imprisonment**

(1) A person who, by force or fraud, takes or carries away a person —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who imprisons another person or restrains another person from freely moving from any place —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[Common law and UK case law]*

## **116. Torture**

(1) A person who is —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person in the performance or purported performance of official duties, commits the offence of torture.

Penalty: Imprisonment for life.

(2) A person who does not fall within subsection (1) above and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person at the instigation or with the consent or acquiescence of —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

who is performing or purporting to perform official duties when he or she instigates the commission of the offence or consents to or acquiesces in it, commits the offence of torture.

Penalty: Imprisonment for life.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It is a defence for a person charged with an offence under this section in respect of any conduct to prove that the person had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section “lawful authority, justification or excuse” means —

(a) in relation to pain or suffering inflicted in the Falkland Islands – lawful authority, justification or excuse under the law of the Falkland Islands;

(b) in relation to pain or suffering inflicted outside the Falkland Islands —

(i) if it was inflicted by a the Falkland Islands public officer acting under Falkland Islands law or by a person acting in an official capacity under that law - lawful authority, justification or excuse under that law;

(ii) in any other case - lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) No prosecution for an offence under this section may be commenced except by, or with the consent of, the Attorney General

(7) An offence under subsection (1) or (2) is triable on indictment only.

*[UK CJ Act 1988 ss.134, 135; CJ Act (OT) Order 1988]*

### **117. Slavery, servitude and forced or compulsory labour**

(1) A person ('A') commits an offence if —

(a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held; or

(b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (Convention for the Protection of Human Rights and Fundamental Freedoms) agreed by the Council of Europe at Rome on 4 November 1950.

*[UK Coroners and Justice Act 2009 s.71]*

### **118. Bigamy**

(1) Subject to subsection (2), a married person ('A') who marries any other person during the life of A's former husband or wife commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) Subsection (1) does not apply to a person ('A') who marries a second time if —

(a) A's husband or wife has been continually absent from A for at least 7 years up to the date of the second marriage and has not been known by A to be living within that time;

(b) at the time of the second marriage, A has been divorced from the bonds of the first marriage; or

(c) A's first marriage has been annulled or declared void by a court of competent jurisdiction.

[UK OAP Act 1861 s.57]

### *Use of force*

#### **119. Use of force in making arrest, etc.**

Section 780 of the Criminal Procedure and Evidence Ordinance 2014 applies in relation to the use of force in effecting an arrest or in assisting in the prevention of crime.

#### **120. Self-defence**

(1) This section applies if in proceedings for an offence —

(a) an issue arises as to whether a person charged with the offence (“D”) is entitled to rely on a defence within subsection (2); and

(b) the question arises whether the degree of force used by D against a person (“V”) was reasonable in the circumstances.

(2) The defences are —

(a) the common law defence of self-defence;

(b) the common law defence of defence of property; and

(c) the defence provided by section 119.

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances —

(a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but

(b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not —

(i) it was mistaken; or

(ii) if it was mistaken - the mistake was a reasonable one to have made.

(5) Subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) —

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

(9) Subsection (7) is not to be read as preventing other matters from being taken into account if they are relevant to deciding the question mentioned in subsection (3).

(10) In this section —

(a) “legitimate purpose” means —

(i) the purpose of self-defence under the common law; or

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.

*[UK Criminal Justice & Immigration Act 2008 s.76 am. by LASPO Act 2012 s.148]*

## PART 5 - CORPORATE MANSLAUGHTER

### *Preliminary*

#### **121. Interpretation**

(1) In this Part —

“corporation” does not include a corporation sole but includes any corporate body wherever incorporated;

“employee” means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly;

“employers’ association” means an organisation which consists wholly or mainly of employers and whose principal purposes include the regulation of relations between employers and workers or trade unions; or any constituent or affiliated organisation having the same purposes;

“enforcement authority” means an authority responsible for the enforcement of any health and safety legislation of or applicable to the Falkland Islands;

“exempt department” means a department of the Government that is exempted from the application of this Part by an order made under subsection (2) in relation to the whole or any provision of this Part;

“health and safety legislation” means any enactment of or applied to the Falkland Islands that deals with health and safety matters;

“partnership” means a partnership within the Companies and Private Partnership Ordinance or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

“premises” includes land, buildings and moveable structures;

“public authority” includes any person any of whose functions are functions of a public nature, but does not include —

(a) any court or tribunal;

(b) the Legislative Assembly or a person exercising functions in connection with proceedings in the Legislative Assembly;

“publicity order” means an order under section 134(1);

“remedial order” means an order under section 133(1);

“trade union” has the meaning given by the Trade Unions and Trade Disputes Ordinance.

(2) The Governor may by order exempt any department of the Government from the application of this Part, or any provision of this Part, if the Governor considers it to be in the public interest to do so.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.25 adapted; Human Rights Act 1998 s.6; UK Trade Union and Labour (Consolidation) Act 1992 s.122]*

## **122. Corporate manslaughter**

(1) An organisation to which this section applies commits the offence of corporate manslaughter if the way in which its activities are managed or organised —

(a) causes a person's death; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Penalty: A fine.

(2) The organisations to which this section applies are —

(a) a corporation;

(b) a department of the Government (other than an exempt department);

(c) a police force;

(d) a partnership, or a trade union or employers' association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part —

(a) "relevant duty of care" has the meaning given by section 123, read with sections 124 to 128;

(b) a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;

(c) "senior management", in relation to an organisation, means the persons who play significant roles in —

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence of corporate manslaughter is triable on indictment only

(6) This section applies only if the harm resulting in death is sustained —

(a) in the Falkland Islands (including its territorial waters);

(b) on a ship or aircraft registered in the Falkland Islands; or

(c) on, under or above an installation in waters to which section 179 of the Criminal Procedure and Evidence Ordinance 2014 applies, or any waters within 500 metres of any such installation.

(7) For the purposes of subsection (6)(b), harm sustained on a ship or aircraft includes harm sustained by a person who —

(a) is then no longer on board the ship or aircraft in consequence of the wrecking of it or of some other mishap affecting it or occurring on it; and

(b) sustains the harm in consequence of that event.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

#### *Relevant duty of care*

### **123. Meaning of “relevant duty of care”**

(1) A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by it under the law of negligence —

(a) a duty owed to its employees or to other persons working for the organisation or performing services for it;

(b) a duty owed as occupier of premises;

(c) a duty owed in connection with —

(i) the supply by the organisation of goods or services (whether for consideration or not);

(ii) the carrying on by the organisation of any construction or maintenance operations;

(iii) the carrying on by the organisation of any other activity on a commercial basis; or

(iv) the use or keeping by the organisation of any plant, vehicle or other thing;

(d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.

(2) A person is within this subsection if the person —

(a) is detained at a prison or in a custody area at a court or police station;

(b) is being transported in a vehicle, or being held in any premises, pursuant to prison escort arrangements or immigration escort arrangements;

(c) is detained under the Mental Health Ordinance.

(3) Subsection (1) is subject to sections 124 to 129.

(4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

(5) For the purposes of this Part —

(a) whether a particular organisation owes a duty of care to a particular individual is a question of law; and

(b) the judge must make any findings of fact necessary to decide that question.

(6) For the purposes of this Part there is to be disregarded —

(a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;

(b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of the person's acceptance of a risk of harm.

(7) In this section —

“construction or maintenance operations” means operations of any of the following descriptions—

(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of —

(i) any building or structure;

(ii) anything else that forms, or is to form, part of the land; or

(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

“the law of negligence” includes, but is not limited to, health and safety legislation.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

#### **124. Public policy decisions, exclusively public functions and statutory inspections**

(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a “relevant duty of care”.

(2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a “relevant duty of care” unless it falls within paragraph (a) or (b) of section 123(1).

(4) In this section —

“exclusively public function” means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred —

(a) by the exercise of that prerogative; or

(b) by or under a statutory provision;

“statutory function” means a function conferred by or under a statutory provision.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

#### **125. Military activities**

(1) Any duty of care owed by the Ministry of Defence of the United Kingdom or by the Government in relation to the Falkland Islands Defence Force in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,

is not a “relevant duty of care”.

(2) The operations within this subsection are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces or of the Falkland Islands Defence Force, as the case may be, come under attack or face the threat of attack or violent resistance.

(3) Any duty of care owed by the Ministry of Defence in respect of activities carried on by members of the special forces is not a “relevant duty of care”.

(4) In this section “the special forces” means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Commander British Forces, South Atlantic Islands, or which are for the time being subject to the operational command of the Commander.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

## **126. Policing and law enforcement**

(1) Any duty of care owed by a public authority in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a “relevant duty of care”.

(2) Operations are within this subsection if —

(a) they are operations for dealing with terrorism, civil unrest or serious disorder;

(b) they involve the carrying on of policing or law-enforcement activities; and

(c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(4) In this section “policing or law-enforcement activities” includes —

(a) activities carried on in the exercise of functions that are —

(i) functions of the police force; or

(ii) functions of the same or a similar nature exercisable by public authorities other than the police force;

(b) activities carried on in the exercise of functions of police officers employed by a public authority;

(c) activities carried on to enforce any provision contained in or made under the Immigration Ordinance.

**127. Emergencies**

(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1)..

(2) The organisations within this subsection are —

(a) a fire and rescue authority;

(b) any other organisation providing a service of responding to emergency circumstances either —

(i) pursuant to an arrangement made with the Government; or

(ii) (if not pursuant to such an arrangements) otherwise than on a commercial basis;

(c) a public hospital;

(d) an organisation providing ambulance services pursuant to an arrangement made with the Government;

(e) an organisation providing services for the transport of organs, blood, equipment or personnel pursuant to an arrangement with the Government;

(f) the armed forces;

(g) Falkland Islands Defence Force.

(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which —

(a) medical treatment is carried out; or

(b) decisions within subsection (4) are made.

(4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.

(5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a “relevant duty of care” unless it falls within section 123(1)(a) or (b).

(6) Any duty of care owed in respect of action taken in order to comply with a safety direction under the Merchant Shipping Ordinance or any UK enactment applied by the Merchant Shipping

(Adoption of Legislation) Ordinance, or with action in lieu of direction, is not a “relevant duty of care” unless it falls within section 123(1)(a) or (b).

(7) In this section —

“emergency circumstances” means circumstances that are present or imminent and —

- (a) are causing, or are likely to cause, serious harm or a worsening of such harm; or
- (b) are likely to cause the death of a person;

“medical treatment” includes any treatment or procedure of a medical or similar nature;

“serious harm” means —

- (a) serious injury to or the serious illness (including mental illness) of a person;
- (b) serious harm to the environment (including the life and health of plants and animals);
- (c) serious harm to any building or other property.

(8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

### **128. Child protection and probation functions**

(1) A duty of care to which this section applies is not a “relevant duty of care” unless it falls within paragraph (a), (b) or (d) of section 123(1).

(2) This section applies to any duty of care that the Crown owes in respect of the exercise by it of functions conferred by or under the Children Ordinance 2014.

(3) This section also applies to any duty of care that a public authority owes in respect of the exercise by it of supervision or similar functions conferred by or under the Criminal Procedure and Evidence Ordinance 2014.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

### **129. Gross breach: Factors**

(1) This section applies if —

- (a) it is established that an organisation owed a relevant duty of care to a person; and
- (b) it falls to the court, or the jury, if there is one, to decide whether there was a gross breach of that duty.

(2) The court or jury, as the case may be, must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so —

(a) how serious that failure was;

(b) how much of a risk of death it posed.

(3) The court or jury, as the case may be, may also —

(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;

(b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the court or jury, as the case may be, from having regard to any other matters they consider relevant.

(5) In this section “health and safety guidance” means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]*

*Application to particular categories of organisation*

**130. Application to public bodies**

(1) An organisation that is a servant or agent of the Crown is not by virtue of its status immune from prosecution under this Part.

(2) For the purposes of this Part —

(a) every department of the Government (other than an exempt department); and

(b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government or servant or agent of the Crown.

(3) For the purposes of section 122 —

(a) a person who is —

(i) employed by or under the Crown for the purposes of a department of the Government;  
or

(ii) employed by a person whose staff constitute such a department,  
is to be treated as employed by that department.

(b) any premises occupied for the purposes of —

(i) a department of the Government; or

(ii) a person whose staff constitute such a department,

are to be treated as occupied by that department.

(4) For the purposes of sections 122 to 127, anything purporting to be done by a department or body of the Government, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.11]*

### **131. Application to police force**

(1) For the purposes of this Part, the police force is to be treated as owing whatever duties of care it would owe if it were a corporate body.

(2) For the purposes of section 122 —

(a) a member of the police force is to be treated as employed by the force;

(b) a reserve police officer is to be treated as employed by the police force;

(c) a probationary police officer undergoing training with a view to becoming a member of the police force is to be treated as employed by the force.

(3) For the purposes of section 122, any premises occupied for the purposes of the police force are to be treated as occupied by the force.

(4) For the purposes of sections 122 to 127, anything that would be regarded as done by the police force if the force were a corporate body is to be so regarded.

(5) If —

(a) by virtue of subsection (3) a person is treated for the purposes of section 122 as employed by the police force; and

(b) by virtue of any other statutory provision (whenever made) the person is, or is treated as, employed by another organisation,

the person is to be treated for those purposes as employed by both the force and the other organisation.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.13]*

**132. Application to partnerships**

- (1) For the purposes of this Part a partnership is to be treated as owing whatever duties of care it would owe if it were a body corporate.
- (2) Proceedings for an offence under this Part alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of its members).
- (3) A fine imposed on a partnership on its conviction of an offence under this Part is to be paid out of the funds of the partnership.
- (4) This section does not apply to a partnership that is a legal person under the law by which it is governed.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.14]*

*Enforcement and procedure*

**133. Power to order breach, etc. to be remedied**

- (1) A court before which an organisation is convicted of corporate manslaughter may make an order (a “remedial order”) requiring the organisation to take specified steps to remedy —
  - (a) the breach mentioned in section 122(1) (“ the relevant breach”);
  - (b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death;
  - (c) any deficiency, as regards health and safety matters, in the organisation’s policies, systems or practices of which the relevant breach appears to the court to be an indication.
- (2) A remedial order —
  - (a) may be made only on an application by the prosecution specifying the terms of the proposed order;
  - (b) must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the organisation.
- (3) Before making an application for a remedial order the prosecution must consult such enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach.
- (4) A remedial order —
  - (a) must specify a period within which the steps referred to in subsection (1) are to be taken;

(b) may require the organisation to supply to an enforcement authority consulted under subsection (3), within a specified period, evidence that those steps have been taken.

(5) A period specified under subsection (4) may be extended or further extended by order of the court on an application made before the end of that period or extended period.

(6) An organisation that fails to comply with a remedial order commits an offence, the maximum penalty for which is a fine.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.9]*

#### **134. Power to order conviction, etc. to be publicised**

(1) A court before which an organisation is convicted of corporate manslaughter may make an order (a “publicity order”) requiring the organisation to publicise in a specified manner —

(a) the fact that it has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(2) In deciding on the terms of a publicity order that it is proposing to make, the court must —

(a) ascertain the views of such enforcement authority or authorities (if any) as it considers appropriate; and

(b) have regard to any representations made by the prosecution or on behalf of the organisation.

(3) A publicity order —

(a) must specify a period within which the requirements referred to in subsection (1) are to be complied with;

(b) may require the organisation to supply to any enforcement authority whose views have been ascertained under subsection (2), within a specified period, evidence that those requirements have been complied with.

(4) An organisation that fails to comply with a publicity order commits an offence, and liable on conviction on indictment to a fine.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.10]*

#### **135. Procedure, evidence and sentencing**

(1) Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under this Part against —

- (a) a department of the Government;
- (b) the police force;
- (c) a partnership;
- (d) a trade union; or
- (e) an employers' association that is not a corporation,

as it applies in relation to proceedings against a corporation.

(2) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.

(3) No proceedings for an offence of corporate manslaughter may be commenced except by, or with the consent of, the Attorney General.

(4) In this section —

“prescribed” means prescribed by criminal procedure rules made under the Criminal Procedure and Evidence Ordinance 2014;

“provision about criminal proceedings” includes —

- (a) provision about procedure in or in connection with criminal proceedings;
- (b) provision about evidence in such proceedings;
- (c) provision about sentencing, or otherwise dealing with, persons convicted of offences.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.15, 17 and 18]*

### **136. Convictions under this Part and under health and safety legislation**

(1) If in the same proceedings there is —

- (a) a charge of corporate manslaughter arising out of a particular set of circumstances; and
- (b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances,

the court, or the jury, if there is one, may, if the interests of justice so require, be invited to return a verdict on each charge.

(2) An organisation that has been convicted of corporate manslaughter arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances.

(3) In this section “health and safety offence” means an offence under any health and safety legislation.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.19]*

### *Miscellaneous*

#### **137. Transfer of functions**

(1) This section applies if —

(a) a person’s death has occurred, or is alleged to have occurred, in connection with the carrying out of functions by a relevant public organisation; and

(b) subsequently there is a transfer of those functions, with the result that they are still carried out but no longer by that organisation.

(2) In this section “relevant public organisation” means —

(a) a department of the Government (other than an exempt department);

(b) a corporation that is a servant or agent of the Crown or Government;

(c) the police force.

(3) Subject to subsection (4), any proceedings commenced against a relevant public organisation after the transfer for an offence under this Part in respect of the person’s death are to be commenced against —

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are currently carried out;

(b) if no such organisation currently carries out the functions - the relevant public organisation by which the functions were last carried out.

(4) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (3) may be commenced, or (if they have already been commenced) may be continued, against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (3)(a) or (b)) specified in the order.

(5) Subject to subsection (6), if the transfer occurs while proceedings for an offence under this Part in respect of the person’s death are in progress against a relevant public organisation, the proceedings are to be continued against —

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are carried out as a result of the transfer;

(b) if as a result of the transfer no such organisation carries out the functions - the same organisation as before.

(6) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (5) may be continued against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (5)(a) or (b)) specified in the order.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.16]*

### **138. Abolition of liability of corporations for manslaughter at common law**

The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which section 122 applies.

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.20]*

### **139. Power to extend section 122 to other organisations**

(1) The Governor may by order amend section 122 so as to extend the categories of organisation to which that section applies.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.21]*

### **140. Power to extend section 123(2)**

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend section 123(2) to make it include any category of person (not already included) who is —

(a) required by virtue of a statutory provision to remain or reside on particular premises; or

(b) otherwise subject to a restriction of his or her liberty.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

*[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.23]*

## **PART 6 – PROTECTION FROM HARASSMENT**

### **141. Interpretation of Part**

(1) This section applies for the interpretation of this Part.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

(4) A “course of conduct” must involve —

(a) in the case of conduct in relation to a single person (see section 142(1)), conduct on at least 2 occasions in relation to that person; or

(b) in the case of conduct in relation to 2 or more persons (see section 142(2)), conduct on at least one occasion in relation to each of those persons.

(5) A person’s conduct on any occasion, if aided, abetted, counselled or procured by another, is to be taken to be —

(a) conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) conduct in relation to which the other’s knowledge and purpose, and what the other ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(6) “Conduct” includes speech.

*[UK Protection from Harassment Act 1997 s.7 am. by Serious Organised Crime & Police Act 2005]*

### *Harassment and stalking*

#### **142. Prohibition of harassment**

(1) A person must not pursue a course of conduct which —

(a) amounts to harassment of another; and

(b) the person knows or ought to know amounts to harassment of the other.

(2) A person (‘A’) must not pursue a course of conduct —

(a) which involves harassment of 2 or more persons;

(b) which A knows or ought to know involves harassment of those persons, and

(c) by which A intends to persuade any person (whether or not one of those mentioned in (a) or (b)) —

(i) not to do something that that person is entitled or required to do; or

(ii) to do something that that person is not under any obligation to do.

(3) For the purposes of this section or section 143, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(4) Subsection (1) or (2) does not apply to a course of conduct if the person who pursued it shows —

(a) that it was pursued for the purpose of preventing or detecting crime;

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

*[UK Protection from Harassment Act 1997 s.1 am. by Serious Organised Crime & Police Act 2005]*

#### **143. Offence of harassment**

A person who pursues a course of conduct in breach of section 142(1) or (2) commits an offence. Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[UK Protection from Harassment Act 1997 s.2]*

#### **144. Offence of stalking**

(1) A person commits an offence if —

(a) the person pursues a course of conduct in breach of section 142; and

(b) the course of conduct amounts to stalking.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of subsection (1)(b) and section 146(1)(a), a person's course of conduct amounts to stalking of another person if —

(a) it amounts to harassment of that person;

(b) the acts or omissions involved are ones associated with stalking; and

(c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking —

(a) following a person;

- (b) contacting, or attempting to contact, a person by any means;
- (c) publishing any statement or other material —
  - (i) relating or purporting to relate to a person; or
  - (ii) purporting to originate from a person;
- (d) monitoring the use by a person of the internet, e-mail or any other form of electronic communication;
- (e) loitering in any place (whether public or private);
- (f) interfering with any property in the possession of a person;
- (g) watching or spying on a person.

(4) This section does not limit the effect of section 146.

*[UK Protection from Harassment Act 1997 s.2A ins. by Protection of Freedoms Act 2012 s.111]*

#### **145. Putting people in fear of violence**

(1) A person ('A') whose course of conduct causes another person ('B') to fear that violence will be used against ('B'), commits an offence if A knows or ought to know that his or her course of conduct will cause B so to fear on each of those occasions.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of this section, A ought to know that his or her course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that —

- (a) the course of conduct was pursued for the purpose of preventing or detecting crime;
- (b) the course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or
- (c) the pursuit of the course of conduct was reasonable for the protection of the defendant or another or for the protection of property of the defendant another.

(4) If on the trial of a person charged with an offence under this section the court or jury finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(5) If by virtue of subsection (4) a person is convicted of an offence under section 143, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

*[UK Protection from Harassment Act 1997 s.4]*

**146. Stalking involving fear of violence or serious alarm or distress**

(1) A person (“A”) whose course of conduct —

(a) amounts to stalking; and

(b) either —

(i) causes another (“B”) to fear, on at least 2 occasions, that violence will be used against B; or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities,

commits an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of this section A ought to know that A’s course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A’s course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that —

(a) A’s course of conduct was pursued for the purpose of preventing or detecting crime;

(b) A’s course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of A’s course of conduct was reasonable for the protection of A or another or for the protection of A’s or another’s property.

(5) If on the trial of a person charged with an offence under this section the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(6) If by virtue of subsection (5) a person is convicted of an offence under section 143 or 144, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

(7) This section does not limit the effect of section 145.

*[UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111]*

**147. Harassment outside a house**

(1) A person ('A') commits an offence if —

(a) A is present outside or in the vicinity of any premises that are used by any individual ("the resident") as his or her dwelling;

(b) A is present there for the purpose (by his or her presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his or her dwelling), or of persuading the resident or such another individual —

(i) that he or she should not do something that he or she is entitled or required to do; or

(ii) that he or she should do something that he or she is not under any obligation to do;

(c) A —

(i) intends his or her presence to amount to the harassment of, or to cause alarm or distress to, the resident; or

(ii) knows or ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and

(d) the presence of A —

(i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2); or

(ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person falls within this subsection if he or she is —

(a) the resident;

(b) a person in the resident's dwelling; or

(c) a person in another dwelling in the vicinity of the resident's dwelling.

(3) The references in subsection (1)(c) and (d) to a person's presence are references to his or her presence either alone or together with that of any other persons who are also present.

(4) For the purposes of this section a person ('A') ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.

(5) A police officer in uniform may arrest without warrant any person he or she reasonably suspects is committing or has committed an offence under this section.

*[UK Criminal Justice & Police Act 2001 s.42A ins. by Serious & Organised Crime and Police Act 2005 s.126]*

#### *Ancillary provisions*

#### **148. Civil remedy for breach of section 142(1)**

(1) An actual or apprehended breach of section 142(1) may be the subject of a claim in civil proceedings in the Magistrate's Court by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) If —

(a) in such proceedings the Magistrate's Court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment; and

(b) the claimant considers that the defendant has done anything which the defendant is prohibited from doing by the injunction,

the claimant may apply for the issue of a warrant for the arrest of the defendant.

(4) The court on an application under subsection (3) may only issue a warrant if —

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the defendant has done anything which the defendant is prohibited from doing by the injunction.

(5) If —

(a) the court grants an injunction for the purpose mentioned in subsection (3)(a); and

(b) without reasonable excuse the defendant does anything which the defendant is prohibited from doing by the injunction,

the defendant commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(6) If a person is convicted of an offence under subsection (5) in respect of any conduct, that conduct is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (5) in respect of any conduct which has been punished as a contempt of court.

*[UK Protection from Harassment Act 1997 s.3]*

#### **149. Injunction for breach of section 142(2)**

(1) This section applies if there is an actual or apprehended breach of section 142(2) by any person (“the relevant person”).

(2) In such a case, any person who is or may be —

(a) a victim of the course of conduct in question; or

(b) a person falling within section 142(2)(c),

may apply to the Magistrate’s Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 148(3) to (7) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 148(3)(a).

*[UK Protection from Harassment Act 1997 s.3A ins. by Serious & Organised Crime Act 2005 s.125]*

#### **150. Power of entry in relation to offence of stalking**

(1) A justice of the peace may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that —

(a) an offence under section 144 or 146 has been, or is being, committed;

(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

(c) the material —

(i) is likely to be admissible in evidence at a trial for the offence; and

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by Part 2 of the Criminal Procedure & Evidence Ordinance 2014; and

(d) either —

- (i) entry to the premises will not be granted unless a warrant is produced; or
- (ii) the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(2) A police officer may —

(a) seize and retain anything for which a search has been authorised under subsection (1);

(b) use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

*[UK Protection from Harassment Act s.2B ins. by Protection of Freedoms Act 2012 s.112]*

### **151. Restraining orders on conviction**

(1) A court sentencing or otherwise dealing with a person (“the defendant”) convicted of an offence may (as well as sentencing the person or dealing with the person in any other way) make an order under this section.

(2) For the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which —

(a) amounts to harassment; or

(b) will cause a fear of violence,

the court may prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 148.

(5) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(6) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (5).

(7) A defendant who without reasonable excuse does anything which the defendant is prohibited from doing by an order under this section commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(8) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

*[UK Protection from Harassment Act 1997 s.5 am. by Domestic Violence, Crime and Victims Act 2004 s.12]*

### **152. Restraining orders on acquittal**

(1) A court before which a person (“the defendant”) is acquitted of an offence under this Ordinance may, if it considers it necessary to do so to protect a person from harassment or fear of violence by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (2) to (8) of section 151 apply to an order under this section as they apply to an order under that section.

(3) If the Supreme Court allows an appeal against conviction it may remit the case to the Magistrate’s Court or Summary Court, as the case may be to consider whether to proceed under this section.

(4) If a case is remitted to the Magistrate’s Court or Summary Court under subsection (3), the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person who is subject to an order under this section has the same right of appeal against the order as if —

(a) the person had been convicted of the offence in question before the court which made the order; and

(b) the order had been made under section 151.

*[UK Protection from Harassment Act 1997 s.5A ins. by Domestic Violence, Crime and Victims Act 2004 s.12]*

### *Sending letters, etc. with intent to cause distress*

### **153. Offence of sending letters etc. with intent to cause distress or anxiety**

(1) A person who sends to another person —

(a) a letter, communication, or article of any description which conveys —

(i) a message which is indecent or grossly offensive;

(ii) a threat; or

(iii) information which is false and known or believed to be false by the sender; or

(b) any article or communication which is, in whole or part, of an indecent or grossly offensive nature,

commits an offence if the conditions in subsection (2) are met.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale.

(2) The conditions are that the defendant's purpose, or one of the defendant's purposes, in sending the letter, article or communication is that it should cause distress or anxiety to the recipient or to any other person to whom the defendant intends that it or its contents or nature should be communicated.

(3) A person does not commit an offence under subsection (1)(a)(ii) if the person shows —

(a) that the threat was used to reinforce a demand made by the person on reasonable grounds; and

(b) that the person believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

(4) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted, and "sender" is to be construed accordingly.

[UK Malicious Communications Act 1988 s.1]

#### *Improper use of public electronic communications network*

### **154. Offence of improper use of public electronic communications network**

(1) A person who —

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person who, for the purpose of causing annoyance, inconvenience or needless anxiety to another —

(a) sends by means of a public electronic communications network a message that the person knows to be false;

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network,

commits an offence.

(3) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service.

(4) In this section, “electronic communications network” means —

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals —

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; and

(iii) software and stored data.

*[UK Communications Act 2003 ss.127 and 32]*

## PART 7 – OFFENSIVE WEAPONS

### **155. Interpretation of Part**

In this Part, unless the context otherwise requires —

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“implement” means a flick knife, razor blade, axe or other article of the kind described in section 160(2) or 161(2);

“knife” means an instrument which has a blade or is sharply pointed;

“offensive weapon” means any article —

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person who has it with him or her for such use by him or her or by some other person;

“publication” includes publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“school” means an institution in which education is provided to persons under the age of 18, whether or not the institution also provides education to persons above the age of 18 years, and whether or not any person is at the time in question present upon the premises for the purpose of education;

“school premises” means land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school;

“suitable for combat” means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

“vehicle” includes —

- (a) any vehicle, whether or not it is in a fit state for use on roads;
- (b) any chassis or body, with or without wheels, which appears to have formed part of such a vehicle;
- (c) any load carried by, and anything attached to, such a vehicle; and
- (d) a caravan;

“violent behaviour” means an unlawful act inflicting injury on a person or causing a person to fear injury.

### *Knives*

#### **156. Unlawful marketing of knives**

(1) It is an offence for a person to market a knife in a way which —

- (a) indicates, or suggests, that it is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this Part, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description —

- (a) applied to the knife;
- (b) on the knife or on any packaging in which it is contained; or
- (c) included in any advertisement which, expressly or by implication, relates to the knife.

(3) For the purposes of this Part, a person markets a knife if the person —

- (a) sells or hires it;
- (b) offers, or exposes, it for sale or hire; or
- (c) has it in his or her possession for the purpose of sale or hire.

*[UK Knives Act 1997 ss.1 to 4]*

### **157. Publications**

It is an offence for a person to publish any written, pictorial or other material in connection with the marketing of any knife which —

- (a) indicates, or suggests, that the knife is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Knives Act 1997 ss.1 to 4]*

### **158. Exempt trades**

(1) It is a defence for a person charged with an offence under section 156 to prove that —

- (a) the knife was marketed —
  - (i) for use by the armed forces of any country;
  - (ii) as an antique or curio; or
  - (iii) as falling within some other prescribed category;
- (b) it was reasonable for the knife to be marketed in that way; and
- (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) It is a defence for a person charged with an offence under section 157 to prove that —

- (a) the material was published in connection with marketing a knife —
  - (i) for use by the armed forces of any country;
  - (ii) as an antique or curio; or
  - (iii) as falling within some other prescribed category;
- (b) it was reasonable for the knife to be marketed in that way; and
- (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the publishing of the material would use it for an unlawful purpose.

(3) The Governor, after consulting the Criminal Justice Council, may by order prescribe the categories for the purpose of subsection (1)(a)(iii) or (2)(a)(iii) by reference to the type of knife or the circumstances of the marketing or publication, as the case may be.

*[UK Knives Act 1997 ss.1 to 4]*

### **159. Other defences**

(1) It is a defence for a person charged with an offence under section 156 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed —

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) It is a defence for a person charged with an offence under section 157 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the material—

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(3) It is a defence for a person charged with an offence under section 156 or 157 to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

*[UK Knives Act 1997 ss.1 to 4]*

### **160. Manufacture and sale of flick knives, etc.**

(1) It is an offence for a person to —

(a) manufacture;

(b) sell or hire or offer for sale or hire, or to expose for sale or hire;

(c) have in the person's possession for the purpose of sale or hire; or

(d) lend or give to any other person,

a weapon to which this section applies.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to —

(a) a knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife” or “flick gun”; or

(b) a knife which has a blade which is released from the handle or sheath by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a “gravity knife”.

*[Gibraltar Criminal Offences Act s.41]*

### **161. Sale of knives etc. to persons under 16**

(1) A person who sells to a person under the age of 16 an article to which this section applies commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to —

(a) any knife, knife blade or razor blade;

(b) any axe; and

(c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

*[UK CJ Act 1988 s.141A ins. by Offensive Weapons Act 1996]*

### **162. Entry, seizure and retention**

(1) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 156, 160 or 161 in relation to knives or other implements of a particular description; and

(b) knives or implements of that description and in the person’s possession or under the person’s control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the knives or implements and seize and remove any that the officer finds.

(2) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 157 in relation to particular material; and

(b) publications consisting of or containing that material and in the person's possession or under the person's control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the publications and seize and remove any that the officer finds.

(3) A police officer, in the exercise of the powers under a warrant issued under this section, may if necessary use reasonable force.

(4) Any knives, implements or publications which have been seized and removed by a police officer under a warrant issued under this section in respect of a person may be retained until the conclusion of proceedings against the person.

(5) For the purposes of this section, proceedings in relation to a person are concluded if —

(a) the person is convicted and sentenced or otherwise dealt with for the offence;

(b) the person is acquitted;

(c) proceedings for the offence are discontinued; or

(d) it is decided not to prosecute the person.

*[UK Knives Act 1997 ss.5 to 7]*

### **163. Forfeiture of knives and publications**

(1) If a person is convicted of an offence under section 156, section 160 or section 161 in relation to a knife or other implement of a particular description, the court may make an order for forfeiture in respect of any knives or implements of that description —

(a) seized under a warrant issued under section 162; or

(b) in the person's possession or under the person's control at the relevant time.

(2) If a person is convicted of an offence under section 157 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which —

(a) have been seized under a warrant issued under section 162; or

(b) were in the person's possession or under the person's control at the relevant time.

(3) The court may make an order under subsection (1) or (2) —

(a) whether or not it also deals with the convicted person in respect of the offence in any other way; and

(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make an order, the court must have regard —

(a) to the value of the property; and

(b) to the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section “relevant time”, in relation to an offence under section 156 or 157, means the time of the arrest for the offence or of the issue of a summons in respect of it.

*[UK Knives Act 1997 ss.5 to 7]*

#### **164. Effect of a forfeiture order**

(1) An order under section 163 (a “forfeiture order”) operates to deprive the convicted person of that person’s rights, if any, in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).

(3) The court may, on an application made by a person who —

(a) claims property to which a forfeiture order applies, but

(b) is not the person from whom it was forfeited,

make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that the applicant owns it.

(4) No application for a recovery order may be made later than 6 months after the date on which the forfeiture order was made.

(5) No application for a recovery order may succeed unless the applicant satisfies the court that the applicant —

(a) did not consent to the convicted person having possession of the property; or

(b) did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) Any right to recover property which is in the possession of another in pursuance of a recovery order —

(a) is not affected by the making of the recovery order for up to 6 months from the date on which the order was made; but

(b) is lost at the end of that period.

(7) Section 622 of the Criminal Procedure and Evidence Ordinance applies in relation to property forfeited under section 163 if —

(a) no application for a recovery order has been made within 6 months of the forfeiture order being made; or

(b) no such application has succeeded.

*[UK Knives Act 1997 ss.5 to 7]*

### *Crossbows*

#### **165. Sale, etc., of crossbows to young persons**

(1) Subject to subsection (2), it is an offence for a person ('A') to sell or let on hire a crossbow or a part of a crossbow to a person ('B') under the age of 17 years.

Penalty: A fine at level 4 on the standard scale.

(2) It is a defence for A to prove that on reasonable grounds A believed that B was aged 17 years or over.

(3) A person under the age of 17 who buys or hires a crossbow or part of a crossbow commits an offence.

Penalty: A fine at level 4 on the standard scale.

(4) Nothing in subsection (1) or (3) applies to a toy crossbow, that is to say a crossbow with a draw weight of less than 1.4 kilograms.

*[Crimes Ord. s.17; UK Crossbows Act 1987 ss.1, 2 and 6]*

#### **166. Possession of crossbow by person under the age of 17**

(1) Except as provided by subsection (2), a person under the age of 17 commits an offence if the person has with him or her —

(a) a crossbow (other than a toy crossbow) which is capable of discharging a missile; or

(b) parts of a crossbow (other than a toy crossbow) which together (and without any other parts) can be assembled to form a crossbow capable of discharging a missile.

Penalty: A fine at level 4 on the standard scale.

(2) No offence is committed under subsection (1) if —

(a) the person under the age of 17 is under the supervision of a person who aged 21 or more; or

(b) the crossbow is within the dwelling-house within which the person under the age of 17 usually resides.

*[Crimes Ord. s.18; UK Crossbows Act 1987 ss.3 and 6]*

### **167. Prohibited use of crossbows**

(1) It is an offence for a person to discharge a crossbow (other than a toy crossbow) —

(a) in any road or public place;

(b) on any beach;

(c) on any other land without the permission of the occupier of that land;

(d) in any sanctuary or reserve (including Stanley Common); or

(e) in any place so that a bolt or missile discharged by the crossbow falls in or traverses a place in which, had the crossbow been discharged there, an offence would have been committed under any of paragraphs (a) to (d).

Penalty: A fine at level 4 on the standard scale.

(2) A person who uses at night a crossbow (other than a toy crossbow) in any place outside a building commits an offence.

Penalty: A fine at level 4 on the standard scale.

*[Crimes Ord. s.19]*

### **168. Forfeiture of crossbows**

(1) A court which convicts a person of an offence to which subsection (1) relates may, on conviction, order that the crossbow be delivered up to the court and be forfeited to the Crown.

(2) A person who fails to deliver up the crossbow in question within 7 days of the making of the order under subsection (1) or any longer time the court allows when making the order, commits an offence.

Penalty: Imprisonment for 3 months or to a fine at level 4 on the standard scale, or both.

(3) An appeal lies against an order under subsection (1) as if it were a sentence imposed on conviction.

*[Crimes Ord. s.20; UK Crossbows Act 1987 s.7 (part)]*

### *Offensive weapons generally*

### **169. Having an article with blade or point in a public place**

(1) Subject to subsections (4) and (5), any person who has an article to which this section applies with him or her in a public place commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(2) This section applies, subject to subsection (3), to any article which has a blade or is sharply pointed.

(3) This section does not apply to a folding pocket knife unless the cutting edge of its blade exceeds 3 inches.

(4) It is a defence for a person charged with an offence under this section to prove that the person had good reason or lawful authority for having the article with him or her in a public place.

(5) Without limiting subsection (4), it is a defence for a person charged with an offence under this section to prove that the person had the article with him or her —

(a) for use at work;

(b) for religious reasons; or

(c) as part of a national costume.

*[Crimes Ord. s.16; UK CJ Act 1988 s.139]*

### **170. Having an offensive weapon, etc. on school premises**

(1) A person who has with him or her on school premises an article to which section 169 applies commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who has with him or her on school premises any other offensive weapon as defined in section 155 commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had good reason or lawful authority for having the article or weapon with him or her on the school premises.

(4) Without limiting subsection (3), it is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had the article or weapon in question with him or her —

(a) for use at work;

(b) for educational purposes;

(c) for religious reasons; or

(d) as part of a national costume.

*[Crimes Ord. s.16A; UK CJ Act 1988 s.139A]*

### **171. Threatening with offensive weapon, etc. on school premises**

(1) A person who —

(a) has an article to which this section applies with him or her on school premises;

(b) unlawfully and intentionally threatens another person with the article; and

(c) does so in such a way that there is an immediate risk of serious physical harm to that other person,

commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) This section applies to an offensive weapon and any article to which section 169 applies.

(3) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of Part 4.

(4) If on a person's trial for an offence under this section the person is found not guilty of that offence but it is proved that the person committed an offence under any of sections 169, 170 or 172, the person may be convicted of the offence under that other section.

*[UK CJ Act 1988 s.139AA ins. by LASPO Act 2012 s.142]*

### **172. Entry and search of school premises for offensive weapons, etc.**

(1) A police officer may enter school premises and search those premises and any person on those premises for —

(a) any article to which section 169 applies; or

(b) any other offensive weapon as defined in section 155,

if the officer has reasonable grounds for believing that an offence under section 170 or section 171 is being, or has been, committed.

(2) If in the course of a search under this section a police officer discovers an article or weapon which he or she has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1), the officer may seize and retain it.

(3) A police officer may use any reasonable force that is necessary in the exercise of the power of entry conferred by this section.

*[UK CJ Act 1988 s.139B]*

### **173. Carrying offensive weapon**

(1) A person who, without lawful authority or reasonable excuse, which the person must prove, has with him or her in any public place any offensive weapon commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) If a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture or disposal of the weapon in respect of which the offence was committed.

*[UK Prevention of Crime Act 1953 s.1 am. by Offensive Weapons Act 1996 and s.1A ins. by LASPO Act 2012]*

**174. Dealing in offensive weapons**

(1) A person who —

- (a) manufactures, sells or hires or offers for sale or hire;
- (b) exposes or has in the person's possession for the purpose of sale or hire;
- (c) lends or gives to any other person; or
- (d) imports,

an offensive weapon to which this section applies commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to the following weapons —

- (a) a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;
- (b) a swordstick, that is, a hollow walking-stick or cane containing a blade which may be used as a sword;
- (c) the weapon sometimes known as a "handclaw", being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;
- (d) the weapon sometimes known as a "belt buckle knife", being a buckle which incorporates or conceals a knife;
- (e) the weapon sometimes known as a "push dagger", being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;
- (f) the weapon sometimes known as a "hollow kubotan", being a cylindrical container containing a number of sharp spikes;
- (g) the weapon sometimes known as a "footclaw", being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;
- (h) the weapon sometimes known as a "shuriken", "shaken" or "death star", being a hard non-flexible plate having three or more sharp radiating points and designed to be thrown;
- (i) the weapon sometimes known as a "balisong" or "butterfly knife", being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;

(j) the weapon sometimes known as a “telescopic truncheon”, being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;

(k) the weapon sometimes known as a “blowpipe” or “blow gun”, being a hollow tube out of which hard pellets or darts are shot by the use of breath;

(l) the weapon sometimes known as a “kusari gama”, being a length of rope, cord, wire or chain fastened at one end to a sickle;

(m) the weapon sometimes known as a “kyoketsu shoge”, being a length of rope, cord, wire or chain fastened at one end to a hooked knife;

(n) the weapon sometimes known as a “manrikigusari” or “kusari”, being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;

(o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);

(p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

(q) a straight, side-handled or friction-lock truncheon (sometimes known as a baton);

(r) a sword with a curved blade of 50 cms or over in length; and for the purposes of this subparagraph, the length of the blade is the straight line distance from the top of the handle to the tip of the blade.

(3) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2).

(4) It is a defence for any person charged with an offence under this section to prove that the person’s conduct was only for the purpose of —

(a) performing functions on behalf of the Crown or a visiting force; or

(b) making the weapon available to a museum or gallery in the Falkland Islands or elsewhere.

(5) If a person acting on behalf of a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for the person to prove that he or she had

reasonable grounds for believing that the person to whom he or she lent or hired it would use it only for cultural, artistic or educational purposes.

(6) It is a defence for a person charged with an offence relating to a weapon mentioned in subsection (2)(r) to show —

(a) that the weapon in question was made in Japan before 1954 or was made in Japan at any other time according to traditional methods of forging swords; and

(b) that the person's conduct was for the purpose only of making the weapon available for the holding of a permitted activity by an organisation which holds public liability insurance in relation to liabilities to third parties arising from or in connection with the organisation and the holding of the activity.

(7) For the purposes of subsection (6), a person is taken to have shown a matter specified in that subsection if —

(a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.

(8) In this section —

“historical re-enactment” means any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past;

insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement;

“museum or gallery” —

(a) includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it; but

(b) does not include an institution that distributes profits.

“permitted activity” means an historical re-enactment or a sporting activity;

“sporting activity” means the practising of a sport which requires the use of a weapon described in subsection (2)(r);

third parties” includes participants in, and spectators of, a permitted activity and members of the public.

*UK CJ Act 1988 s.141; CJ Act 1988 (Offensive Weapons) Order 1988 (S.I. 1988/2019 as am. by 2002/1668, 2004/1271 and 2008/97)*

**175. Authorisation in anticipation of violence in an area**

(1) If the Chief Police Officer reasonably believes —

(a) that —

(i) incidents involving serious violence may occur in any area of the Falkland Islands;  
and

(ii) it is expedient to do so to prevent their occurrence; or

(b) that persons are carrying knives or offensive weapons in any area of the Falkland Islands without good reason,

the Chief Police Officer may authorise the powers to stop and search persons and vehicles conferred by section 176 to be exercised in that area for a specified period not exceeding 24 hours.

(2) The authorisation referred to in subsection (1) may be given by an officer of the rank of Inspector or above if the officer reasonably believes that incidents involving serious violence or use of knives or offensive weapons in the area are imminent and the Chief Police Officer is not available.

(3) If it appears to the Chief Police Officer or to the officer who gave the authorisation that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the area, the officer may extend the authorisation for a further period not exceeding 24 hours.

(4) An authorisation or extension under this section must be in writing signed by the Chief Police Officer or the police officer who gives it, and must specify —

(a) the area in which and the period during which the powers conferred by section 176 are exercisable;

(b) the grounds for the authorisation or extension.

(5) If an officer other than the Chief Police Officer gives an authorisation under subsection (1) or an extension under subsection (3) the officer must as soon as practicable inform the Chief Police Officer.

*[UK Knives Act 1997 s.8 incorporating s.60 of the CJ and PO Act 1994 as am by Anti-terrorism, Crime & Security Act 2001]*

**176. Powers to search for and seize offensive weapons in an area**

(1) An authorisation under section 175 in relation to an area of the Falkland Islands confers on any police officer in uniform power in the area and during the period specified in the authorisation —

(a) to stop any pedestrian and search the pedestrian or anything carried by the pedestrian for knives or offensive weapons;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for knives or offensive weapons.

(2) A police officer may, in the exercise of the power in subsection (1), stop any person or vehicle in the area and make any search the officer thinks fit, whether or not he or she has any grounds for suspecting that the person or vehicle is carrying knives or offensive weapons.

(3) If in the course of a search under this section a police officer discovers a knife or an article which the officer has reasonable grounds for suspecting to be an offensive weapon, the officer may seize it.

(4) This section applies (with the necessary modifications) to ships and aircraft as it applies to vehicles.

(5) A person who fails to stop or (as the case may be) to stop a vehicle when required to do so by a police officer in the exercise of the powers under this section commits an offence, for which the maximum penalty on conviction is imprisonment for 1 month.

(6) If —

(a) a vehicle is stopped by a police officer under this section; and

(b) the driver applies in writing within 12 months from the day on which the vehicle was stopped,

the Chief Police Officer must give the driver a written statement that the vehicle was stopped under the powers conferred by this section.

(7) If —

(a) a pedestrian is stopped and searched by a police officer under this section; and

(b) the pedestrian applies in writing within 12 months from the day on which he or she was stopped and searched,

the Chief Police Officer must give the pedestrian a written statement that he or she was stopped under the powers conferred by this section.

(8) Anything seized by a police officer under subsection (3) may be retained in accordance with Part 3 of the Criminal Procedure and Evidence Ordinance 2014 (Powers of Seizure).

(9) For the purposes of this section, a person carries a knife or an offensive weapon if the person has it in his or her possession.

(10) The powers conferred by this section are in addition to and do not limit any power of stopping, search and seizure otherwise conferred by any other law.

*[UK Knives Act 1997 s.8 incorporating s.60 & 60A of the CJ and PO Act 1994 as am. by Anti-terrorism, Crime & Security Act 2001]*

## PART 8 - EXPLOSIVE SUBSTANCES

### **177. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“explosive” —

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

“explosive substance” includes —

(a) explosives and ingredients for making explosives;

(b) any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance;

(c) any part of any such apparatus, machine, or implement;

(2) The Governor may by order declare that any substance which appears to the Governor to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture of it being liable to explosion, is deemed to be an explosive within the meaning of this Part and the provisions of this Part (subject to any exceptions, limitations, and restrictions specified in the order) then extend to such a substance as if it were included in the term “explosive” in this Part.

*[UK Explosives Act 1875 ss.3 and 104; Explosive Substances Act 1883 s.9]*

*Explosive substances offences*

**178. Causing grievous harm by explosion**

A person who unlawfully and maliciously, by the explosion of any explosive substance, burns, maims, disfigures, disables or does any grievous bodily harm to any person, commits an offence.

Penalty: Imprisonment for 14 years.

*[UK OAP Act 1861, s.28]*

**179. Causing explosion, etc. with intent**

(1) A person who unlawfully and maliciously —

(a) causes any explosive substance to explode;

(b) sends or delivers to or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or

(c) puts or lays at any place, or casts or throws at or upon or otherwise applies to any person, any corrosive fluid or any destructive or explosive substance,

with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, commits an offence.

Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether any bodily injury is caused or not.

*[UK OAP Act 1861, s.29]*

**180. Causing explosion likely to endanger life or property**

(1) A person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to —

(a) endanger life; or

(b) cause serious injury to property,

commits an offence.

Penalty: Imprisonment for life.

(2) It is immaterial for the purposes of subsection (1) whether any injury to person or property is caused or not.

(3) An offence under subsection (1) is triable on indictment only.

*[UK Explosive Substances Act 1883 s.2 am. by CJ Act 1975]*

**181. Acting or conspiring to cause explosion, or making or keeping explosives with intent**

(1) A person who unlawfully and maliciously —

- (a) does any act with intent to cause; or
- (b) conspires to cause,

by an explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, commits an offence.

Penalty: Imprisonment for life.

(2) A person who unlawfully and maliciously makes or has in the person's possession or under the person's control an explosive substance with intent by means of it —

- (a) to endanger life;
- (b) to cause serious injury to property; or
- (c) to enable any other person to endanger life or cause serious injury to property,

commits an offence.

Penalty: Imprisonment for life.

(3) It is immaterial for the purposes of subsection (1) or (2) whether —

- (a) any explosion does or does not take place;
- (b) any injury to person or property is caused or not.

(4) An offence under subsection (1) or (2) is triable on indictment only.

*[UK Explosive Substances Act 1883 s.3 am. by CJ Act 1975]*

### **182. Placing explosives with intent**

(1) A person who unlawfully and maliciously places or throws in, into, upon, against or near any building, ship, or aircraft any explosive substance, with intent to do any bodily injury to any person, commits an offence.

Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether —

- (a) any explosion takes place or not;
- (b) any bodily injury is caused or not.

*[UK OAP Act 1861 s.30]*

### **183. Making explosives for an unlawful purpose**

(1) A person ('A') who makes any explosive substance in circumstances that give rise to a reasonable suspicion that A made the substance, or is making it, for an unlawful purpose, commits an offence.

Penalty: Imprisonment for 14 years.

(2) A does not commit an offence under subsection (1) if A can show that A made or is making the explosive substance for a lawful purpose.

*[UK Explosive Substances Act 1883 s.4 adapted]*

#### **184. Possession of explosives with intent**

A person who has in the person's possession any explosive substance —

(a) with intent by means of the substance to commit an offence under this Ordinance; or

(b) for the purpose of enabling any other person to commit such an offence,

commits an offence.

Penalty: Imprisonment for 2 years.

*[UK OAP Act 1861 s.64 adapted]*

#### **185. Ancillary offences**

(1) A person who, by supplying or soliciting for money, providing premises, supplying materials, or in any other manner procures, counsels, aids, abets, or is accessory to, the commission of an offence under this Part commits that offence and is liable to be tried and punished for it as if the person had been a principal.

(2) A person who —

(a) knows that another person has an explosive substance in that person's possession or under that person's control;

(b) knows facts giving rise to a reasonable suspicion that that person did not have the substance in that person's possession or under that person's control for a lawful object; and

(c) was present actively encouraging or in some way helping that person in the commission of the offence,

commits the offence of aiding and abetting an offence under section 184 and is liable on conviction to the penalty there specified.

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting an offence under this Part, but not for both offences arising out of the same facts.

*[UK Explosive Substances Act 1883 s.5 amplified]*

#### **186. Explosives found on vessels**

(1) If the master or owner of any vessel has reasonable cause to suspect that any explosive substance or other goods of a dangerous nature which, if found, the master would be entitled to throw overboard pursuant to the merchant shipping laws are concealed on board the vessel —

(a) the master may search any part of the vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel;

(b) if the master finds any such goods they may be dealt with in the manner provided by the merchant shipping laws; and

(c) if the master does not find any such goods, he or she is not subject to any liability, civil or criminal, if it appears to a tribunal before which the question of the master's liability is raised that he or she had reasonable cause to suspect that such goods were so concealed.

(2) In this section, "the merchant shipping laws" means merchant shipping legislation of the United Kingdom that applies to the Falkland Islands by its own force or by Order in Council, or any Ordinance of the Falkland Islands replacing that legislation.

*[UK Explosive Substances Act 1883 s.8]*

#### *Offences relating to public safety*

### **187. Offences related to minefields**

(1) A person who —

(a) wilfully enters a minefield without lawful authority; or

(b) without lawful authority wilfully causes a mine to explode or attempts so to do; or

(c) without lawful authority wilfully cuts or removes any part of any fence dividing any minefield from any other land; or

(d) without lawful authority removes, damages or obscures any sign or notice warning of the existence of or depicting the boundaries or a boundary of a minefield, or warning of the possibility that mines may be found in the vicinity; or

(e) wilfully drives any animal into a minefield,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both

(2) For the purposes of subsection (1), "without lawful authority" means without authority given by or on behalf of the Commander British Forces.

*[Crimes Ord. s.12]*

### **188. Possession of unexploded ordnance**

(1) A person who knowingly possesses any unexploded ordnance without lawful authority commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(2) For the purposes of this section —

“unexploded ordinance” means any grenade, mine, mortar round, rocket or shell containing any explosive substance; and

“without lawful authority” has the same meaning as it has under section 187(2).

(3) A person does not commit an offence under subsection (1) if the ordinance in question is upon any land or in any building of which the person is the occupier and the person or a predecessor in occupation has reported the presence of the ordinance to the Royal Engineers Explosive Ordinance Detachment or to the police; but the burden of proof of such report lies upon the person.

*[Crimes Ord. s.13]*

### **189. Sale of explosives**

A person who —

(a) sells any explosive to any other person under the age of 16 years; or

(b) sells or offers for sale any explosive in any road, street, alleyway, thoroughfare or public place,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

*[Crimes Ord. s.14]*

### **190. Casting fireworks, etc.**

A person who casts any firework —

(a) in any road, street, alleyway, thoroughfare or public place; or

(b) without the authority of the occupier, into or upon any land or building,

commits an offence.

Penalty: A fine at level 2 on the standard scale.

*[Crimes Ord. s.15]*

## *Miscellaneous provisions*

### **191. Procedure and saving**

(1) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(2) This Part does not exempt any person from any proceeding for an offence punishable at common law, under the UK Explosives Acts 1875 or 1923 as applied to the Falkland Islands, or

under any other written law other than this Ordinance, but no person may be punished twice for the same criminal act.

*[UK Explosive Substances Act 1883 s.7]*

**192. Seizure and detention of explosives liable to forfeiture**

(1) If a police officer has reasonable cause to believe that any explosive substance found by the officer, whether in the course of a criminal investigation or otherwise, is liable to be forfeited under this Ordinance or the Criminal Procedure and Evidence Ordinance 2014, the officer may seize and detain the substance until the Magistrate's Court has decided, on an application by the Attorney General, whether or not it is liable to be forfeited.

(2) An officer who seizes an explosive substance pursuant to subsection (1) may —

(a) require the occupier of the place in which it was seized (whether a building or other place, including a vehicle, vessel or aircraft) to detain it in that place or in any place under the control of the occupier; or

(b) remove it in a manner and to a place that will in the officer's opinion least endanger the public safety, and there detain it and, if it appears necessary for the public safety, and on the written authority of a justice of the peace or a police officer of the rank of Inspector or above, cause it to be destroyed or otherwise rendered harmless.

(3) Before destroying or rendering harmless the explosive substance, the officer must —

(a) take and keep a sample of it; and

(b) if requested, give a portion of the sample to the person who owns the explosive substance, or has it under the person's control at the time of the seizure.

(4) A person who is an occupier of premises or a vehicle, vessel or aircraft and who —

(a) by that person or by others, fails to keep the explosive substance when required pursuant to subsection (2)(a) to detain it; or

(b) except with the authority of the officer who seized it, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with it while it is so detained,

commits an offence.

Penalty: A fine at level 4 on the standard scale.

(5) A person convicted of an offence under subsection (4) is liable to forfeit all explosive substances which are at the time of the offence in the person's possession or under the person's control at the place to which the offence relates.

(6) Proceedings before the Magistrate's Court to decide whether an explosive substance is liable to forfeiture must be commenced as soon as practicable after the seizure.

(7) A receptacle containing any explosive substance may be seized, detained, and removed in the same way as the contents of it.

(8) A police officer who seizes any explosive substance under this section —

(a) may use for the purposes of the removal and detention of it any vehicle, vessel or aircraft in which it was seized, and any equipment belonging to the vehicle, vessel or aircraft; and

(b) must pay to the owner reasonable compensation for such use, to be determined, in case of dispute, by the Magistrate's Court and recovered as a civil debt of the Government.

(9) The explosive substance must, as far as practicable, be kept and conveyed in accordance with the UK Explosives Act 1875 and regulations made under it, as applied to the Falkland Islands, and with all due care to prevent accident.

(10) A person who seizes, removes, detains, keeps or conveys the substance is not liable to any penalty or forfeiture under this or any other Ordinance, or to any damages, for keeping or conveying it, if the person does so using all due care as mentioned.

(11) A person who seizes an explosive substance, or deals with it pursuant to this section, is not liable for damage caused by the seizure or dealing, or any act incidental to or consequential on it, unless it is proved that the person acted without reasonable cause, or caused the damage by some wilful neglect or default.

*[UK Explosives Act 1875 s.74]*

### **193. Forfeiture of subject-matter of offence**

(1) If a person is convicted of an offence against this Part, the court may order that the explosive substance in respect of which the offence was committed or any part of that substance be forfeited to the Crown.

(2) A receptacle containing any explosive substance may be forfeited, sold, destroyed, or otherwise disposed of, in the same way as the contents of it.

(3) Any explosive substance or receptacle forfeited pursuant to this Part may be sold, destroyed, or otherwise disposed of in the manner the court declaring the forfeiture directs, and the proceeds of any such sale or disposal must be paid as provided by section 90 of the Interpretation and General Clauses Ordinance.

*[UK Explosives Act 1875 s.89]*

## PART 9 - CRIMINAL DAMAGE

### **194. Meaning of “property”**

(1) For purposes of this Part, “property” means property of a tangible nature, whether real or personal, including money and —

(a) includes wild creatures that have been tamed or are normally kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(b) does not include mushrooms growing wild on any land, or flowers, fruit or foliage or plants growing wild on any land.

(2) In subsection (1), “mushroom” includes any fungus and “plant” includes any shrub or tree.

(3) Property is to be treated for the purposes of this Part as belonging to any person who —

(a) has the custody or control of it;

(b) has in it any proprietary right or interest (other than an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) has a charge on it.

(4) If property is subject to a trust, the persons to whom it belongs are to be treated as including any person who has a right to enforce the trust.

(5) Property of a corporation sole is to be treated as belonging to the corporation even if there is a vacancy in the corporation.

(6) For the purposes of this Part, a modification of the contents of a computer is not to be regarded as damaging any computer or computer storage medium unless its effect on that computer or storage medium impairs its physical condition.

*[UK Criminal Damage Act 1971 s.10 am. by Police & Justice Act 2006]*

### **195. Destroying or damaging property**

(1) A person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage the property or being reckless as to whether the property would be destroyed or damaged, commits an offence.

Penalty: Imprisonment for 10 years.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to that person or another —

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would be thereby endangered,

commits an offence.

Penalty: Imprisonment for life.

(3) In this part, “damage” includes not only permanent or temporary physical harm to property but also permanent or temporary impairment of value or usefulness of the property.

(4) An offence under subsection (2) is triable on indictment only.

*[UK Criminal Damage Act 1971 ss.1 to 3]*

### **196. Arson**

(1) A person who commits an offence under section 195(1) by destroying or damaging property by fire commits the offence of arson.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who commits an offence under section 195(2) by destroying or damaging property by fire commits the offence of aggravated arson.

Penalty: Imprisonment for life.

(3) An offence under subsection (2) is triable on indictment only.

(4) The offence of arson at common law is abolished.

*[UK Criminal Damage Act 1971 ss.1 to 3]*

### **197. Threats to destroy or damage property**

A person (‘A’) who without lawful excuse makes to another person (‘B’) a threat, intending that (‘B’) would fear it would be carried out —

(a) to destroy or damage any property belonging to B or a third person; or

(b) to destroy or damage A’s own property in a way which A knows is likely to endanger the life of B or a third person,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Criminal Damage Act 1971 ss.1 to 3]*

### **198. Possessing anything with intent to destroy or damage property**

It is an offence for a person (‘A’) to have anything in A’s custody or under A’s control, if A intends without lawful excuse to use it or cause or permit another person (‘B’) to use it —

(a) to destroy or damage any property belonging to some other person ('C'); or

(b) to destroy or damage A's own or B's property in a way which A knows is likely to endanger the life of C or some other person.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Criminal Damage Act 1971 ss.1 to 3]*

**199. Lawful excuse**

(1) This section applies to —

(a) any offence under section 195; and

(b) any offence under section 197 or 198 except one involving —

(i) a threat by the person charged to destroy or damage property in a way that the person knows is likely to endanger the life of another; or

(ii) an intent by the person charged to use or cause or permit the use of something in that person's custody or under that person's control so to destroy or damage property.

(2) A defendant charged with an offence to which this section applies is, whether or not the person would be treated for the purposes of this Part as having a lawful excuse apart from this subsection, to be treated for those purposes as having a lawful excuse —

(a) if at the time of the act or acts alleged to constitute the offence the defendant believed that the person or persons whom the defendant believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented if that person or persons had known of the destruction or damage and its circumstances; or

(b) if the defendant destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 198, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to the defendant or another, or a right or interest in property which was or which the defendant believed to be vested in the defendant or another, and at the time of the act or acts alleged to constitute the offence the defendant believed that —

(i) the property, right or interest was in immediate need of protection; and

(ii) the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section is not to be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

*[UK Criminal Damage Act 1971 s.5]*

## **200. Search for things intended for use in committing offences of criminal damage**

(1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his or her custody or under his or her control or on his or her premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse —

(a) to destroy or damage property belonging to another; or

(b) to destroy or damage any property in a way likely to endanger the life of another,

the justice may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which the officer believes to have been used or to be intended to be used as aforesaid.

(3) Sections 621 to 623 of the Criminal Procedure and Evidence Ordinance 2014 (disposal of property in the possession of the police) apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in those sections.

*[UK Criminal Damage Act 1971 s.6]*

## **201. Evidence in connection with offences under this Part**

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that do so may incriminate the person or the person's spouse of an offence under this Part.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became partners after the making of the statement or admission) against the person's spouse or partner.

*[UK Criminal Damage Act 1971 s.9]*

## PART 10 – SEXUAL OFFENCES

### 202. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

“care worker” has the meaning given to it by section 243;

“consent” has the meaning given to it by sections 292 to 294;

“image” means a moving or still image and includes an image produced by any means and, if the context permits, a three-dimensional image;

“indecent” in relation to an act or thing means an act or thing that right-thinking people will consider an affront to sexual modesty when applying the objective test of the recognised standards of propriety pertaining in the Falkland Islands at the time;

“mental disorder” has the meaning given by section 4 of the Mental Health Ordinance;

“penetration” is a continuing act from entry to withdrawal;

“touching” includes touching —

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything,

and includes touching amounting to penetration;

“vagina” includes vulva.

(2) For the purposes of this Part —

- (a) references to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery);
- (b) references to an image of a person include references to an image of an imaginary person;
- (c) references to observation (however expressed) are to observation whether direct or by looking at an image;
- (d) in relation to an animal, references to the vagina or anus include references to any similar part.

(3) For the purposes of this Part (except section 292), penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

*[UK Sexual Offences Act 2003 ss.78 and.79]*

### *Rape and related offences*

#### **203. Rape**

(1) A male person ('A') commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person ('B') with his penis;

(b) B does not consent to the penetration; and

(c) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

#### **204. Assault by penetration**

(1) A person ('A') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person ('B') with a part of A's body or anything else;

(b) the penetration is sexual;

(c) B does not consent to the penetration; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

### **205. Sexual assault**

(1) A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual;

(c) B does not consent to the touching; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

### **206. Causing a person to engage in sexual activity without consent**

(1) A person ('A') commits an offence if —

(a) A intentionally causes another person ('B') to engage in an activity;

(b) the activity is sexual;

(c) B does not consent to engaging in the activity; and

(d) A does not reasonably believe that B consents.

Penalty: As provided in subsection (4) or (5).

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) The maximum penalty on conviction for an offence under this section, if the activity caused involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(5) If subsection (4) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

(6) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

### *Rape etc. against children under 13*

#### **207. Rape of a child under 13**

(1) A male person commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and

(b) the other person is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

#### **208. Assault of a child under 13 by penetration**

(1) A person ('A') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person with a part of A's body or anything else;

(b) the penetration is sexual; and

(c) B is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

#### **209. Sexual assault of a child under 13**

A male person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual; and

(c) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**210. Causing or encouraging a child under 13 to engage in sexual activity**

(1) A person ('A') commits an offence if —

(a) A intentionally causes or encourages another person ('B') to engage in an activity;

(b) the activity is sexual; and

(c) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

*Child sex offences*

**211. Sexual activity with a child**

(1) A person aged 18 or over ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

## **212. Causing or encouraging a child to engage in sexual activity**

(1) A person aged 18 or over ('A') commits an offence if —

(a) A intentionally causes or encourages another person ('B') to engage in an activity;

(b) the activity is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**213. Engaging in sexual activity in the presence of a child**

A person aged 18 or over ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
  - (i) when another person ('B') is present or is in a place from which A can be observed;
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it; and
- (d) either —
  - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
  - (ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**214. Causing a child to watch a sexual act**

A person aged 18 or over ('A') commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual; and
- (c) either —
  - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
  - (ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**215. Child sex offences committed by youths**

A person who is a youth commits an offence if the person does anything which would be an offence under any of sections 211 to 214 if the person were an adult.

Penalty: Imprisonment for 5 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**216. Arranging or facilitating commission of a child sex offence**

(1) A person ('A') commits an offence if —

(a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world; and

(b) doing it will involve the commission of an offence under any of sections 211 to 215.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person ('A') does not commit an offence under this section if —

(a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do; and

(b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if the person acts for the purpose of —

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

*[UK Sexual Offences Act 2003 ss.1 to 14]*

**217. Meeting a child following sexual grooming etc.**

(1) A person aged 18 or over ('A') commits an offence if —

(a) A has met or communicated with another person ('B') and subsequently —

(i) A intentionally meets B;

(ii) A travels with the intention of meeting B in any part of the world, or arranges to meet B in any part of the world; or

(iii) B travels with the intention of meeting A in any part of the world;

(b) A intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence;

(c) B is under 16; and

(d) A does not reasonably believe that B is 16 or over.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In subsection (1) —

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

(b) “relevant offence” means —

(i) an offence under this Part; or

(ii) anything done in a place outside the Falkland Islands which is not an offence in that place but would be an offence under this Part if done in the Falkland Islands.

[UK Sexual Offences Act 2003 s.15 am. by Criminal Justice & Immigration Act 2008]

#### *Abuse of position of trust*

### **218. Abuse of position of trust: Sexual activity with a child**

(1) A person aged 18 or over (‘A’) commits an offence if —

(a) A intentionally touches another person (‘B’);

(b) the touching is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

- (a) is in a position of trust in relation to B by virtue of circumstances within section 222; and
- (b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and
- (b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

*[UK Sexual Offences Act 2003 ss.16 to 19]*

**219. Abuse of position of trust: Causing or encouraging a child to engage in sexual activity**

(1) A person aged 18 or over ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) A is in a position of trust in relation to B;
- (d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and
- (e) either —
  - (i) B is under 18 and A does not reasonably believe that B is 18 or over; or
  - (ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

*[UK Sexual Offences Act 2003 ss.16 to 19]*

**220. Abuse of position of trust: Sexual activity in the presence of a child**

(1) A person aged 18 or over ('A') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it—

(i) when another person ('B') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) A is in a position of trust in relation to B;

(e) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(f) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A is —

(a) in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

*[UK Sexual Offences Act 2003 ss.16 to 19]*

## **221. Abuse of position of trust: Causing a child to watch a sexual act**

(1) A person aged 18 or over ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

*[UK Sexual Offences Act 2003 ss.16 to 19]*

## **222. Positions of trust**

(1) For the purposes of sections 218 to 221, a person ('A') is in a position of trust in relation to another person ('B') if —

(a) A has attained the age of 18 years and B has not; and

(b) A holds any position mentioned in subsection (2); or

(c) the Governor, after consulting the Criminal Justice Council, by order declares a position held by A to be a position of trust for those purposes.

(2) The positions which are positions of trust are —

(a) A is a probation officer appointed to supervise B under the Criminal Procedure and Evidence Ordinance 2014 and in that capacity has regular unsupervised access to the child as a requirement of a court order made in criminal proceedings;

(b) A is a guardian for the child, appointed under the Children Ordinance 2014 or any other enactment relating to adoption, family proceedings or otherwise;

(c) A looks after persons under 18 who are detained in an institution by virtue of a court order, or under an enactment, and B is so detained in that institution;

(d) A looks after persons under 18 who are resident in a community home or other place in which accommodation and maintenance are provided under the Children Ordinance 2014 or any other enactment and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place;

(e) A looks after persons under 18 who are accommodated and cared for in a hospital, a nursing home, an independent clinic, a care home or a private hospital, and B is accommodated and cared for in that institution;

(f) A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution;

(g) A is engaged in the provision of services under, or pursuant to anything done under the Education Ordinance and, in that capacity, looks after B on an individual basis;

(h) A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of the Crown;

(i) A, as a person who is to report to the court under the Children Ordinance 2014 or any other enactment on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means);

(j) B is subject to requirements imposed by or under an enactment on his or her release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and A looks after B on an individual basis pursuant to those requirements;

(k) B is subject to a care order or a supervision order under the Children Ordinance 2014 or any other enactment and A looks after B on an individual basis in the exercise of functions conferred on A by the order.

*[UK Sexual Offences Act 2003 s.21 am. by Children Act 2004 and adapted]*

### **223. Positions of trust: Interpretation**

(1) The following provisions apply for the purposes of section 222.

(2) Subject to subsection (3), a person ('A') looks after persons under 18 if A is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person ('A') looks after another person ('B') on an individual basis if —

(a) A is regularly involved in caring for, training or supervising B; and

(b) in the course of A's involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution who —

(a) is registered or otherwise enrolled as a pupil or student at the institution; or

(b) receives education at the institution under arrangements with another educational institution at which the person is so registered or otherwise enrolled.

(5) In section 222 —

“care home” means an establishment which provides accommodation, together with nursing or personal care for persons who —

(a) are or have been ill;

(b) have or have had a mental disorder;

(c) are disabled or infirm; or

(d) are or have been dependent on alcohol or drugs,

but an establishment is not a care home if it is a school, a hospital, an independent clinic or a children's home or the child's family home;

“children's home” means an establishment which provides care and accommodation wholly or mainly for children, other than a school, hospital or care home or the child's family home;

“community home” means a home provided by the Crown —

(a) for the care and accommodation of children looked after by the Crown; or

(b) for purposes connected with the welfare of children, (whether or not looked after by the Crown);

“hospital” means the King Edward VII Memorial Hospital Stanley and any other establishment the main purpose of which is provide medical or psychiatric treatment for illness or mental illness or palliative care;

“independent clinic” means an establishment, other than a hospital, in which services are provided by a medical practitioner (whether or not any services are also provided for the purposes of the establishment elsewhere).

*[UK Sexual Offences Act 2003 ss.22 to26]*

**224. Sections 218 to 221: Exception for spouses or civil partners**

(1) Conduct by a person ('A') which would otherwise be an offence under any of sections 218 to 221 against another person ('B') is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

*[UK Sexual Offences Act 2003 ss.22 to26]*

**225. Sections 218 to 221: Sexual relationships which pre-date position of trust**

(1) Conduct by a person ('A') which would otherwise be an offence under any of sections 218 to 221 against another person ('B') is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 218 to 221 it is for the defendant to prove that such a relationship existed at that time.

*[UK Sexual Offences Act 2003 ss.22 to26]*

*Familial child sex offences*

**226. Sexual activity with a child family member**

(1) A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual;

(c) the relation of A to B is within section 228;

(d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') was under 18, A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('A') for an offence under this section it is proved that the relation of A to the other person ('B') was of a description falling within section 228, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence and subsection (6) applies, is imprisonment for 14 years.

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, or if subsection (6) does not apply, is imprisonment for 5 years.

(6) This subsection applies if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

*[UK Sexual Offences Act 2003 ss.22 to 26]*

## **227. Encouraging a child family member to engage in sexual activity**

(1) A person ('A') commits an offence if —

(a) A intentionally encourages another person ('B') to touch, or allow himself or herself to be touched by, A;

(b) the touching is sexual;

(c) the relation of A to B is within section 228;

(d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') was under 18, A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('A') for an offence under this section it is proved that the relation of A to the other person ('B') was of a description falling within section 228, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence and subsection (6) applies, is imprisonment for 14 years.

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, or if subsection (6) does not apply, is imprisonment for 5 years.

(6) This subsection applies if the touching to which the encouragement related involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

*[UK Sexual Offences Act 2003 ss.22 to26]*

## **228. Family relationships**

(1) The relation of one person ('A') to another ('B') is within this section if it is within any of subsections (2) to (4).

(2) The relation of A to B is within this subsection if —

(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, including by adoption; or

(b) A is or has been B's foster parent or guardian.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and —

- (a) one of them is or has been the other's step-parent;
- (b) A and B are cousins;
- (c) one of them is or has been the other's stepbrother or stepsister; or
- (d) the parent or present or former foster parent or guardian of one of them is or has been the other's foster parent or guardian.

(4) The relation of A to B is within this subsection if —

- (a) A and B live in the same household; and
- (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section —

- (a) “aunt” means the sister or half-sister of a person's parent, and “uncle” has a corresponding meaning;
- (b) “cousin” means the child of an aunt or uncle;
- (c) a person is a child's foster parent if the person fosters the child under arrangements made with the person by the Crown or fosters the child privately;
- (d) a person is a child's guardian if he or she has been appointed guardian of the child under the Children Ordinance 2014;
- (e) “step-parent” includes a parent's partner; and “stepbrother” and “stepsister” includes the child of a parent's partner;
- (f) “partner” means either one of 2 people who live together in an enduring family relationship that is not marriage or a civil partnership.

*[UK Sexual Offences Act 2003 s.27 am. by Criminal Justice & Immigration Act 2008]*

**229. Section 226 and 227: Exception for spouses and civil partners**

(1) Conduct by a person (‘A’) which would otherwise be an offence under section 226 or 227 against another person (‘B’) is not an offence under that section if at the time —

- (a) B is 16 or over; and
- (b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

*[UK Sexual Offences Act 2003 s.28]*

**230. Sections 226 and 227: Sexual relationships which pre-date family relationships**

(1) Conduct by a person ('A') which would otherwise be an offence under section 226 or 227 against another person ('B') is not an offence under that section if —

(a) the relation of A to B is not within subsection (2) of section 228; or

(b) immediately before the relation of A to B first became such as to fall within section 228, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(b) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 226 or 227 it is for the defendant to prove the matters mentioned in subsection (1)(a) and (b).

*[UK Sexual Offences Act 2003 s.29 am. by Criminal Justice & Immigration Act 2008]*

*Offences against persons with a mental disorder impeding choice*

**231. Sexual activity with a person with a mental disorder impeding choice**

(1) A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to the touching (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or

(b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**232. Causing or encouraging a person with a mental disorder to engage in sexual activity**

(1) A person ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) B is unable to refuse because of or for a reason related to a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

- (a) B lacks the capacity to choose whether to agree to engaging in the activity caused or encouraged (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or
- (b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**233. Engaging in sexual activity in the presence of a person with a mental disorder**

(1) A person ('A') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, the person engages in it —

(i) when another person ('B') is present or is in a place from which A can be observed;  
and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B is unable to refuse because of or for a reason related to a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to being present (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**234. Causing a person with a mental disorder to watch a sexual act**

(1) A person ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to watching or looking (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

[UK Sexual Offences Act 2003 ss.30 to 44]

*Inducements, etc. to persons with a mental disorder*

**235. Inducement etc. to procure sexual activity with a person with a mental disorder**

(1) A person ('A') commits an offence if —

(a) with the agreement of another person ('B'), A intentionally touches that person;

(b) the touching is sexual;

(c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;

(d) B has a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**236. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.**

(1) A person ('A') commits an offence if —

(a) by means of an inducement offered or given, a threat made or a deception practiced by A for this purpose, A intentionally causes another person ('B') to engage in, or to agree to engage in, an activity;

(b) the activity is sexual;

(c) B has a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or agreed to involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,  
is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**237. Engaging in sexual activity in the presence, procured by inducement, etc., of a person with a mental disorder**

A person ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
  - (i) when another person ('B') is present or is in a place from which A can be observed; and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
- (d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (e) B has a mental disorder; and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**238. Causing a person with a mental disorder to watch a sexual act by inducement, etc.**

A person ('A') commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual;
- (c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (d) B has a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

*Care workers for persons with a mental disorder*

**239. Care workers: Sexual activity with a person with a mental disorder**

(1) A person ('A') commits an offence if —

- (a) A intentionally touches another person ('B');

- (b) the touching is sexual;
- (c) B has a mental disorder;
- (d) A knows or could reasonably be expected to know that B has a mental disorder; and
- (e) A is involved in B's care in a way that falls within section 243.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body; or
- (d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years or a fine, or both.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

#### **240. Care workers: Causing or encouraging sexual activity**

(1) A person ('A') commits an offence if —

- (a) A intentionally causes or encourages another person ('B') to engage in an activity;
- (b) the activity is sexual;
- (c) B has a mental disorder;
- (d) A knows or could reasonably be expected to know that B has a mental disorder; and
- (e) A is involved in B's care in a way that falls within section 243.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis,

is imprisonment for 14 years or a fine, or both.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**241. Care workers: Sexual activity in the presence of a person with a mental disorder**

(1) A person ('A') commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
  - (i) when another person ('B') is present or is in a place from which A can be observed; and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
- (d) B has a mental disorder;
- (e) A knows or could reasonably be expected to know that B has a mental disorder; and
- (f) A is involved in B's care in a way that falls within section 243.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**242. Care workers: Causing a person with a mental disorder to watch a sexual act**

(1) A person ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 243.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('A') for an offence under this section it is proved that the other person ('B') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

**243. Care workers: Interpretation**

(1) For the purposes of sections 239 to 242, a person ('A') is involved in the care of another person ('B') in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if —

(a) B is accommodated and cared for in a care home, community home, children's home or voluntary home; and

(b) A has functions to perform in the home in the course of employment which have brought A, or are likely to bring A, into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided by the Crown or in an independent hospital or independent clinic, and A has functions to perform for the Crown or hospital in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.

(4) This subsection applies if A —

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and

(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section —

“care home”, “children's home”, “community home”, “hospital” and “independent clinic” each have the meanings given those terms by section 223(5);

“employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship or under a contract for services or otherwise than under a contract and includes service under the Crown;

“independent hospital” means a hospital which is not a hospital operated by the Crown;

“voluntary home” means a children's home which is operated by a voluntary organisation which is not a community home.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

#### **244. Sections 239 to 242: Exception for spouses and civil partners**

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 239 to 242 against another person (‘B’) is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

#### **245. Sections 239 to 242: Sexual relationships which pre-date care relationships**

(1) Conduct by a person (‘A’) which would otherwise be an offence under any of sections 239 to 242 against another person (‘B’) is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 243, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 239 to 242, it is for the defendant to prove that such a relationship existed at that time.

*[UK Sexual Offences Act 2003 ss.30 to 44]*

*Indecent photographs of youths*

**246. Possession of indecent photograph of a youth**

(1) Subject to section 248, it is an offence for a person to have any indecent photograph or pseudo-photograph of a youth in the person's possession.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is charged with an offence under subsection (1), it is a defence for the person to prove that —

(a) he or she had a legitimate reason for having the photograph or pseudo-photograph in his or her possession;

(b) he or she had not seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) the photograph or pseudo-photograph was sent to him or her without any prior request made by him or her or on his or her behalf and that he or she did not keep it for an unreasonable time.

*[UK CJ Act 1988 s.160 am. by Criminal Justice & Public Order Act 1994 ]*

**247. Taking and publishing indecent photographs of youths**

(1) Subject to section 248, it is an offence for a person ('A') —

(a) to take or permit to be taken, or to make, any indecent photograph or pseudo-photograph of a youth;

(b) to distribute or show such indecent photographs or pseudo-photographs;

(c) to have in A's possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by A or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

Penalty: Imprisonment for 10 years, or a fine, or both.

(2) For the purpose of subsection (1)(b), a person ('A') is to be regarded as distributing an indecent photograph or pseudo-photograph if A parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) If a person ('A') is charged with an offence under subsection (1)(b) or (c), it is a defence for A to prove that —

(a) A had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his or her possession; or

(b) A had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

*[UK Protection of Children Act 1978 s.1 as am. by Sexual Offences Act 2003]*

**248. Marriage or similar relationship**

(1) This section applies if, in proceedings for an offence under section 246(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant ('A') proves that the photograph or pseudo-photograph was of the youth aged 16 or over, and that at the time of the offence charged the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies if, in proceedings for an offence under section 247(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant proves that the photograph or pseudo-photograph was of the youth aged 16 or over, and that at the time when A obtained it the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph shows the youth alone or with the defendant, but not if it shows any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether —

(a) the youth consented to the photograph or pseudo-photograph being taken or made, distributed, or in the defendant's possession, as the case may be; or

(b) the defendant reasonably believed that the youth so consented,

the defendant is not guilty of the offence unless it is proved that the youth did not so consent and that the defendant did not reasonably believe that the youth so consented.

(5) In the case of an offence under section 247(1)(b), the defendant is not guilty of the offence unless it is proved that the distributing or showing was to a person other than the youth.

(6) In the case of an offence under section 247(1)(c), if sufficient evidence is adduced to raise an issue both as to whether —

(a) the youth consented to the photograph being in the possession of the defendant ('A'), or as to whether A reasonably believed that the youth so consented; and

(b) A had the photograph in A's possession with a view to its being distributed or shown to anyone other than the youth,

the defendant is not guilty of the offence unless it is proved either that —

(i) the youth did not so consent and that A did not reasonably believe that the youth so consented; or

(ii) A had the photograph in A's possession with a view to its being distributed or shown to a person other than the youth.

*[UK CJ Act 1988 s.160A; UK Protection of Children Act 1978 s.1A ins. by Sexual Offences Act 2003]*

#### **249. Exception for criminal proceedings, investigations etc.**

(1) In proceedings for an offence under section 247(1)(a) of making an indecent photograph or pseudo-photograph of a youth, the defendant ('A') is not guilty of the offence if A proves that it was necessary for A to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

(2) No proceedings for an offence under section 246 or 247 may be commenced except by, or with the consent of, the Attorney General.

*[UK Protection of Children Act 1978 s.1B ins. by Sexual Offences Act 2003 and adapted]*

#### **250. Entry, search and seizure – Schedule 1**

(1) The following subsections apply if a justice of the peace is satisfied by information on oath, laid by or on behalf of the Attorney General or by a police officer, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child.

(2) The justice of the peace may issue a warrant under his or her hand authorising any police officer to enter (if need be by force) and search the premises, and to seize and remove any articles which the officer believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, must be disposed of in accordance with Schedule 1.

(4) This section and Schedule 1 apply in relation to any stall, vehicle or vessel, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

*[UK Protection of Children Act 1978 s.4 as am. by Sexual Offences Act 2003]*

#### **251. Indecent photographs: Interpretation**

(1) The following subsections apply for the interpretation of sections 246 and 247 and Schedule 1.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film), if they show youths and are indecent, are to be treated for all purposes of this Part as indecent photographs of youths and similarly in respect of pseudo-photographs.

(4) References to a photograph include —

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) “Film” includes any form of video-recording.

(6) A person is to be taken as having been a youth at any material time if it appears from the evidence as a whole that he or she was then under the age of 18.

(7) “Pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a youth, the pseudo-photograph is to be treated for all purposes of this Ordinance as showing a youth and a pseudo-photograph is to be similarly treated if the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include —

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

*[UK Protection of Children Act 1978 ss.2 and 7 as am. by Sexual Offences Act 2003]*

#### *Prohibited images of youths*

### **252. Possession of prohibited images of youths**

(1) It is an offence for a person to be in possession of a prohibited image of a youth.  
Penalty: Imprisonment for 3 years or a fine, or both.

(2) A prohibited image is an image which —

(a) is pornographic;

(b) falls within subsection (6); and

(c) is grossly offensive, disgusting or otherwise of an obscene character.

(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An image falls within this subsection if it —

(a) is an image which focuses solely or principally on a youth’s genitals or anal region; or

(b) portrays any of the acts mentioned in subsection (7).

(7) Those acts are —

(a) the performance by a person of an act of intercourse or oral sex with or in the presence of a youth;

(b) an act of masturbation by, of, involving or in the presence of a youth;

(c) an act which involves penetration of the vagina or anus of a youth with a part of a person’s body or with anything else;

(d) an act of penetration, in the presence of a youth, of the vagina or anus of a person with a part of a person’s body or with anything else;

(e) the performance by a youth of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);

(f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a youth.

(8) For the purposes of subsection (6), penetration is a continuing act from entry to withdrawal.

(9) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

*[UK Coroners & Justice Act 2009 ss.62 and 66]*

### **253. Exclusion of classified works**

(1) Section 252(1) does not apply to excluded images.

(2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an “excluded image” if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

(6) In this section —

“classified” in relation to a work means classified by the British Board of Film Censors or an equivalent authority in another jurisdiction as suitable for general viewing and unrestricted supply, with or without advice as to the desirability of parental guidance with regard to the viewing of the work by young children or as to its suitability for such viewing;

“extract” includes an extract consisting of a single image;

“pornographic” has the same meaning as in section 252;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

*[UK Coroners & Justice Act 2009 s.63]*

#### **254. Defences**

(1) If a person is charged with an offence under section 252(1), it is a defence for the person to prove that —

(a) the person had a legitimate reason for being in possession of the image concerned;

(b) the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image of a child; or

(c) the person —

(i) was sent the image concerned without any prior request having been made by or on behalf of the person; and

(ii) did not keep it for an unreasonable time.

(2) In this section, “prohibited image” of a youth has the meaning given that term by section 252(2).

*[UK Coroners & Justice Act 2009 s.64]*

#### **255. Sections 252 to 254: Supplementary**

(1) For the purposes of sections 252 to 254, “image” includes —

(a) a moving or still image (produced by any means); and

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a),

but does not include an indecent photograph, or indecent pseudo-photograph, of a youth.

(2) If an image shows a person, the image is to be treated as an image of a youth if —

(a) the impression conveyed by the image is that the person shown is a youth; or

(b) the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are not those of a youth.

(3) References to an image of a person include references to an image of an imaginary person.

(4) References to an image of a youth include references to an image of an imaginary youth.

(5) The provisions of section 250 and Schedule 1 apply in relation to prohibited images of youths as they apply in relation to indecent photographs of youths.

(6) In this section —

“prohibited image” of a youth has the meaning given that term by section 252;

“prohibited photograph” and “prohibited pseudo-photograph” mean indecent photograph and indecent pseudo-photograph as in sections 246 and 247.

[UK Coroners & Justice Act 2009 ss.65 and 67]

### *Extreme pornographic images*

#### **256. Possession of extreme pornographic images**

(1) It is an offence for a person to be in possession of an extreme pornographic image.

Penalty: (i) If the offence relates to an image that portrays an act within subsection (7)(a) or (b) - imprisonment for 3 years or a fine, or both.

(ii) In any other case – imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) An “extreme pornographic image” is an image which is both —

(a) pornographic, and

(b) an extreme image.

(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) If (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An “extreme image” is an image which —

(a) falls within subsection (7); and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following —

(a) an act which threatens a person's life;

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;

(c) an act which involves sexual interference with a human corpse; or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(8) In this section “image” means —

(a) a moving or still image (produced by any means); or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

*[UK Criminal Justice & Immigration Act 1998 ss.63 and 67]*

## **257. Exclusion of classified works**

(1) Section 256 does not apply to excluded images.

(2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an “excluded image” if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images,

and section 256(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements), is to be disregarded.

(6) In this section —

“classified” has the same meaning as in section 253(6);

“extract” includes an extract consisting of a single image;

“image” and “pornographic” have the same meanings as in section 256;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

*[UK Criminal Justice & Immigration Act 1998 s.64]*

## **258. Defences**

(1) If a person is charged with an offence under section 256, it is a defence for the person to prove that the person —

(a) had a legitimate reason for being in possession of the image concerned;

(b) had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;

(c) was sent the image concerned without any prior request having been made by or on behalf of the person and did not keep it for an unreasonable time.

(2) If —

(a) a person (“D”) is charged with an offence under section 256; and

(b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but not paragraph (d)) of subsection (7) of that section,

subsection (3) below applies.

(3) In the circumstances mentioned in subsection (2), it is a defence for D to prove —

(a) that D directly participated in the act or any of the acts portrayed; and

(b) that the act or acts did not involve the infliction of any non-consensual harm on any person; and

(c) if the image portrays an act within section 256(7)(c), that what is portrayed as a human corpse was not in fact a corpse.

(4) For the purposes of this section harm inflicted on a person is “non-consensual” harm if —

(a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or

(b) the person can, in law, consent to it being so inflicted, but does not in fact consent to it being so inflicted.

*[UK Criminal Justice & Immigration Act 1998 ss.65 and 66]*

*Abuse of children through prostitution and pornography*

**259. Paying for sexual services of a child**

(1) A person (‘A’) commits an offence if —

(a) A intentionally obtains for A, or for any other person, the sexual services of another person (‘B’);

(b) before obtaining those services, A has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment; and

(c) either —

- (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
- (ii) B is under 13.

Penalty: As provided in subsection (3), (4) or (5).

(2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) The maximum penalty on a conviction for an offence under this section against a person under 13 is —

- (a) if subsection (6) applies - imprisonment for life;
- (b) in any other case - imprisonment for 14 years or a fine, or both.

(4) The maximum penalty on conviction for an offence under this section against a person under 16, but not under 13, is —

- (a) if subsection (6) applies - imprisonment for 14 years or a fine, or both;
- (b) in any other case - imprisonment for 10 years or a fine, or both.

(5) The maximum penalty on conviction for an offence under this section against a person under 18, but not under 16, is imprisonment for 7 years or a fine, or both.

(6) This subsection applies if the offence involved —

- (a) penetration of B’s anus or vagina with a part of A’s body or anything else;
- (b) penetration of B’s mouth with A’s penis;
- (c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else; or
- (d) penetration of A’s mouth with B’s penis.

(7) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 s.47 adapted]*

## **260. Causing or encouraging child prostitution or pornography**

A person (‘A’) commits an offence if —

- (a) A intentionally causes or encourages another person (‘B’) to become a prostitute, or to be involved in pornography, in any part of the world; and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

### **261. Controlling a child prostitute or a child involved in pornography**

A person ('A') commits an offence if —

(a) A intentionally controls any of the activities of another person ('B') relating to B's prostitution or involvement in pornography in any part of the world, and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

### **262. Arranging or facilitating child prostitution or pornography**

A person ('A') commits an offence if —

(a) A intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person ('B'); and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

### **263. Sections 259 to 262: Interpretation**

(1) For the purposes of sections 259 to 262, a person is involved in pornography if an indecent image of that person is recorded; and "pornography" and similar expressions are to be interpreted accordingly.

(2) In those sections "prostitute" means a person ('A') who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

### *Exploitation of prostitution*

#### **264. Causing or encouraging prostitution for gain**

A person (‘A’) commits an offence if —

(a) A intentionally causes or encourages another person to become a prostitute in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

#### **265. Controlling prostitution for gain**

A person (‘A’) commits an offence if —

(a) A intentionally controls any of the activities of another person (‘B’) relating to B’s prostitution in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.48 to 53]*

#### **266. Paying for sexual services of a prostitute subjected to force, etc.**

(1) A person (‘A’) commits an offence if —

(a) A makes or promises payment for the sexual services of a prostitute (‘B’);

(b) a third person (‘C’) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment; and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

Penalty: A fine at level 3 on the standard scale.

(2) In relation to an offence under subsection (1), the following are irrelevant —

(a) where in the world the sexual services are to be provided;

(b) whether those services are provided; and

(c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) C engages in exploitative conduct if —

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion; or

(b) C practises any form of deception.

*[UK Sexual Offences Act 2003 s.53A ins. by Policing and Crime Act 2009]*

**267. Loitering or soliciting for purposes of prostitution**

(1) It is an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Penalty: As provided in subsection (3).

(2) For the purpose of subsection (1) —

(a) conduct is persistent if it takes place on 2 or more occasions in any period of 3 months;

(b) a reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

(3) A person who commits an offence under this section is liable on conviction to —

(a) a fine at level 2 on the standard scale; or

(b) for an offence committed after a previous conviction for a similar offence - a fine at level 3 on the standard scale.

(4) A police officer may arrest without warrant a person the officer finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section.

*[UK Street Offences Act 1959 s.1 am. by CJ Act 1982, Sexual Offences Act 2003 and Policing and Crime Act 2009]*

**268. Soliciting prostitution**

(1) It is an offence for a person in a street or public place to solicit another ('B') for the purpose of obtaining B's sexual services as a prostitute.

Penalty: A fine at level 3 on the standard scale.

(2) The reference to a person in a street or public place includes a person in a motor vehicle in a street or public place.

*[UK Sexual Offences Act 2003 s.51A ins. by Policing and Crime Act 2009]*

**269. Prostitution offences: Interpretation**

(1) In sections 264 to 266, "gain" means —

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections, “prostitute” and “prostitution” have the meaning given by section 263(2).

(3) For the purposes of sections 264, 265 and 267 —

(a) “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and

(b) the doorways and entrances of premises abutting on a street (as defined), and any ground adjoining and open to a street, is to be treated as forming part of the street.

*[UK Sexual Offences Act 1985 s.4 am. by Sexual Offences Act 2003; Sexual Offences Act 2003 s.54]*

### *Brothel-keeping*

#### **270. Keeping a brothel**

(1) It is an offence for a person to keep, or to manage, or to act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

Penalty: As provided in subsection (3) or (4)

(2) In this section “prostitution” has the meaning given by section 263(2).

(3) The maximum sentence on conviction for keeping a brothel, unless subsection (4) applies, is imprisonment for 3 months or a fine not exceeding level 3 on the standard scale, or both.

(4) If the defendant has previously been convicted of an offence under —

(a) this section;

(b) any of sections 271, 272 or 273; or

(c) any of sections 34, 35 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for keeping a brothel is imprisonment for 7 years or a fine, or both.

*[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]*

#### **271. Landlord letting premises for use as brothel**

(1) It is an offence for a person who is the lessor or landlord of any premises or an agent of that person —

(a) to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel; or

(b) if the whole or part of the premises is used as a brothel - to be wilfully a party to that use continuing.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, unless section (3) applies, is imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 272 or 273,; or

(c) any of sections 33, 33A, 35 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]*

#### **272. Tenant permitting premises to be used as a brothel**

(1) It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel.

Penalty: As provided in subsection (6) or (7).

(2) If the tenant or occupier of any premises is convicted of knowingly permitting the whole or part of the premises to be used as a brothel, the rights of the lessor or landlord with respect to the assignment or determination of the lease or other contract under which the premises are held by the person convicted are varied as set out in subsection (3).

(3) The variations referred to in subsection (2) are —

(a) the lessor or landlord may require the tenant to assign the lease or other contract under which the premises are held by the tenant to some person approved by the lessor or landlord;

(b) if the tenant fails to do so within 3 months, the lessor or landlord may determine the lease or contract (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination);

(c) if the lease or contract is determined under this subsection, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the lessor or landlord;

(d) the approval of the lessor or landlord for the purposes of paragraph (a) must not be unreasonably withheld.

(4) If the tenant or occupier of any premises is so convicted, or was so convicted under section 35 of the UK Sexual Offences Act 1956 before the commencement of this Part, and either —

(a) the lessor or landlord ('A'), after having the conviction brought to A's notice, fails or failed to exercise A's statutory rights in relation to the lease or contract under which the premises are or were held by the person convicted; or

(b) A, after exercising A's statutory rights so as to determine that lease or contract, grants or granted a new lease or enters or entered into a new contract of tenancy of the premises to, with or for the benefit of the same person, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease or contract,

then, if subsequently an offence under this section is committed in respect of the premises during the subsistence of the lease or contract referred to in paragraph (a) or (if paragraph (b) applies) during the subsistence of the new lease or contract, A is deemed to be a party to that offence unless A shows that he or she took all reasonable steps to prevent the recurrence of the offence.

(5) References in subsection (4) to the statutory rights of a lessor or landlord refer to his or her rights under subsection (3).

(6) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (7) applies.

(7) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 271 or 273; or

(c) any of sections 33, 33A, 34 or 36 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

*[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]*

### **273. Tenant permitting premises to be used for prostitution**

(1) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of prostitution.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (3) applies.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 271 or 272; or

(c) any of sections 33, 33A, 34 or 35 of the UK Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

*[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]*

**274. Allowing persons under 16 to be in a brothel**

It is an offence for a person who has responsibility for a child or young person who has attained the age of 4 years and is under the age of 16 years to allow that child or young person to reside in or to frequent a brothel.

Penalty: Imprisonment for 6 months or a fine at level 2 on the standard scale, or both.

*[UK Children & Young Persons Act 1933 s.3]*

*Sex trafficking*

**275. Trafficking people for sexual exploitation**

(1) A person ('A') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('B');

(b) the travel of B within the Falkland Islands or another country; or

(c) the departure of B from the Falkland Islands or another country,

with a view to the sexual exploitation of B.

Penalty: Imprisonment for 14 years or fine, or both.

(2) For the purposes of subsection (1)(a) and (c), A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(b), A's arranging or facilitating is with a view to the

sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(4) A person who has Falkland Islands status commits an offence under this section regardless of —

(a) where the arranging or facilitating takes place; or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(5) A person who does not have Falkland Islands status commits an offence under this section if—

(a) any part of the arranging or facilitating takes place in the Falkland Islands; or

(b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(6) In this section —

“country” includes any territory or other part of the world;

“relevant offence” means —  
any offence under this Part; or

(a) anything done outside the Falkland Islands which is not an offence within paragraph

(b) but would be if done in the Falkland Islands.

*[UK Sexual Offences Act s.59A ins.by Protection of Freedom Act 2012]*

## **276. Forfeiture of land vehicle, ship or aircraft**

(1) This section applies if a person is convicted of an offence under section 275.

(2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person —

(a) owned the vehicle at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the vehicle;

- (c) was at that time in possession of the vehicle under a hire-purchase agreement;
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
  - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person —
- (a) owned the ship or aircraft at the time the offence was committed;
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
  - (e) was at that time a charterer of the ship or aircraft; or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) In a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
- (a) in the case of a ship - if subsection (5) or (6) applies;
  - (b) in the case of an aircraft - if subsection (5) or (7) applies.
- (5) This subsection applies if a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 275.
- (6) This subsection applies if a ship's gross tonnage is less than 500 tons.
- (7) This subsection applies if the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kgs.
- (8) If a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

(9) Disposal of an item ordered to be forfeited under this section is governed by section 622 of the Criminal Procedure and Evidence Ordinance 2014.

*[UK Sexual Offences Act 2003 s.60A ins.by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]*

**277. Detention of land vehicle, ship or aircraft**

(1) If a person has been arrested for an offence under section 275, a police officer of the rank of inspector or above may detain a relevant vehicle, ship or aircraft —

(a) until a decision is taken as to whether or not to charge the arrested person with that offence;

(b) if the arrested person has been charged, until the person is acquitted, the charge is dismissed or the proceedings are discontinued; or

(c) if the person has been charged and convicted - until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the police or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which the person was arrested, be the subject of an order for forfeiture under section 276.

(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that the applicant —

(a) owns the vehicle, ship or aircraft;

(b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or

(c) is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if —

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 276.

(5) In this section, “court” means —

(a) if the arrested person has not been charged, or the person has been charged but proceedings for the offence have not begun to be heard - the Magistrate’s Court or the Youth Court;

(b) if the person has been charged and proceedings for the offence are being heard - the court hearing the proceedings.

*[UK Sexual Offences Act 2003 s.60B ins.by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]*

**278. Sections 276 and 277: Interpretation**

(1) In sections 276 and 277, unless the contrary intention appears —

“aircraft” includes hovercraft;

“captain” means master (of a ship) or commander (of an aircraft);

“land vehicle” means any vehicle other than a ship or aircraft;

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

(2) In those sections a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

*[UK Sexual Offences Act 2003 s.60C ins.by Violent Crime Reduction Act 2006]*

*Preparatory offences*

**279. Administering a substance with intent**

A person (‘A’) commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person (‘B’) —

(a) knowing that B does not consent; and

(b) intending to stupefy or overpower B, so as to enable any other person (including A) to engage in a sexual activity that involves B.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.61 to 63]*

**280. Committing an offence with intent to commit a sexual offence**

(1) A person who commits an offence with the intention of committing a relevant sexual offence commits an offence under this section.

Penalty: As provided in subsection (3)(a) or (b).

(2) In this section, “relevant sexual offence” means any offence under this Part (including an offence of encouraging, or aiding and abetting such an offence).

(3) The maximum sentence on conviction for an offence under this section is —

(a) if the offence is committed by kidnapping or false imprisonment - imprisonment for life;

(b) in other cases - imprisonment for 10 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

*[UK Sexual Offences Act 2003 ss.61 to 63]*

**281. Trespass with intent to commit a sexual offence**

(1) A person commits an offence if the person —

(a) is a trespasser on any premises;

(b) intends to commit a relevant sexual offence on the premises; and

(c) knows that, or is reckless as to whether, he or she is a trespasser.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In this section —

“premises” includes a structure or part of a structure;

“relevant sexual offence” has the same meaning as in section 280(2);

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

*[UK Sexual Offences Act 2003 ss.61 to 63]*

*Sex with an adult relative (Incest)*

**282. Sex with an adult relative: Penetration**

(1) A person (‘A’) aged 16 or over commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person (‘B’) with a part of A’s body or anything else, or (being a male) penetrates B’s mouth with his penis;

(b) the penetration is sexual;

(c) B is aged 18 or over;

(d) A and B are related in a way mentioned in subsection (2); and

(e) A knows or could reasonably be expected to know of the relationship.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The relationship referred to in subsection (1) is that of parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2) —

“parent” includes an adoptive parent;

“child” includes an adopted child;

“uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;

“nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) If subsection (1) applies in a case where A is related to B as B’s child through adoption, A does not commit an offence unless A is 18 or over.

(5) If in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), it is to be taken that the defendant knew or could reasonably have been expected to know of the relationship, unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of it.

*[UK Sexual Offences Act 2003 s.64 am. by Criminal Justice & Immigration Act 2008]*

### **283. Sex with an adult relative: Consenting to penetration**

(1) A person (‘A’) aged 16 or over commits an offence if —

(a) another person (‘B’) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis;

(b) A consents to the penetration;

(c) the penetration is sexual;

(d) B is aged 18 or over;

(e) A is related to B in a way mentioned in section 282(2); and

(f) A knows or could reasonably be expected to know of the relationship.

Penalty: imprisonment for 2 years or a fine, or both.

(2) Subsections (2) to (5) of section 282 apply to an offence under subsection (1) of this section as they apply to an offence under subsection (1) of that section.

*[UK Sexual Offences Act 2003 s.65 am. by Criminal Justice & Immigration Act 2008]*

### *Other sexual offences*

### **284. Genital exposure**

A person commits an offence if the person —

(a) intentionally exposes his or her genitals; and

(b) intends that someone will see them and be caused alarm or distress.

Penalty: Imprisonment for 2 years or a fine, or both.  
[UK Sexual Offences Act 2003 ss.66 to 71]

**285. Voyeurism**

(1) A person ('A') commits an offence if A —

(a) for the purpose of obtaining sexual gratification, observes another person ('B') doing a private act; and

(b) knows that B does not consent to being observed for A's sexual gratification.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person ('A') commits an offence if A —

(a) operates equipment with the intention of enabling another person ('B') to observe, for the purpose of obtaining sexual gratification, a third person ('C') doing a private act; and

(b) knows that C does not consent to A's operating equipment with that intention.

(3) A person ('A') commits an offence if A —

(a) records another person ('B') doing a private act;

(b) does so with the intention that A or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

(c) knows that B does not consent to A's recording the act with that intention.

(4) A person ('A') commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit an offence under subsection (1).

(5) For the purposes of this section, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and —

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;

(b) the person is using a lavatory; or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(6) In this section "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

[UK Sexual Offences Act 2003 ss.66 to 71]

**286. Intercourse with an animal**

(1) A male person commits an offence if —

- (a) he intentionally performs an act of penetration with his penis;
- (b) what is penetrated is the vagina or anus of an animal (whether dead or alive); and
- (c) he knows that, or is reckless as to whether, that is what is penetrated.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person of either gender ('A') commits an offence if —

- (a) A intentionally causes, or allows, A's vagina or anus to be penetrated;
- (b) the penetration is by the penis of an animal (whether dead or alive); and
- (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.66 to 71]*

**287. Sexual penetration of a corpse**

A person ('A') commits an offence if —

- (a) A intentionally performs an act of penetration with a part of A's body or anything else;
- (b) what is penetrated is a part of the body of a dead person;
- (c) A knows that, or is reckless as to whether, that is what is penetrated; and
- (d) the penetration is sexual.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Sexual Offences Act 2003 ss.66 to 71]*

**288. Sexual activity in a public lavatory**

(1) A person ('A') commits an offence if A —

- (a) is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;
- (b) A intentionally engages in an activity; and
- (c) the activity is sexual.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances, but regardless of any person's purpose, consider it to be sexual.

*Miscellaneous provisions*

**289. Sexual offences outside the Falkland Islands – Schedule 2**

(1) If —

(a) a person who has Falkland Islands status does an act in a place outside the Falkland Islands; and

(b) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(2) If —

(a) a person who is a resident of the Falkland Islands does an act in a place outside the Falkland Islands;

(b) the act constitutes an offence under the law in force in that place; and

(c) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(3) If —

(a) a person does an act in a place outside the Falkland Islands at a time when the person did not have Falkland Islands status nor was a resident of the Falkland Islands;

(b) the act constituted an offence under the law in force in that place;

(c) the act, if done in the Falkland Islands, would have constituted a sexual offence to which this section applies; and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in the Falkland Islands for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person has Falkland Islands status or is a resident of the Falkland Islands at the time when the proceedings are brought.

(5) An act punishable under the law in force in any place constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to prove that it is met.

(7) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(9) The sexual offences to which this section applies are those listed in Part A of Schedule 2.

*[UK Sexual Offences Act 2003 s.72 replaced by s.72(1) Criminal Justice & Immigration Act 2008]*

**290. Encouraging, etc. the commission of certain sexual acts outside the Falkland Islands – Schedule 2**

(1) This section applies if —

(a) any act done by a person in the Falkland Islands would amount to the offence of encouraging, or aiding and abetting, the commission of an offence to which this section applies but for the fact that what the person had in view would not be an offence in the Falkland Islands;

(b) the whole or part of what the person had in view was intended to take place in a place outside the Falkland Islands; and

(c) what the person had in view would involve the commission of an offence under the law of that place.

(2) If this section applies —

(a) what the person had in view is to be treated as that offence for the purposes of any charge of encouraging brought in respect of that act; and

(b) any such offence is accordingly triable in the Falkland Islands.

(3) Any act done by means of a message (however communicated) is to be treated as done in the Falkland Islands if the message is sent or received in the Falkland Islands.

(4) Conduct punishable as an offence under the law of a place outside the Falkland Islands is an offence under that law for the purposes of subsection (1) and (2), however it is described in that law.

(5) Subject to subsection (6), a condition in subsection (1) is to be taken as met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to what the accused had in view, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to show that it is met.

(6) The court, if it thinks fit, may permit the defendant to require the prosecution to show that the condition is met without the prior service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(8) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the accused had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(9) The sexual offences to which this section applies are those listed in Part B of Schedule 2. *[UK Sexual Offences (Conspiracy & Encouragement) Act 1996 ss.2 and 3 and Schedule am. by Sexual Offences Act 2003]*

### **291. Exceptions to encouraging, etc.**

(1) A person is not guilty of encouraging, or aiding and abetting, the commission against a child of an offence to which this section applies if the person acts for the purpose of —

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to —

- (a) an offence under any of sections 207 to 210 (offences against children under 13);
- (b) an offence under section 211 (sexual activity with a child);
- (c) an offence under section 215 (child sex offences by youths) which would be an offence under section 211 if the offender were aged 18;
- (d) an offence under any of sections 218, 226, 231, 235 and 239 (sexual activity) against a person under the age of 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of encouraging, or aiding and abetting an offence under this Part.

*[UK Sexual Offences Act 2003 ss.73 to 77]*

**292. Meaning of “consent”**

(1) For the purposes of this Part, a person consents only if the person agrees by choice, and has the freedom and capacity to make that choice.

(2) If in proceedings for an offence to which this section applies it is proved that —

- (a) the defendant did the relevant act;
- (b) any of the circumstances specified in subsection (3) existed; and
- (c) the defendant knew that those circumstances existed,

then the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he or she consented and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) This section applies if —

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him or her;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant’s physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant’s consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(4) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

*[UK Sexual Offences Act 2003 ss.73 to 77]*

**293. Conclusive presumptions about consent**

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that either or both of the circumstances specified in subsection (2) existed, it is to be conclusively presumed —

- (a) that the complainant did not consent to the relevant act; and
- (b) that the defendant did not believe that the complainant consented to the relevant act.

(2) This section applies if —

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;
- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

*[UK Sexual Offences Act 2003 ss.73 to 77]*

**294. Sections 292 and 293: Relevant acts**

In relation to an offence to which section 292 or 293 applies, references in those sections to the relevant act and to the complainant are to be read as follows —

<i>Offence</i>	<i>Relevant act</i>
An offence under section 203 (Rape)	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”)
An offence under section 204 (Assault by penetration)	The defendant intentionally penetrating, with a part of his or her body or anything else, the vagina or anus of another person (“the complainant”), if the penetration is sexual
An offence under section 205 (Sexual assault)	The defendant intentionally touching another person (“the complainant”), if the touching is sexual

An offence under section 206 (Causing a person to engage in sexual activity without consent)	The defendant intentionally causing another person (“the complainant”) to engage in an activity, if the activity is sexual
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*[UK Sexual Offences Act 2003 ss.73 to 77]*

## PART 11 – SEXUAL OFFENCE ORDERS

### **295. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“absolute discharge” means an absolute discharge granted under section 502(1)(a) of the Criminal Procedure and Evidence Ordinance 2014;

“detained in hospital” means detained in a hospital under either Part 3 or Part 8 of the Mental Health Ordinance;

“community order” means an order under section 509 of the Criminal Procedure and Evidence Ordinance 2014;

“conditional discharge” means a conditional discharge granted under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014;

“foreign travel order” means an order made under section 114 of the Sexual Offences Act 2003;

“harm” from a defendant means physical or psychological harm caused by the defendant;

“home address” means, in relation to any person —

(a) the address of the person’s sole or main residence in the Falkland Islands; or

(b) if the person has no such residence - the address or location of a place in the Falkland Islands where the person can regularly be found and, if there is more than one such place, such one of those places as the person selects;

“interim notification order” means an order made under section 319;

“interim SHPO” means an order made under section 326;

“interim SRO” means an order made under section 335;

“notification order” means an order made under section 316;

“notification period” has the meaning given by section 297;

“notification requirements of this Part” means the requirement to give notification of certain matters under any of sections 298 to 301;

“passport” means —

(a) a document establishing a person’s identity, nationality and citizenship for purposes of immigration laws, issued by or on behalf of the authorities of a country or territory, or by or on behalf of an international organisation;

(b) a document that can be used (in some or all circumstances) instead of a passport;

“qualifying offender” has the meaning given by section 322;

“relevant finding”, in relation to an offence, means a finding that a person —

(a) is not guilty of the offence by reason of mental disorder; or

(b) is under a disability and did the act charged against him or her in respect of the offence;

“relevant offender” means a person for the time being subject to the notification requirements of this Part;

“restriction order” means an order under section 54 of the Mental Health Ordinance in relation to a person detained in a hospital;

“risk of sexual harm order” means an order made under section 123 of the Sexual Offences Act 2003;

“RSHO” means a risk of sexual harm order;

“sexual harm” from a person means physical or psychological harm caused —

(a) by the person committing one or more offences listed in Schedule 3; or

(b) (in the context of harm outside the Falkland Islands) by the person doing outside the Falkland Islands anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands;

“sexual harm prevention order” means an order made under section 321;

“Sexual Offences Act 2003” means the UK Act of that name as applied to the Falkland Islands by the Sexual Offences Ordinance 2005 and as modified by the Schedule to that Ordinance;

“sexual offences prevention order” means an order made under section 104 of the Sexual Offences Act 2003;

“sexual risk order” means an order made under section 332;

“SHPO” means a sexual harm prevention order;

“SOPO” means a sexual offences prevention order;

“SRO” means a sexual risk order;

“the public” means the public in the Falkland Islands;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability, illness, old age, or otherwise.

(2) Any time-limit for the making of complaints in the Magistrate’s Court under any other enactment does not apply to an application for an order on a complaint under this Part.

(3) If the defendant on an application for an order under this Part, or for the variation, renewal or discharge of an order, is a youth, a reference in this Part to the Magistrate’s Court is a reference to that court sitting as the Youth Court.

(4) For the purposes of this Part, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates —

(a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding; or

(b) to the age of any person,

is to be disregarded.

(6) This Part applies to a sentence of detention for a specified period imposed on a youth under sections 725 and 726 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to an equivalent sentence of imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

(7) This Part applies to an order for detention during Her Majesty’s pleasure imposed on a youth under section 727 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to a sentence of life imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

(8) In this Part —

(a) a reference to a conviction includes a reference to a finding of a court under section 762 of the Criminal Proceedings and Evidence Ordinance 2014 that the defendant did the act charged;

(b) a reference to a person being or having been found to be under a disability and to have done the act charged against him or her in respect of an offence means a finding under Part 34 of that Ordinance that the person is —

(i) unfit to be tried for the offence;

(ii) mentally disordered so that the trial for the offence cannot or could not proceed; or

(iii) unfit to be tried and to have done the act charged against him or her in respect of the offence.

*[UK Sexual Offences Act 2003 ss.22, 113, 131, 135 and passim]*

#### *Notification requirements*

### **296. Persons subject to notification requirements – Schedule 3**

(1) A person is subject to the notification requirements of this Part for the period set out in section 298 (“the notification period”) if, in respect of an offence listed in Schedule 3, the person has been since 10 June 2005 (the date of commencement of the Sexual Offences Ordinance 2005) —

(a) convicted of the offence;

(b) found not guilty of the offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged in respect of the offence;  
or

(d) cautioned in respect of the offence.

(2) For purposes of this section, an absolute discharge in respect of an offence does not count as a conviction.

(3) A person to whom subsection (1) applies is a relevant offender for purposes of this Part.

*[UK Sexual Offences Act 2003 s.80]*

### **297. The notification period**

(1) The notification period for a relevant offender is the period in the second column of the following Table opposite the description that applies to the person.

<i>TABLE</i>	
<i>Description of relevant offender</i>	<i>Notification period</i>
A person who, in respect of the offence, is or	An indefinite period beginning with the

has been sentenced to imprisonment for life, or to imprisonment for 30 months or more	relevant date
A person who, in respect of the offence or finding, is or has been detained in a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been detained in a hospital without being subject to a restriction order	7 years beginning with that date
A person who, in respect of the offence, is cautioned	2 years beginning with that date
A person in whose case an order for conditional discharge is made in respect of the offence	The period of conditional discharge
A person of any other description	5 years beginning with the relevant date

(2) If a person is or was under 18 on the relevant date, subsection (1) has effect as if for any reference a period of years specified in subsection (1) there were substituted a reference to one-half of that period.

(3) If a relevant offender is or has been sentenced in respect of 2 or more offences listed in Schedule 3 —

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment which are partly concurrent,

the notification period is calculated as if the relevant offender was or had been sentenced, in respect of each of the offences, to a term of imprisonment which —

- (i) in the case of consecutive terms - is equal to the aggregate of those terms;
- (ii) in the case of partly concurrent terms (X and Y, which overlap for a period Z) - is equal to X plus Y minus Z.

(4) If a relevant offender who is the subject of a finding within section 296(1)(c) is or has been subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(5) In this section and section 298, “relevant date” means —

(a) in the case of a person within section 296(1)(a) - the date of the conviction;

(b) in the case of a person within section 296(1)(b) or (c) - the date of the finding;

(c) in the case of a person within section 296(1)(d) - the date of the caution.

*[UK Sexual Offences Act 2003 s.82 am. by Violent Crime Reduction Act 2006]*

**298. Notification requirements: Initial notification**

(1) A relevant offender must, within 3 days after the relevant date (or, if later, the commencement of this Part), give to the police the information set out in subsection (5).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 296(1) if the offender —

(a) immediately before the conviction, finding or caution was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”);

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 296(1) if the offender complied with section 83(1) of the Sexual Offences Act 2003 in respect of the conviction, finding, caution or order.

(4) If a notification order is or has been made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if the offender —

(a) immediately before the order was made was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”);

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(5) The information to be given in relation to the relevant offender is —

(a) the date of birth;

(b) the Tax Identification Number or, in the case of a person who does not have Falkland Islands status, the work permit or immigration permit number;

(c) the name on the relevant date and, if more or other names were used on that date, each of those names;

(d) the home address on the relevant date;

(e) the name on the date on which notification is given and, if one or more other names are used on that date, each of those names;

(f) the home address on the date on which notification is given;

(g) the address of any other premises in the Falkland Islands at which, at the time the notification is given, the person regularly resides or stays;

(h) whether the person has any passport and the details set out in subsection (6) in relation to each passport.

(6) The details required in relation to each passport are —

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.

(7) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is —

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

*[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]*

## **299. Notification requirements: Changes**

(1) A relevant offender must, within 3 days after —

(a) using a name which has not been notified to the police under section 298;

(b) changing his or her home address;

(c) residing or staying for a qualifying period at any premises in the Falkland Islands the address of which has not been notified to the police under section 298;

(d) being released from custody pursuant to an order of a court or from imprisonment or detention in a hospital;

(e) losing or ceasing to have a passport notified to the police under section 298; or

(f) receiving a passport which has not been notified to the police under section 298(1) and (6),

notify to the police that name, new home address, address of those premises, date of release, details of losing or ceasing to have the passport (as set out in subsection (6) of section 298) and other information set out in that section.

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified —

(a) the notification does not affect the duty imposed by subsection (1); and

(b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 298(7) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 298(1).

(6) In this section, “qualifying period” means —

(a) a period of 7 days; or

(b) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.  
*[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]*

**300. Notification requirements: Periodic notification**

(1) A relevant offender must, within the prescribed period after each event within subsection (2), notify to the police the information set out in section 298(5), unless within that period he or she has given a notification under section 299(1).

(2) The events are —

(a) the commencement of this Part (including persons who became relevant offenders before that commencement);

(b) any notification given by the relevant offender under section 298(1) or 299(1); and

(c) any notification given under subsection (1).

(3) The prescribed period is one year, except that if the home address of the relevant offender given under section 298(1), 299(1) or subsection (1) of this section is not the person's sole or main residence in the Falkland Islands, the prescribed period is 7 days.

(4) If the period referred to in subsection (1) would (apart from this subsection) end while subsection (5) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (5) first ceases to apply.

(5) This subsection applies to a relevant offender who is —

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

*[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]*

**301. Notification requirements: Travel outside the Falkland Islands**

(1) A relevant offender who leaves the Falkland Islands must —

(a) at least 7 days before he or she leaves the Falkland Islands, notify the Chief Police Officer in accordance with this section;

(b) if he or she returns to the Falkland Islands, notify the Chief Police Officer at least 7 days before arriving, in accordance with this section.

(2) A notification under this section must disclose —

(a) the date on which the offender will leave or return to the Falkland Islands;

(b) the countries or territories to which he or she will travel and the point of arrival in those countries or territories;

(c) the identity of any carrier or carriers he or she intends to use to depart from and return to the Falkland Islands, and of travelling to any other place;

(d) details of his or her accommodation arrangements on arrival in a place outside the Falkland Islands;

(e) any other information which the offender has about his or her departure from or return to the Falkland Islands and which the Chief Police Officer reasonably requests.

(3) A notification under this section must include —

(a) the offender's name, address in the Falkland Islands and date of birth; and

(b) any other name the offender is using.

(4) If the information provided under subsection (2) changes before the offender departs from or returns to the Falkland Islands, he or she must notify the Chief Police Officer as soon as practicable.

(5) The Governor in Council, after consulting the Criminal Justice Council, may by regulations amend or add to the requirements of this section and the regulations may make different provision for different categories of person.

*[UK Sexual Offences Act 2003 s.86 adapted; S.I 2004/1220]*

### **302. Method of notification and related matters**

(1) A person gives a notification under any of sections 298(1), 299(1) or 300(1) by —

(a) attending at a place of lawful custody; and

(b) giving an oral or written notification to the police officer in charge of the station.

(2) A notification under this section must be acknowledged in writing in a form approved by the Chief Police Officer.

(3) If a notification is given under any of sections 298(1), 299(1) or 300(1), the relevant offender must, if requested to do so by the police officer referred to in subsection (1)(b), allow the officer to —

(a) take the offender's fingerprints;

(b) photograph any part of the offender; or

(c) do both those things,

for the purpose of verifying the identity of the offender.

(4) In this section, “photograph” includes any process by means of which an image may be produced.

[UK Sexual Offences Act 2003 ss.87 and 88]

### **303. Young offenders: Parental directions**

(1) If a person within the first column of the following Table (“the young offender”) is under 18 when before the court referred to in the second column of the Table, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for the young offender.

<i>TABLE</i>	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 296(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 336(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, SOPO or interim SOPO	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

(2) If this subsection applies —

(a) the obligations that would (apart from this subsection) be imposed by or under sections 298 to 301 on the young offender are to be treated instead as obligations on the parent, and

(b) the parent must ensure that the young offender attends at the place of lawful custody with him or her, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies —

(a) until the young offender attains the age of 18; or

(b) for any shorter period that the court declares when giving the direction.

(4) The Attorney General may apply to the Youth Court for a direction under subsection (1) in respect of a relevant offender (“the defendant”) who —

(a) resides in the Falkland Islands or whom the Attorney General believes is intending to come to the Falkland Islands; and

(b) is under 18.

[UK Sexual Offences Act 2003 ss.89 to 92]

### **304. Parental directions: Variation, renewal and discharge**

(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 304(1).

(2) The persons are —

- (a) the young offender;
- (b) the parent;
- (c) the Attorney General.

(3) An application under subsection (1) may be made —

- (a) if the appropriate court is the Supreme Court - in accordance with the practice of that court;
- (b) in any other case - by complaint.

(4) On an application under this section, the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

(5) In this section “the appropriate court” means —

- (a) if the Supreme Court or the Court of Appeal gave the direction - the Supreme Court;
- (b) if the Youth Court gave the direction - that court.

*[UK Sexual Offences Act 2003 ss.89 to 92]*

### **305. Offences relating to notification**

(1) A person who —

- (a) fails, without reasonable excuse, to comply with any of sections 298(1), 299(1), 301(1), 302(3) or 303(2)(b) or any requirement imposed by or under section 302; or
- (b) notifies to the police, in purported compliance with section 298(1), 299(1) or 300(1) or any requirement imposed by or under section 301, any information which the person knows to be false,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) Subject to subsection (3) —

(a) a person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section 298(1), 299(1) or 300(1) or a requirement imposed by or under section 301; and

(b) continues to commit it throughout any period during which the failure continues.

(3) A person must not be prosecuted under subsection (1) more than once in respect of the same failure.

*[UK Sexual Offences Act 2003 ss.89 to 92]*

### **306. Certificates for purposes of this Part**

(1) Subsection (2) applies when on any date a person is —

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of mental disorder; or

(c) found to be under a disability and to have done the act charged in respect of such an offence.

(2) If the court by or before which the person is so convicted or found —

(a) states in open court —

(i) that on that date the person has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged; and

(ii) that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

(3) Subsection (4) applies when on any date a person is cautioned in respect of an offence listed in Schedule 3.

(4) If the police officer who gives the caution —

(a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently, in writing in a form approved by the Chief Police Officer,

the certificate is, for the purposes of this Part, evidence of those facts.

*[UK Sexual Offences Act 2003 ss.89 to 92]*

*Review of indefinite notification requirements*

**307. Review of indefinite notification requirements: General**

(1) Sections 308 and 309 apply to a person who, at any time after 10 June 2005, became or becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 297(1) (a “relevant sex offender”).

(2) For the purposes of this Part, the date of discharge is —

(a) if the relevant sex offender was aged 18 or over on the relevant date - the date falling 15 years after that date;

(b) if the relevant sex offender was aged under 18 on the relevant date - the date falling 8 years after that date.

(3) In determining the date of discharge under subsection (2), there is to be disregarded any time when the relevant sex offender was —

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in hospital; or

(d) outside the Falkland Islands,

before the relevant sex offender first notified information to the police under section 83(1) of the Sexual Offences Act 2003 or section 298(1) of this Part.

(4) If a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.

(5) In this section —

“relevant date” has the same meaning as in section 297(5);

“notification continuation order” means an order made under section 308.

*[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]*

**308. Review of indefinite notification requirements: Procedure and grounds**

(1) The Chief Police Officer must no later than the date of discharge of a relevant sex offender either —

(a) make a notification continuation order in respect of the offender; or

(b) notify the offender that he or she ceases to be subject to the notification requirements of this Part on the date of discharge.

(2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.

(3) The Chief Police Officer may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands.

(4) In deciding whether to make a notification continuation order, the Chief Police Officer must take into account —

(a) the seriousness of the offence (or offences) —

(i) of which the relevant sex offender was convicted;

(ii) of which the relevant sex offender was found not guilty by reason of mental disorder;

(iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or

(iv) in respect of which the relevant sex offender was cautioned,

which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;

(b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);

(c) whether the relevant sex offender has committed any offence under section 307;

(d) the age of the relevant sex offender at the time of the decision;

(e) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;

(f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;

(g) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;

(h) any caution which the relevant sex offender has received for an offence which is listed in Schedule 3;

(i) whether any criminal proceedings for any offences listed in Schedule 3 have been commenced against the relevant sex offender but have not concluded;

(j) any written submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the Falkland Islands;

(k) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that he or she does not pose a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands; and

(l) any other matter which the Chief Police Officer considers to be appropriate.

(5) A notification continuation order must state —

(a) the reasons why the order was made; and

(b) the reasons for the determination of the fixed period in the order.

(6) A notification continuation order must be notified in writing to the relevant sex offender.

(7) In this section, “sexual harm” means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands.

*[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]*

### **309. Review of indefinite notification requirements: Further review and appeal**

(1) If a notification continuation order has been made, the Chief Police Officer must no later than the further date of discharge —

(a) make another notification continuation order in respect of the relevant sex offender; or

(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.

(2) Section 308(2) to (7) apply in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.

(3) The decision of the Chief Police Officer —

(a) to make a notification continuation order; and

(b) setting the fixed period of the notification continuation order,

may be appealed to the Magistrate's Court by the relevant sex offender within 21 days after the offender receives notice of the decision.

(4) On an appeal under this section, the Magistrate's Court may —

- (a) uphold or quash the decision of the Chief Police Officer;
- (b) make a notification continuation order; or
- (c) vary the fixed period in that order.

(5) The relevant sex offender remains subject to the existing notification requirements of this Part until the expiry of 21 days after the offender receives notice of the decision of the Chief Police Officer or an appeal is decided or abandoned, as the case may be.

*[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]*

*Ending notification requirements for homosexual offences*

**310. Homosexual offences: Ending of notification requirement**

(1) This section and section 311 apply if a relevant offender is subject to the notification requirements of this Part as a result of a conviction, finding or caution in respect of an offence under —

- (a) section 12 or 13 of the Sexual Offences Act 1956 as applied to the Falkland Islands (buggery or indecency between men); or
- (b) section 61 of the Offences against the Person Act 1861.

(2) The relevant offender may apply to the Governor for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery or gross indecency —

- (a) if subsection (1)(a) applies - was aged 16 or over;
- (b) if subsection (1)(b) applies - was aged 17 or over,

and consented to the act.

(3) An application must be in writing and state —

- (a) the name, address and date of birth of the relevant offender;
- (b) the offender's name and address at the time of the conviction, finding or caution;
- (c) so far as known to the offender, the time when and the place where the conviction or finding was made or the caution given and, for a conviction or finding, the case number;

(d) any other information the Governor may reasonably require.

(4) An application may include representations by the relevant offender about the matters mentioned in subsection (2).

(5) In making the decision applied for, the Governor must consider —

(a) any representations included in the application; and

(b) any available record of the investigation of the offence and of any proceedings relating to it that appears to the Governor to be relevant,

but must not seek evidence from any witness.

(6) On making the decision the Governor must —

(a) record it in writing; and

(b) give notice in writing to the relevant offender.

(7) If the Governor decides that it appears as mentioned in subsection (2), the relevant offender ceases, from the beginning of the day on which the decision is recorded under subsection (6), to be subject to the notification requirements of this Part as a result of the conviction, finding or caution in respect of the offence.

(8) Subsection (7) does not affect the operation of this Part as a result of any other conviction, finding or caution or any court order.

(9) In this section a reference to an offence includes —

(a) a reference to an attempt, conspiracy or incitement to commit that offence; and

(b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(10) In the case of an attempt, conspiracy or incitement, references in subsection (1) to the act of buggery or gross indecency are references to the act of buggery or gross indecency to which the attempt, conspiracy or incitement related (whether or not that act occurred).

*[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]*

### **311. Homosexual offences: Right of appeal**

(1) If the Governor decides that it does not appear as mentioned in section 310(2), and if the Supreme Court gives permission, the relevant offender may appeal to that court.

(2) On an appeal under this section the court may not receive oral evidence.

(3) The court —

(a) if it decides that it appears as mentioned in subsection 310(2), must make an order to that effect;

(b) otherwise, must dismiss the appeal.

(4) An order under subsection (3)(a) has the same effect as a decision of the Governor recorded under subsection (6) of section 310 has under subsection (7) of that section.

(5) There is no appeal from the decision of the Supreme Court under this section.

*[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]*

#### *Information relating to notification*

### **312. Supply of information to Governor, etc. for verification**

(1) This section applies to information notified to the police under sections 298 to 301.

(2) The Chief Police Officer may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to —

(a) the Governor; or

(b) a person providing services to the Governor in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to —

(a) checking its accuracy by comparing it with information held by a person within subsection (2)(b) in connection with the provision of the services; and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section does not breach any restriction on the disclosure of information (however arising or imposed).

(5) This section does not affect any power existing apart from this section to supply information.

(6) In this section, “relevant function” means —

(a) a function relating to social security, child support, employment or training;

(b) a function relating to passports;

(c) a function relating to the licensing of vehicles.

*[UK Sexual Offences Act 2003 ss.94 to 96]*

**313. Supply of information by Governor, etc.**

(1) A report compiled under section 312 may be supplied to the Chief Police Officer by —

- (a) the Governor; or
- (b) a person within section 312(2)(b).

(2) Such a report may contain any information held —

- (a) by the Governor in connection with the exercise of a relevant function; or
- (b) by a person within section 312(2)(b) in connection with the provision of services referred to there.

(3) If a report compiled under section 312 contains information within subsection (2), the Chief Police Officer may —

- (a) retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Ordinance; and
- (b) use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Ordinance), but for no other purpose.

(4) Subsections (4) to (6) of section 312 apply in relation to this section as they apply in relation to that section.

*[UK Sexual Offences Act 2003 ss.94 to 96]*

**314. Information about release or transfer**

(1) This section applies to a relevant offender who is serving a sentence of imprisonment, or is detained in a hospital.

(2) The person who is responsible for an offender must notify the Chief Police Officer, in the prescribed manner, of any occasion when the offender is released or a different person becomes responsible for the offender.

(3) The person who is responsible for an offender must, in giving notice, provide —

- (a) any prescribed information about the offender; and
- (b) a photograph of the offender.

(4) In this section, “photograph” includes any process by means of which an image may be produced.

(5) The Governor in Council, on the advice of the Criminal Justice Council, may make regulations to implement this section and in this section “prescribed” means prescribed by the regulations.

(6) The regulations may —

(a) make provision for determining who is to be treated for the purposes of this section as responsible for an offender;

(b) make different provision for different purposes;

(c) prescribe penalties for failure to comply with the requirements of this section or the regulations.

*[UK Sexual Offences Act 2003 ss.94 to 96]*

### **315. Power of entry and search for offender’s home address**

(1) If on an application made by or on behalf of the Chief Police Officer, a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, the justice of the peace may issue a warrant authorising a police officer —

(a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are that —

(a) the address of each set of premises specified in the application is an address falling within subsection (3);

(b) the relevant offender is not one to whom subsection (4) applies;

(c) it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and

(d) on at least 2 occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

(3) An address falls within this subsection if —

(a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his or her home address; or

(b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.

(4) This subsection applies to a relevant offender who is —

- (a) remanded in or committed to custody by order of a court;
  - (b) serving a sentence of imprisonment;
  - (c) detained in a hospital; or
  - (d) outside the Falkland Islands.
- (5) A warrant issued under this section —
- (a) must specify each of the premises to which it relates;
  - (b) may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises;
  - (c) may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).
- (6) If a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.
- (7) In this section a reference to the relevant offender to whom the warrant relates is a reference to a relevant offender —
- (a) who has in accordance with this Part notified the police that the premises specified in the warrant are his or her home address; or
  - (b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.
- [UK Sexual Offences Act 2003 s.96B ins. by Violent Crime Reduction Act 2006]*

#### *Notification orders*

### **316. Notification orders: Applications and grounds**

- (1) The Attorney General may by complaint to the Magistrate’s Court or, in the case of a defendant under 18, the Magistrates Court sitting as the Youth Court, apply for an order under this section (a “notification order”) in respect of a person (“the defendant”) if —
- (a) it appears that the following conditions are met with respect to the defendant; and
  - (b) the defendant resides in the Falkland Islands or the Attorney General believes that the defendant is in, or is intending to come to, the Falkland Islands.
- (2) The first condition is that under the law in force in a place outside the Falkland Islands —

(a) the defendant has been convicted of a relevant offence (whether or not he or she has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the defendant is under a disability and did the act charged in respect of the offence; or

(d) the defendant has been cautioned in respect of a relevant offence.

(3) The second condition is that the notification period set out in section 297(1) (as modified by subsections (2) and (3) of that section) in respect of the relevant offence) has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 317 “relevant offence” has the meaning given by section 318.  
*[UK Sexual Offences Act 2003 ss.97 to 101]*

### **317. Notification orders: Effect**

(1) If a notification order is made —

(a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below; and

(b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 297.

(2) The “relevant date” means —

(a) in the case of a person within section 316(2)(a) - the date of the conviction;

(b) in the case of a person within section 316(2)(b) or (c) - the date of the finding;

(c) in the case of a person within section 316(2)(d) - the date of the caution.

(3) In section 296, the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(4) In sections 298 and 299, references to the commencement of this Part are to be read as references to the date of service of the notification order.

*[UK Sexual Offences Act 2003 ss.97 to 101]*

**318. Sections 316 and 317: Relevant offences**

(1) In sections 316 and 317 the term “relevant offence” means an act which —

(a) constituted an offence under the law in force in the place concerned; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in the Falkland Islands.

(2) An act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, within 28 days of receiving notice of the application, the defendant serves on the applicant a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

*[UK Sexual Offences Act 2003 ss.97 to 101]*

**319. Interim notification orders**

(1) This section applies when an application for a notification order (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim notification order”) —

(a) may be made in the main application; or

(b) if the main application has been made, may be made by supplementary application to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim notification order.

(4) An interim notification order —

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) While such an order has effect —

(a) the defendant is subject to the notification requirements of this Part;

(b) this Part applies to the defendant, subject to the modification set out in subsection (6).

(6) For purposes of this section, “relevant date” means the date of service of the order.

(7) The applicant or the defendant may apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

*[UK Sexual Offences Act 2003 ss.97 to 101]*

### **320. Notification orders: Appeals**

A defendant may appeal to the Supreme Court against the making of a notification order or interim notification order.

*[UK Sexual Offences Act 2003 ss.97 to 101]*

#### *Sexual harm prevention orders (SHPOs)*

### **321. Sexual harm prevention orders: Applications and grounds – Schedules 3 and 4**

(1) A court may make an order under this section (a “sexual harm prevention order” or “SHPO”) in respect of a person (“the defendant”) if subsection (2) or (3) applies to the defendant.

(2) This subsection applies to the defendant if —

(a) the court deals with the defendant in respect of —

(i) an offence listed in Schedule 3 or Schedule 4;

(ii) a finding that the defendant is not guilty of such an offence by reason of mental disorder; or

(iii) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of such an offence; and

(b) the court is satisfied that it is necessary to make a SHPO for the purpose of —

(i) protecting the public or any particular members of the public from sexual harm from the defendant; or

(ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

(3) This subsection applies to the defendant if —

(a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender; and

(b) the court is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make a SHPO, for the purpose of —

(i) protecting the public or any particular members of the public from sexual harm from the defendant; or

(ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

(4) The Attorney General may by complaint to the Magistrate's Court, or, in the case of a defendant under 18, the Magistrates Court sitting as the Youth Court, apply for a SHPO in respect of a person if it appears to the Attorney General that —

(a) the person is a qualifying offender; and

(b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(5) The Attorney General may make an application under subsection (4) only in respect of a person —

(a) who resides in the Falkland Islands; or

(b) whom the Attorney General believes is intending to come to the Falkland Islands.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **322. Section 321: Supplementary provisions**

(1) In section 321 —

“appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3) below;

“qualifying offender” means a person within subsection (2) or (3) below.

(2) A person is within this subsection if, whether before or after the commencement of this Part, the person —

(a) has been convicted of an offence listed in Schedule 3 or Schedule 4;

(b) has been found not guilty of such an offence by reason of mental disorder;

(c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence; or

(d) has been cautioned in respect of such an offence.

(3) A person is within this subsection if, under the law in force in a place outside the Falkland Islands, whether before or after the commencement of this Part —

(a) the person has been convicted of a relevant offence (whether or not the person has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence; or

(d) the person has been cautioned in respect of a relevant offence.

(4) In subsection (3), “relevant offence” means an act which —

(a) constituted an offence under the law in force in the country concerned; and

(b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in the Falkland Islands.

For this purpose an act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law, however it is described in that law.

(5) Subject to subsection (6), on an application under section 321(4) the condition in subsection (3)(b) above (where relevant) is to be taken as met unless, not later than criminal procedure rules may provide, the defendant serves on the applicant a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(6) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **323. Effect of a SHPO**

- (1) A SHPO prohibits the defendant from doing anything described in the order.
- (2) Subject to section 324(1), a prohibition contained in a SHPO has effect —
  - (a) for a fixed period, specified in the order, of at least 5 years; or
  - (b) until further order.
- (3) A SHPO may specify —
  - (a) that some of its prohibitions have effect until further order and some for a fixed period;
  - (b) different periods for different prohibitions.
- (4) The only prohibitions that may be included in a SHPO are those necessary for the purpose of —
  - (a) protecting the public or any particular members of the public from sexual harm from the defendant; or
  - (b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.
- (5) If a court makes a SHPO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.  
*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **324. SHPOs: Prohibition on foreign travel**

- (1) A prohibition on foreign travel contained in a SHPO prevention order must be for a fixed period of not more than 5 years.
- (2) A “prohibition on foreign travel” means —
  - (a) a prohibition on travelling to any country outside the Falkland Islands named or described in the order;
  - (b) a prohibition on travelling to any country outside the Falkland Islands other than a country named or described in the order; or
  - (c) a prohibition on travelling to any country outside the Falkland Islands.
- (3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 325.

(4) A SHPO that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a place of lawful custody specified in the order —

(a) on or before the date when the prohibition takes effect; or

(b) within a period specified in the order.

(5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a SHPO containing a prohibition within subsection (2)(c) unless the person is subject to an equivalent prohibition under another order).

(6) Subsection (5) does not apply in relation to —

(a) a passport issued by or on behalf of the authorities of a place outside the Falkland Islands if the passport has been returned to those authorities;

(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **325. SHPOs: Variation, renewal and discharge**

(1) The defendant or the Attorney General may apply to the appropriate court by complaint for an order varying, renewing or discharging a SHPO.

(2) Subject to subsections (3) and (5), on the application the court, after hearing the person making the application and (if that person wishes to be heard) the other person mentioned in subsection (1), may make any order varying, renewing or discharging the SHPO that the court considers appropriate.

(3) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —

(a) protecting the public or any particular members of the public from sexual harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youth or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose and is subject to section 324(1).

(4) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant, and the Attorney General.

(5) Subsection (4) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

(6) In this section “the appropriate court” means the court that made the original order, except that if the Youth Court made the order and the defendant is aged 18 or over, it means the Magistrate’s Court (subject to section 331 and any rules made under it.)

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **326. Interim SHPOs**

(1) This section applies if an application under section 321(4) (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual harm prevention order”) —

(a) may be made by the complaint by which the main application is made; or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim SHPO, prohibiting the defendant from doing anything described in the order.

(4) Such an order —

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim SHPO for the order to be varied, renewed, or discharged.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **327. SHPOs and interim SHPOs: Notification requirements**

(1) If —

(a) a SHPO is made in respect of a defendant who was a relevant offender immediately before the making of the order; and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(2) If a SHPO is made in respect of a defendant who was not a relevant offender immediately before the making of the order —

(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date of service of the order.

(3) Subsections (1) to (3) apply to an interim SHPO as if references to a SHPO were references to an interim SHPO, and with the omission of “(as renewed from time to time)” in both places.

(4) If —

(a) a SHPO is in effect in relation to a relevant offender; and

(b) by virtue of sections 311 and 312 the relevant offender ceases to be subject to the notification requirements of this Part,

the SHPO ceases to have effect.

(5) On an application for a SHPO made by the Attorney General, the court must make a notification order in respect of the defendant (either in addition to or instead of a SHPO) if —

(a) the applicant invites the court to do so; and

(b) it is proved that the conditions in section 316(2) to (4) are met.

(6) On an application for an interim SHPO made by the Attorney General, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim SHPO).

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **328. SHPOs and interim SHPOs: Appeals**

(1) A defendant may appeal against the making of a SHPO —

(a) if the order was made by virtue of section 321(2)(a)(i) - as if the order were a sentence passed on the defendant for the offence;

(b) if the order was made by virtue of section 321(2)(a)(ii) or (iii) - as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;

(c) if the order was made on an application under section 321(4) - to the Supreme Court.

(2) A defendant may appeal to the Supreme Court against the making of an interim SHPO.

(3) A defendant may appeal against the making of an order under section 325, or the refusal to make such an order —

(a) if the application for such an order was made to the Supreme Court - to the Court of Appeal;

(b) in any other case - to the Supreme Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme Court may make —

(a) any order necessary to give effect to its determination of the appeal; and

(b) any incidental or consequential order as appear to the court to be just.

(5) Any order made by the Supreme Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be reheard by the Magistrate's Court is for the purposes of section 325(1) or 326(5) to be treated as if it were an order of the court from which the appeal was brought, and not an order of the Supreme Court.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

**329. Offence: Breach of SHPO or interim SHPO, etc.**

(1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by —

(a) a SHPO;

(b) an interim SHPO;

(c) a Sexual Offences Prevention Order (“SOPO”);

(d) an interim SOPO; or

(e) a foreign travel order,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 324(4) commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **330. SHPOs and interim SHPOs: Guidance**

(1) The Governor, after consulting the Criminal Justice Council, must issue written guidance to police officers in relation to the exercise by them of their powers with regard to SHPOs and interim SHPOs.

(2) The Governor, after so consulting, may from time to time revise the guidance issued under subsection (1).

(3) The Governor must arrange for any guidance issued or revised under this section to be published in a manner the Governor considers appropriate.

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **331. SHPOs and interim SHPOs: Supplementary**

(1) The Youth Court may give permission for an application under section 321(4) against an adult to be made to the Youth Court if —

(a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and

(b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 321, 325, 326 or 327(5) or (6) have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 326 with modifications).

*[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

*Sexual risk orders (SROs)*

**332. Sexual risk orders: Applications, grounds and effect**

(1) The Attorney General may by complaint to the Magistrate's Court, or in the case of a defendant under 18 the Magistrates Court sitting as the Youth Court, apply for an order under this section (a "sexual risk order" or "SRO") in respect of a person ("the defendant") if it appears to the Attorney General that the condition in subsection (2) is met.

(2) The condition is that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a SRO to be made.

(3) The Attorney General may make an application under subsection (1) only in respect of a person —

(a) who resides in the Falkland Islands; or

(b) whom the Attorney General believes is in the Falkland Islands or is intending to come to the Falkland Islands.

(4) On an application under subsection (1), the court may make a SRO if satisfied that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

(5) A SRO —

(a) prohibits the defendant from doing anything described in the order;

(b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(6) A SRO may specify different periods for different prohibitions.

(7) The only prohibitions that may be imposed are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

(8) If a court makes a SRO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **333. SROs: Prohibition on foreign travel**

(1) A prohibition on foreign travel contained in a SRO must not be for a period of more than 5 years.

(2) A “prohibition on foreign travel” has the same meaning as in relation to a SHPO in section 324.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 334.

(4) Section 324(4) to (6) apply with necessary modifications in relation to a prohibition on foreign travel imposed as a condition of a SRO.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **334. SRO: Variation, renewal and discharge**

(1) The defendant or the Attorney General may by complaint to the appropriate court apply for an order varying, renewing or discharging a SRO.

(2) Subject to subsections (3) and (4), on the application the court, after hearing the person making the application and (if he or she wishes to be heard) the other person mentioned in subsection (1), may make any order, varying, renewing or discharging the SRO, that the court considers appropriate.

(3) An SRO may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose and is subject to section 333(1).

(4) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Attorney General.

(5) In this section “the appropriate court” means the court that made the original order, except that if the Youth Court made the order and the defendant is aged 18 or over, it means the Magistrate’s Court (subject to section 342 and any rules made under it.)

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **335. Interim SROs**

(1) This section applies if an application for a SRO (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim sexual risk order”) —

(a) may be made by the complaint by which the main application is made; or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim SRO, prohibiting the defendant from doing anything described in the order.

(4) An interim SRO —

(a) has effect only for a fixed period, specified in the order; and

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the court that made the interim RO for the order to be varied, renewed or discharged.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **336. SROs and interim SROs: Notification requirements**

(1) A person in respect of whom a court makes —

(a) a SRO (other than one that replaces an interim SRO); or

(b) an interim SRO,

must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2) (unless the person is subject to the notification requirements of this Part on that date).

(2) The information is —

(a) the person's name and, if the person uses one or more other names, each of those names;

(b) the person's home address.

(3) A person who —

(a) is subject to a SRO or an interim SRO (but is not subject to other notification requirements of this Part); and

(b) uses a name which has not been notified under this section (or under any other provision of this Part), or changes his or her home address,

must, within 3 days after the date of the use or change, notify to the police that name or (as the case may be) the new home address.

(4) Sections 302 (Method of notification) and 305 (Offences relating to notification) apply for the purposes of this section —

(a) with references to section 298(1) being read as references to subsection (1) above; and

(b) with references to section 299(1) being read as references to subsection (3) above.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **337. SROs and interim SROs: Appeals**

(1) A defendant may appeal to the Supreme Court —

(a) against the making of a SRO;

(b) against the making of an interim SRO;

(c) against the refusal to vary or discharge a SRO.

(2) On any such appeal, the Supreme Court may make any order that is necessary to give effect to its determination of the appeal, and any incidental or consequential order that appears to the court to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be reheard by the Magistrate's Court) is for the purposes of section 334 or 335(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

**338. Offence: Breach of SRO or interim SRO, etc.**

(1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by —

- (a) a SRO;
- (b) an interim SRO;
- (c) a Risk of Sexual Harm Order (“RSHO”); or
- (d) an interim RSHO,

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 324(4) in relation to a SRO commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

**339. Effect of conviction, etc. of an offence under section 338**

(1) This section applies to a person (“the defendant”) who is –

- (a) convicted of an offence under section 338 of this Ordinance, or section 128 of the Sexual offences Act 2003 as applied to the Falkland Islands;
- (b) found not guilty of such an offence by reason of mental disorder;
- (c) found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
- (d) cautioned in respect of such an offence.

(2) If a defendant —

- (a) was a relevant offender immediately before this section applied to the defendant; and
- (b) would (apart from this subsection) cease to be subject to the notification requirements of this Part (other than those imposed by section 327 or section 336) while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to those notification requirements.

(3) If a defendant was not a relevant offender immediately before this section applied to the defendant —

(a) this section causes the defendant to become subject to the notification requirements of this Part (other than those imposed by section 327 or section 336) from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date on which this section first applies to the defendant.

(4) In this section “relevant order” means —

(a) if the conviction, finding or caution within subsection (1) is in respect of a breach of a SRO or a RSHO - that order;

(b) if the conviction, finding or caution within subsection (1) is in respect of a breach of an interim SRO or an interim RSHO - any SRO or RSHO made on the hearing of the application to which the interim order relates; or

(c) if no such order is made - the interim order.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **340. SROs and interim SROs: Guidance**

(1) The Governor, after consulting the Criminal Justice Council, must issue guidance to police officers in relation to the exercise by them of their powers with regard to SROs and interim SROs.

(2) The Governor, after so consulting, may from time to time revise the guidance issued under subsection (1).

(3) The Governor must arrange for any guidance issued or revised under this section to be published in a manner the Governor considers appropriate.

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

### **341. SROs and interim SROs: Supplementary**

(1) The Youth Court may give permission for an application under section 333 against an adult to be made to the Youth Court if —

(a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and

(b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 332, 334 or 335 have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 335 with modifications).

*[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]*

#### *Miscellaneous provisions*

### **342. Power to amend Schedules 3 and 4**

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend Schedule 3 or Schedule 4.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of this Part, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it —

(a) adds an offence;

(b) removes a threshold relating to an offence; or

(c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

*[UK Sexual Offences Act 2003 s.130]*

### **343. Schedules: Interpretation**

(1) A reference in Schedule 3 or 4 to an offence includes a reference to —

(a) an attempt or conspiracy to commit that offence;

(b) encouraging the commission of that offence; and

(c) aiding and abetting the commission of that offence.

(2) A reference in either Schedule to a person's age is —

(a) a reference to the person's age at the time of the offence;

(b) in the case of an indecent photograph - a reference to the person's age when the photograph was taken;

(c) in any other case - a reference to the person's age at the time of the offence.

*[UK Sexual Offences Act 2003 Sched.3]*

### **344. Schedules: Offences with thresholds**

(1) This section applies to an offence which is listed in Schedule 3 or 4 subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (if a relevant finding has been made in respect of the defendant) in respect of the finding (a "sentencing condition").

(2) If an offence is listed subject to a sentencing condition or a condition of another description, this section applies only to the offence as listed subject to that condition.

(3) For the purposes of this Part (including in particular section 297(4)) —

(a) a person is to be regarded as convicted of an offence to which this section applies; or

(b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

at the time when the sentencing condition is met.

(4) In the following subsections, references to a foreign offence are references to an act which—

(a) constituted an offence under the law in force in a place outside the Falkland Islands ("the relevant foreign law"); and

(b) would have constituted an offence to which this section applies if it had been done in the Falkland Islands.

(5) In relation to a foreign offence, references to the corresponding the Falkland Islands offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when the person is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

(7) If in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

*[UK Sexual Offences Act 2003 s.132]*

### **345. Saving for orders, etc. under the Sexual Offences Ordinance**

(1) Notwithstanding the repeal by this Ordinance of the Sexual Offences Ordinance 2005, any notification given, and any order or direction made in respect of such notification, under Part 2 of the UK Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to that Ordinance continues in effect as if made under the equivalent provisions of this Part.

(2) If a court has before the commencement of this Part made in respect of a person a RSHO, a SOPO or a foreign travel order under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Sexual Offences Ordinance 2005, the order continues to have effect in accordance with its terms and that Act, notwithstanding the repeal of that Ordinance, but subject to subsection (3).

(3) If a court makes a SHPO or a SRO on a person in respect of whom a RSHO, SOPO or foreign travel order under the Sexual Offences Act 2003 is in force, the earlier order ceases to have effect unless the court orders otherwise.

*[UK Sexual Offences Act 2003 s.136ZB ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5 adapted]*

## PART 12 - THEFT AND FRAUD

### **346. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“gain” and “loss” are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent;

“gain” includes a gain by keeping what one has, as well as a gain by getting what one has not;

“goods”, unless the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing;

“loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has;

“trustee” means a trustee on an express trust created by a deed, will or instrument in writing and includes —

- (a) the heir or personal representative of any such trustee and any other person on or to whom the duty of such trust has devolved or come; and

(b) an executor and administrator and an official receiver, trustee, assignee, liquidator or similar officer acting under any written law relating to joint stock companies or bankruptcy;

(2) Sections 351(1) and 352(1) apply generally for the purposes of this Part as they apply for the purposes of section 348.

*[UK Theft Act 1968 s. 34]*

### *Offence of theft*

#### **347. Offence of theft**

(1) A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it commits theft; and “thief” and “steal” are to be construed accordingly.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Sections 348 to 352 have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Part, apply only for purposes of this section).

*[UK Theft Act 1968 ss.1 and 7]*

#### **348. “Dishonestly”**

(1) A person's appropriation of property belonging to another is not to be regarded as dishonest if the person who appropriates the property —

(a) believes that that person has in law the right to deprive the other of it, on behalf of the person who appropriates or of a third person;

(b) believes that that person would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (unless the property came to that person as trustee or personal representative) believes that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest even if the person who appropriates is willing to pay for the property.

*[UK Theft Act 1968 ss.2 to 6]*

#### **349. “Appropriates”**

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, if the person has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) If property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believed that person was acquiring amounts, by reason of any defect in the transferor's title, to theft of the property.

*[UK Theft Act 1968 ss.2 to 6]*

### **350. “Property”**

(1) In this Part, “property” includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by that person or by that person’s directions, except when that person —

(a) is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in that person; or

(b) is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) being in possession of the land under a tenancy, appropriates the whole or part of any fixture or structure let to be used with the land.

(3) For the purposes of subsection (2) —

(a) “land” does not include incorporeal hereditaments;

(b) “tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy;

(c) “let” is to be construed accordingly.

(4) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what is picked, unless the person does it for reward or for sale or other commercial purpose.

(5) For purposes of subsection (4) “mushroom” includes any fungus, and “plant” includes any shrub or tree.

(6) Wild creatures, tamed or untamed, are to be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

*[UK Theft Act 1968 ss.2 to 6]*

**351. “Belonging to another”**

(1) Property is to be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) If property is subject to a trust, the persons to whom it belongs are to be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust is to be regarded accordingly as an intention to deprive of the property any person having that right.

(3) If a person receives property from or on account of another person, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds is to be regarded (as against that person) as belonging to the other.

(4) If a person gets property by another person’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds are to be regarded (as against the person who gets the property) as belonging to the person entitled to restoration, and an intention not to make restoration is to be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole is to be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

*[UK Theft Act 1968 ss.2 to 6]*

**352. “With the intention of permanently depriving the other of it”**

(1) If a person (‘A’) appropriates property belonging to another person (‘B’) without meaning B permanently to lose the thing itself —

(a) A is to be regarded as having the intention of permanently depriving B of it if A’s intention is to treat the thing as A’s own to dispose of regardless of B’s rights; and

(b) a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without limiting subsection (1), if A, having possession or control (lawfully or not) of property belonging to B, parts with the property under a condition as to its return which A may not be able to perform, this (if done for purposes of A’s own and without B’s authority) amounts to treating the property as A’s own to dispose of regardless of B’s rights.

*[UK Theft Act 1968 ss.2 to 6]*

*Robbery, burglary, etc.*

**353. Robbery**

(1) A person who —

(a) steals; and

(b) immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force,

commits robbery.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who assaults another person with intent to rob that person commits an offence.

Penalty: Imprisonment for 18 years or a fine, or both.

*[UK Theft Act 1968 ss.8 to 10]*

**354. Burglary**

(1) A person who —

(a) enters any building or part of a building as a trespasser and with intent to commit an offence mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser —

(i) steals or attempts to steal anything in the building or that part of it; or

(ii) inflicts or attempts to inflict on any person in the building any grievous bodily harm,

commits burglary.

Penalty: As provided in subsection (4).

(2) The offences referred to in subsection (1)(a) are —

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person in the building any grievous bodily harm;

(c) doing unlawful damage to the building or anything in it.

(3) References in subsections (1) and (2) to a building, and the reference in subsection (3) to a building which is a dwelling, apply also to an inhabited vehicle or vessel, and apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when the person is there.

(4) The maximum penalty on conviction for burglary is —

(a) imprisonment for 10 years or a fine, or both; or

(b) if the burglary was in a dwelling-house - imprisonment for 14 years or a fine, or both.

*[UK Theft Act 1968 ss.8 to 10]*

### **355. Aggravated burglary**

(1) A person who commits any burglary and has with him or her at the time any firearm or imitation firearm, any weapon of offence, or any explosive, commits aggravated burglary.

Penalty: Imprisonment for 18 years or a fine, or both.

(2) For the purpose of subsection (1) —

“firearm” includes an airgun or air pistol;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;

“weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person who has it with him or her for such use; and

“explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person who has it with him or her for that purpose.

*[UK Theft Act 1968 ss.8 to 10]*

### **356. Going equipped for stealing etc.**

(1) A person who, when not at his or her place of abode, has with him or her any article for use in the course of or in connection with any burglary or theft commits an offence.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) If a person is charged with an offence under this section, proof that the person had with him or her any article made or adapted for use in committing a burglary or theft is evidence that the person had it with him or her for such use.

(3) For purposes of this section an offence under section 362 of taking a conveyance is to be treated as theft.

*[UK Theft Act 1968 s.25 as am. by Fraud Act 2006]*

### **357. Theft of or from mails outside the Falkland Islands, and robbery, etc. on such a theft**

(1) If a person —

(a) steals or attempts to steal any mail bag or postal packet in the course of transmission to or from the Falkland Islands, or any of the contents of such a mail bag or postal packet; or

(b) in stealing or with intent to steal any such mail bag or postal packet or any of its contents, commits any robbery, attempted robbery or assault with intent to rob,

then, even though the act is done outside the Falkland Islands, the person is guilty of committing or attempting to commit the offence against the relevant provision of this Part as if it were done in the Falkland Islands, and is liable to be prosecuted, tried and punished in the Falkland Islands without proof that the offence was committed there.

(2) For the purposes of this section a postal packet is deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed.

(3) In this section —

“mail bag” includes any form of container or covering in which postal packets in the course of transmission by post are enclosed by a postal operator in the Falkland Islands or elsewhere for the purpose of conveyance by post;

“postal packet” means a letter, parcel, packet or other article transmissible by post.  
[UK Theft Act 1968 s.14; Postal Services Act 2000 s.125]

#### *Offences relating to stolen goods*

### **358. Scope of offences relating to stolen goods**

(1) The provisions of this Part relating to goods which have been stolen apply whether the stealing occurred in the Falkland Islands or elsewhere, if the stealing (not being an offence under this Part) amounted to an offence where the goods were stolen; and references to stolen goods are to be construed accordingly.

(2) For the purposes of those provisions, references to stolen goods include, in addition to the goods originally stolen and parts of them (whether in their original state or not) —

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by the handler or of goods so representing them.

(3) No goods are to be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through that person have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Part relating to goods which have been stolen (including subsections (1) to (3) of this section), goods obtained in the Falkland Islands or elsewhere either by blackmail or, subject to subsection (5), by fraud (within the meaning of section 368) are to be regarded as stolen; and “steal”, “theft” and “thief” are to be construed accordingly.

(5) Subsection (1) applies in relation to goods obtained by fraud.

*[UK Theft Act 1968 s.24 as am. by Fraud Act 2006]*

### **359. Handling stolen goods**

A person who, otherwise than in the course of stealing, knowing or believing goods to be stolen—

(a) dishonestly receives the goods;

(b) dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person; or

(c) arranges to do (a) or (b),

commits the offence of handling stolen goods.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Theft Act 1968 s.22 as am. by Fraud Act 2006]*

### **360. Advertising rewards for return of goods stolen or lost**

If any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that —

(a) no questions will be asked;

(b) the person producing the goods will be safe from arrest or inquiry; or

(c) money paid for the purchase of the goods or advanced by way of loan on them will be repaid,

the person advertising the reward and any person who prints or publishes the advertisement each commits an offence.

Penalty: A fine at level 3 on the standard scale.

*[UK Theft Act 1978 s.23]*

### **361. Search for stolen goods**

(1) Subject to subsection (2), if it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in the person’s custody or possession or on the person’s premises any stolen goods, the justice may grant a warrant to search for and seize the same.

(2) No warrant to search for stolen goods may be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(3) A person who under this section is authorised to search premises for stolen goods may —

(a) enter and search the premises; and

(b) seize any goods the person believes to be stolen goods.

(4) This section is to be construed in accordance with section 358.

[UK Theft Act 1968 s.26]

*Offences similar to theft*

**362. Taking a conveyance without authority**

(1) Subject to subsections (4) and (7), a person ('A') who, without having the consent of the owner or other lawful authority —

(a) takes a conveyance for the use of A or another person; or

(b) knowing that a conveyance has been taken without such authority, drives it or allows himself or herself to be carried in or on it,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If on the trial for theft the court is not satisfied that the defendant committed theft, but is satisfied beyond reasonable doubt that the defendant committed an offence under subsection (1)—

(a) the court may convict the defendant of the offence under subsection (1); and

(b) the maximum penalty on conviction is as provided in subsection (1).

(3) Subsection (1) does not apply in relation to pedal cycles.

(4) Subject to subsection (7), a person ('A') who, without having the consent of the owner or other lawful authority —

(a) takes a pedal cycle for the use of A or another person; or

(b) rides a pedal cycle knowing it to have been taken without such authority,

commits an offence.

Penalty: A fine at level 2 on the standard scale.

(5) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority to do the thing; or

(b) would have the owner's consent to do it if the owner knew of the person's doing it and the circumstances.

(6) The court, upon convicting a person of an offence under subsection (1), must order that the person's driver's licence be endorsed with particulars of the conviction and may disqualify the person from holding or obtaining a driver's licence for a period the court thinks fit.

(7) A police officer may arrest without warrant any person whom the officer reasonably suspects of having committed, being in the course of committing, having attempted or being in the course of attempting to commit an offence under this section.

(8) For purposes of this section —

“conveyance” —

(a) means any conveyance constructed or adapted for the carriage of a person or persons by land, water or air; but

(b) does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it;

“drive” is to be construed accordingly; and

“owner”, in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

*[Road Traffic Ordinance s.30, replacing UK Theft Act 1968 s.12]*

### **363. Aggravated vehicle-taking**

(1) Subject to subsection (3), a person ('A') commits aggravated taking of a vehicle if —

(a) A commits an offence under section 362 (in this section referred to as a “basic offence”) in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by A or another person) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2).

Penalty: As provided in subsection (4).

(2) The circumstances referred to in subsection (1)(b) are that —

(a) the vehicle was driven dangerously on a road or other public place;

(b) owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) damage was caused to the vehicle.

(3) A is not guilty of an offence under this section if A proves that, as regards any proven driving, injury or damage as referred to in subsection (1)(b), either —

(a) the driving, accident or damage referred to in subsection (2) occurred before A committed the basic offence; or

(b) A was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) The maximum penalty on conviction for an offence under this section is —

(a) imprisonment for 2 years or a fine, or both; or

(b) if it is proved that, in circumstances falling within subsection (2)(b), the accident caused the death of a person - imprisonment for 14 years or a fine, or both.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that the person committed a basic offence, the person may be convicted of the basic offence.

(6) If by virtue of subsection (5) a person is convicted of a basic offence before the Supreme Court, the court has the same powers and duties as the Magistrate's Court or Summary Court would have on convicting the person of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if —

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody.

*[UK Theft Act 1968 s.12A ins. by Aggravated Vehicle Taking Act 1992]*

### **364. Removing articles from places open to the public**

(1) Subject to subsections (2) to (4), if the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purpose of subsection (1) —

(a) “collection” includes a collection got together for a temporary purpose; but

(b) references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) For purposes of subsection (1) —

(a) it is immaterial that the public’s access to a building is limited to a particular period or particular occasion; but

(b) if anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless the person removes it on a day when the public have access to the building as mentioned in that subsection.

(4) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority for the removal of the thing in question; or

(b) would have such authority if the person entitled to give it knew of the removal and the circumstances of it.

*[UK Theft Act 1968 s.11]*

### **365. Making off without payment**

(1) Subject to subsection (3), a person who, knowing that immediate payment for any goods supplied or service done is required or expected from the person, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For purposes of this section “immediate payment” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) does not apply in cases in which the supply of the goods or the doing of the service is contrary to law, or in which the service done is such that payment is not legally enforceable.

*[UK Theft Act 1978 s.3]*

### **366. Abstracting of electricity**

A person who dishonestly —

- (a) uses without due authority; or
- (b) causes to be wasted or diverted,

any electricity, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

*[UK Theft Act 1968 s.13]*

## *Blackmail*

### **367. Blackmail**

(1) A person who —

- (a) with a view to gain for that person or another person; or
- (b) with intent to cause loss to another person,

makes any unwarranted demand with menaces, commits the offence of blackmail.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purpose of this section, a demand with menaces is unwarranted unless the person making it does so in the belief that —

- (a) the person has reasonable grounds for making the demand; and
- (b) the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

*[UK Theft Act 1968 s.21]*

## *Fraud*

### **368. Offence of fraud**

A person who contravenes any of sections 369 to 372 (which provide for different ways of committing the offence) commits the offence of fraud.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Fraud Act 2006 ss.1 to 4]*

**369. Fraud by false representation**

(1) A person ('A') is in breach of this section if A —

- (a) dishonestly makes a false representation; and
- (b) intends, by making the representation to —
  - (i) make a gain for A or another person; or
  - (ii) cause loss to another person or to expose another person to a risk of loss.

(2) A representation is false if —

- (a) it is untrue or misleading; and
- (b) the person making it knows that it is, or might be, untrue or misleading.

(3) In this section, “representation” means any representation as to fact or law, including a representation as to the state of mind of —

- (a) the person making the representation; or
- (b) any other person.

(4) For the purposes of this section a representation may be —

- (a) express or implied;
- (b) regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

*[UK Fraud Act 2006 ss.1 to 4]*

**370. Fraud by failing to disclose information**

A person ('A') is in breach of this section if A —

- (a) dishonestly fails to disclose to another person information which A is under a legal duty to disclose; and
- (b) intends, by failing to disclose the information —
  - (i) to make a gain for A or another person; or
  - (ii) to cause loss to another person or to expose another person to a risk of loss.

*[UK Fraud Act 2006 ss.1 to 4]*

**371. Fraud by abuse of position**

(1) A person ('A') is in breach of this section if A —

- (a) occupies a position in which A is expected to safeguard, or not to act against, the financial interests of another person;
- (b) dishonestly abuses that position; and
- (c) intends, by means of the abuse of that position —
  - (i) to make a gain for A or another person; or
  - (ii) to cause loss to another person or to expose another person to a risk of loss.

(2) A may be regarded as having abused A's position even though A's conduct consisted of an omission rather than an act.

*[UK Fraud Act 2006 ss.1 to 4]*

**372. Possession etc. of articles for use in frauds**

A person ('A') who has in the possession or under the control of A any article for use in the course of or in connection with any fraud commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

*[UK Fraud Act 2006 s.6]*

**373. Making or supplying articles for use in frauds**

A person who makes, adapts, supplies or offers to supply any article —

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or
- (b) intending it to be used to commit, or assist in the commission of, fraud,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Fraud Act 2006 s.6]*

**374. Participating in fraudulent business carried on by sole trader, etc.**

(1) A person who is knowingly a party to the carrying on of a business to which this section applies commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) This section applies to a business which is —

- (a) not governed by the UK Companies Act 1948 as applied to the Falkland Islands; and

(b) carried on with intent to defraud creditors of any person or for any other fraudulent purpose.

(3) This section is in addition to and does not derogate from any powers of investigation of fraudulent conduct under the UK Companies Act 1948 as applied to the Falkland Islands by section 2 of the Companies and Private Partnership Ordinance and by the Companies (Auditors) Ordinance.

*[UK Fraud Act 2006 s.9 adapted]*

### **375. Obtaining services dishonestly**

(1) A person ('A') who obtains services for A or another person —

(a) by a dishonest act; and

(b) in breach of subsection (2),

commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A obtains services in breach of this subsection if —

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;

(b) A obtains them without any payment having been made for or in respect of them or without payment having been made in full; and

(c) when A obtains them, A knows that they —

(i) are being made available on the basis described in paragraph (a), or

(ii) might be so made available,

but intends that payment will not be made, or will not be made in full.

*[UK Fraud Act 2006 s.11]*

### **376. Fraud: Definitions**

(1) For the purposes of sections 368 to 371, "gain" and "loss" —

(a) extend only to gain or loss in money or other property;

(b) include any such gain or loss whether temporary or permanent;

and in this context, "property" means any property whether real or personal (including things in action and other intangible property).

(2) For the purposes of —

(a) sections 372 and 373; and

(b) the meaning of “prohibited articles” for the purposes of stop and search powers in the Criminal Procedure and Evidence Ordinance 2014,

so far as they relate to articles for use in the course of or in connection with fraud, “article” includes any programme or data held in electronic form.

*[UK Fraud Act 2006 s.8 adapted]*

### **377. Fraud: Evidence**

(1) A person (‘A’) is not to be excused from —

(a) answering any question put to A in proceedings relating to property; or

(b) complying with any order made in proceedings relating to property,

on the ground that doing so may incriminate A or A’s spouse of an offence under any of sections 368 to 375 or a related offence.

(2) In proceedings against a person for an offence under any of sections 368 to 375 or a related offence, a statement or admission made by the person in —

(a) answering such a question; or

(b) complying with such an order,

is not admissible in evidence against the person or (unless they married after the making of the statement or admission) the person’s spouse.

(3) In this section —

“proceedings relating to property” means any proceedings for —

(a) the recovery or administration of any property;

(b) the execution of a trust; or

(c) an account of any property or dealings with property,

“property” means money or other property whether real or personal (including things in action and other intangible property);

“related offence” means —

(a) conspiracy to defraud;

(b) any other offence involving any form of fraudulent conduct or purpose.

[UK Fraud Act 2006 s.13]

*Offences similar to fraud*

**378. False accounting**

(1) A person ('A') who dishonestly, with a view to gain for A or another person or with intent to cause loss to another person —

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to A's knowledge is or may be misleading, false or deceptive in a material particular,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For purposes of this section a person who —

(a) makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular; or

(b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

[UK Theft Act 1968 s.17]

**379. False statements by company directors, etc.**

(1) An officer of a corporate body or unincorporated association (or person purporting to act as such) who, with intent to deceive members or creditors of the corporate body or association about its affairs, publishes or concurs in publishing a written statement or account which to the officer's knowledge is or may be misleading, false or deceptive in a material particular, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purposes of this section a person who has entered into a security for the benefit of a corporate body or association is to be treated as a creditor of it.

(3) If the affairs of a corporate body or association are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with the member's or her functions of management as if the member were an officer of the corporate body or association.

*[UK Theft Act 1968 s.19]*

**380. Suppression etc. of documents**

(1) A person ('A') who dishonestly, with a view to gain for A or another person, or with intent to cause loss to another person, destroys, defaces or conceals —

(a) any valuable security;

(b) any will or other testamentary document; or

(c) any original document of or belonging to, or filed or deposited in, any court of justice or any government department,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this section, "valuable security" means any document —

(a) creating, transferring, surrendering or releasing any right to, in or over property;

(b) authorising the payment of money or delivery of any property; or

(c) evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

*[UK Theft Act 1968 s.20]*

**381. Dishonestly retaining a wrongful credit**

(1) A person commits an offence if —

(a) a wrongful credit has been made to an account kept by the person or in respect of which the person has any right or interest;

(b) the person knows or believes that the credit is wrongful; and

(c) the person dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A credit to an account is wrongful to the extent that it derives from —

(a) theft;

(b) blackmail;

(c) fraud (contrary to section 369); or

(d) stolen goods.

(3) In determining whether a credit to an account is wrongful, it is immaterial whether the account is overdrawn before or after the credit is made.

(4) In this section —

“account” means an account kept with —

(a) a bank;

(b) a person carrying on a business which falls within subsection (5); or

(c) an issuer of electronic money (as defined in Part 2 of the UK Financial Services and Markets Act 2000 as applied to the Falkland Islands);

“credit” means a credit of an amount of money;

“stolen goods” include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(5) A business falls within this subsection if —

(a) in the course of the business money received by way of deposit is lent to others; or

(b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) For the purpose of subsection (5) —

(a) references to a deposit must be read with Part 2 of the UK Financial Services and Markets Act 2000 as applied to the Falkland Islands;

(b) any restriction on the meaning of “deposit” which arises from the identity of the person making it is to be disregarded;

(c) all the activities which a person carries on by way of business are to be regarded as a single business carried on by that person; and

(d) “money” includes money expressed in a currency other than sterling.

*[UK Theft Act 1968 s.24A inserted by Theft (Am.) Act 1996]*

### **382. Cheating the public revenue**

It is an offence for a person to —

- (a) make a false statement relating to tax, whether in writing or not, with intent to defraud the public revenue;
- (b) deliver or cause to be delivered a false document relating to tax, with similar intent;
- (c) fail to register for tax or to make the requisite returns and payments when due; or
- (d) otherwise engage in fraudulent conduct (whether similar to the conduct mentioned in paragraphs (a) to (c) or not) which diverts taxation money from the public revenue or deprives it of taxation money to which it is entitled.

Penalty: Imprisonment for 14 years or a fine, or both.

*[Common law]*

### *Miscellaneous provisions*

#### **383. Prohibition on interception**

(1) A person ('A') who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunications system commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) It is a defence for A to prove —

(a) that at the time of the alleged offence A had reasonable grounds for believing that the person to whom, or the person by whom, the communication was sent has consented to the interception;

(b) the communication was intercepted for purposes connected with the provision of postal or public telecommunication services or with the enforcement of any enactment relating to the use of those services; or

(c) the communication was being transmitted by wireless telegraphy and was intercepted with lawful authority for purposes connected with the issue of licences under the Telecommunications Ordinance or detection of interference with wireless telegraphy.

(3) No proceedings for an offence under subsection (1) may be brought except by or with the consent of the Attorney General.

*[Crimes Ord. s.30; UK Regulation of Investigatory Powers Act 2000, s.1]*

#### **384. Procedure and evidence on charge of theft or handling stolen goods**

(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of 2 or more persons charged for jointly handling any stolen goods, the court may find any of the defendants guilty if the court is satisfied that the person handled all or any of

the stolen goods, whether or not the person did so jointly with the other defendant or any of them.

(3) If a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of that person's having or arranging to have in that person's possession the goods the subject of the charge, or of that person's undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realisation, the following evidence is admissible for the purpose of proving that the person knew or believed the goods to be stolen goods —

(a) evidence that the person has had in that person's possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than 12 months before the offence charged; and

(b) if 7 days' notice in writing has been given to the person of the intention to prove the conviction - evidence that the person has within the 5 years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that that person despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by that person were in a particular state or condition, is admissible as evidence of the facts stated in the declaration, subject to the following conditions —

(a) a statutory declaration is only admissible if and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration is only admissible if at least 7 days before the hearing or trial a copy of it has been given to the person charged, and that person has not, at least 3 days before the hearing or trial or within any further time the court in special circumstances allows, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) This section is to be construed in accordance with section 358.

*[UK Theft Act 1968 s.27]*

### **385. Effect on civil proceedings and rights**

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that do so may incriminate the person or the person's spouse or civil partner of an offence under this Part.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became civil partners after the making of the statement or admission) against the person's spouse or civil partner.

(3) Regardless of any enactment to the contrary, if property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

*[UK Theft Act 1968 s.31]*

## PART 13 - FORGERY AND COUNTERFEITING

### **386. Interpretation of Part**

In this Part, unless the context otherwise requires —

“currency note” means any note —

(a) which —

(i) has been issued by the relevant authority in the Falkland Islands or the United Kingdom;

(ii) is or has been customarily used as money in the Falkland Islands; and

(iii) is payable on demand; or

(b) which —

(i) has been issued by the relevant authority in some country other than the Falkland Islands; and

(ii) is customarily used as money in that or another country;

“protected coin” means any coin which —

(a) is customarily used as money in any country; or

(b) is specified in an order made by the relevant authority for the purposes of this Part;

“Register” means the register kept at the Central Registry pursuant to the Registration Ordinance;

“relevant authority”, in relation to a coin or a currency note of any particular description, means the authority empowered by law to issue those coins, or notes of that description, as the case may be;

“revenue stamp” means a stamp for denoting any duty or fee, whether an adhesive stamp or a stamp impressed by means of a die;

“share certificate” means an instrument entitling or evidencing the title of a person to a share or interest —

(a) in any public stock, annuity, fund or debt of any government or territory, including a territory which forms part of a state; or

(b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in the Falkland Islands or elsewhere.

*[UK Forgery & Counterfeiting Act 1981 passim; Stamp Duties Act 1981 s.127]*

#### *Forgery and kindred offences*

### **387. Meaning of “instrument”**

(1) Subject to subsection (2), in this Part “instrument” means —

(a) any document, whether of a formal or informal character;

(b) any stamp issued or sold by a postal operator;

(c) any revenue stamp; and

(d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) A currency note as defined in section 386 is not an instrument for the purposes of this Part.

(3) A mark denoting payment of postage which the postal operator authorises to be used instead of an adhesive stamp is to be treated for the purposes of this Part as if it were a stamp issued by the postal operator concerned.

*[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]*

### **388. Meaning of “false” and “making”**

(1) An instrument is false for the purposes of this Part if it purports to have been —

(a) made in the form in which it is made by a person who did not in fact make it in that form;

(b) made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;

(c) made in the terms in which it is made by a person who did not in fact make it in those terms;

(d) made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;

(e) altered in any respect by a person who did not in fact alter it in that respect;

(f) altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;

(g) made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or

(h) made or altered by an existing person who did not in fact exist.

(2) A person is to be treated for the purposes of this Part as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

*[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]*

### **389. Meaning of “prejudice” and “induce”**

(1) Subject to subsections (2) and (4), for the purposes of this Part an act or omission intended to be induced is to a person’s prejudice if, and only if, it is one which, if it occurs, will —

(a) result in the person —

(i) losing the property temporarily or permanently;

(ii) being deprived of an opportunity to earn remuneration or greater remuneration; or

(iii) being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) result in somebody being given an opportunity to —

(i) earn remuneration or greater remuneration from the person; or

(ii) gain a financial advantage from the person otherwise than by way of remuneration; or

(c) be the result of the person having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person’s performance of any duty.

(2) Doing something that a person has an enforceable duty to do and omitting to do something that a person is not entitled to do are to be disregarded for the purposes of this Part.

(3) In this Part references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.

(4) If subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy is to be treated as an act or omission to a person's prejudice.

(5) In this section, "loss" includes not getting what one might get as well as parting with what one has.

*[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]*

### **390. Forgery**

A person ('A') who makes a false instrument, with the intention that A or another person will use it to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]*

### **391. Copying a false instrument**

A person ('A') who makes a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention that A or another will use it to induce somebody ('B') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]*

### **392. Using a false instrument**

A person ('A') who uses an instrument which is, and which A knows or believes to be, false, with the intention of inducing somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]*

### **393. Using a copy of a false instrument**

A person ('A') who uses a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention of inducing somebody ('B') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]*

**394. Offences relating to money orders, share certificates, passports, etc.**

(1) A person ('A') who has in A's custody or under A's control an instrument to which this section applies which is, and which A knows or believes to be, false, with the intention that A or another person will use it to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who has in A's custody or under A's control, without lawful authority or excuse, an instrument to which this section applies which is, and which A knows or believes to be, false, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person ('A') who makes or has in A's custody or under A's control a machine or implement, or paper or any other material, which to A's knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention —

(a) that A or another person will make an instrument to which this section applies which is false; and

(b) that A or another person will use the instrument to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(4) A person ('A') who makes or has in A's custody or under A's control any machine, implement, paper or material as described in subsection (3), without lawful authority or excuse, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) The instruments to which this section applies are —

(a) money orders;

(b) postal orders;

(c) Falkland Islands postage stamps;

(d) revenue stamps;

(e) share certificates;

(f) passports and documents which can be used instead of passports;

- (g) cheques;
- (h) travellers' cheques;
- (i) cheque cards;
- (j) credit cards;
- (k) certified copies relating to an entry in the Register; and
- (l) certificates relating to entries in the Register.

*[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]*

### **395. Abolition of offence of forgery at common law**

The offence of forgery at common law is abolished for all purposes except in relation to offences committed before the commencement of this Part.

*[UK Forgery & Counterfeiting Act 1981 s.13]*

#### *Counterfeiting and kindred offences*

### **396. Counterfeiting notes and coins**

(1) A person ('A') who makes a counterfeit of a currency note or of a protected coin, intending that A or another person will pass or tender it as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, without lawful authority or excuse, makes a counterfeit of a currency note or of a protected coin commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]*

### **397. Passing, etc. counterfeit notes and coins**

(1) A person ('A') who —

(a) passes or tenders as genuine anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin; or

(b) delivers to another anything which is, and which A knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another will pass or tender it as genuine,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse, delivers to another person anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.  
*[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]*

**398. Custody or control of counterfeit notes and coins**

(1) A person ('A') who has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another person ('B') with the intention that A or B will pass or tender it as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse, has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) It is immaterial for the purposes of subsections (1) and (2) that —

(a) that a coin or note is not in a fit state to be passed or tendered; or

(b) that the making or counterfeiting of a coin or note has not been finished or perfected.

*[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]*

**399. Making, etc. of counterfeiting materials and implements**

(1) A person ('A') who —

(a) makes; or

(b) has in A's custody or under A's control,

anything which A intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('A') who, without lawful authority or excuse —

(a) makes; or

(b) has in A's custody or under A's control,

anything which, to A's knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) Subject to subsection (4), a person ('A') who —

(a) makes; or

(b) has in A's custody or under A's control,

any implement which, to A's knowledge, is capable of imparting to anything a resemblance —

(i) to the whole or part of either side of a protected coin; or

(ii) to the whole or part of the reverse of the image on either side of a protected coin,

commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) It is a defence for a person ('A') charged with an offence under subsection (3) to show that A—

(a) made the implement or, as the case may be, had it in A's custody or under A's control, with the written consent of the relevant authority; or

(b) had lawful authority otherwise than by virtue of paragraph (a), or a lawful excuse, for making it or having it in A's custody or under A's control.

*[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]*

#### **400. Meaning of "counterfeit"**

(1) For the purposes of this Part a thing is a counterfeit of a currency note or of a protected coin if —

(a) it is not a currency note or a protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or

(b) it is a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description.

(2) For the purpose of this Part —

(a) a thing consisting of one side only of a currency note, with or without the addition of other material is a counterfeit of such a note;

(b) a thing consisting —

(i) of parts of 2 or more currency notes; or

(ii) of parts of a currency note, or of parts of 2 or more currency notes, with the addition of other material,

is capable of being a counterfeit of a currency note.

(3) References in this Part to passing or tendering a counterfeit of a currency note or a protected coin are not to be construed as confined to passing or tendering it as legal tender.

*[UK Forgery & Counterfeiting Act 1981 s.28]*

#### **401. Reproducing currency notes**

(1) A person who reproduces any currency note or any part of a currency note, without the previous consent in writing of the relevant authority, commits an offence.

Penalty: A fine.

(2) Subsection (1) applies to reproduction on any substance whatsoever, and whether or not on the correct scale.

*[UK Forgery & Counterfeiting Act 1981 ss.18 and 22 adapted]*

#### **402. Making, etc. imitation protected coins**

(1) A person ('A') who —

(a) makes an imitation protected coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or

(b) sells or distributes imitation protected coins in connection with any such scheme, or has imitation coins in A's custody or under A's control with a view to such sale or distribution,

commits an offence, unless the relevant authority has previously consented in writing to the sale or distribution of such imitation coins in connection with that scheme.

Penalty: A fine.

(2) In this section "imitation protected coin" means anything which resembles a protected coin in shape, size and the substance of which it is made.

*[UK Forgery & Counterfeiting Act 1981 ss.19 and 22]*

#### **403. Prohibition of importation or exportation of counterfeit notes and coins**

(1) A person who imports, lands, loads or unloads a counterfeit of a currency note or of a protected coin without the consent of the relevant authority commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who exports a currency note or protected coin without the consent of the relevant authority commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) Without affecting subsection (1) or (2), the importation or exportation of a counterfeit of a currency note or of a protected coin without the consent of the relevant authority is prohibited as if such counterfeit were prohibited by an order of the Governor made under section 143 of the Customs Ordinance and the penalty were as specified in subsection (1) above.

*[UK Forgery & Counterfeiting Act 1981 ss.20 to 22 adapted]*

*Identity documents offences*

**404. Possession of false identity documents, etc.**

(1) It is an offence for a person ('A') with an improper intention to have in A's possession or under A's control —

- (a) an identity document that is false and that A knows or believes to be false;
  - (b) an identity document that was improperly obtained and that A knows or believes to have been improperly obtained; or
  - (c) an identity document that relates to another person.
- Penalty: Imprisonment for 10 years or a fine, or both.

(2) Each of the following is an improper intention for the purpose of subsection (1) —

- (a) the intention of using the document for establishing personal information about A;
- (b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about A or anyone else.

(3) In subsection (2)(b) the reference to A or anyone else does not include, in the case of a document within subsection (1)(c), the individual to whom it relates.

*[UK Identity Documents Act 2010 ss.4 to 6]*

**405. Apparatus for the making of false identity documents**

(1) It is an offence for a person ('A') with the prohibited intention to make, or to have in A's possession or under A's control —

- (a) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents; or
- (b) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of false identity documents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) The prohibited intention for the purpose of subsection (1) is the intention —

- (a) that A or another person will make a false identity document; and
- (b) that the document will be used by some person for establishing, ascertaining or verifying personal information about any person.

*[UK Identity Documents Act 2010 ss.4 to 6]*

**406. Possession of false identity documents etc without reasonable excuse**

It is an offence for a person ('A') to have in A's possession or under A's control, without

reasonable excuse —

- (a) an identity document that is false;
- (b) an identity document that was improperly obtained;
- (c) an identity document that relates to another person;
- (d) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents; or
- (e) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Identity Documents Act 2010 ss.4 to 6]*

#### **407. False identity documents: Supplementary**

(1) In sections 404 to 406 “identity document” means any document that is, or purports to be —

- (a) an immigration document;
- (b) a United Kingdom passport;
- (c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation;
- (d) a document that can be used (in some or all circumstances) instead of a passport;
- (e) a Falkland Islands or United Kingdom driving licence; or
- (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.

(2) The Governor may by order amend the list of documents in subsection (1).

(3) In subsection (1), “immigration document” means —

- (a) a document used for confirming the right of a person in respect of entry or residence in the United Kingdom or the Falkland Islands;
- (b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom or the Falkland Islands.

(4) In subsection (1) “residential status” of a person means —

- (a) the person's nationality;
  - (b) the person's entitlement to remain in the Falkland Islands; and
  - (c) if that entitlement derives from a grant of leave to enter or remain in the Falkland Islands, the terms and conditions of that leave.
- (5) In sections 404 and 405, "personal information" in relation to a person means —
- (a) the person's full name;
  - (b) other names by which the person is or has previously been known;
  - (c) the person's gender;
  - (d) the person's date and place of birth;
  - (e) external characteristics of the person that are capable of being used for identifying the person;
  - (f) the address of the person's principal place of residence in the Falkland Islands;
  - (g) the address of every other place in the Falkland Islands or elsewhere where the person has a place of residence;
  - (h) where in the Falkland Islands and elsewhere the person has previously been resident;
  - (i) the times at which the person was resident at different places in the Falkland Islands or elsewhere;
  - (j) the person's current residential status;
  - (k) residential statuses previously held by the person;
  - (l) information about any numbers allocated to the person for identification purposes and about the documents (including stamps or labels) to which they relate.
- (6) For the purposes of sections 404 to 406 and this section —
- (a) the term "apparatus" includes any equipment, machinery or device and any wire or cable, together with any software used with it;
  - (b) an identity document is "false" only if it is false within the meaning of section 389;
  - (c) the term "false" information includes information containing any inaccuracy or omission that results in a tendency to mislead;

- (d) an identity document was “improperly obtained” if —
- (i) false information was provided in, or in connection with, the application for its issue to the person who issued it, or
  - (ii) false information was provided in, or in connection with, an application for its modification to a person entitled to modify it;
- (e) “information” includes documents (including stamps and labels) and records;
- (f) the “issue” of a document includes its renewal, replacement or re-issue (with or without modifications);
- (g) references to the making of a false identity document include the modification of an identity document so that it becomes false.

*[UK Identity Documents Act 2010 ss.7 to 9]*

## PART 14 - COMPUTER MISUSE

### **408. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“act” includes a series of acts;

“computer data” means a representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

“computer system” means a device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

“service provider” means —

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such a service;

“traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service.

(2) For the purposes of this Part, a person secures access to any program or data held in a computer if by causing a computer to perform any function the person —

(a) alters or erases the program or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c) uses it; or

(d) has it output from the computer in which it is held (whether by having it displayed or in any other manner),

and references to access to a program or data (and to an intent to secure such access or to enable such access to be secured) are to be read accordingly.

(3) For the purposes of subsection (2)(c) a person uses a program if the function the person causes the computer to perform —

(a) causes the program to be executed; or

(b) is itself a function of the program.

(4) For the purposes of subsection (2)(d) —

(a) a program is output if the instructions of which it consists are output; and

(b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) For purposes of this Part, but subject to subsection (7), access of any kind by any person to any program or data held in a computer is unauthorised if —

(a) the person is not himself or herself entitled to control access of the kind in question to the program or data; and

(b) the person does not have consent to access by him or her of the kind in question to the program or data from any person who is so entitled.

(6) In this Part —

(a) references to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(b) an act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done) —

(i) is not himself or herself a person who has responsibility for the computer and who is entitled to determine whether the act may be done; and

(ii) does not have consent to the act from any such person;

(c) a reference to doing an act includes a reference to causing an act to be done;

(d) references to a program include references to part of a program.

(7) For the purposes of this Part, a person intercepts a communication in the course of its transmission by means of a telecommunication system only if the person —

(a) so modifies or interferes with the system, or its operation;

(b) so monitors transmissions made by means of the system; or

(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

(8) For the purposes of this Part —

(a) the times while a communication is being transmitted by means of a telecommunication system are to be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it;

(b) the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

*[UK Computer Misuse Act 1990 s.17 and EU Convention Art.1]*

### *Computer misuse offences*

#### **409. Unauthorised access to computer material**

(1) A person commits an offence if —

(a) the person causes a computer to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured;

(b) the access the person intends to secure or to enable to be secured is unauthorised; and

(c) the person knows at the time when he or she causes the computer to perform the function that that is the case.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intent a person has to have to commit an offence under this section need not be directed at —

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

*[UK Computer Misuse Act 1990 s.1 am. by Police & Justice Act 2006 s.35]*

**410. Unauthorised access with intent to commit or facilitate commission of further offences**

(1) A person commits an offence under this section if the person commits an offence under section 409 with intent to —

- (a) commit an offence to which this section applies (“the further offence”); or
- (b) facilitate the commission of such an offence (whether by himself or herself or any other person).

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This section applies to offences for which —

- (a) the sentence is fixed by law; or
- (b) a person of or over the age of 18 years may be sentenced to imprisonment for 5 years or more.

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the offence under section 409 or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

*[UK Computer Misuse Act 1990 s.2 ]*

**411. Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.**

(1) A person commits an offence if —

- (a) the person does any unauthorised act in relation to a computer;
- (b) at the time when the person does the act he or she knows that it is unauthorised; and
- (c) either subsection (2) or (3) applies.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) This subsection applies if the person intends by doing the act to —

- (a) impair the operation of any computer;
- (b) prevent or hinder access to any program or data held in any computer;
- (c) impair the operation of any such program;
- (d) impair the reliability of any such data or the authenticity of any such data resulting in it being considered or acted upon for legal purposes as authentic;
- (e) cause a loss of property to any other person or to derive an economic benefit for himself or herself or any other person; or
- (f) enable any of the things mentioned in paragraphs (a) to (e) to be done.

(3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in subsection (2)(a) to (f).

(4) The intention referred to in subsection (2), or the recklessness referred to in subsection (3), need not relate to —

- (a) any particular computer;
- (b) any particular program or data; or
- (c) a program or data of any particular kind.

(5) In this section —

- (a) “impair” includes damaging a computer; deleting, deteriorating, altering or suppressing data; inputting data to cause damage, deterioration, alteration or suppression; and introducing contaminants to cause the cessation of a computer’s functions; and
- (b) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.

*[UK Computer Misuse Act 1990 s.3 replaced by Police & Justice Act 2006 s.36]*

#### **412. Unauthorised interception of computer service**

(1) A person commits an offence if —

- (a) the person does any unauthorised act in relation to a computer;
- (b) at the time the person does the act he or she knows that it is unauthorised; and

(c) the person intends by doing the act to intercept or cause to be intercepted, directly or indirectly, any non-public electronic transmission or electro-magnetic emission of computer data to, from or within a computer, by any electro-magnetic, acoustic, mechanical or other technical means.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) The intention referred to in subsection (1)(c) need not relate to —

(a) any particular computer;

(b) any particular transmission or emission;

(c) any particular data; or

(d) a transmission or emission of any particular kind.

*[EU Convention Art 3]*

#### **413. Making, supplying or obtaining articles for use in relevant offences**

(1) This section applies to an offence under any of sections 409, 411 or 412 (a “relevant offence”).

(2) A person commits an offence if the person makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, a relevant offence

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person commits an offence if the person supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, a relevant offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) A person commits an offence if the person obtains or possesses any article with a view to its being supplied for use to commit, or to assist in the commission of, a relevant offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) In this section “article” includes any program or data held in electronic form.

*[UK Computer Misuse Act 1990 s.3A ins. by Police & Justice Act 2006 s.37]*

#### **414. Unauthorised disclosure of access code**

(1) A person commits an offence if the person, for any wrongful gain or unlawful purpose, and knowing that the access intended to be secured is unauthorised and is likely to cause wrongful loss to any other person —

(a) discloses any password, access code or any other means of gaining access to any program or data held in a computer; or

(b) possesses any password, access code or any other means of gaining access to any program or data in a computer with a view to its being used or supplied for use to commit, or to assist in the commission of an offence under any of sections 409, 411 or 412.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intention referred to in subsection (1) need not relate to —

(a) any particular computer;

(b) any particular program or data; or

(c) a program or data of any particular kind.

*[EU Convention Art 11]*

### *Jurisdiction*

#### **415. Territorial scope of offences under this Part**

(1) Except as provided in this section, it is immaterial for the purposes of an offence under any of sections 409 to 414 —

(a) whether any act or other event proof of which is required for conviction of the offence occurred in the Falkland Islands; or

(b) whether the defendant was in the Falkland Islands at the time of any such act or event.

(2) Subject to subsection (3), in the case of such an offence at least one significant link with the Falkland Islands must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section 409 to be established in proof of an allegation to that effect in proceedings for an offence under section 410.

(4) Subject to section 417, if —

(a) any such link does in fact exist in the case of an offence under section 409; and

(b) commission of that offence is alleged in proceedings for an offence under section 410,

section 410 applies as if anything the defendant intended to do or facilitate in any place outside the Falkland Islands which would be an offence to which section 410 applies if it took place in the Falkland Islands were the offence in question.

*[UK Computer Misuse Act 1990 ss.4 to 9]*

#### **416. Significant links with the Falkland Islands**

(1) The following provisions of this section apply for the interpretation of section 415.

(2) In relation to an offence under section 409, either of the following is a significant link with the Falkland Islands —

(a) that the defendant was in the Falkland Islands at the time when he or she did the act which caused the computer to perform the function; or

(b) that any computer containing any program or data to which the defendant by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the Falkland Islands at that time.

(3) In relation to an offence under section 411 or 412, either of the following is a significant link with the Falkland Islands —

(a) that the defendant was in the Falkland Islands at the time when he or she did the unauthorised act (or caused it to be done); or

(b) that the unauthorised act was done in relation to a computer in the Falkland Islands.

*[UK Computer Misuse Act 1990 ss.4 to 9]*

#### **417. Territorial scope of ancillary offences related to offences under this Part**

(1) On a charge of conspiracy to commit an offence under this Part the following questions are immaterial to the defendant's guilt —

(a) where any person became a party to the conspiracy; and

(b) whether any act, omission or other event occurred in the Falkland Islands.

(2) On a charge of attempting to commit an offence under section 411 or 412, the following questions are immaterial to the defendant's guilt —

(a) where the attempt was made; and

(b) whether it had an effect in the Falkland Islands.

(3) On a charge of encouraging the commission of an offence under any of sections 409 to 414, the question where the encouraging took place is immaterial to the defendant's guilt.

*[UK Computer Misuse Act 1990 ss.4 to 9]*

#### **418. Relevance of external law**

(1) A person commits an offence triable by virtue of section 415(4) only if what the person intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person commits an offence triable by virtue of section 416 only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the criminal law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than criminal procedure rules may provide, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) “the relevant conduct” means —

(a) if the condition in subsection (1) is in question - what the defendant intended to do or facilitate;

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court the question whether the condition is satisfied is to be decided by the judge alone.

*[UK Computer Misuse Act 1990 ss.4 to 9]*

### *Investigation of offences*

#### **419. Search warrants for offences under this Part**

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

(a) an offence under this Part has been or is about to be committed in any premises; and

(b) evidence that such an offence has been or is about to be committed is in those premises,

the justice may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as necessary, the police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(3) In executing a warrant issued under this section a police officer may seize an article if the officer reasonably believes that —

(a) it is evidence that an offence under this Part has been or is about to be committed; or

(b) the article has been acquired by a person as a result of an offence committed under this Part.

(4) In seizing any article referred to in subsection (3), a police officer must have due regard to the rights and interests of any person affected by such seizure to carry on that person's normal activities.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers granted under this section commits an offence.

(6) In this section —

“article” includes a computer or part of a computer, a computer system or part of it, a computer data storage system and a document.

“premises” includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft;

*[UK Computer Misuse Act 1990 s.11]*

#### **420. Warrant for access to computer and data for investigation of offences**

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

(a) a computer is being or has been used in connection with an offence; and

(b) evidence that such an offence is being or has been committed is in that computer,

the justice may issue a warrant authorising a police officer to do the things mentioned in subsection (2).

(2) A warrant under subsection (1) may authorise a police officer to enter any premises where the computer is kept, using such reasonable force as is necessary, and to —

(a) have access to and use the computer and examine the operation of that computer;

(b) search any data stored or available in the computer or in any computer data storage system forming part of the computer;

(c) have access to any password or access code or any other means of gaining access to the computer;

(d) have access to any program having the capability of retransforming or unscrambling encrypted data in the computer into readable and comprehensible format or into plain text;

(e) make and take any copies or take any samples of any data held in the computer; and

(f) require any person whom the police officer has reasonable cause to suspect is or has been using the computer, or any person having charge or control of or operating the computer, to provide the officer with any technical and other assistance that the officer reasonably requires for the purposes of carrying out the investigation authorised under this section.

(3) In taking any samples or copies of data or performing any of the actions referred to in subsection (2), a police officer must have due regard to the rights and interests of any person affected by such actions to carry on that person's normal activities.

(4) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as may be necessary, a police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers under subsection (2)(a) to (e) or who fails to comply with a requirement under subsection (2)(f) commits an offence.

(6) An information given under subsection (1) may be combined with an information given for the purposes of section 368 and a warrant issued under this section may be combined with a warrant issued under that section.

(7) In this section “premises” has the meaning given by section 419(6).  
*[EU Convention Arts 15 & 19]*

#### **421. Record of seized articles, etc.**

(1) If a computer, computer program or data has been removed following a search under section 419, the police officer who carried out the search must, at the time of the search or as soon as practicable after it —

(a) make an official record of the articles seized and removed, of the premises from where they were removed, and the date and time of seizure; and

(b) give a copy of the record to the owner, lessee or occupier of the premises if they are immovable property; to the master, captain or person in charge of a vehicle, vessel, aircraft or

other movable structure; or to the person in charge or control of the articles seized and removed.

(2) Subject to subsection (3), if a computer has been used or its operation examined or a program or data has been accessed under section 420, the police officer who carried out the action may authorise a person who had charge or control of the computer to access and copy a program or data in the computer.

(3) The police officer may refuse to permit access to the computer under subsection (2) if the officer has reasonable grounds for believing that giving the access would lead to the commission of a criminal offence or would prejudice —

(a) the investigation in connection with which the search was carried out;

(b) another ongoing investigation; or

(c) any criminal proceedings which are pending or which may be brought in relation to any of those investigations.

*[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]*

#### **422. Preservation of data**

(1) If the Chief Police Officer is satisfied that —

(a) a program or data, including traffic data, stored in a computer is necessary for the purposes of a criminal investigation; and

(b) there is a risk that the program or data may be lost, destroyed or rendered inaccessible or modified,

the Chief Police Officer may by written notice given to a person in charge or in control of the computer require that person to ensure that the program or data specified in the notice be preserved for the period stated in the notice, which must not exceed 30 days.

(2) Before the period stated in the notice issued under subsection (1) has expired, a justice of the peace may, on the application of the Attorney General, order that the period stated in the notice be extended for a maximum of 90 days from the date of first issue.

(3) Traffic data may be ordered to be preserved under subsection (1) irrespective of how many service providers were involved in the transmission of the data.

(4) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art. 16]*

#### **423. Interception of traffic data**

(1) If traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, a justice of the peace may, on the application of the Attorney General, issue an order requiring a person in charge or in control of such data or to an internet service provider to —

(a) collect and record traffic data associated with the communication for the period specified in the notice; or

(b) permit and assist any named person with appropriate technical knowledge and expertise to collect and record the data.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art. 20]*

#### **424. Order for disclosure of stored traffic**

(1) If a justice of the peace is satisfied on an application by the Attorney General that specified data stored in a computer is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring a person in charge or in control of the computer to preserve and disclose to a police officer an amount of traffic data about specified communication sufficient to identify —

(a) the internet service providers; and

(b) the path through which the communication was transmitted.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art. 17]*

#### **425. Order for production of data**

(1) If a justice of the peace is satisfied on an application by the Attorney General that a specified computer program, data, printout of that data or any other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring —

(a) a person in charge or in control of a computer to produce to a police officer any computer program, data or printout of data specified in the order which is stored in the computer or in a computer data storage system in that person's possession or control; and

(b) an internet service provider with a place of business in the Falkland Islands to produce to a police officer any subscriber information specified in the order relating to a service provided by that service provider.

(2) In this section, “subscriber information” means any information in the form of computer data, or in any other form, which is held by a service provider, which relates to subscribers of its service other than traffic or content data, and by which can be established —

(a) the subscriber’s identity, telephone or access number, postal address and billing and payment information;

(b) the type of communication service used by the subscriber, the technical provisions relating to it and the period of service; and

(c) any other information on the site relating to the installation of communication equipment.

(3) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art. 18]*

#### **426. Order for interception of electronic communication**

(1) If a justice of the peace is satisfied on an application by the Attorney General that the contents of electronic communication or any other information connected with such communication are reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice may issue an order requiring an internet service provider with a place of business in the Falkland Islands to —

(a) apply such technical means as are necessary to collect and record; or

(b) permit or assist any named person with appropriate technical knowledge and expertise to collect and record,  
content data associated with specified communications transmitted by means of a computer.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art. 21]*

#### *Miscellaneous provisions*

#### **427. Rights and duties of internet service providers**

(1) An internet service provider is not liable under civil or criminal law for the disclosure of any data or other information that the provider discloses under any of sections 424 to 426.

(2) An internet service provider who without lawful authority discloses —

(a) the fact that a notice has been given under section 422 or that an order has been issued under any of sections 423 to 426;

- (b) anything done under the notice or order; or
- (c) any data collected or recorded under the notice or order,

commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Arts. 20.3, 21.3]*

#### **428. Saving for certain law enforcement powers**

(1) Nothing in this Part affects the operation of other provisions of this Ordinance, the Criminal Procedure and Evidence Ordinance 2014 or any other enactment relating to powers of inspection, search or seizure.

(2) Nothing designed to indicate a withholding of consent to access to any program or data from persons as enforcement officers makes access unauthorised for the purposes of section 410(1).

(3) In subsection (2) —

(a) “enforcement officer” means a police officer or other person charged with the duty of investigating offences; and

(b) withholding consent from a person “as” an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.

*[UK Computer Misuse Act 1990 s.10]*

#### **429. Offences by and for the benefit of corporate bodies**

If an offence under any of sections 410 to 415 which was committed by any person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.

Penalty: The statutory maximum fine.

*[EU Convention Art.12]*

#### **430. Forfeiture**

(1) A court before which a person is convicted of an offence under any of sections 410 to 413 may, in addition to imposing any other penalty, make an order for the forfeiture of any computer, computer program or data, computer data storage system, or other apparatus, article or thing which is the subject matter of the offence or which was used in connection with the commission of the offence.

(2) Section 90 of the Interpretation and General Clauses Ordinance applies to the proceeds of any forfeiture under this Part.

*[Gibraltar Crimes Bill - Not in EU Convention]*

### **431. Compensation**

(1) The court before which a person is convicted of an offence under any of sections 410 to 413 may order the person to pay a sum fixed by the court by way of compensation to any other person for damage caused to that person's computer, computer data storage system, program or data by the offence for which the person is convicted.

(2) A claim by a person for damage caused by an offence under any of sections 410 to 413 is deemed to have been satisfied to the extent of any amount ordered to be paid to the person by way of compensation under subsection (1), but the order does not affect any right to a civil remedy for the recovery of damages beyond the amount of such compensation.

(3) Compensation awarded by an order under subsection (1) is recoverable as a civil debt.  
*[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]*

### **432. Breach of confidentiality**

(1) Except for the purpose of a prosecution for an offence under this Part, for other purposes of this Part, or pursuant to an order of a court, a person who has had access to —

(a) any computer, computer data storage system, program or data during the course of an investigation under this Part;

(b) any record, book, register, correspondence, information, document or any other material during the course of an investigation under this Part;

(c) any confidential information which may have been received from the competent authorities of another place for the purpose of an investigation under this Part,

must not disclose to any other person, or use for any purpose other than that for which the person obtained access or received information, the contents of the material mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine at level 11 on the standard scale.

*[EU Convention Art 28]*

### **433. Codes of practice**

(1) The Governor may issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part.

(2) Without limiting subsection (1), a code of practice made under this section may make provision limiting —

(a) the class of criminal offences in respect of which warrants and orders under this Part may be applied for;

(b) the class of criminal offences in respect of which notices under this Part may be issued;

(c) the class of person in respect of whom a notice under section 422 or an order under any of sections 423 to 426 may be issued;

(d) the duration of notices under section 422 and of orders under any of sections 423 to 426;

(e) the number of persons to whom any of the material or data obtained by virtue of this Part may be disclosed or otherwise made available;

(f) the extent to which any of the material or data may be disclosed or otherwise made available;

(g) the extent to which any of the material or data may be copied;

(h) the number of copies that may be made; and

(i) the use that can be made of the material or data.

(3) The Governor may by order prescribe the circumstances under which and the time within which material or data obtained under this Part must be destroyed, and the penalties for failure to comply with the order.

(4) In issuing a code of practice or an order under this section the Governor must have due regard to the fundamental rights and freedoms under the Constitution of the Falkland Islands and in particular to the right of privacy and the requirement of proportionality in the investigation and prevention of crime.

(5) The Governor must lay before the Legislative Assembly every code of practice and order issued or amended under this section.

(6) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under this section must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of a code of practice issued under this section does not of itself render the person liable to any criminal or civil proceedings but may be taken into account in deciding on the admissibility and weight of any evidence obtained in contravention of the provision.

(8) A code of practice issued under this section is admissible in evidence in any criminal or civil proceedings.

*[Gibraltar Crimes Act; SH Crimes Bill – Not in EU Convention but required by FCO]*

PART 15 - COMMERCIAL TRANSACTIONS  
*Auction sales*

**434. Auction bidding offences**

(1) A dealer who —

- (a) agrees to give;
- (b) gives; or
- (c) offers,

any gift or consideration to any other person as an inducement or reward for abstaining, or for having abstained, from bidding at a sale by auction either generally or for any particular lot, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

- (a) agrees to accept;
- (b) accepts; or
- (c) attempts to obtain,

from any dealer any such gift or consideration as aforesaid, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) If it is proved that a dealer has —

- (a) previously to an auction entered into an agreement in writing with one or more persons to purchase goods at the auction in good faith on a joint account; and
- (b) has before the goods were purchased at the auction deposited a copy of the agreement with the auctioneer,

such an agreement is not to be treated as an agreement made in contravention of this section.

(4) For the purposes of this Part, “dealer” means a person who in the normal course of reselling them.

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

*[UK Auctions (Bidding Agreements) Act 1927 s.1 amended]*

#### **435. Auction bidding offences: Prohibition orders**

(1) On conviction of a person under section 434, the court may order that —

(a) the person so convicted; or

(b) that person and any person appointed to bid on behalf of that person,

must not (without leave of the court) enter upon any premises where goods intended for sale by auction are on display or attend or participate in any way in any sale by auction.

(2) An order under subsection (1) must specify the period for which it lasts, which must be not more than 3 years from the date of the conviction.

(3) A person who contravenes an order under this section made in respect of the person commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) In proceedings against a person for contravention of an order under this section consisting in the entry upon premises where goods intended for sale by auction were on display, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that goods so intended were on display on the premises.

(5) In proceedings against a person for contravention of an order under this section consisting in the person having done something as the representative of another, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that that other person was the subject of such an order.

(6) A person does not commit an offence under this section only by selling property by auction or causing it to be so sold.

*[Auctions (Bidding Agreements) Act 1969 s.2]*

#### **436. Rights of seller of goods by auction**

(1) If —

(a) a person ('A') purchases goods at an auction and has entered into an agreement with another person ('B') or other persons that B or those others (or some of them) will abstain from bidding for the goods (not being an agreement to purchase the goods in good faith on a joint account); and

(b) A or B, or one of the other parties to the agreement is a dealer,

the seller may avoid the contract under which the goods are purchased.

(2) If a contract is avoided by virtue of subsection (1), and if the purchaser has obtained possession of the goods and restitution of them is not made, the persons who were parties to the agreement that one or some of them should abstain from bidding for the goods the subject of the

contract are jointly and severally liable to make good to the seller any loss the seller sustained by reason of the operation of the agreement.

*[Auctions (Bidding Agreements) Act 1969 s.3]*

**437. Notices to be exhibited at sale**

(1) Every auctioneer, before beginning any auction, must display a notice containing the auctioneer's full name and place of residence and a copy of sections 434 to 436 of this Ordinance—

(a) in large letters publicly visible and legible; and

(b) in some conspicuous part of the room or place where the auction is held,

so that all persons present may easily read it.

(2) An auctioneer who fails to keep a notice as described in subsection (1) displayed as there described during the whole time that the auction is held commits an offence.

Penalty: A fine at level 1 on the standard scale for every day that the offence continues.

*[UK Auctioneers Act 1845 s.7 applied by Auctions (Bidding Agreements) Acts 1927 and 1969]*

**438. Penalties for promoting or conducting mock auctions.**

(1) A person who —

(a) promotes;

(b) conducts; or

(c) assists in the conduct of,

a mock auction at which one or more lots to which this Part applies are offered for sale commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this Part a sale of goods by way of competitive bidding is taken to be a mock auction if, but only if, during the course of the sale —

(a) any lot to which this Part applies is sold to a person bidding for it, and either it is sold to that person at a price lower than the amount of that person's highest bid for that lot, or part of the price at which it is sold to the person is repaid or credited to the person or is stated to be so repaid or credited;

(b) the right to bid for any lot to which this Part applies is restricted, or is stated to be restricted, to persons who have bought or agreed to buy one or more articles; or

(c) any articles are given away or offered as gifts.

(3) A sale of goods shall not be taken to be a mock auction by virtue of subsection (2)(a) if it is proved that the reduction in price, or the repayment or credit, as the case may be —

(a) was on account of a defect discovered after the highest bid in question had been made, being a defect of which the person conducting the sale was unaware when that bid was made; or

(b) was on account of damage sustained after that bid was made.

*[UK Mock Auctions Act 1961 s.1]*

#### **439. Mock auctions: Interpretation**

(1) In section 438 —

“sale of goods by way of competitive bidding” means any sale of goods at which the persons present, or some of them, are invited to buy articles by way of competitive bidding;

“competitive bidding” includes any mode of sale whereby prospective purchasers may be enabled to compete for the purchase of articles, whether by way of increasing bids or by the offer of articles to be bid for at successively decreasing prices or otherwise;

“lot to which this section applies” means a lot consisting of or including one or more prescribed articles;

“prescribed articles” means any plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament or any musical or scientific instrument or apparatus;

“stated”, in relation to a sale of goods by way of competitive bidding, means stated by or on behalf of the person conducting the sale, by an announcement made to the persons for the time being present at the sale.

(2) For the purposes of section 438 and this section, any bid stated to have been made at a sale of goods by way of competitive bidding is conclusively presumed to have been made, and to have been a bid of the amount stated; and any reference in that section to the sale of a lot to a person who has made a bid for it includes a reference to a purported sale of it to a person stated to have bid for it, whether that person exists or not.

(3) For the purposes of section 438 and this section, anything done in or about the place where a sale of goods by way of competitive bidding is held, if done in connection with the sale, is taken to be done during the course of the sale, whether it is done at the time when any articles are being sold or offered for sale by way of competitive bidding or before or after any such time.

(4) Subject to section 6(6) of the Constitution (which relates to being tried twice for the same offence) nothing in this Part limits any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part.

*[UK Mock Auctions Act 1961 s.3]*

*Unsolicited goods*

**440. Demands and threats regarding payment**

(1) A person ('A') who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business —

- (a) makes a demand for payment; or
- (b) asserts a present or prospective right to payment,

for what A knows are unsolicited goods sent to another person ('B') with a view to that B acquiring them for the purposes of B's trade or business, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(2) A person who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business and with a view to obtaining any payment for what the person knows are unsolicited goods sent as aforesaid —

- (a) threatens to bring any legal proceedings; or
- (b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so; or
- (c) invokes or causes to be invoked any other collection procedure or threatens to do so,

commits an offence.

Penalty: A fine at level 5 on the standard scale.

(3) In this section and section 441, "unsolicited" means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person's behalf.

*[UK Unsolicited Goods and Services Act 1971 s.1]*

**441. Directory entries**

(1) A purchaser ('P') is not liable to make any payment, and is entitled to recover any payment made by P, by way of charge for including or arranging for the inclusion in a directory of an entry relating to P or P's trade or business, unless —

- (a) there has been signed by P or on P's behalf an order complying with this section;
- (b) there has been signed by P or on P's behalf a note complying with this section of P's agreement to the charge and before the note was signed, a copy of it was supplied, for retention by P, to P or a person acting on P's behalf; or
- (c) there has been transmitted by P or a person acting on P's behalf an electronic communication which includes a statement that P agrees to the charge and the relevant condition is satisfied in relation to that communication.

(2) If, when a payment in respect of a charge would, in the absence of an order or note of agreement to the charge complying with this section and in the absence of an electronic communication in relation to which the relevant condition is satisfied, be recoverable from a person in accordance with subsection (1), a person ('A') demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without knowing or having reasonable cause to believe that —

- (a) the entry to which the charge relates was ordered in accordance with this section;
- (b) a proper note of the agreement has been duly signed; or
- (c) the requirement of subsection (1)(c) have been met,

A commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) For the purposes of subsection (1), an order for an entry in a directory must be made by means of an order form or other stationery belonging to P and bearing, in print, P's name and address (or one or more of P's addresses) and a note complying with subsection (4).

(4) The note required by subsections (1) and (3) is a note of P's agreement to the charge which—

- (a) states the amount of the charge immediately above the place for signature; and
- (b) identifies the directory or proposed directory, giving the following particulars of it —
  - (i) the proposed date of publication of the directory or of the issue in which the entry is to be included and the name and address of the person producing it;
  - (ii) if the directory or that issue is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;
  - (iii) if the directory or that issue is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed; and
- (c) sets out or gives reasonable particulars of the entry in respect of which the charge would be payable.

(5) In relation to an electronic communication which includes a statement that P agrees to a charge for including or arranging the inclusion in a directory of any entry, the relevant condition is that —

- (a) before the electronic communication was transmitted the information referred to in subsection (6) was communicated to P; and

(b) the electronic communication can readily be produced and retained in a visible and legible form.

(6) The information to be communicated to P is —

(a) the following particulars —

- (i) the amount of the charge;
- (ii) the name of the directory or proposed directory;
- (iii) the name of the person producing the directory;
- (iv) the geographic address at which that person is established;
- (v) if the directory is or is to be available in printed form - the proposed date of publication of the directory or of the issue in which the entry is to be included;
- (vi) if the directory or the issue in which the entry is to be included is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;
- (vii) if the directory or the issue in which the entry is to be included is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed;
- (viii) if the directory is or is to be available in a form other than in printed form - adequate details of how it may be accessed; and

(b) reasonable particulars of the entry in respect of which the charge would be payable.

(7) In this section “electronic communication” means a communication by electronic means.  
[UK Unsolicited Goods and Services Act 1971 s.2]

## CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

### PART 16 – TREASON

#### **442. Treason**

(1) A person who, owing allegiance to Her Majesty —

- (a) kills, wounds or causes bodily harm to Her Majesty;
- (b) imprisons or restrains Her Majesty;
- (c) forms an intention to do (a) or (b) and manifests such intention by an overt act;

- (d) levies war against Her Majesty in the Falkland Islands or elsewhere —
- (i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
  - (ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels; or
  - (iii) in order to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly, the United Kingdom Parliament, or the legislature of any other British overseas territory or of a Crown dependency;
- (e) instigates any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a Crown dependency;
- (f) assists by any means whatever any public enemy at war with Her Majesty; or
- (g) conspires with any other person to do anything mentioned in paragraph (a), (b) or (d),

commits the offence of treason.

Penalty: As provided in subsection (3)

(2) A person who murders —

- (a) the Lord Chancellor;
- (b) the First Lord of the Treasury; or
- (c) any judge of the Crown Court, the Court of Appeal, or the Supreme Court,

while any of them is performing the duties of the office, commits the offence of treason.

Penalty: As provided in subsection (3).

(3) A person convicted of the offence of treason must be sentenced to life imprisonment, but subject to section 728 of the Criminal Procedure and Evidence Ordinance 2014 if the person convicted is aged under 21.

(4) In subsection (1)(a), (b) and (c), “Her Majesty” means Her Majesty Queen Elizabeth II, Her lawful heirs and successors, Her spouse, Her eldest son, the spouse of Her eldest son, and Her eldest daughter, if unmarried.

(5) An offence under this section is triable on indictment only.

*[Treason Act 1351; Treason Act 1702, s.3]*

#### **443. Treasonable offences**

(1) A person who forms an intention to —

(a) depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;

(b) levy war against Her Majesty within the United Kingdom or the Falkland Island or any other British overseas territory or any Crown dependency in order —

(i) by force or constraint to compel Her Majesty to change Her measures or counsels; or

(ii) to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly or the United Kingdom Parliament or the legislature of any other British overseas territory or of a Crown dependency; or

(c) instigate any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a Crown dependency,

and manifests such intention by an overt act in the Falkland islands or elsewhere or by publishing any printing or writing, commits an offence.

Penalty: Imprisonment for life.

(2) It is not a defence to a charge under this section that any act proved against the defendant amounts to treason under section 442; but a person convicted or acquitted of an offence under this section may not afterwards be prosecuted for treason under section 442 upon the same facts.

(3) An offence under subsection (1) is triable on indictment only.

*[Treason Felony Act 1848, ss.3, 7]*

#### **444. Limitation and procedure**

(1) A person may not be prosecuted for an offence under section 442 or 443 unless the prosecution is commenced within 3 years after the offence is committed.

(2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty.

(3) The procedure on a trial for treason or any treasonable offence is the same as the procedure on a trial for murder.

*[Treason Act 1695 ss.5, 6]*

#### **445. Assaults on the Queen**

(1) A person who wilfully —

(a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;

(b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused —

- (i) discharges, or points, aims or presents any arms at or near Her Majesty;
- (ii) causes any explosive substance to explode near Her Majesty;
- (iii) assaults Her Majesty; or
- (iv) throws anything at or upon Her Majesty,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this section, “arms” includes imitation and toy arms.  
*[Treason Act 1842 ss.2, 3]*

## PART 17 – SECURITY

### *The armed forces*

#### **446. Inciting disaffection**

(1) A person who maliciously and wilfully endeavours to seduce any member of the armed forces of the Crown from his or her duty or allegiance to Her Majesty commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who, with intent to commit or to aid, abet, counsel, or procure the commission of an offence under subsection (1), has in his or her possession or under his or her control a document of such a nature that the dissemination of copies of it among members of the armed forces of the Crown would constitute such an offence, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Incitement to Disaffection Act 1934 ss.1 and 2 adapted]*

#### **447. Assisting, etc. desertion**

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to assist or procure any person who is serving in the armed forces of the Crown to desert or improperly absent himself or herself from duty; or

(b) to conceal, employ or continue to employ any such person who is a deserter or so improperly absent from duty, knowing the person to be a deserter or so improperly absent.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

*[UK Armed Forces Act 2006 ss.8 and 10 adapted]*

#### **448. Bringing contempt on uniform**

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to wear without the permission of the Governor —

- (i) the uniform of any of those forces; or a

- (ii) any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform,

in such a manner or under such circumstances as to be likely to bring contempt upon that uniform; or

- (b) to employ any other person so to wear that uniform or dress.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

*[UK Uniforms Act 1894 s.3]*

#### **449. Unlawful drilling**

(1) Any meeting or assembly of persons for the purpose of —

- (a) training or drilling persons to the use of arms;
- (b) being trained or drilled to the use of arms; or
- (c) practising military exercises, movements, or evolutions,

without the written authority of the Governor, or of a public officer authorised by the Governor for the purpose, is prohibited.

(2) A person present at a prohibited meeting or assembly for the purpose mentioned in subsection (1)(a) commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(3) A person who at a prohibited meeting or assembly aids or assists a person for the purpose mentioned in subsection (1)(a) commits an offence.

Penalty: Imprisonment for 7 years.

(4) A person present at a prohibited meeting for a purpose mentioned in subsection (1)(b) or (c) commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) A police officer may disperse any prohibited meeting or assembly and arrest without warrant any person present at or aiding and abetting any such meeting or assembly.

(6) A prosecution for an offence under this section —

- (a) must be brought within 6 months after the date of the offence;
- (b) may not be brought except by, or with the consent of, the Attorney General.

(7) In this section, “prohibited meeting or assembly” has the meaning given to that term by subsection (1).

*[UK Unlawful Drilling Act 1819 ss.1, 2 and 7]*

*The police*

**450. Causing disaffection among police officers**

It is an offence for a person —

(a) to cause, or attempt to cause, or do any act calculated to cause, disaffection amongst members of the police force; or

(b) to induce or attempt to induce or do any act calculated to induce any police officer to withhold his or her services or to commit a breach of discipline.

Penalty: Imprisonment for 2 years or a fine, or both.

*[Crimes Ord. s.31; Police Ord. s.57; UK Police Act 1996 s.91]*

**451. Obstructing police officer in the performance of duty**

A person who resists or wilfully obstructs —

(a) a police officer in the performance of the police officer's duty; or

(b) a person assisting the police officer in the performance of that duty,

commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

*[Crimes Ord. s.34 modified; UK Police Act 1996 s.89]*

**452. Impersonating a police officer, etc.**

(1) A person who, with intent to deceive —

(a) pretends to be a police officer, customs officer or immigration officer; or

(b) makes any statement or does any act calculated falsely to suggest that he or she is such an officer,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person who pretends to be a police officer, customs officer or immigration officer with a view to obtaining —

(a) admission to premises;

(b) information; or

(c) any other benefit,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(3) A person who, not being a police officer, customs officer or immigration officer, wears any article of police uniform in circumstances where the article gives the person an appearance so nearly resembling that of such an officer as to be likely to deceive commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) A person who, not being a police officer, customs officer or immigration officer, has in his or her possession any article of the uniform of any such officer commits an offence, unless the person can prove that he or she obtained possession of the article in question lawfully and that his or her possession of it is for a legal purpose.

Penalty: A fine at level 3 on the standard scale.

(5) In this section —

“article of police uniform” means any article of uniform or any distinctive badge or mark or document of identification issued to police, customs or immigration officers or which has the appearance of any such article, badge, mark or document.

“customs officer” has the meaning given to that term by the Customs Ordinance;

“immigration officer means a person appointed as such under section 3 of the Immigration Ordinance.

*[UK Police Act 1996 s.90; Commissioners for Revenue and Customs Act 2005 s.30]*

#### **453. Offences of escaping**

(1) A person who is —

- (a) lawfully in the custody of a police officer or other public officer;
- (b) lawfully detained in any place; or
- (c) serving any sentence of imprisonment or other custodial sentence,

and who escapes, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is —

- (a) lawfully in the custody of a police officer or other public officer;
- (b) lawfully detained in any place; or
- (c) serving any sentence of imprisonment or other custodial sentence,

any police officer or other public officer who negligently allows that person to escape commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(3) An offence under subsection (1) is committed —

(a) whether the escape was effected by artifice or as a result of the negligence of the person or persons who had custody of the escapee; and

(b) whether the escape was made from a place of lawful custody or prison or elsewhere.

*[Crimes Ord. ss.35 and 36]*

**454. Escaping: Ancillary offences**

(1) A person who —

(a) encourages;

(b) aids and abets; or

(c) assists,

an offence under section 453(1) commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, with intent to facilitate the escape of any prisoner —

(a) conveys anything into a prison or to a prisoner; or

(b) places anything anywhere with a view to it coming into the possession of a prisoner,

commits an offence, whether or not escape is effected.

Penalty: Imprisonment for 5 years or a fine, or both

(3) A person must not be —

(a) prosecuted for an offence under both subsection (1) and subsection (2) in respect of the same facts; nor

(b) prosecuted for an offence under subsection (1) and under Part 4 for an ancillary offence in relation to the same escape.

*[Crimes Ord. s.38 modified]*

**455. Escaping: Supplementary**

(1) If a person, in committing an offence under section 453(1) uses —

(a) violence, explosives or any offensive weapon; or

(b) a threat of the use of anything mentioned in paragraph (a),

to assist in effecting his or her own escape, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(2) If a person, in committing an offence under section 454(1) uses —

- (a) violence, explosives or any offensive weapon; or
- (b) a threat of the use of anything mentioned in paragraph (a),

to encourage, aid and abet or assist the escape of another person, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(3) For the purposes of sections 453 and 454, a person is deemed to be lawfully in custody —

- (a) while confined in or being taken to or from any prison or place of lawful custody;
- (b) while for any other reason outside a prison or place of lawful custody, in the custody or under the control of a police officer;
- (c) while being taken to any place to which the person is required or authorised to be taken in custody; and
- (d) while kept in custody in pursuance of any lawful requirement or authorisation.

*[Crimes Ord. ss.37 and 39 modified]*

#### **456. Harboursing**

(1) This section applies in relation to a person ('A') who —

- (a) has escaped from a prison; or
- (b) having been sentenced to imprisonment or detention, is otherwise unlawfully at large.

(2) A person who knowingly harbours A, or gives to A any assistance, with intent to prevent, hinder or interfere with A's being taken into custody, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

*[UK CJ Act 1961 s.22]*

*False alarms, etc.*

#### **457. False alarms, etc.**

(1) A person who knowingly gives or causes to be given a false alarm of fire to the police force or to the fire service commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) A person ('A') who causes any wasteful employment of any police officer by knowingly making to any other person a false report —

- (a) likely to give rise to apprehension for the safety of any persons or property;
- (b) saying or implying that an offence has been committed; or
- (c) saying or implying that A has information material to any police inquiry,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(3) A person who, knowing that there is no sufficient reason to do so, summons or causes an ambulance or a medical practitioner to be summoned to attend at any place, commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

[Crimes Ord.ss.42, 43, 44]

## PART 18 - JUDICIAL PROCEEDINGS

### **458. Restriction on reports of divorce and similar proceedings**

(1) It is an offence for a person to print or publish, or cause or procure to be printed or published in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage or for judicial separation, any particulars other than —

- (a) the names and occupations of the parties and witnesses;
- (b) a concise statement of the charges, defences and countercharges in support of which evidence has been given
- (c) submissions on any point of law arising in the course of the proceedings, and the decision of the court on them;
- (d) the judgment of the court and observations made by the judge in giving judgment.

Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale.

(2) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(3) Nothing in this section applies to —

- (a) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication of them to persons concerned in the proceedings;
- (b) the printing or publishing of any notice or report in pursuance of the directions of a court; or
- (c) the printing or publishing of any matter —

(i) in a separate volume or part of a *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; or

(ii) in a publication of a technical character *bona fide* intended for circulation among members of the legal or medical profession.

[UK CJ Act 1925 s.1 (repealed)]

**459. Publication of information relating to proceedings in private**

(1) Subject to subsection (3), the publication of information relating to proceedings before any court sitting in private is a contempt of court if —

(a) the proceedings —

(i) relate to the exercise of the inherent jurisdiction of the Supreme Court with respect to youths;

(ii) are brought under the Children Ordinance 2014; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a youth;

(b) the proceedings are brought in relation to the property of a person suffering from mental disorder;

(c) the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) the court (if it has power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without limiting subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not of itself contempt of court unless the court (having power to do so) expressly prohibits the publication.

(3) The court may in its discretion give leave for the publication of any information the publication of which under subsection (1) would otherwise be a contempt of court.

(4) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.

(5) Nothing in this section is to be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

*[UK Administration of Justice Act 1960 s.12 adapted]*

**460. Restriction on reports of other judicial proceedings**

(1) This Part is in addition to and does not limit the following provisions of the Criminal Procedure and Evidence Ordinance 2014 which restrict the reporting of publication of proceedings in criminal proceedings, namely —

- (a) sections 200 to 206 in relation to the reporting of sending proceedings;
- (b) section 251 to 253 in relation to preliminary rulings;
- (c) section 387 and 388 in relation to derogatory assertions;
- (d) sections 461 to 470 in relation to the reporting of judicial proceedings which involve vulnerable witnesses;
- (e) section 753 in relation to judicial proceedings which involve young offenders.

(2) An offence under any of the provisions mentioned in subsection (1) committed in the face of the court may, instead of being prosecuted under those provisions, be treated as a contempt of court under the provisions of this Part.

(3) This Part applies to a breach of the restriction on reporting in section 691 of the Criminal Procedure and Evidence Ordinance 2014 (which relates to reporting of retrials) as provided by that section.

*[UK Magistrates' Courts Act 1980 s.8; UK Crime & Disorder Act 1998 Sched. 3 expanded]*

**461. Taking photographs, etc. in court**

(1) It is an offence for a person —

- (a) to take or attempt to take in any court any photograph of the proceedings of the court;
- (b) with a view to publication, to make or attempt to make in any court any portrait or sketch of the judge of the court, or a juror or witness in or a party to any proceedings before the court, whether civil or criminal; or
- (c) to publish any photograph, portrait, or sketch taken or made in contravention of paragraph (a) or (b), or any reproduction of such a photograph, portrait or sketch.

Penalty: A fine at level 3 on the standard scale.

(2) For the purposes of this section —

- (a) “court” means any court of justice, including a coroner’s court;
- (b) “judge” includes the Registrar, a justice of the peace and the coroner;

(c) a photograph, portrait or sketch of a person is deemed to be taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is taken or made of the person while the person is entering or leaving the courtroom or any such building or precincts.

*[UK CJ Act 1925 s.41 adapted]*

*Perverting the course of justice, etc.*

**462. Perverting the course of justice, etc.**

(1) A person who, with intent to pervert the course of public justice, does an act or a series of acts which have a tendency to pervert the course of public justice commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) If a person has committed an imprisonable offence, any other person who, knowing or believing that the offence or some other imprisonable offence has been committed, and that he or she has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) No proceedings may be commenced for an offence under this section except by or with the consent of the Attorney General.

*[UK Criminal Law Act 1967 s.5 and common law]*

**463. Intimidation, etc. of witnesses, jurors and others**

(1) A person commits an offence if the person —

(a) does an act which intimidates, and is intended to intimidate, another person (“the victim”);

(b) does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and

(c) does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person commits an offence if the person —

(a) does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, threatens to do an act which would harm that other person;

(b) does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed, or some other person, has assisted in an investigation into an offence or has

given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and

(c) does or threatens to do it because of that knowledge or belief.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made —

(a) otherwise than in the presence of the victim; or

(b) to a person other than the victim.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) If, in proceedings against a person for an offence under subsection (1), it is proved that the person did an act falling within subsection (1)(a) with the knowledge or belief required by subsection (1)(b), the person is presumed, unless the contrary is proved, to have done the act with the intention required by subsection (1)(c).

(7) If, in proceedings against a person ('A') for an offence under subsection (2), it is proved that within the relevant period —

(a) A did an act which harmed, and was intended to harm, another person ('B'); or

(b) intending to cause B fear of harm, A threatened to do an act which would harm B,

and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by subsection (2)(b), A is presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by subsection (2)(c).

(8) In this section —

“investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

“offence” includes an alleged or suspected offence;

“potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

“the relevant period” means —

(a) in relation to a witness or juror in any proceedings for an offence - the period beginning with the commencement of the proceedings and ending a year after the conclusion of the trial or, if there is an appeal, the conclusion of the appeal;

(b) in relation to a person who has, or is believed by the defendant to have, assisted in an investigation into an offence, but who was not also a witness in proceedings for an offence - the period of one year beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation; and

(c) in relation to a person who both has, or is believed by the defendant to have, assisted in the investigation into an offence and was a witness in proceedings for the offence - the period beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation and ending as stated in (a) above.

(9) For the purposes of the definition of the relevant period in subsection (8) —

(a) proceedings for an offence are commenced at the earliest of the following times —

(i) when a justice of the peace issues a summons or warrant under section 258 of the Criminal Procedure and Evidence Ordinance 2014 (Issue of summons or warrant for arrest) in respect of the offence;

(ii) when a person is charged with the offence after being taken into custody without a warrant;

(iii) when a bill of indictment is preferred by virtue of section 290 of the Criminal Procedure and Evidence Ordinance 2014 (Bills of indictment);

(b) proceedings at a trial of an offence are concluded with the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the defendant or the sentencing of or other dealing with the defendant for the offence of which the defendant was convicted; and

(c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(10) This section is in addition to, and does not derogate from, any offence subsisting at common law relating to witnesses and jurors.

*[Crimes Ord. s.50; UK Criminal Justice & Public Order Act 1994 s.51]*

*Contempt of court*

**464. Contempt of the Supreme Court or Court of Appeal**

(1) Conduct, whether in the face of the court or otherwise, which constituted contempt of the Court of Appeal or the Supreme Court before the commencement of this Part —

(a) constitutes contempt of the respective court after that commencement, subject to section 469; and

(b) may be dealt with by the Court of Appeal or the Supreme Court respectively by imprisonment or a fine or both, after hearing representations both as to liability and as to penalty from or on behalf of the defendant, and subject to section 469.

(2) Nothing in this Part —

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

*[Common law; UK Contempt of Court Act 1981 s.6]*

**465. Strict liability rule**

(1) In this Part “the strict liability rule” means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

(2) The strict liability rule applies —

(a) only in relation to publications, and for this purpose “publication” includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public;

(b) only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced;

(c) to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(3) Section 470 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

(4) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that relevant proceedings are active.

(5) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) the person does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(6) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

(7) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(8) In any such proceedings the court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for a period the court thinks necessary for that purpose.

(9) For the purposes of subsection (7) a report of proceedings is to be treated as published contemporaneously —

(a) in the case of a report of which publication is postponed pursuant to an order under subsection (8) of this section - if published as soon as practicable after that order expires;

(b) in the case of a report of sending proceedings of which publication is permitted by virtue only of section 200 or 201 of the Criminal Procedure and Evidence Ordinance 2014 (reporting of sending proceedings) - if published as soon as practicable after publication is so permitted.

(10) A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

*[Contempt of Court Ord. Schedule; UK Contempt of Court Act 1981 ss.1 to 5]*

#### **466. Confidentiality of jury's deliberations**

(1) Subject to subsection (2), it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars —

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,

or to the publication of any particulars so disclosed.

*[UK Contempt of Court Act 1981 s.8]*

#### **467. Use of tape recorders**

(1) Subject to subsection (4), it is a contempt of court to —

(a) use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused at the discretion of the court, and if granted may be granted subject to conditions the court thinks proper with respect to the use of any recording made pursuant to the leave; and if leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without affecting any other power to deal with an act of contempt under subsection (1)(a), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to it to be the owner) be sold or otherwise disposed of in the manner the court directs.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

*[UK Contempt of Court Act 1981 s.9]*

#### **468. Contempt of the Magistrate's Court or the Summary Court**

(1) The Magistrates' Court has jurisdiction under this section to treat as in contempt of court any person who wilfully —

(a) insults the Senior Magistrate or justices of the peace, any witness before or officer of the court or any legal practitioner having business in the court, during his or her or their sitting or attendance in court or in going to or returning from the court;

- (b) interrupts the proceedings of the court or otherwise misbehaves in court;
- (c) commits a contempt of court of the kind mentioned in section 466 or 467.
- (d) commits an offence under any of the provisions mentioned in section 460(1) in the face of the court.

(2) In any such case the Magistrate's Court or the Summary Court, as the case may be, may —

(a) order any officer of the court, or any police officer, to take the offender into custody and detain him or her until the rising of the court; and

(b) commit the offender to custody for a specified period not exceeding one month or impose on him or her a fine at level 4 on the standard scale, or both.

(3) The Magistrate's Court or the Summary Court, as the case may be, may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his or her discharge.

(4) Provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to fines, power to rectify mistakes and appeals to Supreme Court apply in relation to an order made by the Magistrate's Court or the Summary Court under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence by that court.

*[UK Contempt of Court Act 1981 s.12]*

#### **469. Penalties and procedure**

(1) If a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal must —

(a) (without affecting the power of the court to order the person's earlier discharge) be for a fixed term;

(b) not on any one occasion exceed 2 years in the case of committal by the Supreme Court or Court of Appeal, or one month in the case of committal by the Magistrate's Court or the Summary Court.

(2) In the Magistrate's Court and the Summary Court a fine for contempt of court must not exceed level 4 on the standard scale and is subject to section 468(4).

(3) A court has the same power to make a hospital order under Part 34 of the Criminal Procedure and Evidence Ordinance 2014 (Mentally Disordered Offenders) in the case of a person suffering from mental disorder who could otherwise be committed to prison for contempt of court as it has under that Part in the case of a person convicted of an offence.

(4) No proceedings for a contempt of court under this Part may be commenced except by, or with the consent of, the Attorney General, or on the motion of a court having jurisdiction to deal with it.

(5) A fine imposed under this section or section 468 is, for the purposes of any enactment, deemed to be a sum adjudged to be paid by a conviction and may be enforced accordingly.

[UK Contempt of Court Act 1981 ss.7, 14 and 16]

**470. Times when proceedings are active**

(1) Criminal, appellate and other proceedings are active for the purpose of section 469 at the times respectively prescribed by the following subsections; and in relation to proceedings in which more than one of the steps described in any of those subsections is taken, the reference in that subsection is a reference to the first of those steps.

(2) Subject to the following subsections, criminal proceedings are active from the relevant initial step specified in subsection (3) until concluded as described in subsection (4).

(3) The initial steps of criminal proceedings are —

- (a) arrest without warrant;
- (b) the issue of a warrant for arrest;
- (c) the issue of a summons to appear;
- (d) the service of an indictment or other document specifying the charge;
- (e) an oral charge.

(4) Criminal proceedings are concluded —

- (a) by acquittal or, as the case may be, by sentence;
- (b) by any other verdict, finding, order or decision which puts an end to the proceedings;
- (c) by discontinuance or by operation of law.

(5) The reference in subsection (4)(a) to sentence includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events and a deferment of sentence under Part 23 of the Criminal Procedure and Evidence Ordinance 2014 (Sentencing: General Principles).

(6) Proceedings are discontinued within the meaning of subsection (4)(c) —

- (a) if the charge or summons is withdrawn or a *nolle prosequi* entered;

(b) in the case of proceedings commenced by arrest without warrant - if the person arrested is released, otherwise than on bail, without having been charged.

(7) Criminal proceedings cease to be active if an order is made for the charge to lie on the file, but become active again if leave is later given for the proceedings to continue.

(8) Without affecting subsection (4)(b), criminal proceedings against a person cease to be active if —

(a) the defendant is found to be under a disability such as to render him or her unfit to be tried or unfit to plead; or

(b) a hospital order is made in his or her case under [Part 34] of the Criminal Procedure and Evidence Ordinance 2014 (Mentally Disordered Offenders),

but become active again if they are later resumed.

(9) Criminal proceedings against a person which become active on the issue of a warrant for the person's arrest cease to be active 12 months after the date of the warrant unless the person has been arrested within that period, but become active again if the person is subsequently arrested.

(10) Proceedings other than criminal proceedings and appellate proceedings are active from the time when a date for the trial or hearing is fixed until the proceedings are disposed of or discontinued or withdrawn; and for the purposes of this subsection any motion or application made in or for the purposes of any proceedings is to be treated as a distinct proceeding.

(11) Appellate proceedings are active from the time when they are commenced by —

(a) application for leave to appeal or apply for review, or by notice of such an application;

(b) notice of appeal or of application for review; or

(c) other originating process,

until disposed of or abandoned, discontinued or withdrawn.

(12) If, in appellate proceedings relating to criminal proceedings, the court —

(a) remits the case to the court below; or

(b) orders a new trial,

any further or new proceedings which result are to be treated as active from the conclusion of the appellate proceedings.

*[UK Contempt of Court Act 1981 Sched. 1]*

#### **471. Supplementary provisions**

(1) No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which the person is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security, or for the prevention of disorder or crime.

(2) If a court that has power to do so allows a name or other matter to be withheld from the public in proceedings before the court, the court may give any directions prohibiting the publication of that name or matter in connection with the proceedings that appear to the court to be necessary for the purpose for which it was so withheld.

(3) Nothing in this Part —

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

*[UK Contempt of Court Act 1981 ss. 10 and 11]*

### PART 19 – PERJURY, ETC.

#### **472. Interpretation of Part**

(1) For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial, if —

(a) the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question; and

(b) the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him or her.

(2) The expression “judicial proceedings” includes proceedings before the European Court or any court attached to it or any other court, tribunal or person having by law power to hear, receive, and examine evidence on oath.

*[UK Perjury Act 1911 s.15]*

### *Perjury*

#### **473. Perjury in judicial proceedings**

(1) A person lawfully sworn as a witness or as an interpreter in any judicial proceedings who wilfully makes a statement material in the proceeding, which the person knows to be false or does not believe to be true, commits the offence of perjury.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If a statement made for the purposes of any judicial proceedings is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it is, for the purposes of this section, to be treated as having been made in judicial proceedings.

(3) A statement made by a person lawfully sworn in the Falkland Islands for the purposes of any judicial proceedings in a place outside the Falkland Islands is, for the purposes of this section, to be treated as a statement made in judicial proceedings in the Falkland Islands.

(4) If, for the purposes of judicial proceedings in the Falkland Islands, a person is lawfully sworn under the authority of any enactment —

- (a) in any part of Her Majesty's dominions;
- (b) before a British officer in a foreign country; or
- (c) within the jurisdiction of the Admiralty of England,

a statement made by the person (unless the enactment under which it was made otherwise specifically provides) is to be treated for the purposes of this section as having been made in the judicial proceedings in the Falkland Islands for the purposes of which it was made.

(5) The question whether a statement in respect of which perjury is alleged was material is a question of law to be determined by the court of trial.

*[UK Perjury Act 1911 s.1]*

#### **474. Perjury in the European Court, etc.**

(1) A person who, in sworn evidence before the European Court or any court attached to it, makes any statement which the person knows to be false or does not believe to be true, commits an offence and may be proceeded against and punished as for an offence under section 473(1).

(2) For the purposes of this section, it is immaterial whether the defendant does or does not have Falkland Islands status.

*[UK European Communities Act 1972 s.11(1) adapted]*

#### **475. Subornation of perjury**

Every person who counsels, procures or suborns another person to commit an offence under this Part commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[UK Perjury Act 1911 s.7 adapted]*

## *False statements*

### **476. Penalty for giving false unsworn evidence**

(1) This section applies when a person gives unsworn evidence in criminal proceedings pursuant to section 352 of the Criminal Procedure and Evidence Ordinance 2014 (Reception of unsworn evidence).

(2) A person who wilfully gives false evidence in such circumstances that, had the evidence been given on oath, the person would have been guilty of perjury, commits an offence.

Penalty: (i) in the case of an adult - imprisonment for 6 months or a fine at level 5 on the standard scale, or both;

(ii) in the case of a youth – a fine at level 3 on the standard scale.

*[UK Youth Justice and Criminal Evidence Act 1999 s.57]*

### **477. False written statements tendered in evidence**

A person who in a written statement tendered in evidence in criminal proceedings by virtue of section 411 of the Criminal Procedure and Evidence Ordinance 2014 (Proof by written statement) wilfully makes a statement material in those proceedings which the person knows to be false or does not believe to be true, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK CJ Act 1967 s.89]*

### **478. False unsworn statements under the Evidence (Proceedings in Other Jurisdictions) Act 1975**

A person who, in giving any evidence (either orally or in writing) otherwise than on oath, when required to do so by an order under section 2 of the UK Evidence (Proceedings in Other Jurisdictions) Act 1975, makes a statement —

(a) which the person knows to be false in a material particular; or

(b) which is false in a material particular and which the person does not believe to be true, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Perjury Act 1911 s.1A; Evidence (Proceedings in other Jurisdictions) Act 1975]*

### **479. False statements on oath made otherwise than in judicial proceedings**

A person who —

(a) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in judicial proceedings) wilfully makes a statement which is material for that purpose and which the person knows to be false or does not believe to be true; or

(b) wilfully uses any false affidavit for the purposes of the UK Bills of Sale Act 1878 as applied to the Falkland Islands,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK Perjury Act 1911 s.2]*

**480. False statements, etc. with reference to marriage**

(1) A person who, for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate, required under any enactment for the time being in force relating to marriage, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person who forbids any marriage or the issue of any certificate or licence for marriage by falsely representing himself or herself to be a person —

(a) whose consent to the marriage is required by law; or

(b) who is authorised to forbid the issue of such a certificate,

knowing such representation to be false, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Perjury Act 1911 s.3; CJ Act 1925 s.28]*

**481. False statements, etc. as to births or deaths**

A person who knowingly and wilfully —

(a) makes a false answer to any question put by or on behalf of the Registrar General relating to the particulars required to be registered concerning any birth or death;

(b) gives to the Registrar General any false information concerning any birth or death or the cause of any death;

(c) makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths;

(d) knowing any such certificate or declaration to be false, uses it as true or gives or sends it as true to any person;

(e) makes, gives or uses, any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin;

(f) falsely pretends that any child born alive was still-born; or

(g) makes any false statement with intent to have it inserted in any register of births or deaths,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

*[UK Perjury Act 1911 s.4; CJ Act 1925 s.28]*

**482. False statutory declarations and other false statements**

A person who knowingly and wilfully makes (otherwise than on oath) a statement that is false in a material particular commits an offence if the statement is made —

(a) in a statutory declaration;

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which the person is authorised or required to make, attest or verify, by any enactment then in force in the Falkland Islands;

(c) in any written statement which the person is required to make or makes for the purposes of or in connection with any civil proceedings; or

(d) in any oral declaration or oral answer which the person is required to make by, under, or in pursuance of any enactment,

commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Perjury Act 1911 s.5]*

**483. False declarations, etc. to obtain registration, etc. for carrying on a vocation**

A person who —

(a) procures or attempts to procure himself or herself to be registered on any register or roll kept under or pursuant to any enactment in force in the Falkland Islands of persons qualified by law to practise any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which the person knows to be false or fraudulent, commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

*[UK Perjury Act 1911 s.6]*

**484. False statement to procure passport**

A person who, for the purpose of procuring a passport for himself or herself for any other person, makes a statement which is to his or her knowledge untrue, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.  
[UK CJ Act 1925 s.36]

**485. Offences under the British Nationality Act 1981**

(1) A person who, for the purpose of procuring anything to be done or not to be done under the UK British Nationality Act 1981 as applied to the Falkland Islands, makes a statement which the person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence.

Penalty: Imprisonment for 3 months or a fine a level 4 on the standard scale, or both.

(2) A person who fails to comply with any requirement imposed on the person under the UK British Nationality Act 1981 with respect to the delivering up of certificates of naturalisation commits an offence.

Penalty: A fine at level 3 on the standard scale.

[UK British Nationality Act 1981 s.46 (part)]

*Miscellaneous provisions*

**486. Corroboration required**

(1) A person is not liable to be convicted of any offence under this Part, or for any offence declared by any other enactment to be perjury or subornation of perjury, or to be punishable as perjury or subornation, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(2) The requirement for corroboration in relation to certain offences contained in subsection (1) applies also to an attempt to commit any of those offences.

[UK Perjury Act 1911 s.13 adapted]

**487. Proof of former trial**

On a prosecution —

(a) for perjury alleged to have been committed on the trial of an indictment or criminal information; or

(b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial may be proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information or charge and trial purporting to be signed by the Registrar or clerk of the court, or other person having the custody of the records of the court where the indictment or information was tried, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

[UK Perjury Act 1911 s.14]

**488. Form of indictment or charge**

(1) In an information or charge for an offence under this Part, it is sufficient to state the substance of the offence charged, and before which court or person (if any) the offence was

committed, without stating the proceedings or any part of the proceedings in the course of which the offence was committed, and without stating the authority of any court or person before whom the offence was committed.

(2) In an information or charge for aiding, abetting, counselling, suborning, or procuring any other person to commit an offence under this Part, or for conspiring with any other person to commit any such offence, it is sufficient —

(a) if that offence has been committed - to allege that offence, and then to allege that the defendant procured the commission of that offence;

(b) if that offence has not been committed - to state the substance of the offence charged against the defendant without stating any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation that is an offence under this Part.

*[UK Perjury Act 1911 s.12]*

#### **489. Saving for corrupt practice offence**

If the making of a false statement by a person is not only an offence under this Part, but also by virtue of some other Part is a corrupt practice, the liability of the person under this Part is in addition to and not in substitution for the person's liability under that other Part.

*[UK Perjury Act 1911 s.16(1)]*

## PART 20 – BRIBERY AND PUBLIC OFFICE OFFENCES

### *General bribery offences*

#### **490. Offences of bribing another person**

(1) A person ('P') commits an offence in either of the following cases.

(2) Case 1 is where —

(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P intends the advantage —

(i) to induce a person to perform improperly a relevant function or activity; or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where —

(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In Case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In Cases 1 and 2 it is irrelevant whether the advantage is offered, promised or given by P directly or through a third party.

(6) The maximum penalty for an offence under this section is —

(a) if P is an individual - imprisonment for 10 years or a fine, or both;

(b) in any other case - a fine.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

#### **491. Offences relating to being bribed**

(1) A person ('R') commits an offence in any of the following cases.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.

(3) Case 4 is where —

(a) R requests, agrees to receive or accepts a financial or other advantage; and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—

(a) by R; or

(b) by another person at R's request, or with R's assent or acquiescence.

(6) In Cases 3 to 6 it is irrelevant whether —

(a) R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party; or

(b) the advantage is (or is to be) for the benefit of R or another person.

(7) In Cases 4 to 6 it is irrelevant whether R knows or believes that the performance of the function or activity is improper.

(8) In Case 6, where a person other than R is performing the function or activity, it is also irrelevant whether that person knows or believes that the performance of the function or activity is improper.

(9) The maximum penalty for an offence under this section is —

(a) if P is an individual - imprisonment for 10 years or a fine, or both;

(b) in any other case - a fine.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

**492. Function or activity to which bribe relates**

(1) For the purposes of this Part, a function or activity is a relevant function or activity if —

(a) it falls within subsection (2); and

(b) meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection —

(a) any function of a public nature;

(b) any activity connected with a business;

(c) any activity performed by or on behalf of a body of persons (whether incorporated or not).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it —

(a) has no connection with the Falkland Islands; and

(b) is performed in a place outside the Falkland Islands.

(7) In this section, “business” includes trade or profession.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

**493. Improper performance to which bribe relates**

(1) For the purposes of this Part a relevant function or activity —

- (a) is performed improperly if it is performed in breach of a relevant expectation; and
- (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1), “relevant expectation” —

- (a) in relation a function or activity which meets condition A or B - means the expectation mentioned in the condition concerned; and
- (b) in relation a function or activity which meets condition C - means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for purposes of this Part as being done (or omitted) by that person in the performance of that function or activity.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

**494. Expectation test**

(1) For the purposes of sections 492 and 493, the test of what is expected is a test of what a reasonable person in the Falkland Islands would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of the Falkland Islands, any local custom or practice is to be disregarded unless it is permitted or required by the written law of the place concerned.

(3) In subsection (2), “written law” means law contained in —

- (a) any written constitution, or provision made by or under legislation, applicable to the place concerned; or
- (b) any judicial decision which is so applicable and is evidenced in published written sources.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

*Bribery of foreign public officials*

**495. Bribery of foreign public officials**

(1) A person ('P') who bribes a foreign public official ('F') with intent to influence F in F's capacity as a foreign public official commits an offence if P's intention is to obtain or retain —

(a) business; or

(b) an advantage in the conduct of business.

Penalty: (i) If P is an individual - imprisonment for 10 years or a fine, or both;

(ii) in any other case - a fine.

(2) P bribes F if, and only if —

(a) directly or through a third party P offers, promises or gives any financial advantage —

(i) to F; or

(ii) to another person at F's request or with F's assent or acquiescence; and

(b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the promise, offer or gift.

(3) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes —

(a) any omission to exercise those functions; and

(b) any use of F's position as such an official, even if not within F's authority.

(4) The term "foreign public official" means an individual who —

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory);

(b) exercises a public function —

(i) for or on behalf of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory); or

(ii) for any public agency or public enterprise of that country or territory (or subdivision); or

(c) is an official or agent of a public international organisation.

(5) In this section, “public international organisation” means an organisation whose members are any of the following —

- (a) countries or territories;
- (b) governments of countries or territories;
- (c) other public international organisations;
- (d) a mixture of any of the above.

(6) For the purpose of section (3)(b), the written law applicable to F is —

- (a) if the performance of the functions of F which P intends to influence would be subject to the law of the Falkland Islands - that law;
- (b) if paragraph (a) does not apply and F is an official or agent of a public international organisation - the applicable written rules of that organisation;
- (c) if paragraphs (a) and (b) do not apply - the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in —
  - (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
  - (ii) any judicial decision which is so applicable and is evidenced in published written sources.

(7) For the purposes of this section, a trade or profession is a business.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

*Failure of commercial organisations to prevent bribery*

**496. Failure of commercial organisations to prevent bribery**

(1) A relevant commercial organisation (“C”) commits an offence under this section if a person (“A”) associated with C bribes another person intending to —

- (a) obtain or retain business for C; or
- (b) obtain or retain an advantage in the conduct of business for C.

Penalty: A fine.

(2) It is a defence for C to show that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribed another person if, and only if, A —

(a) is, or would be, guilty of an offence under section 490 or 491 (whether or not A has been prosecuted for such an offence); or

(b) would be guilty of such an offence if section 503(1)(c) and (3) were omitted.

(4) Section 497 applies as regards the meaning of a person associated with C and section 498 applies as regards a duty on the Governor to publish guidance.

(5) In this section —

“partnership” means —

(a) a partnership within the meaning of the Companies and Private Partnership Ordinance; and

(b) a limited partnership registered under that Ordinance,

or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

“relevant commercial organisation” means —

(a) a body incorporated under the law of the Falkland Islands which carries on a business there or elsewhere;

(b) any other corporate body (wherever incorporated) which carries on business, or part of a business, in the Falkland Islands;

(c) a partnership formed under the law of the Falkland Islands which carries on a business (whether there or elsewhere); or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in the Falkland Islands,

and for purposes of this section, a trade or profession is a business.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

**497. Meaning of “associated person”**

(1) For the purposes of section 496 a person (‘A’) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C is irrelevant, so that A may (for example) be C’s employee, agent or subsidiary.

(3) Subject to subsection (4), the question of whether A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(4) In determining a question as mentioned in subsection (3), if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

#### **498. Guidance about commercial organisations preventing bribery**

(1) The Governor, after consulting the Criminal Justice Council, may by order publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 496(1).

(2) The Governor, after consulting as aforesaid, may from time to time by order publish revisions to guidance published under this section, or to revised guidance.

(3) Expressions used in this section have the same meaning as in section 496.

*[UK Bribery Act 2010 ss.1 to 9 and 11]*

#### *Misconduct in judicial or public office*

#### **499. Misconduct in public office**

A public officer who wilfully and without reasonable excuse or justification —

(a) neglects to perform his or her duty; or

(b) misconducts himself or herself to such a degree as to amount to an abuse of the public's trust in the office holder,

commits an offence.

Penalty: Imprisonment for 14 years or a fine, or both.

*[Common law]*

#### *Miscellaneous*

#### **500. Consent to prosecution**

No proceedings under this Part may be commenced except by, or with the consent of, the Attorney General.

*[UK Bribery Act 2010 ss.10]*

#### **501. Territorial application of this Part**

(1) If —

(a) no act or omission which forms part of an offence under section 490, 491 or 495 takes place in the Falkland Islands;

(b) a person's acts or omissions done or made outside the Falkland Islands would form part of such an offence if done or made in the Falkland Islands; and

(c) that person has a close connection with the Falkland Islands,

proceedings for the offence may be taken in the Falkland Islands.

(2) An offence is committed under section 496 irrespective of whether the acts or omissions which form part of the offence take place in the Falkland Islands or elsewhere.

(3) For the purposes of subsection (1), a person has a close connection with the Falkland Islands if the person was at the time when the acts or omissions were done or made, the person was —

(a) an individual who was ordinarily resident in the Falkland Islands; or

(b) a corporate body incorporated by or under the law of or carrying on business in the Falkland Islands.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

## **502. National security as a defence**

(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for the proper exercise of the functions of —

(a) the functions of the Crown in relation to national security; or

(b) the armed forces when engaged on active service.

(2) For the purposes of subsection (1), a "relevant bribery offence" means —

(a) an offence under section 490 which would not also be an offence under section 495;

(b) an offence under section 491;

(c) an offence of attempting or conspiring to commit, the commission of an offence falling within paragraph (a) or (b);

(d) an offence committed by encouraging, or aiding and abetting, the commission of an offence falling within paragraph (a) or (b).

(3) In relation to the intelligence services operating in the Falkland Islands, the Governor must ensure that the service has in place arrangements designed to ensure that any conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).

(4) In relation to the armed services operating in the Falkland Islands, the Governor must ensure that the forces have in place arrangements designed to ensure that any conduct of —

- (a) a member of the armed forces who is engaged on active service; or
- (b) a civilian subject to service discipline when working in support of any person falling within paragraph (a),

which would otherwise be a relevant bribery offence, is necessary for a purpose falling within subsection (1)(b).

(5) In this section —

“active service” means service in —

- (a) an action or operation against an enemy;
- (b) an operation outside the British Islands for the protection of life or property; or
- (c) the military occupation of a foreign country or territory;

“civilian subject to service discipline” and “enemy” have the same meaning as in the Act of 2006.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

### **503. Bribery offences by corporate bodies**

(1) This section applies if an offence under any of sections 490, 491 or 495 is committed by a corporate body.

(2) If the offence is proved to have been committed with the consent or connivance of —

- (a) a senior officer of the corporate body; or
- (b) a person purporting to act in such a capacity,

the senior officer or person (as well as the corporate body) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Subsection (2) does not apply, in the case of an offence committed under section 490, 491 or 495 by virtue of section 501(1), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with the Falkland Islands (within the meaning given by section 501(3)).

(4) In this section —

“director” means, in relation to a corporate body the affairs of which are managed by its members, a member of the body;

“senior officer” means, in relation to a corporate body, a director, manager, secretary or other similar officer of the body.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

#### **504. Bribery offences by partnerships**

(1) Proceedings for an offence under section 496 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purpose of such proceedings —

(a) statutory provisions relating to the service of documents have effect as if the partnership were a corporate body; and

(b) the provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to proceedings against a corporate body apply as they apply in relation to such a body.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

#### **505. Application to Crown**

This Part applies to individuals in the public service of the Crown as it applies to other individuals.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

#### **506. Abolition of common law offences**

The common law offences of bribery and embracery are abolished.

*[UK Bribery Act 2010 ss.12 to 17(1)]*

### PART 21 - PUBLIC ORDER

#### **507. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“damage”, in relation to land, includes the deposit of any substance capable of polluting the land;

“distribute” means distribute to the public or a section of the public;

“exempt person”, in relation to land (or any gathering on land), means the occupier, any member of the occupier’s family, any employee or agent of the occupier and any person whose dwelling is situated on the land;

“land” means land in the open air and includes a place partly open to the air;

“meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

“music” includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats;

“night” means the interval between 9.0 p.m. and 6.0 a.m. on the next succeeding day;

“occupier” in relation to land means the person entitled to possession of the land by virtue of an estate or interest that person holds, and in relation to assemblies on land includes the person reasonably believed by the person applying for or making the order to be the occupier;

“owner”, in relation to land, means the person in whom the freehold estate is vested or who holds the land under a lease for a term of years or from year to year;

“premises” means any place and includes any vehicle, vessel, aircraft or hovercraft;

“private land” means land other than Crown land in terms of the Land Ordinance;

“public” includes a section of the public;

“public meeting” includes any meeting in a public place and any meeting which the public or any section of it are permitted to attend, whether on payment or otherwise;

“publication” includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“sound equipment” means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment.

“structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“trespass”, in relation to land, means trespass as against the occupier of the land;

“vehicle” includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan;

“violence” means any violent conduct, so that —

(a) except in the context of affray - it includes violent conduct towards property as well as violent conduct towards persons; and

(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct.

(2) For the purposes of this Part a person may be regarded as residing on any land even if the person has a home elsewhere.

*[UK Public Order Act 1986 as am by Criminal Justice & Public Order Act 1994]*

*Riot, etc.*

### **508. Riot**

(1) If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose commits the offence of riot.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

*[UK Public Order Act 1986 s.1 adapted]*

### **509. Violent disorder**

(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence commits the offence of violent disorder.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

*[UK Public Order Act 1986 s.2 adapted]*

### **510. Affray**

(1) If —

(a) a person ('A') uses or threatens unlawful violence towards another person; and

(b) A's conduct is such as would cause any person of reasonable firmness present at the scene to fear for his or her personal safety,

A commits the offence of affray.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

*[UK Public Order Act 1986 s.3 adapted]*

### **511. Fear or provocation of violence**

(1) A person ('A') commits an offence if A —

(a) uses towards another person ('B') threatening, abusive or insulting words or behaviour;  
or

(b) distributes or displays to another person ('B') any writing, sign or other visible representation which is threatening, abusive or insulting,

either —

(c) with intent —

(i) to cause ('B') to believe that immediate unlawful violence will be used against ('B') or another by any person; or

(ii) to provoke the immediate use of unlawful violence by ('B') or another; or

(d) whereby ('B') is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

*[UK Public Order Act 1986 s.4 adapted]*

### **512. Intentionally abusive conduct**

(1) A person ('A') who, with intent to cause another person ('B') harassment, alarm or distress—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

and thereby causes B or any other person harassment, alarm or distress, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for A to prove that —

(a) A was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(b) A's conduct was reasonable.

*[UK Public Order Act 1986 s.4A, inserted by Criminal Justice & Public Order Act 1994]*

### **513. Disorderly conduct**

(1) A person who —

(a) uses threatening or abusive words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening or abusive,

within the hearing or sight of a person likely to be caused harassment, alarm or distress by such words, behaviour or representation, commits an offence.

Penalty: A fine at level 3 on the standard scale.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the defendant to prove that —

(a) the defendant had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

(b) the defendant was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(c) the defendant's conduct was reasonable.

(4) A police officer may arrest without warrant any person who —

(a) engages in offensive conduct which the police officer warns the person to stop; and

(b) engages in further offensive conduct immediately or shortly after the warning.

*[UK Public Order Act 1986 s.5 am. by Crime & Courts Act 2013]*

#### **514. Riot, etc.: Mental element**

(1) A person commits riot only if he or she intends to use violence or is aware that his or her conduct may be violent.

(2) A person commits violent disorder or affray only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(3) A person commits an offence under section 512 only if he or she intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person commits an offence under section 513 only if the person —

(a) intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive;

(b) is aware that they might be threatening or abusive; or

(c) (if the offence is constituted by behaviour) intends his or her behaviour to be, or is aware that it might be, disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which the person would be aware if not intoxicated, unless he or she shows either that the intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) “intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

*[UK Public Order Act 1986 s.6 am. by Crimes & Courts Act 2013]*

#### **515. Riot, etc.: Procedure**

(1) No prosecution for an offence of riot or encouraging or assisting the offence of riot may be commenced except by, or with the consent of, the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 508 to 513 creates one offence.

(3) If on the trial of a person charged with violent disorder or affray the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 511.  
*[UK Public Order Act 1986 s.7]*

**516. Common law offences of riot etc. abolished**

(1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) In any enactment coming into force or instrument taking effect after the coming into force of this Part, a reference to “riot”, “rout”, “unlawful assembly” or “affray”, or their cognate expressions, is to be construed as a reference to the offences created by sections 508 to 510.

(3) Subject to subsection (2), and unless a different intention appears, nothing in this Part affects the meaning of “riot” or of any cognate expression in any enactment in force, or instrument taking effect, before the coming into force of this Part.

*[UK Public Order Act 1986 ss.9 & 10]*

*Disguises*

**517. Authorisation relating to disguises**

(1) If a police officer of the rank of inspector or above reasonably believes —

(a) that activities may take place in any locality in the Falkland Islands that are likely (if they take place) to involve the commission of offences; and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

the officer may authorise the power conferred by section 518 to be exercised in that locality for a specified period not exceeding 24 hours.

(2) If it appears to an officer of the rank of inspector or above that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the locality, the officer may extend the authorisation for a further period not exceeding 24 hours.

(3) An authorisation or extension under this section must be in writing signed by the police officer who gives it, and must specify —

(a) the locality in which and the period during which the powers conferred by section 518 are exercisable;

(b) the grounds for the authorisation or extension.

(4) The police officer who gives an authorisation under subsection (1) or an extension under subsection (2) must as soon as practicable inform the Chief Police Officer.

*[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24]*

**518. Power to require removal of disguise**

(1) An authorisation under section 517 confers on any police officer in uniform power in the locality and during the period specified in the authorisation —

(a) to require any person to remove any item which the officer reasonably believes the person is wearing wholly or mainly for the purpose of concealing his or her identity;

(b) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(2) A person who fails to remove an item he or she is wearing when required to do so by a police officer in the exercise of the powers under this section commits an offence.

Penalty: Imprisonment for one month or a fine at level 2 on the standard scale, or both.

(3) Anything seized by a police officer under subsection (1)(b) may be retained in accordance with regulations made by the Governor under the Criminal Procedure and Evidence Ordinance 2014.

*[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24]*

*Causing public alarm or anxiety*

**519. Interference with goods with intention of causing public alarm or anxiety, etc.**

(1) A person who, with the intention of causing —

(a) public alarm or anxiety;

(b) injury to members of the public consuming or using the goods;

(c) economic loss to any person by reason of the goods being shunned by members of the public; or

(d) economic loss to any person by reason of steps taken to avoid any such alarm or anxiety, injury or loss,

does any of the following —

(i) contaminates or interferes with goods;

(ii) makes it appear that goods have been contaminated or interfered with;

(iii) places goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied,

commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, with any such intention as is mentioned in paragraph (a), (c) or (d) of subsection (1), threatens that that person or another will do, or claims that that person or another has done, any of the acts mentioned in sub-paragraph (i), (ii) or (iii) of that subsection, commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(3) A person who is in possession of —

(a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with; or

(b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with,

with a view to the commission of an offence under subsection (1), commits an offence.

Penalty: Imprisonment for 10 years or a fine, or both.

(4) In this section “goods” includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

(5) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

*[UK Public Order Act 1986 s.38]*

## **520. Bomb hoaxes**

(1) A person who —

(a) places any article or substance in any place whatever; or

(b) dispatches any article or substance by post or any other means whatever of sending things from one place to another,

with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property, commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who communicates any information which he or she knows or believes to be false to another person with the intention of inducing in that or any other person a false belief that a

bomb or other thing liable to explode or ignite is present in any place or location whatever commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) For a person to commit an offence against subsection (1) or (2) it is not necessary for the person to have any other particular person in mind as the person in whom he or she intends to induce the belief mentioned in that subsection.

[UK Criminal Law Act 1977 s.51]

*Quasi-military organisations, uniforms etc.*

### **521. Quasi-military organisations**

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

(a) organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organized and either trained or equipped for that purpose,

any person who takes part in the control or management of the association, or in organising or training any members or adherents of it as described above, commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) In any proceedings against a person under subsection (1) it is a defence for the defendant to show that he or she did not consent to or connive at the organisation, training, or equipment of members or adherents of the association in contravention of subsection (1).

(3) No proceedings for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

(4) If upon application by the Attorney General it appears to the court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of subsection (1), the court may —

(a) make an order to prevent any disposition without the leave of the court of property held by or for the association;

(b) direct an inquiry and report to be made as to any such property and as to the affairs of the association;

(c) make such further orders as appear to the court to be just and equitable for the application of such property in or towards —

(i) the discharge of the liabilities of the association lawfully incurred before the date of the application, or since that date with the approval of the court;

(ii) the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of the contravention;

(iii) any costs incurred in connection with any inquiry and report directed under paragraph (b) or in winding-up or dissolving the association,

(d) order that any property which is not directed by the court to be so applied is forfeited to the Crown.

(5) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organizing, training or equipping members or adherents of it is admissible as evidence of the purposes for which, or the manner in which, the members or adherents (whether those persons or others) were organized, trained or equipped.

(6) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission of it is to be found at any premises or place specified in the information, the justice may, on application by a police officer of the rank of inspector or above, grant a search warrant authorizing the officer, or another officer named in the warrant, together with any other persons named in the warrant and any other police officers to —

(a) enter the premises or place at any time within one month from the date of the warrant, if necessary by force;

(b) search the premises or place and every person found therein; and

(c) seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of the offence.

(7) Nothing in this section prohibits —

(a) the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises;

(b) making of arrangements for that purpose;

(c) instructing persons to be employed in their lawful duties as stewards; or

(d) providing them with suitable badges or other appropriate distinguishing signs.

*[UK Public Order Act 1936 s.2]*

**522. Prohibition of uniforms in connection with political objects**

(1) Subject to subsection (2), a person who in any public place or at any public meeting wears a uniform signifying his or her association with —

- (a) any political organisation; or
- (b) the promotion of any political object,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If the Chief Police Officer is satisfied that the wearing of the uniform on any ceremonial, anniversary or other special occasion is not likely to involve risk of public disorder, the Chief Police Officer may, with the written consent of the Governor, issue a permit for the wearing of such uniform on that occasion either absolutely or subject to conditions specified in the permit.

*[UK Public Order Act 1936 s.1]*

*Breaches of the peace*

**523. Behaviour likely to cause a breach of the peace**

A person who in any public place behaves in such a manner that a breach of the peace is likely to be caused by the behaviour commits an offence.

Penalty: (i) Binding over with a recognisance to keep the peace; or

- (ii) if the person refuses to be so bound over - imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[UK Public Order Act s.40(4); Magistrates Courts Act 1980 s.115(3)]*

**524. Disorderly conduct in a place of lawful custody**

A person who in any place of lawful custody behaves in a riotous, indecent, disorderly or insulting manner commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 1 on the standard scale, or both.

*[UK Town Police Clauses Act 1847 s.29]*

**525. Disorderly or indecent behaviour while intoxicated**

(1) It is an offence for a person, while intoxicated —

- (a) to commit in any public place or police station any disorderly or indecent behaviour; or
- (b) to be in possession of a firearm.

Penalty: (i) On first conviction - imprisonment for 2 months or a fine at level 1 on the standard scale, or both;

- (ii) on a second or subsequent conviction - imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(2) In this section “intoxication” means physical or mental impairment, whether caused by the consumption of alcohol, drugs or other means, or by a combination of means, and “intoxicated” is to be construed accordingly.

[UK CJ Act 1967 s.91]

## PART 22 – HATE CRIMES

### **526. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“distribute” means distribute to the public or a section of the public;

“hatred on the grounds of sexual orientation” means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both);

“racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins;

“recording” means any record from which visual images or sounds may, by any means, be reproduced; and —

(a) references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording to the public or a section of the public; and

(b) “play” and “show”, and related expressions, in relation to a recording, are to be construed accordingly;

“religious hatred” means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

[UK Public Order Act 1986 *passim*]

### *Stirring up racial hatred*

### **527. Use of words or behaviour or display of written material: racial hatred**

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person’s actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this section it is a defence for the defendant to prove that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or another dwelling.

(4) A person who is not shown to have intended to stir up racial hatred does not commit an offence under subsection (1) if the person did not intend his or her words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

*[UK Public Order Act 1986 s.18 am. by Racial and Religious Hatred Act 2006]*

#### **528. Publishing or distributing written material: racial hatred**

(1) A person who publishes or distributes written material which is threatening, abusive or insulting commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In proceedings for an offence under subsection (1) it is a defence for a defendant who is not shown to have intended to stir up racial hatred to prove that he or she was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

*[UK Public Order Act 1986 s.19 am. by Racial and Religious Hatred Act 2006]*

#### **529. Public performance of a play: racial hatred**

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances, and taking the performance as a whole, racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for the person to prove that he or she did not know, and had no reason to suspect that —

(a) the performance would involve the use of the offending words or behaviour;

(b) the offending words or behaviour were threatening, abusive or insulting; or

(c) the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

(3) Subject to subsection (4), this section does not apply to a performance given solely or primarily for one or more of the following purposes —

(a) rehearsal;

(b) making a recording of the performance; or

(c) enabling the performance to be included in a programme service.

(4) If it is proved that the performance was attended by persons other than those directly connected with the giving of the performance, or the doing in relation to it of the things mentioned in paragraph (b) or (c) of subsection (3), the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purposes mentioned in that subsection.

(5) For the purposes of this section a person —

(a) is not to be treated as presenting a performance of a play by reason only of taking part in it as a performer;

(b) if taking part as a performer in a performance directed by another person, is to be treated as directing the performance if without reasonable excuse he or she performs otherwise than in accordance with that other person's direction;

(c) is to be taken as directing a performance of a play given under his or her direction even if he or she is not present during the performance;

(d) is not to be treated as aiding or abetting the commission of an offence under this section by reason only of taking part in a performance as a performer.

*[UK Public Order Act 1986 s.20 am. by Racial and Religious Hatred Act 2006]*

### **530. Distributing, showing or playing a recording: racial hatred**

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting commits an offence if —

(a) the person intends by doing so to stir up racial hatred; or

(b) having regard to all the circumstances racial hatred is likely to be stirred up by the person's actions.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In proceedings for an offence under this section it is a defence for a defendant who is not shown to have intended to stir up racial hatred to prove that he or she was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

*[UK Public Order Act 1986 s.21 am. by Racial and Religious Hatred Act 2006]*

**531. Broadcasting or including a programme in a programme service: racial hatred**

(1) If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) commits an offence if —

(a) the person intends by that inclusion to stir up racial hatred; or

(b) having regard to all the circumstances, racial hatred is likely to be stirred up by that inclusion.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) The persons referred to in subsection (1) are —

(a) the person providing the programme service;

(b) any person by whom the programme is produced or directed; and

(c) any person by whom offending words or behaviour are used.

(3) If the person providing the programme, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, it is a defence for the person to prove that —

(a) the person did not know and had no reason to suspect that the programme would involve the offending material; and

(b) having regard to the circumstances in which the programme was included in a programme service it was not reasonably practicable for the person to secure the removal of the material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred to prove that the person did not know and had no reason to suspect that —

(a) the programme would be included in a programme service; or

(b) the circumstances in which the programme would be broadcast would be such that racial hatred would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up racial hatred to prove that the person did not know and had no reason to suspect that —

(a) a programme involving the use of the offending material would be included in a programme service; or

(b) the circumstances in which a programme involving the use of the offending material would be so included, or in which a programme so included would involve the use of the offending material, would be such that racial hatred would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up racial hatred does not commit an offence under this section if the person did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

*[UK Public Order Act 1986 s.22 am. by Racial and Religious Hatred Act 2006]*

### **532. Possession of racially inflammatory material**

(1) A person ('A') who has in A's possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to its being displayed, shown, played, published, distributed or included in a programme service, whether by A or another person, commits an offence if —

(a) A intends racial hatred to be stirred up by any such action; or

(b) having regard to all the circumstances, racial hatred is likely to be stirred up by any such action.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of subsection (1), regard must be had to such display, showing, playing, publication, distribution or inclusion as A has, or might reasonably be inferred to have, in view.

(3) In proceedings for an offence under subsection (1) it is a defence for A, if A is not shown to have intended to stir up racial hatred, to prove that A was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

*[UK Public Order Act 1986 s.23 am. by Racial and Religious Hatred Act 2006]*

*Stirring up religious hatred, or hatred on the ground of sexual orientation*

**533. Use of words or behaviour or display of written material: religious etc. hatred**

(1) A person who uses threatening words or behaviour, or displays any written material which is threatening, and intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this section it is a defence for the defendant to prove that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or another dwelling.

(4) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

*[UK Public Order Act 1986 s.29B ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

**534. Publishing or distributing written material: religious etc. hatred**

(1) A person who publishes or distributes written material which is threatening and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

*[UK Public Order Act 1986 s.29C ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

**535. Public performance of a play: religious etc. hatred**

(1) If a public performance of a play is given which involves the use of threatening words or behaviour, any person who presents or directs the performance and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) This section does not apply to a performance given solely or primarily for one or more of the following purposes —

(a) rehearsal;

(b) making a recording of the performance; or

(c) enabling the performance to be included in a programme service.

(3) If it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purpose mentioned above.

(4) For the purposes of this section —

(a) a person is not to be treated as presenting a performance of a play by reason only of taking part in it as a performer;

(b) a person taking part as a performer in a performance directed by another is to be treated as a person who directed the performance if without reasonable excuse he or she performs otherwise than in accordance with that other person's direction; and

(c) a person is to be taken to have directed a performance of a play given under his or her direction even if he or she was not present during the performance;

(d) a person is not to be treated as aiding or abetting the commission of an offence under this section by reason only of taking part in a performance as a performer.

*[UK Public Order Act 1986 s.29D ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

### **536. Distributing, showing or playing a recording: religious etc. hatred**

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening and who intends by doing so to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

*[UK Public Order Act 1986 s.29E ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

### **537. Broadcasting or including programme in a programme service: religious etc. hatred**

(1) If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) who intends by that inclusion to stir up religious hatred, or hatred on the grounds of sexual orientation, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) The persons are —

- (a) the person providing the programme service;
- (b) any person by whom the programme is produced or directed; and
- (c) any person by whom offending words or behaviour are used.

*[UK Public Order Act 1986 s.29F ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

**538. Possession of inflammatory material: religious etc. hatred**

(1) A person who has in his or her possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view —

- (a) in the case of written material, to its being displayed, published, distributed, or included in a programme service whether by that person or another; or
- (b) in the case of a recording, to its being distributed, shown, played, or included in a programme service, whether by that person or another,

and who intends religious hatred, or hatred on the grounds of sexual orientation, to be stirred up by any of those actions, commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of subsection (1), regard must be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as the person has, or it may reasonably be inferred that the person has, in view.

*[UK Public Order Act 1986 s.29G ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16]*

*Hate crimes - Supplementary*

**539. Powers of entry and search**

(1) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting, as regards any premises specified in the information, that a performance of a play is to be given at those premises, and that an offence under section 529 or 535 is likely to be committed in respect of that performance, the justice of the peace may issue a warrant under his or her hand empowering any police officer at any time within 7 days from the date of the warrant to enter the premises and to attend any performance of a play which may be given there.

(2) If a justice of the peace is satisfied by information on oath laid by a police officer that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 532 or section 538, the justice of the peace may issue a warrant under his or her hand authorising any police officer to enter and search the premises where it is suspected the material or recording is situated.

(3) A police officer entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

*[UK Public Order Act 1986 ss.24 and 29G; UK Theatres Act 1968 s.15]*

**540. Script as evidence of what was performed**

(1) If a performance of a play was based on a script, then, in any proceedings for an offence under section 529 or section 535 alleged to have been committed in respect of that performance—

(a) an actual script on which that performance was based is admissible as evidence of what was performed and of the manner in which the performance or any part of it was given; and

(b) if such a script is given in evidence on behalf of any party to the proceedings then, except in so far as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance is to be taken to have been given in accordance with that script.

(2) In this section “script”, in relation to a performance of a play, means the text of the play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not.

*[UK Theatres Act 1968 s.9]*

**541. Power to make copies of scripts**

(1) If a police officer of the rank of sergeant or above has reasonable grounds for suspecting —

(a) that an offence under section 529 or section 535 has been committed by any person in respect of a performance of a play; or

(b) that a performance of a play is to be given and that an offence under that section is likely to be committed by any person in respect of that performance,

the officer may require the person suspected of committing the offence to produce a copy of any actual script on which the performance was or, as the case may be, will be based.

(2) A person who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) If, in the case of a performance of a play based on a script, a copy of an actual script on which that performance was based has been provided to a police officer, section 548 applies in relation to that copy as it applies in relation to an actual script on which the performance was based.

*[UK Theatres Act 1968 s.10]*

**542. Power to order forfeiture**

(1) A court by or before which a person is convicted of an offence —

(a) under section 527 or 533 relating to the display of written material; or

(b) under any of sections 528, 530, 532, 534, 536 or 538,

must order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section does not take effect until the expiry of the ordinary time within which an appeal may be instituted or, if an appeal is duly instituted, until it is finally decided or abandoned.

(3) For the purposes of subsection (2) —

(a) an application for leave to appeal is to be treated as the institution of an appeal; and

(b) if a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, if a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

*[UK Public Order Act 1986 ss.25 and 29H]*

#### **543. Savings for reports of parliamentary or judicial proceedings**

(1) Nothing in any of sections 527 to 538 applies to a fair and accurate report of proceedings in the Legislative Assembly.

(2) Nothing in any of sections 547 to 558 applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority, if the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

*[UK Public Order Act 1986 ss.26 and 29K]*

#### **544. Saving for freedom of expression**

(1) Nothing in this Part is to be read or given effect in a way which prohibits or restricts freedom of religion or of expression to the extent reasonably justifiable in a democratic society.

(2) Without limiting subsection (1), nothing in this Part is to be read or given effect in a way which prohibits or restricts —

(a) discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents or any other belief system or the beliefs or practices of its adherents; or

(b) proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

(3) In this Part, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices is not to be taken of itself to be threatening or intended to stir up hatred.

*[UK Racial and Religious Hatred Act 2006 s.29J adapted]*

**545. Procedural**

(1) No proceedings for an offence under any of sections 527 to 538 may be commenced except by, or with the consent of, the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 527 to 538 creates a separate offence.

*[UK Public Order Act 1986 s.27 and 29L]*

*Racially or religiously aggravated offences*

**546. Meaning of “racially or religiously aggravated”**

(1) An offence is racially or religiously aggravated for the purposes of this Part if —

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

(2) For the purposes of subsection (1) —

(a) “basic offence” means an offence mentioned in any of sections 547(1), 548(1), 549(1) and 550(1);

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender;

“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief;

(b) it is immaterial the purposes of subsection (1) whether the offender’s hostility is also based to any extent on any other factor not mentioned in that paragraph

*[UK Crime and Disorder Act 1998 s.28 am. by Anti-Terrorism Crime and Security Act 2001]*

**547. Racially or religiously aggravated assaults**

A person who commits an offence under —

(a) section 64 (Wounding with intent to do grievous bodily harm);

- (b) section 65 (Malicious wounding);
- (c) section 70 (Common assault); or
- (d) section 71 (Assault occasioning actual bodily harm),

which is racially or religiously aggravated as defined in section 546 also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) – imprisonment for 16 years or a fine, or both;  
(ii) for an offence under paragraph (b) – imprisonment for 9 years or a fine, or both;  
(iii) for an offence under paragraph (c) – imprisonment for 2 years or a fine, or both;  
(iv) for an offence under paragraph (d) – imprisonment for 7 years or a fine, or both.

*[UK Crime & Disorder Act 1998 s.29 am. by Anti-Terrorism, Crime & Security Act 2001]*

#### **548. Racially or religiously aggravated criminal damage**

(1) A person who commits an offence under section 195(1) (Destroying or damaging property) or section 196(1) (Arson) which is racially or religiously aggravated as defined in section 546 also commits an offence under this section.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who commits an offence under section 195(2) (destroying or damaging property with intent to endanger life) or section 196(2) (arson with intent to endanger life) which is racially or religiously aggravated as defined in section 546 also commits an offence under this section.

Penalty: Imprisonment for life.

(3) An offence under subsection (2) is triable on indictment only.

(4) For the purposes of subsections (1) and (2), section 546(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 195 or section 196) were the victim of the offence.

*[UK Crime & Disorder Act 1998 s.30 adapted]*

#### **549. Racially or religiously aggravated public order offences**

A person who commits an offence under —

- (a) section 511 (Fear or provocation of violence);
- (b) section 512 (Intentionally abusive conduct); or
- (c) section 513 (Disorderly conduct),

which is racially or religiously aggravated as defined in section 546 also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) or (b) - imprisonment for 2 years or a fine, or both; or

(ii) for an offence under paragraph (c) - a fine at level 5 on the standard scale.  
*[UK Crime & Disorder Act 1998 s.31 adapted]*

**550. Racially or religiously aggravated harassment etc.**

A person who commits an offence under —

- (a) section 143 (Offence of harassment);
- (b) section 144 (Offence of stalking);
- (c) section 145 (Putting people in fear of violence); or
- (d) section 146 (Stalking involving fear of violence or serious alarm or distress),

which is racially or religiously aggravated as defined in section 546, also commits an offence under this section.

Penalty: (i) For an offence under paragraph (a) or (b) - imprisonment for 2 years or a fine, or both;  
(ii) for an offence under paragraph (c) or (d) - imprisonment for 7 years or a fine, or both.

*[UK Crime & Disorder Act 1998 s.32 adapted]*

**551. Alternative verdicts**

(1) If, on the trial of a person charged with an offence under a provision of subsection (1) of any of sections 547 to 550, the court finds the person not guilty of the offence charged, the court may find the person guilty of the basic offence to which the charge relates.

(2) If, on the trial of a person charged with an offence under section 550(c), the court finds the person not guilty of the offence charged, the court may find the person guilty of an offence under section 550(a).

(3) If, on the trial of a person charged with an offence under section 550(d), the court finds the person not guilty of the offence charged, the court may find the person guilty of an offence under section 550(b).

*[UK Crime & Disorder Act 1998 ss.31(6) and 32(5) adapted]*

PART 23 – PUBLIC NUISANCES

**552. Noise nuisance**

(1) Subject to section 553, it is an offence for a person, through the use of an instrument or by any other means, to —

- (a) make noise; or
- (b) cause noise to be made,

if the noise causes or is likely to cause —

(i) annoyance or distress to a reasonable person having regard to the time of day; or

(ii) a breach of the peace.

Penalty: A fine at level 4 on the standard scale.

(2) In having regard to the time of day, the hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a reasonable person and subparagraph (i) of subsection (1) is to be construed accordingly.

(3) If the noise is emitted or caused by an animal, the owner and the person who is responsible for, or who has charge or control of the animal, are both liable as though each was making the noise himself or herself.

(4) In proceedings under subsection (1) it is immaterial whether the person making the noise is in a public place, a dwelling or elsewhere.

(5) If a person makes noise between the hours of 6 a.m. and 11 p.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or take any steps required to reduce the level of noise or to stop the making of it.

(6) If a person makes noise between the hours of 11 p.m. and 6 a.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to stop or take any steps required to stop the making of the noise.

(7) A person who fails to comply with a reasonable request by a police officer under subsection (5) or (6) commits an offence.

Penalty: A fine at level 4 on the standard scale.

(8) A person does not commit an offence under this section if the making of the noise is authorised under another enactment or is in accordance with the terms and conditions of a permit or licence issued under an enactment or under section 553.

*[Gibraltar Crimes Act 2012; SH Crimes Bill]*

### **553. Noise nuisance: Exemptions**

(1) The Governor may issue a permit for the purposes of authorising a public performance, a fair or other event, to named persons, to make noise that is in breach of section 552, subject to any conditions the Governor considers necessary.

(2) In considering the application for a permit and the imposition of any conditions, the Governor must have regard to the interests of the persons whom the Governor foresees may be affected by the grant of the permit.

(3) A person who acts within the terms of a permit issued under subsection (1) is not liable to proceedings for an offence under section 552.

(4) If a condition of a permit is breached, the person to whom the permit is issued, as well as the person who commits the breach, may be proceeded with for an offence under section 552.

*[Gibraltar Crimes Ord. and SH Crimes Bill]*

**554. Causing danger in a public place**

It is an offence for a person —

(a) not sufficiently to fence any area, pit or sewer left open, or to leave such open area, pit or sewer without a sufficient light after sunset to warn and prevent persons from falling into it; or

(b) in any manner or from any place to throw or discharge any stone or other missile or thing whatsoever to the damage or danger of any person;

Penalty: A fine at level 3 on the standard scale.

*[Metropolitan Police Act 1839 s.60(8); UK Town Police Clauses Act 1847 s.28]*

**555. Obstruction and other nuisances in streets, etc.**

(1) Subject to subsection (2), it is an offence for a person to —

(a) obstruct the free passage of persons along a highway or road without lawful authority or reasonable excuse;

(b) place, hang up or otherwise expose to sale any goods, wares, merchandise, matter or thing so that it projects into or over any footway or beyond the line of any house, shop or building at which it is exposed so as to obstruct or incommode the passage of any person over or along the footway;

(c) throw or lay in any public place any building or construction materials or similar articles, or any wares, unless they are placed or enclosed so as to prevent any mischief happening to passers-by;

(d) cause a nuisance by the deposit of excrement, urine, or faecal matter of any kind in any public place, or upon or against any house, building, doorstep, doorway, wall, fencing or paling;

(e) follow, jostle, or otherwise annoy any person passing in any public place; or

(f) ride or drive dangerously any horse or carriage, or drive dangerously any livestock.

Penalty: A fine at level 2 on the standard scale.

(2) If any rubbish, lead, iron, wood, goods, commodity or other article, matter or thing is placed or allowed to remain in any public place so that it causes obstruction, annoyance or danger to any person, a police officer may —

(a) remove the thing or cause it to be removed and taken to a place of safety;

(b) detain it at the risk of the owner until the expenses of removal and detention are paid; and

(c) if such expenses are not paid within 7 days - sell or dispose of the thing and apply the proceeds as directed by the Governor.

*[UK Metropolitan Police Act 1839 ss.54(17) and 60(2); UK Town Police Clauses Act 1847 s.28]*

### **556. Posting bills**

(1) It is an offence for a person to affix any poster, bill or other paper against or upon any building, wall, fence, or pole without the express consent of the owner or occupier of the premises or property concerned.

Penalty: A fine at level 2 on the standard scale.

(2) It is an offence for a person to allow the person's goods, trade, business occupation, profession or other concern to be given publicity by or to benefit from the affixing of a poster, bill or other paper in breach of subsection (1), unless the person shows that the affixing of the bill by which the publicity was given occurred without the person's consent.

Penalty: A fine at level 2 on the standard scale.

*[UK Metropolitan Police Act 1839 ss.54 and 60; UK Town Police Clauses Act 1847 s.28]*

## **PART 24 – CRIMINAL TRESPASS**

### *Criminal trespass*

### **557. Interpretation of Part**

(1) In this Part, unless the context otherwise requires —

“access”, in relation to any premises, means any part of any site or building within which the premises are situated which constitutes an ordinary means of access to the premises (whether or not that is its sole or primary use);

“caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“displaced residential occupier” has the meaning given by section 573;

“firearm” has the same meaning as in the Firearms Ordinance;

“intending residential occupier” has the meaning given by section 574;

“land” includes premises;

“offensive weapon” has the same meaning as in Part 7;

“premises” means any building, any part of a building under separate occupation, any land ancillary to a building and the site comprising any building or buildings together with any land ancillary thereto;

“residential premises” means premises that are or form part of premises used mainly for residential purposes, or intended by the owner to be used for those purposes, whether by the owner or some other person;

“site” means the whole or part of any building or buildings, or any land, or both;

“vehicle” includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan.

(2) References to a building apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for use for residential purposes; and for this purpose —

(a) a part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole;

(b) land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

*[UK Criminal Law Act 1977 s.12 (part)]*

### **558. Failing to obey directions to leave land**

(1) If a police officer of the rank of Inspector or above reasonably believes —

(a) that a person is trespassing on land with the purpose of residing there for any period;

(b) that reasonable steps have been taken by or on behalf of the occupier to ask the person to leave; and

(c) that —

(i) the person has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier’s family or an employee or agent of the occupier; or

(ii) the person has a vehicle on the land,

the officer may direct the person to leave the land and to remove any vehicles or other property the person has with him or her on the land.

(2) If the police officer reasonably believes that the person was not originally a trespasser but has become a trespasser, on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after the person became a trespasser before the officer can exercise the power conferred by subsection (1).

(3) A direction under subsection (1), if not communicated to the person referred to in that subsection by the police officer giving the direction, may be communicated to the person by any police officer at the scene.

(4) A person who, knowing that a direction under subsection (1) has been given which applies to the person —

(a) fails to leave the land as soon as reasonably practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(5) If a direction has been given under subsection (1) and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse —

(a) failed to remove from the land a vehicle which appears to the officer to belong to the person or to be in the person's possession or under the person's control; or

(b) entered the land as a trespasser with a vehicle within 3 months after the direction was given,

the officer may seize and remove the vehicle.

(6) In proceedings for an offence under this section it is a defence for the defendant to show -

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) A person may be regarded for the purposes of this section as having a purpose of residing in a place even if the person has a home elsewhere.

*[UK Criminal Justice & Public Order Act 1994 ss.61 & 62 adapted]*

### **559. Violence to secure entry**

(1) Subject to the following subsections, any person ('A') who, without lawful authority, uses

or threatens violence for the purpose of securing entry into any premises for A or for any other person if —

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) A knows that that is the case,

commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) Subsection (1) does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the defendant adduces sufficient evidence that he or she was, or was acting on behalf of, such an occupier the defendant is presumed to have been, or to have been acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(3) Subject to subsection (2), the fact that A has any interest in or right to possession or occupation of any premises does not for the purposes of subsection (1) constitute lawful authority for the use or threat of violence by A or anyone else for the purpose of securing A's entry into those premises.

(4) It is immaterial for the purposes of this section —

(a) whether the violence in question is directed against the person or against property; or

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

*[UK Criminal Law Act 1977 s.6]*

### **560. Remaining in public premises**

(1) A person who, having entered any public premises, persists without lawful excuse in remaining in the premises after being required to leave by a police officer acting on the request of a person in lawful occupation or control of the premises, commits an offence.

Penalty: A fine at level 2 on the standard scale.

(2) In this section, “public premises” means —

(a) any building or part of a building, any land ancillary to a building, and the site comprising any building or buildings together with any ancillary land, which belongs to or is occupied by the Government or any statutory public body; and

(b) any premises used for public worship or for education,

and for the purposes of this definition land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

(3) In this section, “person in control” includes (without limiting the scope of that expression) the owner, tenant or licensee of premises, and any person in lawful occupation of them, and, in relation to premises belonging to or occupied by the Government, includes any Government or Crown servant; and any employee or agent of a person mentioned in this definition.

*[Gibraltar Crimes Act; SH Crimes Bill]*

### **561. Squatting in a residential building**

(1) A person commits an offence if —

(a) the person is in a residential building as a trespasser having entered it as a trespasser;

(b) the person knows or ought to know that he or she is a trespasser; and

(c) the person is living in the building or intends to live there for any period.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both

(2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).

(3) For the purposes of this section —

(a) “building” includes any structure or part of a structure (including a temporary or moveable structure); and

(b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.

(4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.

(5) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.

*[UK LASPO Act 2012 s.144]*

### *Aggravated trespass*

### **562. Offence of aggravated trespass**

(1) A person (‘A’) commits the offence of aggravated trespass if A trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land in the open air, does there anything which is intended by A to have the effect of —

(a) intimidating those persons or any of them so as to deter them or any of them from engaging in that activity;

(b) obstructing that activity, or

(c) disrupting that activity.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) Activity on any occasion on the part of a person or persons on land is lawful for the purposes of this section if the person or persons may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

*[UK Criminal Justice & Public Order Act 1994 s.68]*

**563. Power to remove persons committing or participating in aggravated trespass**

(1) If the senior police officer present at the scene reasonably believes —

(a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air; or

(b) that 2 or more persons are trespassing on land in the open air and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity,

the officer may direct that person or those persons, or any of them, to leave the land.

(2) A direction under subsection (1), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(3) A person who, knowing that a direction under subsection (1) has been given which applies to the person —

(a) fails to leave the land as soon as practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(4) In proceedings for an offence under subsection (2) it is a defence for the defendant to show—

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as practicable or, as the case may be, for again entering the land as a trespasser.

(5) In this section “lawful activity” has the same meaning as in section 562(2).

*[UK Criminal Justice & Public Order Act 1994 s.69]*

**564. Trespassing with an offensive weapon**

A person who is on any premises as a trespasser, after having entered as such, commits an offence if, without lawful authority or reasonable excuse, the person has with him or her on the premises any offensive weapon or any firearm.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale.

*[UK Criminal Law Act 1977 s.8]*

*Unauthorised camping*

**565. Camping without permission**

(1) A person who camps on any land except with the permission, whether express or implied, of the occupier of the land commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

(2) Nothing in this section applies to a police officer or other public officer when engaged in the execution of his or her duty.

*[Gibraltar Criminal Offences Act s.165B to E]*

*Designated sites*

**566. Trespassing on a designated site**

(1) A person who enters, or is on, any designated site as a trespasser, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A “designated site” means a site —

(a) specified or described (in any way) in an order made by the Governor; and

(b) designated for the purposes of this section by the order.

(3) The Governor may only designate a site for the purposes of this section if —

(a) it is comprised in Crown land; or

(b) it appears to the Governor that it is appropriate to designate the site in the interests of the security of the Falkland Islands.

(4) It is a defence for a person charged with an offence under this section to prove that the defendant did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a designated site.

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(6) For the purposes of this section a person who is on any designated site as a trespasser does not cease to be a trespasser by virtue of being allowed time to leave the site.

PART 25 – OBSCENE PUBLICATIONS

**567. Interpretation and general provisions**

(1) In this Part, unless the context otherwise requires —

“article” means —

(a) any writing, drawing, print, painting, photograph, book, card, lithographic or other engraving, printed matter, picture, poster, emblem, cinematograph film or any description of article containing or embodying matter to be read or looked at or both;

(b) any sound record; and

(c) any film or other record of a picture or pictures, moving or otherwise;

“distribute” has the meaning given that term by section 569;

“film exhibition” means an exhibition of moving pictures produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service;

“import” in relation to a publication means to bring or cause to be brought into the Falkland Islands, wherever the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

“indecent” has the same meaning as in Part 10;

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“plate” includes a block, mould, matrix and stencil;

“publication” has the meaning given that term by the Interpretation and General Clauses Ordinance.

(2) References in this Part to possession or distribution for gain —

(a) include possession or distribution by way of trade or for public exhibition;

(b) mean any such possession or distribution whether the gain is to accrue by way of consideration for the distribution or in any other way; and

(c) apply whether in fact any gain does accrue.

(3) This Part applies in relation to anything which is intended to be used, either alone or as one of a set, for the reproduction or manufacture from it of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying that matter so far as that matter is to be derived from it or from the set.

(4) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(5) This Part is in addition to, and does not derogate from, the provisions of Part 10 relating to indecent photographs of youths, prohibited images of youths, or extreme pornographic images. *[UK Children and Young Persons (Harmful Publications) Act 1955 ss.1 and 4 (part); Customs Consolidation Act 1876; Customs & Excise Management Act 1979]*

### *Obscene publications*

#### **568. Test of obscenity**

(1) For the purposes of this Part a publication or article is deemed to be obscene if its effect (or, if the publication or article comprises 2 or more distinct items, the effect of any one of the items) is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In proceedings against a person for an offence under this Part, the question whether the publication or article is obscene is to be determined —

(a) by reference to such distribution as in the circumstances it may reasonably be inferred the person had in contemplation and to any further distribution that could reasonably be expected to follow from it, but not to any other publication or article;

(b) as if any reference to distribution of it were a reference to distribution of items reproduced from it;

(c) on the assumption that copies of it, and items reproduced or manufactured from it, would be distributed in any manner likely having regard to the circumstances in which it was found, but in no other manner.

*[UK Obscene Publications Act 1959 s.1 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]*

#### **569. Meaning of ‘distribution’**

(1) For the purposes of this Part a person distributes a publication or article who —

(a) circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

(b) in the case of a publication or article containing or embodying matter to be looked at or a record - shows, plays or projects it, or, if the matter is data stored electronically, transmits the data.

(2) A person also distributes a publication or article to the extent that any matter recorded on it is included by the person in a programme included in a programme service.

(3) If the inclusion of any matter in a programme included in a programme service would, if that matter were recorded matter, constitute the distribution of an obscene publication or article for the purposes of this Part by virtue of subsection (4), this Part has effect in relation to the inclusion of that matter in that programme as if it were recorded matter.

(4) A publication or article is deemed to be had or kept for distribution if it is had or kept for the reproduction or manufacture from it of items for distribution.

*[UK Obscene Publications Act 1959 s.2 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]*

### **570. Distribution or possession of obscene publication or article**

(1) A person who for gain —

(a) distributes an obscene publication or article; or

(b) has in the person's possession an obscene publication or article for distribution,

commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of proceedings for an offence under this section, a person is deemed to have in the person's possession a publication or article for distribution for gain if with a view to such distribution the person has the publication or article in the person's ownership, possession or control.

(3) A person may not be convicted of an offence under this section in respect of a publication or article if the person proves that the person had not examined the publication or article and had no reasonable cause to suspect that it was such that having it would make the person liable to be convicted of an offence against this section.

*[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977; Customs and Excise Management Act 1979]*

### **571. Manufacture, etc. of obscene publication or article**

(1) A person who for gain —

(a) manufactures or produces;

(b) imports or exports; or

(c) causes to be manufactured, produced, imported or exported,

any obscene publication or article commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A person who advertises or makes known by any means, in order to assist in any of the acts mentioned in subsection (1), that another person is engaged in any of those acts commits an offence.

Penalty: Imprisonment for 3 years or a fine, or both.

(3) A person who advertises or makes known how or from whom any obscene publication or article can be procured, either directly or indirectly, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[SH Obscene Publications Ordinance s.2 modified; UK Customs and Excise Management Act 1979]*

### **572. Common law offence abolished**

(1) No proceedings may be brought against a person at common law for the possession, distribution, manufacture, importation, exportation, advertising or promotion of an obscene publication or article.

(2) Subsection (1) does not prevent the prosecution of a person for any offence in relation to the possession, distribution, importation, manufacture or advertising of any publication or article under any other enactment.

(3) Without limiting subsection (1), no proceedings may be brought against a person for an offence at common law —

(a) in respect of a film exhibition or anything said or done in the course of such an exhibition, if it is of the essence of the common law offence that the exhibition or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

(b) in respect of an agreement to give a film exhibition or to cause anything to be said or done in the course of such an exhibition if the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

*[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977]*

### **573. Arrest, search and seizure and forfeiture**

(1) If a police officer has reasonable grounds for suspecting that a person has committed an offence under section 570 or 571, the officer may require the person to give his or her name and address and, if the person refuses or fails to do so or gives a name and address which the officer reasonably suspects to be false, may arrest the person without warrant.

(2) The powers of search and seizure in Part 3 of the Criminal Procedure and Evidence Ordinance 2014 apply to a publication or article which is the subject of an offence under section 570 or 571, including —

(a) any copies of the publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article.

(3) The power of search and seizure in relation to a suspected offence committed by a person under either of those sections extends to any premises, stall or vehicle used by the person for the purposes of trade or business and to the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle, which relate to a trade or business carried on at the premises or from the stall or vehicle.

(4) Subject to subsection (5), any article seized under subsection (2) or (3) must be brought before a justice of the peace, who may issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle, to appear on a day specified in the summons before the Magistrates' Court or the Summary Court to show cause why the publication or article should not be forfeited.

(5) If on a hearing under subsection (4) the court is satisfied, with respect to any publication or article, that at the time when it was seized it was obscene and kept for distribution for gain, the court must order the article to be forfeited.

(6) On the conviction of a person for an offence under this Part the provisions of section 617 of the Criminal Procedure and Evidence Ordinance 2014 apply to the publication or article which is the subject of the offence, including —

(a) any copies of the relevant publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article,

found in the possession of the person or under that person's control.

(7) Subsection (6) does not apply in relation to any article seized under subsection (3) which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

(8) In addition to the person summoned under subsection (4) —

(a) the owner, author or maker of any publication or article brought before the court; and

(b) any other person through whose hands the publication or article had passed before being seized,

is entitled to appear before the court on the day specified in the summons to show cause why the publication or article should not be forfeited.

(9) If an order is made under subsection (5) for the forfeiture of any publication or article, any person who appeared, or was entitled to appear, to show cause against the making of the order

may appeal to the Supreme Court, and the order does not take effect until the expiration of the period within which notice of appeal to the Supreme Court may be given against the order.

(10) If as respects any article brought before it the court does not order forfeiture under subsection (5) —

(a) the court may order the person on whose information the warrant for the seizure of the article was issued to pay costs the court thinks reasonable to any person who has appeared before the court to show cause why the article should not be forfeited; and

(b) costs ordered to be paid under this subsection are enforceable as a civil debt.

*[UK Obscene Publications Act 1959 s.3 (part) as am. by Courts Act 1971, Criminal Law Act 1977 and PACE Act 1984; Video Recordings Acts 1984 and 2010]*

#### **574. Defence of public good**

(1) Subject to subsection (2), a person must not be convicted of an offence under section 570 or 571 in relation to a publication or article, and the powers of forfeiture under section 573 do not apply, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, the arts or learning, or of other objects of general public concern.

(2) The opinion of experts as to the scientific, literary, artistic, scientific, educational or other merits of a publication or article may be admitted in any proceedings under this Part either to establish or to negative the ground mentioned in subsection (1).

*[UK Obscene Publications Act 1959 s.4 as am. by Criminal Law Act 1977]*

#### **575. Assisting the commission of an offence overseas**

(1) It is an offence for a person in the Falkland Islands to —

(a) encourage, aid and abet, or assist the commission in any place outside the Falkland Islands of an offence punishable under the provisions of any law in force in that place corresponding to the provisions of section 570 or 571; or

(b) do any act preparatory to or in furtherance of any act which if committed in the Falkland Islands would constitute an offence under either of those sections.

Penalty: Imprisonment for 3 years or a fine, or both.

(2) For the purposes of subsection (1) —

(a) “corresponding law” means any law stated in a certificate purporting to be issued by or on behalf of the authorities of any place outside the Falkland Islands to be a law providing for the suppression of the circulation of and traffic in obscene publications in accordance with the provisions of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications 1923; and

(b) any statement in any such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, is conclusive.

*[SH Obscene Publications Ordinance s.3]*

#### *Unsolicited publications*

#### **576. Unsolicited publications**

(1) A person who sends or causes to be sent to another person —

- (a) any book, magazine or leaflet; or
- (b) advertising material for any such publication,

which the person knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques, commits an offence.

Penalty: (i) For a first offence – a fine at level 2 on the standard scale;

(ii) for a subsequent offence – a fine at level 5 on the standard scale.

(2) In this section, “unsolicited” means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person’s behalf.

(3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

*[UK Unsolicited Goods and Services Act 1971 s.5]*

#### *Indecent displays*

#### **577. Indecent displays: Offence**

(1) If any indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made each commits an offence.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) Any matter which is displayed in or so as to be visible from any public place is, for the purposes of this section, deemed to be publicly displayed.

(3) In subsection (2), “public place”, in relation to the display of any matter has the meaning given to that term by section 2(1).

(4) Nothing in this section applies in relation to any matter —

- (a) included by any person in a programme service;
- (b) included in the display of an art gallery or museum and visible only from within the gallery or museum;

(c) displayed by or with the authority of, and visible only from within a building occupied by, the Crown; or

(d) included in a performance of a play.

(5) In this section “matter” includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent —

(a) any part of that matter which is not exposed to view is to be disregarded; and

(b) account may be taken of the effect of juxtaposing one thing with another.

*[UK Indecent Displays (Control) Act 1981 ss.1 and 4]*

## **CHAPTER 4 – SUPPLEMENTARY PROVISIONS**

### **PART 26 – MISCELLANEOUS AND TRANSITIONAL**

#### **578. 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.

#### **579. Criminal procedure rules and practice directions**

(1) In addition to any other power in this Ordinance to make criminal procedure rules, the Chief Justice may make criminal procedure rules to implement this Ordinance.

(2) Rules made under this section or any other provision of this Ordinance —

(a) must be consistent with the Constitution and this Ordinance;

(b) must be made only after consulting the Criminal Justice Council;

(c) may create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both;

(d) may make different provision for different cases or circumstances and may contain such incidental, supplemental, saving or transitional provisions as the Chief Justice, after consulting as required by paragraph (b), thinks fit.

(3) The Chief Justice, after consulting the Criminal Justice Council, may issue practice directions as to the practice to be adopted in the Supreme Court, the Magistrate's Court and the Summary Court on specific aspects of criminal procedure and practice arising under this Ordinance.

#### **580. Amendment of Schedules**

(1) The Governor, after consulting the Criminal Justice Council, may by order amend any Schedule to this Ordinance.

(2) An order under subsection (1) —

(a) may make such transitional and consequential provisions as appear to the Governor, after consulting as required by subsection (1), to be necessary or expedient;

(b) requires the approval of the Legislative Assembly.

#### **581. Repeal and disapplication of laws – Schedule 5**

(1) The Ordinances listed in Part 'A' of Schedule 5 (the "repealed Ordinances") are repealed.

(2) Consequently, the English Acts applied to the Falkland Islands by Schedule 1 to the Crimes Ordinance and by the Sexual Offences Ordinance 2005 ("the repealed Acts") cease to have effect as part of the law of the Falkland Islands.

(3) The provisions of the Ordinances listed in Part 'B' of Schedule 5 are repealed, and are included in the term "repealed Ordinances".

(4) The imperial enactments listed in Part 'C' of Schedule 5 (the "disapplied Acts"), being English Acts that apply to the Falkland Islands by their own force or by virtue of Chapter X of the Interpretation and General Clauses Ordinance, are disapplied in relation to the Falkland Islands.

(5) In this section, the term "disapply" has the same effect as an order by the Governor under section 79(2) of the Interpretation and General Clauses Ordinance declaring that a UK enactment has never been enacted, except that the disapplication only has effect from the date of commencement of this section.

(6) After the commencement of this section, there are no common law offences in the Falkland Islands, that is to say, no person may be prosecuted for an offence unless it is one created by or under an enactment.

(7) In particular, but without limiting subsection (6), the following are not offences in the Falkland Islands —

- (a) sedition and seditious libel;
- (b) defamatory libel;
- (c) obscene libel;
- (d) blasphemy.

(8) There is no defence of marital coercion in the Falkland Islands.

## **582. Saving provisions**

(1) Except as expressly provided in this Ordinance, nothing in this Ordinance affects —

- (a) the liability, trial or punishment of a person for an offence against any other law in force in the Falkland Islands other than this Ordinance;
- (b) any of the written laws for the time being in force for the government of the police force or of the armed forces of the Crown.

(2) Subject to subsection (3), all items of subsidiary legislation made under any of the repealed Ordinances or repealed or disappplied Acts continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(3) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (2) could be made, the item is repealed or disappplied, 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 583.

(4) Any legislative instrument made by the Governor or Chief Justice under a repealed Ordinance or repealed or disappplied Act which could be made or issued by the Governor or Chief Justice under this Ordinance continues to have effect as if made or issued by the Governor or Chief Justice respectively under this Ordinance (irrespective of a requirement for consultation) until varied or revoked under this Ordinance.

(5) Any direction, exemption, notice or other non-legislative instrument made or issued by any person or body under any of the repealed Ordinances or repealed disappplied Acts which could be made or issued by an equivalent person or body under this Ordinance continues to have effect as if made or issued by that person or body under this Ordinance until varied or revoked under this Ordinance.

(6) Any delegation made, direction given or other action taken by a person under any of the repealed Ordinances or repealed or 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.

(7) This section is in addition to, and does not displace, section 345 as regards the effect of the repeal of the Sexual Offences Ordinance, 2005.

### **583. Transitional provisions**

(1) Proceedings for an offence under any enactment or at common law that had commenced before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(2) If proceedings for an offence committed under any of the repealed Ordinances or repealed or disapplied Acts have not been commenced at the commencement of this Ordinance —

(a) if there is an equivalent offence under this Ordinance - proceedings must be brought under this Ordinance;

(b) if there is no equivalent offence - proceedings cannot be brought.

(3) Subsections (1) and (2) do not apply in relation to an offence of conspiracy if the agreement was entered into before the commencement of this Ordinance and the conspiracy continued to exist after that date.

(4) For the purposes of this section, an offence is committed wholly or partly before the commencement of this Ordinance if any of the conduct or events alleged to constitute the offence occurred before that commencement.

(5) The maximum sentence for an offence under a repealed Ordinance or repealed or disapplied Act that can be imposed for an offence under that Ordinance or Act committed before the commencement of this Ordinance is the maximum sentence for that offence under that Ordinance or Act.

(6) If an offence committed before the commencement of this Ordinance is by any enactment then in force made punishable only on summary conviction, it remains only so punishable.

(7) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(8) All sentences of imprisonment (including suspended sentences), fines, conditional discharges, disqualifications and forfeitures imposed before the commencement of this Ordinance continue to have effect and can be varied or appealed from as if this Ordinance had not been enacted.

(9) For purposes of this section, proceedings for an offence commence on —

(a) arrest without warrant;

- (b) the issue of a warrant for arrest;
- (c) the issue of a summons to appear;
- (d) the service of an indictment or other document specifying the charge; or
- (e) an oral charge,

in respect of the offence.

*[UK Criminal Justice & Public Order Act 1994 s.35]*

#### **584. Consequential amendments**

(1) A reference in any other enactment to a repealed Ordinance or to a repealed or disappplied Act is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

(2) A reference in any other enactment to the Governor or Chief Justice exercising legislative functions in relation to criminal offences is, to the extent possible, to be read as a reference to the Governor or Chief Justice, as the case may be, exercising equivalent functions under this Ordinance after consulting the Criminal Justice Council.

(3) The Governor, after consulting the Criminal Justice Council, may by order make such modifications or adaptations of any enactment as the Governor considers necessary or expedient in consequence of the repeal of the repealed Ordinances, the repeal of the repealed Acts, and the disapplication of the disappplied enactments.

(4) An order under subsection (3) may make such transitional and consequential provisions as the Governor, after consulting the Criminal Justice Council, considers necessary or expedient.

(5) Without affecting the powers in subsections (3) and (4), the Ordinance listed in Part D of Schedule 5 is amended in the manner set out in that Schedule.

#### **585. Ordinance binds the Crown**

This Ordinance is binding on the Crown.

### **SCHEDULES**

Schedule 1- Forfeiture of indecent photographs of children

Schedule 2 - Sexual offences to which sections 289 and 290 apply

Schedule 3 - Sexual offences for purposes of Part 11

Schedule 4 - Other offences for purposes of Part 11

Schedule 5 - Repealed and disappplied laws

## SCHEDULE 1

### FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN

(section 251(3))

#### **Application of Schedule**

1. (1) This Schedule applies if —

- (a) property which has been lawfully seized in the Falkland Islands is in the custody of a police officer;
- (b) apart from this Schedule, there is no legitimate reason for the officer to retain custody of the property;
- (c) the officer is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property; and
- (d) apart from this Schedule, the officer is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.

(2) The term “forfeitable property” means —

- (a) any indecent photograph or pseudo-photograph of a child;
- (b) any property which it is not reasonably practicable to separate from any property within sub-paragraph (a).

(3) For the purposes of this paragraph —

- (a) a part of any property is a “readily separable part” of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property; and
- (b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.

(4) The circumstances mentioned in paragraph (3)(a) include the time and costs involved in separating the property.

#### **Possession pending forfeiture**

2. (1) The property must be retained in the custody of a police officer until it is returned or otherwise disposed of in accordance with this Schedule.

(2) The provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to property seized in the investigation of an offence do not apply to property held under this Schedule.

**The relevant officer**

3. “The relevant officer”, in relation to any property, is the police officer who for the time being has custody of the property.

**Notice of intended forfeiture**

4. (1) The relevant officer must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to —

(a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property;

(b) if the property was seized from premises - every person whom he believes to have been an occupier of the premises at that time; and

(c) if the property was seized as a result of a search of any person - that person.

(2) The notice of intended forfeiture must set out —

(a) a description of the property; and

(b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.

(3) Subject to paragraph (4), the notice of intended forfeiture may be given to a person only by—

(a) delivering it to the person personally;

(b) addressing it to the person and leaving it for the person at the appropriate address; or

(c) addressing it to the person and sending it to the person at that address by post.

(4) A notice given in accordance with paragraph (1)(b) may, if it is not practicable to give the notice in accordance with paragraph (3), be given by —

(a) addressing it to “the occupier” of those premises, without naming the person; and

(b) leaving it for the person at those premises or sending it to the person at those premises by post.

(5) Property may be treated or condemned as forfeited under this Schedule only if —

(a) the requirements of this paragraph have been complied with in the case of the property;  
or

(b) it was not reasonably practicable for them to be complied with.

- (6) In this paragraph “the appropriate address”, in relation to a person, means —
- (a) in the case of a corporate body - its registered or principal office in the Falkland Islands;
  - (b) in the case of a firm - the principal office of the partnership;
  - (c) in the case of an unincorporated body or association - the principal office of the body or association;
  - (d) in any other case – the person’s usual or last known place of residence in the Falkland Islands or last known place of business in the Falkland Islands.
- (7) In the case of —
- (a) a company registered outside the Falkland Islands;
  - (b) a firm carrying on business outside the Falkland Islands; or
  - (c) an unincorporated body or association with offices outside the Falkland Islands,

the references in this paragraph to its principal office include references to its principal office within the Falkland Islands (if any).

#### **Notice of claim**

5. (1) A person claiming to have a legitimate reason for possessing the property or a part of it may give notice of the claim to a police officer at any police station.

(2) Oral notice is not sufficient for this purpose.

#### **Time and form of notice**

6. (1) A notice of claim may not be given more than one month after —

- (a) the date of the giving of the notice of intended forfeiture; or
- (b) if no such notice has been given - the date on which the property began to be retained under this Schedule (see paragraph 2).

(2) A notice of claim must specify —

- (a) the name and address of the claimant;
- (b) a description of the property, or part of it, in respect of which the claim is made;
- (c) in the case of a claimant who is outside the Falkland Islands, the name and address of a person in the Falkland Islands who is authorised to accept service, and to act, on behalf of the claimant.

(3) Service upon a person so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.

(4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference in relation —

(a) to a person to whom notice of intended forfeiture was given - to the day on which that notice was given to that person; and

(b) to any other person - to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

#### **Automatic forfeiture if no claim is made**

7. (1) If the property is unclaimed it is treated as forfeited.

(2) The property is “unclaimed” if, by the end of the period for the giving of a notice of claim —

(a) no such notice has been given in relation to it or any part of it; or

(b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.

(3) Paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose paragraph (2) applies as if references to the property were to the part.

(4) In this paragraph “readily separable part” has the meaning given by paragraph 1.

#### **Decision whether to take court proceedings to condemn property as forfeited**

8. (1) If a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.

(2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

#### **Return of property if no forfeiture proceedings**

9. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides not to take proceedings —

(a) for condemnation of the property; or

(b) for condemnation of a part of the property.

(2) The relevant officer must return the property or part to the person who appears to the officer to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.

(3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

### **Forfeiture proceedings**

10. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it (“the relevant property”).

(2) Subject to sub-paragraphs (5) and (7), the court must condemn the relevant property if it is satisfied that —

(a) the relevant property is forfeitable property; and

(b) no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

(3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

(4) If the court is satisfied that —

(a) the relevant property is forfeitable property; and

(b) a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,

the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.

(5) If the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.

(6) For this purpose a part of any property is a “separable part” of the property if —

(a) it can be separated from the remainder of that property; and

(b) if a person has a legitimate reason for possessing the remainder of that property or any part of it - the separation will not prejudice the remainder or part.

(7) If the court is satisfied that —

(a) a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property; and

(b) although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property,

the court may order the return of that part to that person.

(8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

### **Supplementary orders**

11. (1) If the court condemns property under sub-paragraph 10(2), the court —

(a) may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(2) A court order under any of sub-paragraphs 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.

(3) If the court makes an order under sub-paragraph 10(7) for the return of a part of the relevant property, the court —

(a) may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(4) For the purposes of this paragraph, “specified” means specified in, or determined in accordance with, the court order.

### **Magistrate’s Court**

12. Proceedings by virtue of this Schedule are civil proceedings and may be instituted in the Magistrate’s Court or in the Summary Court.

### **Appeals**

13. (1) Either party may appeal against the decision of the Magistrate’s Court or the Summary Court to the Supreme Court.

(2) This paragraph does not affect any right to require the statement of a case for the opinion of the Supreme Court.

(3) If an appeal has been made (whether by case stated or otherwise) against the decision of the Magistrate's Court or the Summary Court in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a police officer pending the final determination of the matter.

### **Effect of forfeiture**

14. If property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

### **Disposal of property which is not returned**

15. (1) If —

(a) property is required to be returned to a person under this Schedule;

(b) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose; and

(c) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,

section 622 of the Criminal Procedure and Evidence Ordinance 2014 as to disposal of property applies.

(2) If property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on payment of costs within specified period), the relevant officer may dispose of the property in any manner the officer thinks fit.

### **Provisions as to proof**

16. (1) In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.

(2) In any proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either —

(a) the order of condemnation; or

(b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

### **Saving for owner's rights**

17. Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects —

- (a) the rights in relation to that property, or any part of it, of any other person; or
- (b) the right of any other person to enforce his rights against the person to whom it is returned.

### **Interpretation**

18. (1) In this Schedule —

“the court” is to be construed in accordance with paragraph 12;

“forfeitable property” is to be construed in accordance with paragraph 1(2);

“premises” has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014; and

“the relevant officer” is to be construed in accordance with paragraph 3.

(2) For the purposes of this Schedule the circumstances in which a person (‘P’) has a legitimate reason for possessing an indecent photograph of a child (‘C’) include —

- (a) the photograph was of C aged 16 or over;
  - (b) one or both of the following apply —
    - (i) P and C are married or civil partners or are living together in an enduring family relationship;
    - (ii) P and C were married or civil partners or were so living together at the time P obtained the photograph;
  - (c) the photograph shows C alone or with P, but does not show any other person;
  - (d) C has consented to the photograph being in P’s possession (and that consent has not been withdrawn); and
  - (e) P owns the photograph, or is authorised (directly or indirectly) by the owner to possess it.
-

**SCHEDULE 2**  
(sections 289(9) and 290(10))

**SEXUAL OFFENCES TO WHICH SECTIONS 289 AND 290 APPLY**

**PART A**  
**SEXUAL OFFENCES TO WHICH SECTION 289 APPLIES**

1. The following are sexual offences to which section 289 (Offences outside the Falkland Islands) applies —

(a) an offence under any of sections 207 to 210 (sexual offences against children under 13);

(b) an offence under any of sections 211 to 217 (child sex offences);

(c) an offence under any of the following sections if the victim of the offence was under 13 at the time of the offence —

- sections 203 to 206 (Rape and related offences)

- sections 218 to 221 (Abuse of position of trust)

- sections 226 and 227 (Familial child sex offences)

- sections 231 to 234 (Offences against persons with a mental disorder)

- sections 235 to 238 (Inducements, etc. to persons with a mental disorder)

- sections 239 to 242 (Offences by care workers)

- sections 259 to 262 (Abuse of children through prostitution and pornography)

- section 279 (Administering a substance with intent);

(d) an offence under section 246, 247 or 252 (Indecent photographs or images of youths) in relation to a photograph or pseudo-photograph or image showing a person under 13;

(e) an offence under section 279 or 280 (Preparatory offences) if the intended offence was an offence against a person under 13.

2. A reference in paragraph 1 to an offence includes —

(a) an attempt or conspiracy to commit that offence;

(b) encouraging the commission of that offence; and

- (c) aiding and abetting the commission of that offence.

**PART B**  
**SEXUAL OFFENCES TO WHICH SECTION 290 APPLIES**

Section 290 (Encouraging the commission of certain sexual acts outside the Falkland Islands) applies to an offence under any of sections 203 to 214 and sections 216 to 227 in which the victim of the offence has not attained the age of 16 years.

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**SCHEDULE 3**  
(section 2 and Part 11)

**SEXUAL OFFENCES FOR PURPOSES OF PART 11**

**Offences under the UK Sexual Offences Act 1956**

1. An offence under section 1 (Rape).
2. An offence under section 5 (Intercourse with girl under 13).
3. An offence under section 6 (Intercourse with girl under 16) if the offender was 20 or over.
4. An offence under section 10 (Incest by a man) if the victim or (as the case may be) other party was under 18.
5. An offence under section 12 (Buggery) if —
  - (a) the offender was 20 or over; and
  - (b) the victim or (as the case may be) other party was under 18.
6. An offence under section 13 (Indecency between men) if —
  - (a) the offender was 20 or over; and
  - (b) the victim or (as the case may be) other party was under 18.
7. An offence under section 14 (Indecent assault on a woman) if —
  - (a) the victim or (as the case may be) other party was under 18; or
  - (b) the offender, in respect of the offence or finding, is or has been —
    - (i) sentenced to imprisonment for not less than 30 months; or
    - (ii) admitted to a hospital subject to a restriction order.

8. An offence under section 15 (Indecent assault on a man) if —
  - (a) the victim or (as the case may be) other party was under 18; or
  - (b) the offender, in respect of the offence or finding, is or has been —
    - (i) sentenced to imprisonment for a term of not less than 30 months; or
    - (ii) admitted to a hospital subject to a restriction order.
9. An offence under section 16 (Assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
10. An offence under section 28 (Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).

**Offences under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to the Sexual Offences Ordinance 2005**

1. An offence under section 1 or 2.
2. An offence under section 3 if —
  - (a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;
  - (b) in any other case —
    - (i) the victim was under 18; or
    - (ii) the offender, in respect of the offence or finding, is or has been —
      - (A) sentenced to a term of imprisonment;
      - (B) detained in a hospital; or
      - (C) made the subject of a community order of at least 120 hours.
3. An offence under any of sections 4 to 6.
4. An offence under section 7 if the offender —
  - (a) was 18 or over; or
  - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
5. An offence under any of sections 8 to 12.

6. An offence under section 13, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.
7. An offence under section 14 if the offender —
  - (a) was 18 or over; or
  - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
8. An offence under section 15.
9. An offence under any of sections 17 to 20 of the Sexual Offences Act 2003 (Abuse of position of trust) if the offender, in respect of the offence, is or has been —
  - (a) sentenced to a term of imprisonment;
  - (b) detained in a hospital; or
  - (c) made the subject of a community order of at least 120 hours.
10. An offence under section 25 or 26 if the offender —
  - (a) was 18 or over; or
  - (b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.
11. An offence under any of sections 30 to 37.
12. An offence under any of sections 38 to 41 if —
  - (a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;
  - (b) in any other case, the offender, in respect of the offence or finding, is or has been —
    - (i) sentenced to a term of imprisonment;
    - (ii) detained in a hospital; or
    - (iii) made the subject of a community order of at least 120 hours.
13. An offence under section 47 if the victim or (as the case may be) other party was under 16, and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under section 48 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

15. An offence under section 49 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 50 (Arranging or facilitating child prostitution or pornography) if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 61.

18. An offence under section 62 or 63 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

19. An offence under section 64 or 65 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

20. An offence under section 66 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 67 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

22. An offence under section 69 or 70 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

**Offences under Part 10 of this Ordinance**

1. An offence under section 203 or 204.

2. An offence under section 205 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

3. An offence under any of sections 206 to 208.

4. An offence under section 209 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

5. An offence under any of sections 210 to 214.

6. An offence under section 215, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.

7. An offence under section 216 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

8. An offence under section 217.

9. An offence under any of sections 218 to 221 if the offender, in respect of the offence, is or has been —

(a) sentenced to a term of imprisonment;

(b) detained in a hospital; or

(c) made the subject of a community order of at least 120 hours.

10. An offence under section 226 or 227 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

11. An offence under any of sections 231 to 238.

12. An offence under any of sections 239 to 242 if —

(a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case, the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment;

(ii) detained in a hospital; or

(iii) made the subject of a community order of at least 120 hours.

13. An offence under 246 or 247 if —

(a) the indecent photograph or pseudo-photograph showed persons under 16; and

(b) the offender was 18 or over or is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under 252 if —

(a) the offender was 18 or over; and

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 2 years.

15. An offence under section 256 if the victim or (as the case may be) other party was under 16, and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 257 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 258 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

18. An offence under section 262 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

19. An offence under section 279.

20. An offence under section 280 or 281 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 282 or 283 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

22. An offence under section 284 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

23. An offence under section 285 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

24. An offence under section 286 or 287 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

**Other offences**

1. An offence under section 1 of the UK Indecency with Children Act 1960 (Indecent conduct towards young child).

2. An offence under section 54 of the UK Criminal Law Act 1977 (Inciting girl under 16 to have incestuous sexual intercourse).

3. An offence under section 160 of the UK Criminal Justice Act 1988 (Possession of indecent photograph of a child) if the indecent photograph or pseudo-photograph showed persons under 16 and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

4. An offence under section 3 of the UK Sexual Offences (Amendment) Act 2000 (c. 44) (Abuse of position of trust), if the offender was 20 or over.

5. An offence under the Customs Ordinance in relation to the import of prohibited articles if —

(a) the prohibited articles included indecent photographs of persons under 16; and

(b) the offender was 18 or over.

6. Conspiracy to commit any of the offences listed in this Schedule.

7. Attempting to commit any of those offences.

8. Encouraging any of those offences.

9. Aiding and abetting any of those offences.

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**SCHEDULE 4**  
(sections 321 and 322)

**OTHER OFFENCES FOR THE PURPOSES OF PART 11**

Murder at common law or under section 46

Manslaughter at common law or under section 50

An offence under section 52 (Soliciting murder)

An offence under section 53 (Threats to kill)

An offence under section 56 (Infanticide)

An offence under section 57 (Child destruction)

An offence under section 64 (Wounding, etc. with intent to cause grievous bodily harm)

An offence under section 65 (Malicious wounding)

An offence under section 66 (Attempting to choke etc. with intent to facilitate serious offence)

An offence under section 67 (Using drugs to facilitate serious offence)

An offence under section 68 (Administering poison)

An offence under section 69 (Setting spring guns, etc.)

An offence under section 71 (Assault occasioning actual bodily harm)

An offence under section 73 (Assault to prevent arrest)

An offence under section 74 (Assaulting persons when preserving wrecks)

An offence under section 77 (Causing or allowing the death of a child or vulnerable adult)

An offence under section 80 (Abandoning young child)

An offence under section 82 (Cruelty to or neglect of person under 16)

An offence of abduction under section 84 or 85

An offence under section 87 (Trafficking for labour)

An offence under section 88 (Female genital mutilation)

An offence under section 90 (Forced marriage)

Kidnapping under section 115(1)

False imprisonment at common law or under section 115(2)

Torture under section 116

An offence under section 178 (Causing grievous harm by explosion)

An offence under section 179 (Causing explosion, etc. with intent)

An offence under section 182 (Placing explosives with intent)

An offence under section 184 (Possession of explosives with intent)

An offence under section 195 (Destroying or damaging property)

An offence under section 196 (Arson)

An offence under section 259 (Paying for sexual services of a child) if the victim or (as the case may be) other party was 16 or over

An offence under any of sections 260 to 263 (Exploitation of prostitution)

An offence under section 275 (Sex trafficking)

An offence under section 347 (Theft)

An offence under section 353 (Robbery)

An offence under section 354 (Burglary)

An offence under section 355 (Aggravated burglary)

An offence under section 363 (Aggravated vehicle-taking) involving an accident which caused the death of any person

An offence of riot at common law or under section 508

An offence under section 509 (Violent disorder)

An offence of affray at common law or under section 510

An offence under section 87 of the Mental Health Ordinance (Ill-treatment of patients)

An offence under section 14 of the Road Traffic Ordinance (Causing death by reckless driving)

An offence under section 23 of the Firearms Ordinance (Possessing firearm with intent to injure)

An offence under section 24 of the Firearms Ordinance (Use of firearm or imitation firearm to effect unlawful purpose)

An offence under any provision of the Telecommunications Ordinance

Outraging public decency at common law

The following offences insofar they apply to the Falkland Islands by virtue of Part X of the Interpretation and General Clauses Ordinance —

An offence under section 1 of the UK Aviation Security Act 1982 (Hijacking)

An offence under section 2 of that Act (Destroying, damaging or endangering safety of aircraft)

An offence under section 3 of that Act (Other acts endangering or likely to endanger safety of aircraft)

An offence under section 4 of that Act (Offences in relation to certain dangerous articles)

An offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes)

An offence under section 9 of that Act (Hijacking of ships)

An offence under section 10 of that Act (Seizing or exercising control of fixed platforms)

An offence under section 11 of that Act (Destroying ships or fixed platforms or endangering their safety)

An offence under section 12 of that Act (Other acts endangering or likely to endanger safe navigation)

An offence under section 13 of that Act (Offences involving threats)

An offence under section 1 of the UK Terrorism Act 2005 (Hostage-taking)

Conspiracy to commit any of the offences listed in this Schedule

Attempting to commit any of those offences

Encouraging any of those offences

Aiding and abetting any of those offences

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**SCHEDULE 5**  
(section 581)

**REPEALED AND DISAPPLIED LAWS**

**PART ‘A’**  
**REPEALED ORDINANCES**

- Crimes Ordinance, including Schedules 1 and 2
- Contempt of Court Ordinance
- Sexual Offences Ordinance 2005
- Protection from Harassment Ordinance 2014

**PART ‘B’**  
**REPEALED PROVISIONS**

- Police Ordinance, sections 55 and 57
- Road Traffic Ordinance, section 30

**PART ‘C’**  
**DISAPPLIED IMPERIAL ENACTMENTS**

Accessories and Abettors Act 1861  
Uniforms Act 1894 section 2  
Children and Young Persons (Harmful Publications) Act 1955  
Obscene Publications Acts 1959 and 1964  
Abortion Act 1967  
Prohibition of Female Circumcision Act 1985  
Human Organs Transplants Act 1989  
Protection from Harassment Act 1997  
Sex Offenders Act 1997  
Crime and Disorder Act 1998  
Anti-Terrorism, Crime and Security Act 2001

**PART ‘D’**  
**CONSEQUENTIAL AMENDMENTS**

In section 41 of the Telecommunications Ordinance —

- (a) renumber subsection (2) as “subsection (1)” and “subsection (2)” as “subsection (3)”; and
- (b) under subsection (2) replace “subsection (1)” with “section 154 of the Crimes Ordinance 2014”;

(c) under subsection (3) replace “any provision of this section” in each place it appears by “any provision of section 154 of the Crimes Ordinance”.

Passed by the Legislature of the Falkland Islands on 30 October 2014.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD.,  
*Deputy Clerk of the Legislative Assembly.*

# CRIMES ORDINANCE 2014

## EXPLANATORY MEMORANDUM

### GENERAL INTRODUCTION

#### **Background**

Prior to the passing of this Ordinance criminal laws of the Falkland Islands were contained in a few local Ordinances and a large number of United Kingdom enactments that applied by their own force, by Order in Council, by virtue of Chapter X of the Interpretation and General Clauses Ordinance or by virtue of the Crimes Ordinance. Section 3 of the previous Crimes Ordinance made offences at common law offences in the Falkland Islands and section 6 adopted as laws of the Falkland Islands the English Acts listed in Schedule 1 to that Ordinance

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

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

This Ordinance updates and consolidates legislation that creates criminal offences in the Falkland Islands. It re-states in modern language the provisions of relevant local ordinances, which will be repealed upon commencement. They are:

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

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

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

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

## **Scope of the Ordinance**

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

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

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

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

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

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

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

## **Penalties**

The Ordinance adopts the modern practice of placing the penalty at the foot of each offence. The penalty stated is the maximum (as provided in section 480(3) of the CPEO 2014.) There will be sentencing guidelines issued under section 482 of that Ordinance.

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

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

## **Role of the Governor**

In accordance with s.66 of the Constitution, the Governor must consult the Executive Council before performing functions. This convention is confirmed by the Interpretation and General Clauses Ordinance which confirms that the term 'Governor' means the Governor after consulting Executive Council, therefore any reference in the Ordinance to 'the Governor' alone means the Governor after consulting Executive Council.

S66(2)(c) of the Constitution states that if the Governor is required to consult with any person or authority other than the Executive Council, the Governor's obligation to consult with the Executive Council is displaced:

*'The Governor shall not be obliged to consult with the Executive Council.....when exercising any function conferred on the Governor by this Constitution or any other law where it is provided, either expressly or by necessary implication, that the Governor exercise such function in his or her discretion or in his or her judgement or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council'*

Some provisions within the Ordinance require the Governor to consult some other person or body, such as the Criminal Justice Council, the Advisory Committee or the Chief Justice, and the requirement to consult Executive Council is therefore displaced, as per s66(2)(c) of the Constitution, above.

Having carefully considered the need in some instances for the Governor to have the benefit of advice both from the Judicial and Executive branches of Government, there are some provisions which require the Governor to consult both the Executive Council and some other person or

body. This, in effect requires consensus of the two bodies unless the Governor chooses to disregard the advice in accordance with Article 67 of the Constitution. In order to preserve the role of Executive Council as a required consultee, the term ‘Governor in Council’ is used to ensure clarity that the obligation to consult with Executive Council has not been displaced but is in addition to the obligation to consult with the stated body.

The Governor must report to the Legislative Assembly any disagreement with the advice given, as provided by section 788. The obligation under section 67 of the Constitution to report to Secretary of State any disagreement with ExCo’s advice remains.

### **Other matters**

Powers of arrest without warrant are in the police powers provisions of the CPEO 2014 so are not included in this Ordinance unless the offence is not imprisonable in which case the power is stated.

Powers of search and seizure are also included in the police powers provisions of the CPEO 2014 and are not repeated in this Ordinance unless they have special features which justify that.

Powers of forfeiture are included in this Ordinance although the CPEO 2014 empowers courts to make deprivation orders (see sections 617 on.). The UK laws (and Schedule 1 to this Ordinance) continue to include express forfeiture provisions and section 622 of the CPEO 2014 makes provision for the disposal of forfeited items (see section 622.)

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

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

The Ordinance is divided into 4 Chapters and 26 Parts. The Chapters deal with preliminary and general principles; then with crimes against the individual; then with crimes against the general public; and supplementary provisions. There are also 5 Schedules, which are set out at the end of the whole Ordinance, in line with the usage in the UK.

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

## **CHAPTER 1 – PRELIMINARY**

### **PART 1 – PRELIMINARY AND INTERPRETATION**

#### **Introduction**

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

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

### **Notes on sections**

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

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

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

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

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

Sub-cause (2) provides that any terms defined in section 2 of the CPEO 2014 but not in this Ordinance have the same meaning in this Ordinance.

Sub-sections (3) to (6) are similar to subsections of section 2 of the CPEO 2014 but are repeated for ease of reference and to ensure consistency.

## **PART 2 - GENERAL PROVISIONS**

### **Introduction**

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

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

Other general principles applicable to offences as well as procedure are included in the Criminal Procedure and Evidence Ordinance. See for example section 780 on the use of force, section 781 on the criminal liability of corporations, and section 782 on service of documents. (For a separate statement of the rule about corporations see section 429 which relates to computer misuse offences committed by someone who is not an officer or member of the corporation.)

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

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

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

### **Notes on sections**

#### Criminal liability

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

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

Section 5 is a definition of automatism based on English case law (see Archbold paras. 17-85 on.) It was included in the Crimes Ordinance and is reproduced in this Part. However, the case law interpreting this definition continues to develop and no attempt has been made to refine it beyond the basic definition. Reference to the common law will still be necessary to assist in the application of the definition to fact-specific situations.

Note that there has been no attempt in this Part to codify the law on insanity, self-induced intoxication etc. or other defences, apart from self-defence which is in section 120. Marital coercion (both as a statutory and a common law defence) is no longer a defence in the Falkland Islands, in line with its abolition in the UK.

#### Offences outside the Falkland Islands

Section 6 states the common law rule about extraterritorial jurisdiction in respect of homicide offences.

Sections 7 to 13 make extended provisions about extraterritorial jurisdiction in relation to offences of dishonesty, conspiracy, incitement and attempts. They are based on sections 1 to 6 of the UK Criminal Justice Act 1993. These provisions do not affect the operation of any specific rules about jurisdiction that apply to particular offences under any provision of the Ordinance.

The terms ‘Group A offence’ and ‘Group B offence’ are defined in section 2. The Group B offences involve more than one person so that different rules about jurisdiction might apply.

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

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

#### Alternative verdicts

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

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

#### Miscellaneous

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

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

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

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

### PART 3 – ANCILLARY OFFENCES

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

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

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

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

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

## **Notes on sections**

### Attempts

Section 19 combines and modifies provisions of section 10 of the previous Crimes Ordinance and of section 1 of the UK Criminal Attempts Act, 1981. It makes attempt a general offence and says that every substantive offence can be the subject of a charge of attempt, and can result in a conviction for attempt, even if not charged. This is a broad statement but appropriate in the Falkland Islands where even very serious offences are summary. It means that no other provisions need mention attempt as a separate or additional offence, although they might sometimes do so when listing offences.

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

Section 21 makes procedural rules about prosecuting attempts.

Section 22 abolishes the common law offence of attempt.

### Conspiracy

Sections 23 to 30 are based on the UK Criminal Law Act 1977 as amended by the Criminal Attempts Act 1981, Criminal Justice (Terrorism and Conspiracy) Act 1998 and Criminal Justice

Act 1987. Conspiracy is triable only on indictment in England, but is triable according to the nature of the main offence in the Falkland Islands. So it is an indictment-only offence if the main offence is indictment-only – see section 181 Criminal Procedure and Evidence Ordinance.

Section 23 creates the offence of conspiracy. The transitional provisions at (2) of the UK section are in Part 26 of the Ordinance.

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

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

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

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

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

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

#### Encouraging offences

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

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

Section 31 therefore creates 3 new offences –

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

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

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

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

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

Section 33 makes supplemental provisions.

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

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

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

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

Sub-section (6) provides that the requirement that a person believes that a criminal offence, or a number of criminal offences, be committed is satisfied if he or she believes that the

criminal offence, or that one or more criminal offences, would be done if certain conditions are met.

Section 34 provides two defences.

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

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

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

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

Sub-section (1) confers jurisdiction where a person does an act in the Falkland Islands, capable of encouraging an offence, and knows or believes that what the person anticipates might take place outside the Falkland Islands but the offence is one for which a perpetrator could be tried in the Falkland Islands if the anticipated offence were committed outside the Falkland Islands, or relevant conditions exist that would make it so triable.

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

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

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

Section 37 governs the institution and conduct of proceedings.

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

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

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

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

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

Section 40 prescribes the penalties that will apply to the offences created in section 31. The maximum penalty for encouraging an offence of murder is imprisonment for life. The general rule is that the maximum penalty available for an offence under section 31 will be the same as the maximum available on conviction for the relevant anticipated or reference offence. If none of the offences is punishable by imprisonment then the maximum sentence will be a fine.

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

#### Accessories

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

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

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

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

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

Note that attempts, conspiracy and aiding and abetting are triable in the same manner as the main offence i.e. indictment-only or summary. See the definition of ‘indictment-only’ offence in section 181 of the CPEO 2014.

## **CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL**

### **PART 4 – OFFENCES AGAINST THE PERSON**

#### **Introduction**

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

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

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

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

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

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

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

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

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

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

The Part includes the offence of torture, which was created for the Falkland Islands by the Criminal Justice (Torture) (Application to Overseas Territories) Order 1988, and the offences of genocide and crimes against humanity, created for the Falkland Islands by the International Criminal Court Act 2001 (Overseas Territories) Order 2009. It does not include other international offences applied to the Falkland Islands by Order in Council such as hijacking, aviation security and maritime security. These will continue to apply directly.

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

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

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

### **Notes on sections**

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

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

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

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

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

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

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

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

Sections 52 and 53 are based on provisions of the OAP Act 1861 as amended by the Criminal Law Act 1977. Section 52 deals with soliciting for murder and section 53 deals with threats to kill.

Sub-section (3) of 52 is a protection against double jeopardy as the facts could amount to aiding and abetting which is an ancillary offence under Part 3.

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

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

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

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

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

#### Endangering life

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

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

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

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

#### Assaults

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

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

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

#### Endangering lives of children, etc.

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

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

each parent in the acts or omissions was unclear. As a result this offence has a lower penalty than that for murder or manslaughter.

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

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

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

Section 81 is the offence of being drunk while in charge of a child under the age of 7 in a public place, section 2 of the UK Licensing Act 1902, which was disapplied in Falkland Islands but as a useful provision for child protection has now been reinstated in this legislation.

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

In April 2012 the UK charity Action for Children launched a campaign calling for reform of the CYPA. It argued that the law needed to be modernised to align with society's current understanding of parenting, child protection and neglect as a form of child abuse, which has evolved in the 80 years since the 1933 Act was introduced. The CYPA seeks only to protect children's very basic physical needs and fails to reflect their emotional and developmental needs or the current recognition of children as individuals with rights. The issue has been debated several times in the House of Commons, and the government has now significantly shifted its position, from initially resisting any amendment. The *Child Maltreatment Bill 2013-14*, a Private Members' Bill sponsored by Mark Williams, was presented to Parliament through the ballot procedure on 19 June 2013 but was not moved for debate and the order to read the Bill a second time lapsed. However, in the Queen's Speech on 4 June 2014 the Government announced that a provision to introduce a change to the law, to include emotional abuse and developmental neglect, will be included in the Serious Crime Bill in the current Parliamentary session.

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

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

### Child abduction

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

Section 84 creates the offence of abduction of a child by parent or someone in a similar relationship and section 85 creates the offence of abduction of a child by persons other than parents. The penalty for the offence of abduction by persons other than parents has been increased to 10 years, as it was regarded by Legislative Assembly as being a more serious offence.

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

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

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

### Forced marriages

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

Sections 92 to 101 provide for the making of forced marriage protection orders on the application of a person who fears being forced into a marriage, or of the Attorney General, or on the court's own initiative. The provisions are based on provisions in the UK Family Law Act 1996 as recently amended.

### Domestic violence protection

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

The procedure is similar to that for a forced marriage protection order under sections 92 to 101. It is also similar to the procedure for sexual risk orders (SROs) under Part 11. The availability of this procedure provides the victim of domestic violence short term protection while he or she is offered professional support and considers what action they wish to take e.g. to make a statement and support a prosecution, or to commence Family proceedings for non-molestation, etc. Such

orders should help to reduce the risk of domestic violence, as application is not made by the victim, who is often reluctant or fearful of seeking a non-molestation order in the civil courts for various reasons.

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

#### Human organ transplants

Sections 109 to 111 are based on the UK Human Organs Transplant Act 1989 which applies to the Falkland Islands. This Act was repealed in the UK by the Human Tissue Act 2004. The later Act is however much more detailed and wide-ranging than is necessary for the Falklands context, where medical facilities are limited. The earlier provisions have therefore been retained but the penalties updated and aligned to the equivalent provisions in the Human Tissue Act.

Section 109 prohibits commercial dealings in human organs.

Section 110 restricts transplants between persons not genetically related.

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

#### Crimes against humanity

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

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

#### Miscellaneous offences

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

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

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

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

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

Section 119 permits the use of reasonable force in making an arrest, etc. by cross-referring to section 782 of the CPEO 2014.

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

## PART 5 - CORPORATE MANSLAUGHTER

### **Introduction**

This Part derives from the UK Corporate Manslaughter and Corporate Homicide Act 2007. (The offence is called corporate manslaughter in England and Wales; corporate homicide in Scotland.) It creates a statutory offence, not previously known to the English law. It covers cases where death is caused by the activities of a corporation, although prosecution under this Part does not preclude prosecution of individuals for gross negligence manslaughter as well, should the circumstance of the case dictate that this is appropriate.

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

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

For purposes of this Part, a corporation includes –

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

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

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

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

### **Notes on sections**

Section 122 creates the offence and makes it indictment-only. The penalty is an unlimited fine. The application of the offence is limited to harm sustained in the Falkland Islands (including its territorial waters), on a Falkland’s registered ship or aircraft or offshore installation.

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

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

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

Sections 133 to 136 are about evidence and procedure.

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

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

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

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

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

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

## PART 6 - PROTECTION FROM HARASSMENT

### **Introduction**

This Part is mainly based on the UK Protection from Harassment Act 1997, as amended, and is intended to protect people from harassing behaviour in all its forms and from whatever source, including hate mail or even excessive adulation. It is possible for an offence of harassment to be racially or religiously aggravated, see section 550.

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

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

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

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

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

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

The arrest without warrant powers in the UK Acts were repealed by the Serious and Organised Crime and Police Act 2005 with effect from 1 January 2006 and are not included as they are in the CPEO 2014.

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

### **Notes on sections**

Section 141 defines terms used in the Part that are not defined in section 2 or elsewhere. It applies the interpretation section 7 of the UK 1997 Act to the whole Part and incorporates other definitions from the UK Acts. It does not define 'harassment', a term which has been the subject of much case law in the UK. The decision as to whether behaviour amounts to harassment is a matter for the court to decide on a case by case basis. There is general agreement that for conduct to constitute harassment it must be objectively judged as oppressive and unacceptable; that what is oppressive and unacceptable may depend upon the social or working context in which the

conduct occurs; and that a line is to be drawn between conduct which is unattractive and unreasonable and conduct which amounts to ‘torment’ of the victim or is of a degree that should sustain criminal liability. See *Dawson v Northumbria Police* unreported 20.10.2010 QBD

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

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

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

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

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

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

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

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

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

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

Section 151 is based on section 5 of the Protection from Harassment Act 1997 as amended. It empowers a court to impose a restraining order on a person convicted of ‘an offence’. The offence in question might be under other legislation e.g. drugs or firearms. There is UK case law that a restraining order can be imposed for any offence if the court considers it appropriate in order to protect the victim from harassment or fear of violence. It is a useful power in relation to domestic violence cases.

Section 152 empowers a court to impose a restraining order on a person acquitted of an offence. As the section is currently drafted this must be for an offence under the Ordinance rather than for any offence as in section 151. Unfortunately the anomaly between the two sections was not identified in sufficient time to lay an amendment before the Bill was passed. It was always the intention to replicate the provision of section 151 and an amendment to implement this is

anticipated. The courts in UK can impose a RO if they find behaviour requiring restraint but not sufficient for a criminal conviction. The power is equivalent to a civil injunction without the victim having to make a separate application.

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

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

## PART 7 - OFFENSIVE WEAPONS

### **Introduction**

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

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

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

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

### **Notes on sections**

Section 155 contains definitions which relate to the whole Part. The definitions of 'school' and 'school premises' are based on s.2 of the Education Ordinance and s.16A of the Crimes Ordinance, and are similar to the definition in s.4 of the UK Education Act 1996. There is no

requirement that the school needs to be in session or that it be during term-time when the possession occurs.

The definition of ‘offensive weapon’ adopts the concept in UK law that anything can be an offensive weapon if intended to be used for offence. The definition does not mention firearms or crossbows or knives or bladed/pointed articles as these are controlled by specific provisions in this Part or the Firearms Ordinance. Section 160 relates specifically to flick knives. This offence is not in the UK legislation, but is in some other criminal codes (notably Gibraltar) and appears to be appropriate for the Falkland Islands.

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

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

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

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

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

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

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

Section 163 empowers a court to order forfeiture of articles. This and section 164 will attract the provisions of section 622 of the CPEO 2014.

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

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

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

Section 170 prohibits the possession on school premises of an article to which section 169 applies and any other offensive weapon, with similar exceptions as in section 169. This aggravated form of the offence carries an enhanced penalty of 2 years.

Section 171 is the offence of threatening with an offensive weapon or an article with a blade or point on school premises. It was introduced by the UK LASPO Act 2012. The minimum sentence requirement has not been included but this provision carries a higher penalty than charges of simple possession on school premises, and, as it is doubly aggravated, is 4 years.

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

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

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

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

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

## PART 8 - EXPLOSIVE SUBSTANCES

### **Introduction**

This Part incorporates UK provisions about explosive substances that are still extant, and provisions of the previous Crimes Ordinance about explosives endangering public safety. The UK criminal offences relating to explosive substances (other than manufacture and keeping) are comparatively few and rather ancient. There are some provisions relating to explosive substances in the UK Offences against the Person Act (sections 28, 29, 30 and 64.) There are also provisions in the UK Explosive Substances Act 1883 (sections 2 to 9), as amended by the Criminal Jurisdiction Act 1975, which replaced sections 2 and 3 of the 1883 Act, and by the Criminal Law Act 1977. The 1883 Act is listed under Explosives in the Laws of Falkland Islands as applying to the Falkland Islands. It was noted that there was a degree of overlap in the various definitions and offences but with sentence disparity. These have been rationalised.

A few of the provisions of the UK Explosives Act 1875 relate to explosives generally and are included in this Part (sections 192 and 193 dealing with forfeiture etc.) The rest of the 1875 Act

relates to the manufacture and keeping and conveyance of gunpowder and other explosives and will continue to apply to the Falkland Islands as imperial enactments.

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

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

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

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

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

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

### **Notes on sections**

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

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

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

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

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

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

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

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

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

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

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

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

Section 189 relates to the sale of explosives.

Section 190 prohibits the throwing of fireworks.

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

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

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

Section 193 provides for the forfeiture of all explosive substances. See section 622 of the CPEO 2014 for the disposal of forfeited property.

## PART 9 - CRIMINAL DAMAGE

### **Introduction**

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

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

Offences relating to explosive substances are in Part 8.

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

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

### **Notes on sections**

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

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

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

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

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

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

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

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

## PART 10 – SEXUAL OFFENCES

### **Introduction**

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

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

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

The Part includes amendments made to the 2003 Act by the Criminal Justice and Immigration Act 2008 and the Policing and Crime Act 2009. It includes an offence of possession of prohibited images based on sections 62 to 67 of the Coroners and Justice Act 2009 - see sections 253 to 256. It includes the concept of a ‘pseudo-photograph’ introduced by that Act, and extends the age of the victim for all such offences to 18, as in the SOO Schedule. The Part also includes the offences in the Criminal Justice and Immigration Act 2008 of possession of extreme pornographic images.

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

Sections 259 to 263 (child pornography) based on sections 160 and 160A of the Criminal Justice Act 1988 and section 1 and other sections of the Protection of Children Act 1978;

Section 267 (loitering etc. for prostitution) based on s.1 of the Street Offences Act 1959;

Sections 270 to 273 (brothel-keeping) based on sections 33 to 36 of the Sexual Offences Act 1956; and

Section 274 (allowing young persons to be in a brothel) based on section 3 of the Children and Young Persons Act 1993.

The offence under the 1956 Sexual Offences Act and the Offences against the Person Act 1861 of indecency between males was abolished by the 2003 Act. Homosexuality has therefore been decriminalised in Falkland Islands since 2004. There is a consequential provision in Part 29 on

rehabilitation of offenders in the CPEO 2014. See also the provisions on ending of the requirement for notification of homosexual offences in Part 11 of this Ordinance.

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

### **Age of consent, etc.**

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

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

Note that the age of the defendant is not relevant to his or her belief regarding the age of the child. There is also a distinction between offences against those under 16 and those under 13 as regards belief of age in relation to persons in positions of trust (sections 218 to 225). This is because the circumstances of the offences involving abuse of trust are specialised and do not apply to everyone.

### **Extraterritoriality**

Sections 216 and 217 include an extraterritorial element in that they relate to an intention to commit a crime anywhere in the world. The intended activity must be one that, whether or not it is a crime in the local jurisdiction, would be a crime in the Falkland Islands. So an intention to engage in or arrange sexual activity with a child under 13 in another country would be caught, because the activity would be a crime in the Falkland Islands.

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

Sections 275 to 278 create offences relating to sex trafficking into, within, and out of the Falkland Islands. They create extraterritorial jurisdiction in relation to sex trafficking which by

its nature involves cross-border activity. The definition of 'relevant offence' in section 275 limits the prohibited conduct to that which would be an offence if committed in Falkland Islands; it does not include all conduct which is an offence in another country.

Sections 289 and 290 confer extraterritorial jurisdiction over certain sexual offences.

Section 289 provides that relevant conduct is an offence in Falkland Islands and can be tried there, wherever committed, if it would be an offence in Falkland Islands, even if it is not an offence in the other country. But conduct that might be an offence in another place is not triable in Falkland Islands if it is not an offence in Falkland Islands. The relevant offences are listed in Schedule 1. The term 'place' is used rather than 'country' or 'territory' to avoid problems of political identity

### Penalties

The Part adopts the penalties prescribed in the SO Act 2003 as modified by the SOO Schedule. The statement of penalty is generally in the simplified version but it is spelled out in full if there are any variants e.g. whether penetration etc.

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

Under the procedure in the CPEO 2014, all the offences will be triable summarily except those that are indictment-only (as to which see section 181 Part of the CPEO 2014). All the sexual offences that carry a life sentence are indictment-only. They include rape, offences under sections 204, 206, 207 and 208, and aggravated offences under sections 231, 232, 235, 236, 239, 259 and 280.

There are some offences that only carry low penalties, such as e.g. loitering for prostitution (section 267).

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

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

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

The offences of prostitution etc. as in sections 264 to 268 are summary only so do not appear in Archbold Criminal Pleading and Practice. They are however discussed in Archbold's Magistrates' Courts Criminal Practice at paras.14-40 to 43.

### **Notes on sections**

Section 202 defines some terms used in the Part that are not defined elsewhere in the Ordinance or in the IGCO. It includes a definition of ‘indecent’ based on UK case law, such as R v Stamford 1972 2 QB 391; R v Court 1988 87 CrAppR 144; R v Neal 2011 EWCA Crim 461.

Sections 203 to 206 create the main sexual offences against person of any age. They include rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Sections 207 to 210 create the offences of rape, assault etc. against a child under the age of 13, who is unable to give consent. It will be an offence to penetrate or have other sexual relations with a child under 13, irrespective of consent. The existing offence of unlawful sexual intercourse is therefore expanded to include boys and to include sexual activity short of penetration.

Sections 211 to 214 apply to people aged 18 or over. They create offences of engaging in sexual activity with a child of under 13, or a child of 13 but under 16 if the offender does not reasonably believe the child is over 16.

Section 215 provides that if young people aged 18 or under commit the offences in sections 203 to 214, lower penalties apply. However, a custodial sentence can still be imposed on a youth by virtue of section 729 of the CPEO 2014 relating to offences with a carrying a maximum sentence of 14 years or more.

Section 216 creates an offence of arranging or facilitating sexual activity by children under 16. The defence in (2) as amplified by (3) is to cover the situation where e.g. a health worker knows that someone intends to have sex with a child, and does not condone it but provides the person with a condom so that the sex will at least be protected.

Section 217 creates the offence of meeting a child following sexual grooming and has been amended from the UK wording. The Ordinance provides that the offence is committed after any contact. The UK wording of this offence has attracted much criticism since its implementation; for the offence to have been committed two previous contacts have to have occurred prior to the meeting or travelling to the meeting. This means that significant grooming may have taken place particularly via social media or SMS messaging which is discovered but may not be prosecuted even as an attempt, depending upon the circumstances. Proposals have been made in a recent parliamentary report that the number of contacts should be reduced to one and that a new offence of ‘sexualised contact’ be considered. However it is right to say that if parents report inappropriate internet contact to the police, the police can consider applying for a Sexual Risk Order to prevent such activity. Accordingly, when the issue was considered in Legislative Assembly, the Honourable Members considered it appropriate to pay heed to the criticism and amended the provision accordingly.

Sections 218 to 225 create offences by persons in a position of trust in who abuse the trust by engaging in sexual activity with a child etc. The categories of persons in a position of trust are adapted to Falkland Islands. Some terms, such as ‘independent clinic’ and ‘residential care

home' are not defined, but have an established meaning. Strict liability is imposed on care workers in relation to children under 16, but in respect of young people aged 16 or 17, the prosecution needs to show that the accused did not reasonably believe that the person was 18 or over. The age of the defendant is irrelevant to this requirement, and there is a rebuttable presumption that the accused did not reasonably believe the person was 18 or over. The prosecution must also show in certain cases that the defendant knew or could reasonably be expected to know that he or she was in a position of trust.

Under section 222(10) the Governor, after consulting the Criminal Justice Council, can declare additional positions to be positions of trust for purposes of these sections.

Sections 226 to 230 deal with child sex offences in the family context, including child incest. See section 282 for adult incest.

Sections 231 to 234 make it an offence for any person to engage in sexual activity with a person with a mental disability that impedes choice.

Sections 235 to 238 create various other offences in relation to persons with a mental disorder, including offering inducements etc. to procure sexual activity.

Sections 239 to 245 make it an offence for a care worker to engage in sexual activity with a person with a mental disorder and create other sexual offences by care workers in relation to persons in their care.

Sections 246 to 251 make it an offence to take or possess or publish indecent photographs of youths, i.e. a person under the age of 18. Section 250 gives powers of entry, search and seizure and Schedule 1 sets out a procedure for disposal of seized items. The term 'indecent' is not defined in UK statute law but is defined in section 202 on the basis of UK case law as mentioned above.

Sections 252 to 255 make it an offence to possess prohibited images of youths. There is exclusion for classified films and a defence of having a legitimate excuse for possession.

Section 252 implements Article 9 of the Council of Europe Convention on Cybercrime. See also Part 14 for other provisions implementing that Convention.

Sections 256 to 258 relate to the possession of extreme pornographic images. They are derived from sections 63 to 67 of the Criminal Justice and Immigration Act 2008. It is an offence for a person to be in possession of an extreme pornographic image, moving or still. An 'extreme' image is defined by reference to specific acts. Defences are provided for extracts from classified movies, and for persons who are themselves portrayed in such images, who are not aware of the images, or who have a legitimate reason for possessing them, etc.

Section 257 omits the UK rules about classification of videos (which are no longer law in the UK) and section 258 omits the exception about providers of information services. But see Part 25 for offences relating to obscene publications generally.

Sections 259 to 263 create offences relating to the abuse of children through prostitution and pornography. Section 260 retains the distinction between children under 13 and those under 18 for sentencing purposes.

Section 259(1) is varied from the UK version to make it an offence to pay a child for sexual services not only for the payer but for another person on whose behalf payment has been made.

Sections 264 to 269 create various offences relating to prostitution, such as kerb-crawling and persistent soliciting. The offences can be committed by either sex and include men soliciting prostitutes, but do not include prostitution itself. The term 'street' is defined in the IGCO.

The power of arrest in section 267(4) is needed because the offence is not imprisonable so the general arrest power in Part 4 of the CPEO 2014 does not apply.

Sections 270 to 274 create offences relating to the keeping of a brothel and permitting premises to be used as a brothel. The offences are framed so as to cover people who are in the process of gender reassignment.

Section 275 creates a composite offence relating to sex trafficking into, within, and out of the Falkland Islands. The offence is made extraterritorial as noted above. Sections 276 and 277 empower courts to forfeit land vehicles, ships and aircraft used for sex trafficking and section 278 defines some terms.

Sections 279 to 281 create certain preparatory offences such as administering a substance with intent to stupefy.

Sections 282 and 283 create the offence of incest i.e. sexual relations with an adult relative. The list of prohibitions is limited to direct blood relationships, and is similar to the proscribed degrees of relationship for marriage. See sections 226 to 230 for sexual activity with children of the family.

Sections 284 to 288 create certain other sexual offences, including genital exposure (called simply 'exposure' in the UK Act), voyeurism, bestiality and sexual penetration of a corpse.

Section 286 varies from the UK version in that the penetration is prohibited of or by an animal, whether alive or dead. This parallels the offence in section 256 in relation to 'extreme images'.

Sections 289 confers extraterritorial jurisdiction in respect of certain sexual offences as listed in Schedule 2. It uses the term 'place outside Falkland Islands' to avoid any question about the country status of a jurisdiction.

Section 290 relates to encouraging, aiding and abetting the commission of certain sexual offences outside the Falkland Islands.

Section 291 provides certain exceptions to the rules about encouraging, aiding and abetting, in order to protect people who are advising children, etc. Sections 292 and 293 define ‘consent’, and section 294 lists the acts that are relevant for the purposes of that definition.

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

Schedule 2 lists the sexual offences which attract the extraterritorial jurisdiction under sections 289 and 290.

## PART 11 – SEX OFFENCE ORDERS

### **Introduction**

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

The Part incorporates significant changes made to the sex offenders’ notification and orders regime by the Anti-social Behaviour, Crime and Policing Act 2014 s.113. This gave effect to Schedule 5 which repealed 3 of the previous orders – the sexual offences prevention order (SOPO), the risk of sexual harm order (RSHO) and the foreign travel order. It replaced them with 2 new orders – the sexual harm prevention order (SHPO) and the sexual risk order (SRO.) Each of these orders can include a prohibition on foreign travel.

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

The notification regime in the UK remains the same as before and is set out in sections 296 to 320. They impose a notification requirement on all sex offenders i.e. people convicted of any of the offences listed in Schedule 3.

Sections 321 to 331 empower courts to impose SHPOs, and sections 332 to 341 empower courts to impose SROs.

Sections 342 to 345 are miscellaneous provisions as noted below.

The Part provides that offences committed outside the Falkland Islands and committed before the commencement of the Part are to be taken into account. In addition to sentences of fines or

imprisonment, community service orders for 120 hours or more, conditional discharges and cautions are to be taken into account. Absolute discharges do not count as convictions, however.

The Part provides for orders to be made on the basis of convictions outside the Falkland Islands of offences equivalent to sexual offences in the Falkland Islands, if the offender comes to the Falkland Islands to live. See e.g. section 316.

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

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

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

As well as the 2014 amendment noted above, the Part includes other amendments to the UK legislation including the Sexual Offenders (Remedial) Order 2012 which provided for a review of indefinite notification requirements. This is to comply with an ECHR decision that is binding on the UK.

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

### **Notes on sections**

Section 295 defines various terms used in the Part that are not defined elsewhere in the Ordinance or in the IGCO. Sub-sections (3) and (4) set out rules of equivalence as between detention for young offenders and other sentences. Sub-section (5) sets out rules of equivalence in relation to mentally disordered defendants.

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

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

Sections 296 to 306 impose notification requirements on offenders in respect of most sexual offences committed in the Falkland Islands. They set out the requirements for notification, and

what the notification must include. Notification must be given to the police after a conviction, and every year for the duration of the requirement. Notification must also be given of certain changes, and of any proposed travel outside the Falkland Islands.

Section 296 specifies as persons who are subject to notification requirements those who have been convicted of an offence listed in Schedule 4. An absolute discharge does not count as a conviction. There is a retrospective provision to the date of commencement of the SOO.

Section 297 specifies by means of a Table the period for which the notification requirement continues. The last item in the Table - 'a person of any other description' – would include someone convicted but sentenced only to community service.

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

Sections 298 to 301 specify the details that are to be given in a notification. The terms 'home address' and 'passport' are defined in section 295. No regulations prescribing additional requirements are contemplated except under Section 301(5) relating to travel outside the Falkland Islands.

Section 302 enables notification to be given at a place of lawful custody (as defined in section 2) on a form to be approved by the Governor.

Sections 303 and 304 provide that in the case of young offenders, the notification must be given by a parent, who can also apply for a variation or discharge of the order.

Section 305 makes it an offence to fail to give notification when and as required.

Section 306 is about certification. It contemplates that when dealing with a Schedule 3 offence the presiding officer will, in addition to announcing the decision of the court in the usual way at the end of a case, state that the offence is a Schedule 3 offence.

Sections 307 to 309 impose an obligation to review indefinite periods of notification as required by the ECHR.

Sections 310 and 311 are a consequence of the decriminalisation of homosexuality by the 2003 Act. They enable the Governor to make a declaration about the nature of an earlier homosexual offence which results in it not being subject to notification. There are similar provisions about rehabilitation regarding homosexual offences in sections 639 to 645 of the CPEO 2014 Ordinance.

Sections 312 to 315 relate to the supply of information to and by the Governor and to other courts.

Sections 316 to 320 provide for the making of notification orders in respect of sexual offences committed outside the Falkland Islands if the offender is in or intends to come to the Falkland

Islands. They specify the grounds on which a notification order can be sought, and its effect, and provide for interim notification orders and appeals.

Sections 321 to 331 empower a court to make a sexual harm prevention order (SHPO) if the person is convicted of an offence listed in Schedule 3 or 4 and the court is satisfied that it is necessary to make such an order for the purpose of protecting youths, vulnerable people or the public or any particular members of those groups from sexual harm from the person. The order prohibits the defendant from doing anything described in the order and has effect for not less than 5 years. The only prohibitions that may be included in the order are those necessary for the purpose of protecting the protected groups or any particular members of them from sexual harm from the defendant.

Section 324 enables a court to include in a SHPO a foreign travel prohibition, prohibiting the person from travelling outside the Falkland Islands in order to prevent sexual harm being caused by the defendant doing, outside the Falkland Islands, anything which would constitute a sexual offence if done in the Falkland Islands.

Section 325 enables either party to apply for a variation, renewal or discharge of a SHPO.

Section 326 provides for the making of interim SHPOs pending a final determination on the application. These are not time limited.

Sections 332 to 341 empower a court to make a sexual risk order (SRO). The court must be satisfied that it is necessary to make the order for the purpose of protecting people generally or any particular person from physical or psychological harm caused by the defendant doing the acts mentioned.

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

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

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

A person on whom a SHPO or SRO is made becomes liable to the notification requirements of sections 296 to 306.

Section 342 empowers the Governor to amend Schedule 3 or 4 and section 344 contains interpretative rules for them. In the UK Act these rules are stated in additional Schedules, but as they are rules of general application they are stated in the body of the Part. There is a presumption in section 343(3) about the age of a child.

Section 344 sets out the rules for ascertaining the date of a conviction and other matters relevant under the Schedules.

Section 345 is a saving for orders etc. made under the Sexual Offences Ordinance, as that Ordinance will be repealed by this Ordinance when it is enacted.

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

Schedule 4 lists other offences that are relevant in the context of sections 321 and 322 to determine whether a person is a ‘qualifying offender’ for the making of a SHPO. Hijacking and other UK anti-terrorism laws that apply to the Falkland Islands are included as the Schedule seeks to include all offences which show a propensity for violence towards people, particularly women and children, and which might mean that a person convicted of them could pose a sexual danger to people in the Falkland Islands.

## PART 10 -THEFT AND FRAUD

### **Introduction**

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

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

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

### Mortgage fraud

Section 375 uses the word ‘services’ as in section 11 of the Fraud Act 2006. The UK Court of Appeal has held that that term is wide enough to embrace professional services, commercial services and financial services. The essential condition is that the service must confer a benefit and be rendered on the basis that it has been or will be paid for. By enacting the Fraud Act using the word ‘services’ and not defining it, the UK Parliament accepted the wide meaning of the word. In the circumstances, there is no need to define the word ‘services’, leaving the prosecution to argue for the wide meaning of the term.

### Obtaining a money transfer by deception

This offence was only created in the UK in 1996, by the Theft (Amendment) Act 1996 which added sections 15A and 15B to the Theft Act 1968. Those sections are repealed by the Fraud Act 2006 as the new wider provisions of the Fraud Act covered the lacuna in the previous Theft Acts. The Fraud Act seeks to conceptualise and generalise the offence, rather than having a number of offences relating to different types of service and different monetary transactions. Obtaining a money transfer by deception is covered in this Part, either as fraud by a false representation (section 369) or obtaining services dishonestly (section 375). In this connection, it should be noted that Section 376 defines ‘property’ to mean money or other property whether real or personal, including things in action and other intangible property.

### Transnational fraud

The UK Criminal Justice Act 1993 confers extraterritorial jurisdiction in respect of a long list of offences which are mostly deception or fraud offences. This issue is dealt with in Part 2 General Principles in sections 7 to 10.

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

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

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

### **Notes on sections**

Section 346 defines various terms used in the Part but not defined elsewhere in the Ordinance or in the IGCO.

Section 347 creates the offence of theft, which it defines as “dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.” The maximum penalty is 7 years imprisonment.

Sections 348 to 352 then define the terms used in that definition of theft.

Sections 353 to 356 create various other offences involving theft, ranging from robbery and aggravated burglary which carry a maximum sentence of 18 years, to going equipped for stealing, which carries a sentence of 3 years.

Section 357 is about theft of or from mails outside the Falkland Islands. It includes some definitions based on the UK Postal Services Act 2000.

Sections 358 to 361 create offences relating to stolen goods, including handling (receiving) and advertising rewards.

Section 358 does not create an offence but has an extraterritorial element. It says that offences in the Falkland Islands relating to stolen goods are committed in the Falkland Islands wherever the goods were stolen, if the stealing amounted to a crime in the place where they were stolen.

Note that in Section 359 the maximum penalty, following the UK law, is 14 years which is double the maximum for theft. This reflects Parliament's desire to deter the professional 'fence' so that the market for stolen goods diminishes and the incidents of theft decrease: 'without handlers there would be fewer thieves'. It should also be borne in mind that handlers receive the proceeds of burglary as well as theft; and dwelling house burglary also carries a maximum sentence of 14 years.

Section 360 is required because taking a reward and doing nothing to earn it is covered by the definition of fraud, but taking a reward with a promise that no questions will be asked is not. This section makes it an offence to advertise a reward with no questions asked (as this effectively makes one an abettor to an offence). Sub-section (2) creates an offence of taking a reward in response to an unlawful advertisement.

The power of search in section 361 is retained as it is still in the UK Theft Act and is not inconsistent with the proposed search etc. provisions in the Criminal Procedure and Evidence Ordinance.

Sections 362 to 366 restate in modern terms existing offences that are similar to theft but do not amount to theft. They include taking vehicles, making off without payment and abstracting electricity.

Section 362 on taking vehicles without authority is based on s.30 of the Road Traffic Ordinance, which replaced s.12 of the Theft Act and has been repealed. The section does not include the 3-year limitation that appears in the equivalent UK provision. The reason for it in the UK is the practical difficulty of tracing a vehicle ownership etc., and does not apply in the Falkland Islands. The section extends to the taking of pedal bicycles. On a charge of theft of a vehicle, the court can convict for taking the vehicle if they are not satisfied that there was an intention to permanently deprive the owner of the vehicle.

Section 363 is a new offence of aggravated vehicle-taking. It consists of taking a vehicle and driving it dangerously, or so as to cause injury to a person or damage to property or damage to the vehicle. In other words, more than just a 'joy ride', which is covered by section 362. The test under the provision is one of driving dangerously rather than recklessly, which has been the test in the UK since 1991. The offence of reckless driving remains unchanged in the Road Traffic Ordinance, but is likely to be subject to a review of that ordinance in due course under the wider reform programme. The test for dangerous driving is lower than that of reckless driving. To commit the offence of dangerous driving the person must drive in a way that falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous. A person is also to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous. This is what is known as an objective test. This is to be contrasted with the higher, subjective test of the state of mind necessary for reckless

driving where it has to be proved that the driver was aware of the risk of driving in such a manner and that in the circumstances known to him or her at the time it was unreasonable to take that risk.

Section 364 is the offence of removing articles from public places. This would include a person removing an item from e.g. a public museum. Dishonesty but not an intention to permanently deprive must be proved; the offence is to 'remove' rather than to 'steal'. This offence also covers the difficulties with proving a burglary where a building or part of a building is open to the general public and the requisite act of trespass cannot necessarily be proved.

Section 365 is the offence of making off without payment. This covers a person who has a job done but refuses to pay for it, or orders goods and doesn't pay for them, neither of which is covered by the definition of theft. (See section 375 for the offence of obtaining services dishonestly.)

Section 366 is the offence of abstracting electricity and means that a person who uses electricity without authority, or dishonestly causes electricity to be wasted or diverted, commits an offence.

Section 367 restates the existing offence of blackmail based on s.21 of the Theft Act 1968. The offence is committed by a person who, with a view to gain or to cause loss to another, makes unwarranted demands with menaces relating to action by any person.

#### Fraud offences

Sections 368 to 377 deal with the offence of fraud and are based on the UK Fraud Act 2006. They set out the various ways in which fraud can be committed. All of them require the intention to make a gain or cause a loss.

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

Section 369 says that fraud by misrepresentation requires a dishonest false representation of fact or law, express or implied.

Section 370 says that fraud by failing to disclose information requires a failure to disclose information the person has a duty to disclose.

Section 371 says that fraud by abuse of position requires dishonest abuse (by act or omission) of a position the person holds in which he or she is expected to safeguard the financial interests of another person.

Section 372 creates the offence of possession of articles for use in fraud.

Section 373 creates the offence of making or supplying articles for use in frauds.

Section 374 creates the offence of participating in a fraudulent business carried on by a sole trader, i.e. a company outside the scope of the Companies Acts. It is in addition to the powers of investigation of fraudulent conduct under the UK Companies Act 1948 as applied to the Falkland Islands. Note – the Companies Act 1948 has been replaced in UK by the Companies Act 2006.

Section 375 creates the offence of obtaining services dishonestly, i.e. without making payment and not intending to pay. (This differs from the offence of making off without payment in section 365). See notes above about mortgage fraud and obtaining by deception.

Section 376 defines the terms “gain”, “loss”, “property” and “article” as used in the preceding sections.

Section 377 is about evidence in proceedings relating to any of sections 369 to 376. A person is not excused from answering questions or complying with an order about property on the ground that to do so might incriminate him or his spouse; but a statement or admission made by the person is not admissible against him or his spouse in a prosecution for fraud.

Sections 378 to 381 create four offences that are similar to fraud – false accounting, false statements by company directors, suppression of documents and retaining a wrongful credit.

The definition of ‘wrongful credit’ in section 381 does not cover money credited to an account in error, because keeping money paid by mistake amounts to theft. The reason for this offence is that the ‘owner’ of the money cannot rightfully claim it. If there is a rightful owner, the money must be returned or the recipient dishonestly appropriates property belonging to another i.e. commits theft.

Section 382 puts into statutory form the common law offence of cheating the public revenue, which dates back to the reign of Edward III. For the English case law see Archbold para.25-409.

Section 383 restates an offence in the previous Crimes Ordinance about unlawful interception of communications, whether by post or wireless telegraphy. It originates from section 1 of the UK Regulation of Investigatory Powers Act 2000. See also section 412 for a similar offence in relation to computer services.

Sections 384 and 385 are miscellaneous provisions relating to procedure and evidence and the effect of a prosecution on civil proceedings.

## PART 13 - FORGERY AND COUNTERFEITING

### **Introduction**

Forgery and counterfeiting (coinage offences) were formerly covered by separate UK enactments - the Forgery Act 1913 and the Coinage Offences Act 1931. Both those Acts were repealed and replaced by the UK Forgery and Counterfeiting Act 1981 and this Part is based on that Act. The Part contains three groups of offences – forgery in sections 387 to 395, counterfeiting (including counterfeiting of currency notes) in sections 396 to 403, and offences in relation to identity documents, based on the UK Identity Documents Act 2010 – see sections 404 to 407.

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

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

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

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

### **Notes on sections**

Section 386 contains definitions that apply to the whole Part, including ‘relevant authority’ and ‘postal operator’. The UK Act references to ‘British coin’ are replaced by ‘protected coin’. The references to ‘British currency note’ are replaced by ‘currency note.’ This includes pounds sterling and Falkland Islands notes issued under the Currency Ordinance. The definition of ‘share certificate’ includes bodies incorporated outside the Falkland Islands.

Sections 387 to 394 are the forgery offences.

Section 387 defines ‘instrument’. It includes ‘revenue stamp’ so as to include e.g. customs stamps. The term ‘document’ is not defined and remains ambiguous, as in the UK Act

Section 390 defines forgery as being committed by a person (‘A’) who makes a false instrument with the intention that he or another (‘B’) will use it to induce a further person (‘C’) to accept it as genuine and thus do something to the prejudice of C or someone else (‘D.’) This can involve 4 different persons, but is the best way to express the offence.

Sections 391 to 393 create offences relating to ‘instruments’. The instruments include money orders, postage stamps, passports, ID cards, cheques, credit and debit cards and entries in the register of births, marriages and deaths.

The offences are –

- having a false version of an instrument with the intention as in the offence of forgery;
- having a false instrument knowing it to be false (with no specific intention);
- making or having equipment intended for making a false instrument with the intention as in the offence of forgery;

- making or having equipment specially designed or adapted to make these type of instruments without lawful authority.

Section 395 abolishes the offence of forgery at common law. Arguably that is not needed as the 1981 Act (which applies to the Falkland Islands) has achieved that result already, but the section is included for the avoidance of doubt. The common law offence of cheating was abolished by the UK Theft Act 1978 except in relation to revenue offences; see section 383 for a statutory offence. The common law offence of personation is now limited to jurors and is sufficiently covered by section 338 of the CPEO 2014.

Sections 396 to 403 are the counterfeiting offences.

Section 396 creates 2 offences of making a counterfeit of a currency note or protected coin. The first offence is if a person intends that he or another will pass or tender it as genuine. The other, and lesser, offence consists of the making without any specific intention.

Section 397 also creates 2 offences – passing or tendering a counterfeit note or coin with the intention mentioned in section 396; and delivering a counterfeit note or coin to someone, intending that he will pass or tender it as genuine.

Section 398 creates 2 more offences – having custody or control of a counterfeit note or coin with the intention mentioned in section 396; and having such custody or control without that intention.

Section 399 creates 3 offences –

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

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

Section 400 defines ‘counterfeit’ for the purpose of these offences. It means a false note or coin that resembles a genuine note or coin so that it is reasonably capable of passing as a genuine note or coin; or a note or coin altered to resemble another note or coin (e.g. of a higher denomination.)

Section 401 creates the offence of reproducing currency notes without authority. It is altered from the UK text to make it clear that the absence of consent is part of the offence, and that the offence applies to reproduction on any substance and whether or not on the right scale, as in an advertisement.

Section 402 creates 2 offences relating to imitation coins used in a scheme to promote the sale of a product or the supply of services. One offence is of making a coin; the other is of selling or distributing or having them in one's custody.

Section 403 combines and adapts two sections of the UK Act and creates the offences of importing or exporting counterfeit notes and coins without the consent of the relevant authority. The offences are punishable by 2 years' imprisonment, and the importation is prohibited. See section 143 of the Customs and Excise Ordinance enabling the Governor to make orders prohibiting the import of goods. See also the proclamations made under section 35 of the previous Customs Ordinance which were saved by s.163 (4) of the Customs and Excise Ordinance.

Sections 404 to 406 create 3 offences in relation to identity documents. They are based on the UK Identity Documents Act 2010 which replaced the Identity Cards Act 2006 when the government abandoned the policy to introduce identity cards for UK citizens. The offences in relation to identity documents remained essentially unchanged, but referring to 'personal information' rather than 'registrable details'.

Section 407 contains definitions and other supplementary provisions in relation to identity documents offences.

## PART 14 - COMPUTER MISUSE

### **Introduction**

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

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

An offence under this Part requires a person to act intentionally or knowingly or recklessly as to whether the unauthorised actions taken causes harm to another person. The offences under sections 409 to 414 can be committed anywhere, by any person, using any internet provider, subject to section 415 about territorial scope. The offence under section 409 involves direct interference with a computer based in the Falkland Islands, whereas the offences under sections 410 to 414 can involve indirect interference with or use of a computer or system wherever based.

Seizure of computerised information is also provided for in the CPEO 2014, but this Part gives more explicit powers of search and seizure of computer data.

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

### **Notes on sections**

Section 408 defines certain terms used in the Part. It does not define ‘computer’ or ‘program’ in order to avoid the need for amendments as technology advances. Some of the defining provisions (limiting the scope of some of the offences) are from the RIPA.

Section 409 makes it an offence for a person knowingly to have unauthorised access to any program or data held in a computer.

Section 410 makes it an offence for a person to access a computer program or data with intent to commit or facilitate the commission of another offence which carries a life sentence or a sentence of at least 5 years imprisonment.

Section 411 makes it an offence for a person to do an act, whether temporary or permanent, which the person knows will cause an impairment of the operation of a computer or any program or data held in a computer or an impairment of the reliability or the authenticity of any such data.

Section 412 makes it an offence for a person knowingly to intercept any non-public transmission from a computer without authority. For a general offence of interception communications see section 384.

Section 413 makes it an offence for any person to produce, sell or procure for use any device, program or data which is designed or adapted with the intention that it should be used to commit any other offence under the Part.

Section 414 makes it an offence for any person, knowingly and without authority, to disclose any password or access code of a computer that is capable of being accessed, with the intention that it be used by any person for the purpose of committing an offence.

Sections 415 to 419 provide for the territorial scope of offences under the Part and ancillary offences related to such offences. It is irrelevant whether the offender has Falkland Islands status, provided the person or the computer was in the Falkland Islands at the material time. The word ‘criminal’ used in section 418(3) is not in the UK Act but makes it clear that civil penalties do not make the conduct an offence.

Section 418(4) contemplates criminal procedure rules being made as to service of notices.

Section 419 empowers a justice of the peace to issue a search warrant to a police officer, who, upon executing it, may seize any computer or computer program or data if the officer believes it is evidence that an offence has been committed or is about to be committed.

Section 420 empowers a justice of the peace to issue a warrant to a police officer to have access to any computer, or any program or data held in any computer, and to require any person concerned to assist the officer in the investigations. It is not limited to offences under this Part.

Section 421 requires the police officer to make and deliver to the person in charge of a computer a record of the seized articles. This duty is not in the UK Act or the EU Convention but is regarded as desirable.

Sections 422 enables the Chief Police Officer to issue a written order requiring the preservation of data if data stored in a computer is required for the purposes of a criminal investigation; and if there is a risk that the data may be destroyed or rendered inaccessible or modified.

Section 423 empowers a justice of the peace, on the application of the Attorney General, to issue an order requiring a person in charge or in control of data, or an internet service provider, to collect and record traffic data or permit and assist any named person with appropriate technical knowledge and expertise to collect and record the data.

Sections 424 to 426 empower a justice of the peace, on the application of the Attorney General, to order production of data required for the purpose of a criminal investigation or criminal proceedings; to authorise a police officer to collect or record traffic data associated with a specified communication during a specified period if there are reasonable grounds to suspect that traffic data is required for the purposes of a criminal investigation; and to order internet service providers to intercept electronic communications and data traffic where necessary for criminal investigations.

Section 427 makes it an offence for an internet provider to disclose the fact that the powers under sections 424 to 426 have been used, or any information given by the provider in response to a notice or order under those powers. An internet provider is not liable for the disclosure of any information given in response to such a notice or order.

Section 428 makes it clear that other powers of inspection, search and seizure are not displaced by this Part and that a withholding of consent device in a computer program does not operate to bar access to an enforcement officer.

Section 429 makes it an offence for a corporate body to benefit from the commission of an offence under sections 409 to 414, whether or not the person who committed the offence was acting as an agent of the body. This is wider than the normal rule stated in section 17 (i.e. if an offence is committed by a corporate body with the consent or connivance of a director, the director as well as the corporate body commits the offence.)

Section 430 empowers a court to order the forfeiture of a computer and other articles used in connection with an offence.

Section 431 enables a court to make an order for payment of compensation by the offender to any person for damage caused to that person's computer or any program or data held in the computer. This power is in addition to the general compensation provisions in the CPEO 2014.

Section 432 creates an offence of unauthorised disclosure of information obtained during the course of an investigation or of information received from the competent authorities of another country or territory” for the purposes of or to assist in the investigation of offences.

Section 433 enables the Governor to issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part. This is included to meet objections to the powers of interception that were raised by FCO legal advisors on human rights grounds in relation to the Gibraltar version of this Part. There is a similar power in s.71 of the Regulation of Investigatory Powers Act 2000.

## PART 15 - COMMERCIAL TRANSACTIONS

### **Introduction**

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

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

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

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

### **Notes on sections**

Section 434 creates offences of ‘fixing’ prices at auction sales.

Section 435 enables a court to make an order prohibiting a person convicted of an offence of fixing prices from attending auctions.

Section 436 asserts the rights of seller in good faith of goods by auction

Section 437 says what notices are to be displayed in an auction room.

Section 438 makes it an offence to conduct a mock auction, i.e. where the bidding is not genuine.

Section 439 contains interpretative provisions about mock auctions.

Section 440 makes it an offence to demand payment for goods that have not been ordered.

Section 441 makes it an offence to demand payment for entries in a trade directory that have not been asked for.

## **CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC**

### **PART 16 - TREASON**

#### **Introduction**

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

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

The Crime and Disorder Act 1998 abolished the death penalty for all Treason Acts offences but did not mention the 1351 Act which is slightly odd. It is reasonable to assume that Parliament’s intention was to provide for a mandatory life sentence for treason itself and that is reflected in section 442.

#### **Notes on sections**

Sections 442 and 443 create offences for which the penalty is life imprisonment. In the case of a section 442 offence the life sentence is mandatory but subject to the rules about imprisonment of youths in section 730 of the CPEO 2014 and the minimum tariff provisions in section 577 of that Ordinance. These offences are indictment-only.

Section 442 includes the immediate family of the Queen, as provided by the Treason Act 1351. It also includes the killing (i.e. murder) of high officers of state as provided in that Act. The equivalent of ‘Treasurer’ could be the First Lord of the Treasury, or the Chancellor of the Exchequer. It seems appropriate to protect the former, as being also the Prime Minister of the UK.

Section 444 imposes a time limit of 3 years for prosecutions for treason except for treason involving killing or endangering life.

Section 445 creates an offence of assault on the Queen for which the maximum penalty is 7 years imprisonment and which can be tried summarily.

### **PART 17 – SECURITY**

#### **Introduction**

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

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

### **Notes on sections**

Sections 446 to 450 relate to the armed forces of the Crown and are based on various UK statutes.

Section 446 makes it an offence to incite disaffection among members of the armed forces.

Section 447 makes it an offence to assist the desertion of a member of the armed forces.

Section 448 prohibits wearing a Crown uniform in such a manner as to bring contempt on the uniform.

Section 449 re-enacts an old offence that is still law in the UK and applies to the Falkland Islands. It prohibits unlawful drilling i.e. training or being trained in the use of arms, doing military exercises, etc., without the authority of the Governor.

Sections 450 to 452 relate to the police force and reproduce provisions based on the UK Police Act 1996.

Section 450 makes it an offence to incite disaffection among police officers.

Section 451 makes it an offence to obstruct a police officer in the performance of his or her duty, or to obstruct anyone assisting the police.

Section 452 creates offences relating to impersonating a police, customs or immigration officer. The section heading is 'Impersonation' (as in the UK law) but the offence is of pretending to be any such officer. Sub-section (1) requires a general intent to deceive, while (2) requires a specific intent to obtain a benefit. The term 'likely' to deceive is used rather than 'calculated' as that begs the question of who is calculating. The reverse onus of proof is acceptable in this context.

Sections 453 to 456 re-enact provisions in the previous Crimes Ordinance relating to escapes from custody derived from the common law and the Prison Act 1952 but rationalised and aligned to UK law.

Section 453 creates the offence of escaping. Under the Crimes Ordinance the penalty for a prisoner escaping without using violence is 12 months whereas the penalty for a person assisting the prisoner to escape is 5 years. This seems anomalous and the penalty is therefore amended to 5 years for both.

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

Section 454 creates the offence of encouraging, aiding and abetting or assisting escape. The penalties are higher than they would be for an ancillary offence under Part 3, but persons cannot be prosecuted both under this section and Part 3.

Section 455 defines the term 'legal custody' and says that if an offence is committed using violence, the penalty is double i.e. 10 years imprisonment.

Section 456 is the offence of harbouring, which is the most serious offence related to escapes, carrying 10 years imprisonment. It comes from the UK Criminal Justice Act 1961.

Section 457 combines 3 offences of raising a false fire alarm, wasting police time, and calling out an ambulance, etc. that were in the previous Crimes Ordinance.

## PART 18 - JUDICIAL PROCEEDINGS

### **Introduction**

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

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

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

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

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

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

The term 'judicial proceeding' is defined in section 2.

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

## **Notes on sections**

Section 458 imposes restrictions on the reporting of divorce and similar proceedings. The UK provision on which this is based, section 1 of the Criminal Justice Act 1925, was repealed in the UK in 1948 but in the local circumstances could still be appropriate in a modified form.

Section 459 prohibits the publication of information relating to proceedings before a court sitting in private if the proceedings relate to the welfare of children, the property of mental patients, national security (defined in section 2 to include the Falkland Islands, UK, other British Overseas Territories and the Crown dependencies) or a secret process, discovery or invention.

Section 460 is a saving for provisions of the CPEO 2014 relating to the reporting of sending proceedings, judicial proceedings which involve vulnerable witnesses and judicial proceedings which involve young offenders. It provides that an offence under any of those provisions committed in the face of the court may, instead of being prosecuted under those provisions, be treated as a contempt of court under this Part. The section also saves the contempt of court provision in section 691 of that Ordinance which relates to reporting of retrials.

Section 461 about taking of photographs etc. in court is still the law in the UK and is still appropriate in the Falkland Islands. The prohibition is only on photos etc. of people, not of the courtroom or precincts as such.

Section 462 sets out in statutory form the common law offence of perverting the course of justice. This is still a widely used offence in the UK . The offence is the doing of some act which has a tendency to and is intended to pervert the administration of public justice. The commonly used expression ‘attempting to pervert’ is a misnomer and is misleading as this is not an inchoate offence.

Section 463 on intimidation is based on section 51 of the UK Criminal Justice and Public Order Act 1994. It is about jurors as well as witnesses. This offence was in the previous Crimes Ordinance at s.50 which specified a fine at level 10, but it is not necessary as the court has power to fine under section 589 of the CPEO 2014.

Sections 464 to 471 set out in statutory form the law on contempt of court, including (but not limited to) the provisions of the UK Contempt of Court Act 1981 mentioned above.

Section 464 makes the common law offence of contempt of the superior courts a statutory offence. It does not seek to define the offence, however, as there are many ways in which it can be committed and the UK case law will need to be relied on. The UK Act does not make contempt an offence, but this section does so.

Section 465 provides that the strict liability rule (that conduct may be treated as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so) only applies to publications.

Section 466 declares it a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

Section 467 declares it a contempt of court to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court.

Section 468 gives the lower courts jurisdiction to deal with some types of contempt, i.e. insulting the court, witnesses, officers or legal practitioners, interrupting the proceedings of the court or otherwise misbehaving in court. The lower courts can also deal with persons who are in breach of sections 466 and 467 or who publish reports of proceedings contrary to the provisions in the CPEO 2014 listed in section 460.

Section 469 sets the maximum penalty for contempt of court as 2 years imprisonment or a fine in the Supreme Court or Court of Appeal or one month's imprisonment or a fine at level 4 in the Magistrates' Court. It also contains procedural rules.

Section 470 describes the times during which proceedings are active for the purposes of contempt of court.

Section 471 contains supplementary provisions about sources of information, etc.

## PART 19 – PERJURY, ETC.

### **Introduction**

This Part is based on the UK Perjury Act 1911 but includes provisions from the Criminal Justice Act 1967. The Perjury Act has not been amended much since it was enacted but the context of its provisions has changed and so have some of the penalties, as reflected in this Part. The Part does not include the provisions of section 7 of the Perjury Act on aiders and abettors as they are dealt with in Part 3 (Ancillary Offences). However, the offence of subornation of perjury is included as section 475. The Part does not include section 8 of the Perjury Act on venue, which is not needed in the Falkland Islands.

The offences of perjury (section 473), making a false statement on oath (section 479) and false statements as to births and deaths (section 481) are triable summarily, unlike the UK where they are triable on indictment only. The penalties are the same as in the UK, however.

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

### **Notes on sections**

Section 472 defines various terms, but not terms defined in the IGCO such as 'oath'. The term 'judicial proceedings' is defined in section 2.

Section 473 creates the offence of perjury. It omits any mention of a 'British tribunal' but retains the reference to a British officer and the Admiralty court. The reference to 'Her Majesty's

dominions' will include all countries of which Her Majesty is Head of State. (See section 443 in Part 16 (Treason Offences) for a similar usage.)

Section 474 is about perjury before the European Court. It is based on the UK European Communities Act 1972. It is needed because the European Treaties apply to the Falkland Islands, although it will probably rarely be needed.

Section 475 creates the offence of subornation of perjury in respect of the offences equivalent to sections 1 to 6 of the Perjury Act. The maximum penalty is set at 14 years imprisonment, making the offence a summary one, rather than being the same as for the substantive offence (as in the UK). Otherwise some subornation offences would be indictment-only and others would be summary.

Section 476, about giving false unsworn evidence, derives from section 57 of the Youth Justice and Criminal Evidence Act 1999. It is appropriate in this Part as it deals with false statements rather than the protection of witnesses. Section 56 of the 1999 Act about unsworn testimony of a child witness is in section 352 of the CPEO 2014.

Section 477 is about false written statements tendered in evidence.

Section 478 creates an offence relating to unsworn statements made under the Evidence (Proceedings in Other Jurisdictions) Act 1975 (which applies to the Falkland Islands). It derives from section 1A of the Perjury Act which was added by the 1975 Act.

Section 479 creates an offence about false statements on oath but not in judicial proceedings. The Bills of Sale Act 1978 is still law for the Falkland Islands.

Section 480 creates an offence about false statements with reference to marriage.

Section 481 creates an offence about false statements relating to births and deaths. There is no time-limit for prosecuting this offence, as in the UK.

Section 482 is concerned with false statutory declarations and certain other statements, including statements made for the purposes of or in connection with civil proceedings. The term 'statutory declaration' is defined in the IGCO.

Section 483 expands the offence about false written statements to include statements made for the purpose of or in connection with (but not in) civil proceedings.

Section 484 about passports is not in the Perjury Act but is in the UK Criminal Justice Act 1925.

Section 485 about nationality declarations is not in the Perjury Act, but is in the British Nationality Act 1981.

Section 486 imposes a requirement for corroboration in respect of all offences under this Part. This is an extension of the rule in s.13 of the Perjury Act.

Section 487 provides that on a prosecution for perjury in relation to the trial of an indictment, the fact of the former trial may be proved by the production of a certificate containing the substance and effect of the indictment.

Section 488 relates to the form of an information or charge for perjury and is still in the Perjury Act. (There will not be indictments for these offences as they are triable summarily.)

Section 489 is a saving for corrupt practice offences. It is still in the Perjury Act and is currently the law in the Falkland Islands. The reference in the Perjury Act to forfeiture or disqualification is not included as it is outdated.

## PART 20 - BRIBERY AND PUBLIC OFFICE OFFENCES

### **Introduction**

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

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

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

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

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

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

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

### **Notes on sections**

Section 490 creates the offence of bribing another person. The Bribery Act states the maximum penalty as 10 years imprisonment or a fine or both, but the fine does not need stating in Falkland Islands as section 589 of the CPEO 2014 gives power to fine in addition.

Section 491 creates the offence of being bribed.

Section 492 sets out the function or activity to which a bribe might relate.

Section 493 sets out the improper performance to which a bribe might relate.

Section 494 introduces an expectation test.

Section 495 creates the offence of bribery of foreign public officials as required by the EU Convention on Corruption and the OECD Convention on anti-bribery.

Section 496 creates the offence of failure of a commercial organisation to prevent bribery.

Section 497 defines “associated person”.

Section 498 empowers the Governor, after consulting the Criminal Justice Council, to issue guidance about commercial organisations and the prevention of bribery.

Section 499 puts on a statutory footing the common law offence of misconduct in public office. It would include e.g. sale of an office and failure to perform an office. The definition of ‘public officer’ in the IGCO is “any person holding an office or emolument under the Crown in right of the Government of the Falkland Islands, whether such office be permanent or temporary.” So the offence would extend to judicial officers.

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

Section 500 requires the Attorney General’s consent for a prosecution under the Part.

Section 501 establishes limited extraterritorial scope for offences of bribery.

Section 502 creates a defence of legitimate purpose relating to the security services and the armed forces.

Sections 503 and 504 create special rules about offences committed by corporations and partnerships.

Section 505 applies the Part to servants of the Crown. This section is strictly speaking not needed as the Ordinance will be stated to bind the Crown, but it makes it clear that public servants are liable for bribery offences.

Section 506 abolishes the common law offences of bribery and embracery.

## PART 21 - PUBLIC ORDER

### **Introduction**

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

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

This Part incorporates provisions of the Public Order Act 1986, as amended, dealing with riot and violent disorder, affray, threatening and abusive behaviour and disorderly conduct. It also includes provisions on disguises, bomb hoaxes and military uniforms, and ends with a miscellaneous group of offences concerned with breaches of the peace, some of which are quite old but are still English law.

Section 45 of the previous Crimes Ordinance on disorderly behaviour is incorporated at section 525.

Sections 4A and 5 of the UK Public Order Act 1986, which refer to behaviour that can cause harassment, alarm or distress, are included in this Part rather than in Part 6 as they amount to disorderly conduct with harassment being one of three possible outcomes, rather than harassing behaviour itself.

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

Racially or religiously aggravated public order offences as in sections 18 to 29 of the UK Public Order Act 1986 and the Crime and Disorder Act 1998 are dealt with in Part 22.

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

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

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

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

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

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

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

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

#### **Notes on sections**

Sections 508 to 513 re-enact the offences of riot, affray, etc. contained in sections 1 to 6 of the Public Order Act 1986. Section 516 abolishes common law riot, etc. as a consequence.

Section 512 (intentionally abusive behaviour) and section 513 (disorderly conduct) and are based on sections 4A and 5 of the UK POA 1986 as amended in 2013. The term 'insulting' was removed from section 5 of the POA 1986 by the UK Crime and Courts Act 2013.

Section 512 makes it an offence for a person, with intent to cause harassment, alarm or distress, to use threatening abusive or insulting words or behaviour or disorderly behaviour, or to display any writing or sign which is threatening abusive or insulting, where the conduct causes another person harassment, alarm or distress.

Section 513 creates a similar but less serious offence where no intent as to the effect upon the victim is required but still proscribes behaviour which is threatening or abusive even if its effect was unintentional. The word 'insulting' was removed from the UK version of this section by the Crime and Courts Act 2013 because of the lack of intent as to consequence required for the commission of the offence.

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

Section 514 specifies the mental element involved in each of the offences.

Sections 517 and 518 regulate the wearing of disguises and the wearing of uniforms, as in the 1994 Act.

Section 519 enacts in Falkland Islands law the offence of contamination of or interference with goods which is in the 1986 Act.

Section 520 enacts the offence of causing public alarm or anxiety by bomb hoaxes which is in the Criminal Law Act 1977. The UK Criminal Justice Act 1991 amendment was disapplied so the penalties are as in the 1977 Act.

Sections 521 and 522 relate to quasi-military organisations and are based on provisions in the UK Public Order Act 1936 which are still law in England and Wales.

Section 523 prohibits conduct likely to cause a breach of the peace, and saves the common law offence.

Section 524 is derived from section 29 of the UK Town Police Clauses Act 1847 which was disapplied to the Falkland Islands. The offence of disorderly conduct in a police station (or “place of lawful custody” as defined in section 2) is a useful offence and, despite its age, is still used widely in the UK to deal with minor but disruptive behaviour committed by persons under arrest ( or their supporters) whilst detained, but falling short of a full public order offence.

Section 525 prohibits disorderly or indecent behaviour while intoxicated and is based on section 91 of the Criminal Justice Act 1967. Other offences relating to drunkenness are in the Licensing Ordinance; see also section 81 about being drunk in charge of a child.

## PART 22 – HATE CRIMES

### **Introductory**

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

There were already some offences in Falkland Islands law based on the pre-2004 UK law relating to racial hatred. Sections 527 to 538 restate and update those provisions and add offences based on religious hatred and hatred of sexual orientation which have been introduced in the UK since 2004. Sections 546 to 550 then deal with various offences – assaults, damage, public order and harassment – that are aggravated by hatred and as a result carry a higher maximum penalty than the basic offence.

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

One difference from the UK law is in section 544, based on section 29J of the UK Racial and Religious Hatred Act 2006. It is modified by adding a reference to what is reasonably justifiable in a democratic society (as in sections 8 to 16 of the Falkland Islands Constitution.)

### **Notes on sections**

#### Hate crimes

Sections 527 to 545 derive from:

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

It is notable that the two types of offences i.e. sections 527 to 532 and 533 to 538, differ in subtle but important ways. An offence of racial hatred – sections 527 to 532 - can be committed by using either threatening, abusive or insulting words or behaviour either with specific intent to stir up racial hatred or with the result that racial hatred is stirred up.

An offence of religious hatred or hatred on the grounds of sexual orientation – sections 533 to 538 - can only be committed if threatening words or behaviour are used with the specific intent of stirring up hatred.

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

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

The amendment was then included in the Racial and Religious Hatred Bill later in 2005 after the General Election. Critics of the Bill in its unamended form asserted that as drafted, (mirroring

the existing racial hatred provisions) it would make major religious works such as the Bible and the Qur'an illegal in their current form. Comedians and satirists also feared prosecution for their work and aired their objections vociferously in the media. Leaders of major religions and race groups, as well as non-religious groups, also expressed objections to the Bill. There was particular concern that the Bill would not be Human Rights Act compliant by limiting the rights of freedom of religion and expression.

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

Prior to the passing of this Ordinance only the racial hatred offences – sections 527 to 532 - were in force in the Falkland Islands, as the amendments came after the cut-off date for automatic updating. Legislative Assembly considered it appropriate to follow the UK provisions in sections 533 to 538 rather than include religious and sexual orientation hatred offences on the wider basis applicable to racial hatred offences.

#### Aggravated offences

Sections 546 to 551 are about racially and religiously aggravated offences and are derived from provisions of the UK Crime and Disorder Act 1998 as extended to religious aggravation by the Anti-Terrorism Crime and Security Act 2001.

These provisions appear at first sight to place defendants in double jeopardy for the same offence. However, as the penalties for the aggravated offence are higher than those for the basic offence in each case, the legislative scheme is that a person can be prosecuted for the 'basic' offence i.e. criminal damage, assault, public disorder or harassment, and for the aggravated offence but if the court does not find the aggravated offence proved, it has the option of convicting for the 'basic' offence under section 551.

Section 551 on alternative verdicts is adapted from the UK provisions to apply to all the offences in this group and to the Magistrate's Court as well as the Supreme Court. There is a more general provision relating to alternative verdicts in Part 2 of this Ordinance.

There is a general power of arrest without warrant in relation to all these offences in the CPEO 2014, based on the UK Police and Criminal Evidence Act 1984. There are entry and search provisions in section 539 which are in addition to the PACE provisions in the CPEO 2014.

## PART 23 – PUBLIC NUISANCES

### **Introduction**

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

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

Offences under the UK Licensing Act 1872 (c. 94) and the Licensing Act 1902 (c.28) are contained in the Licensing Ordinance which is not replaced in this Ordinance.

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

### **Notes on sections**

Sections 552 and 553 deal with noise nuisance and are based on the Gibraltar version of noise nuisance, designed for small communities. It makes it an offence to make noise, whether from musical instruments or singing or otherwise, if it causes offence or is likely to cause annoyance or distress to a reasonable person having regard to the time of day, or causes a breach of the peace. The hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a reasonable person. A police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or take any steps required to reduce the level of noise or to stop the making of it.

Section 553 empowers the Governor (i.e. in Council) to issue a permit for a public performance, a fair or other event, to named persons, to make noise that is in breach of section 552, subject to conditions.

Sections 554 and 555 relate to danger in public places and obstruction in the streets. They are based on provisions in the 1839 and 1847 Town Police Clauses Acts. The language and scope has been updated to apply to present-day Falkland Islands.

Section 556 is about bill-posting. If the owner of the premises consents, posters can be placed anywhere, subject to other laws about indecency, etc. Sub-sections (1) and (2) place the burden of proving absence of consent on the prosecution, in line with modern evidentiary principles.

## **PART 24 – CRIMINAL TRESPASS**

### **Introduction**

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

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

For the offence of entering a minefield, see section 187(1)(a). Trespassory assembly is an offence in the UK but is not included in Part 21. The offence of trespass with intent to commit a sexual offence is in Part 10 – see section 281. Entry as a trespasser is an element in burglary under section 354.

There are more general criminal trespass laws in the UK that apply to the Falkland Islands and this Part has rationalised and re-enacted them with appropriate modifications where there are overlaps and included some more recent provisions. The law in this Part is derived from the UK Criminal Law Act 1977, Criminal Justice and Public Order Act 1994 and the Legal Aid Sentencing and Punishment of Offenders Act 2012.

The 1977 Act set out the common law rules about criminal trespass. The 1994 Act introduced new offences of aggravated trespass and unauthorised camping. They were prompted by the need to prevent confrontations between owners of premises and squatters, including ‘travellers’ (gypsies). There are not the same problems in the Falkland Islands as led to the passing of these laws in the UK, but the 1994 Act applied by virtue of Part X of the IGCO and it was considered appropriate to include some of its trespass provisions in this Ordinance.

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

### **Notes on sections**

Section 557 defines various terms used in the Part that are not defined elsewhere, such as ‘site’, or that have different meanings in this Part from other Parts of the Ordinance, such as ‘premises’. (In this Part, ‘land’ includes ‘premises’.)

### Criminal trespass

Section 558 is based on sections 61 and 62 of the UK Criminal Justice and Public Order Act 1994 which give police officers power to direct trespassers to leave land. The UK Act deals only with trespass by 2 or more persons with a common purpose where there are elements of violence or damage or vehicles are left on the land. The section is expanded to include trespass by a single person in similar circumstances. The power of direction is given to a police officer of the rank of inspector or above.

Section 559 is based on section 6 of the UK Criminal Law Act 1977. It relates only to premises, and does not require actual entry. It is particularly useful in the context of domestic violence cases.

Section 560 is based on offences contained in the Gibraltar Criminal Offences Act and repeated in the new Crimes Act. It creates an offence of remaining on public premises after being required to leave by a police officer acting on a request by the lawful occupier.

Section 561 is a recent addition to the UK statute book (LASPO Act 2012 s.144) and prohibits squatting in residential buildings. It improves upon the previous criminal trespass provisions by not requiring a demand for repossession by a displaced or intending residential occupier.

### Aggravated trespass

Sections 562 and 563 are based on sections 68 and 69 of the UK Criminal Justice and Public Order Act 1994. They create the offence of aggravated trespass, when a person trespasses on land in a manner which intimidates the occupiers or obstructs or disrupts a lawful activity on the land.

Section 563 gives a senior police officer the power to direct persons who are committing aggravated trespass the power to direct them to leave. If they fail, an additional offence is committed.

Section 564 creates the offence of trespassing with a weapon of offence, as in section 8 of the UK Criminal Law Act 1977. The maximum penalty of 6 months is twice that in the UK, as 3 months is rather low for this offence in the modern context. The section includes the offence of trespassing with a firearm, as this is in section 20 of the UK Firearms Act 1968 but is not in the Firearms Ordinance.

### Unauthorised camping

Section 565 creates an offence of camping on land without permission whether express or implied.

### Designated sites

Section 566 derives from section 128 of the UK Serious Organised Crime and Police Act 2005. It enables the Governor to designate sites which must not be trespassed upon, and is concerned with protection of the environment and security. The designation can only be of Crown land, or in the public interest of private land. It is an offence to enter on designated land as a trespasser.

## PART 25 – OBSCENE PUBLICATIONS

### **Introduction**

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

The Part incorporates provisions of the UK Obscene Publications Act 1959 as amended by the Courts Act 1971, the Criminal Law Act 1977 and the Criminal Justice and Public Order Act 1994. It includes at sections 571 and 575 provisions from the St Helena Obscene Publications Ordinance which were considered useful in the Falkland Islands.

The Part includes amendments as to powers of arrest and penalties made by the UK Video Recordings Acts 1984 and 2010 (the VRA) and the Customs Consolidation Act 1876 as amended in 1979. The system of classification of video recordings was abolished in the UK, and film classification is dealt with under other legislation, but the power of arrest under the VRA is retained in section 573(1).

The term ‘publication’ as meaning an activity is defined in the UK laws, but it is confusing, and the term ‘distribution’ is used in this Part in preference. It is defined in section 569. The term

‘publication or article’ in this Part refers only to a thing, (a newspaper etc.) while ‘distribution’ is an activity.

The term ‘indecent’ is not defined in English law but is defined in Part 10 (Sexual Offences – see section 202).

The UK laws include forfeiture powers on a conviction, but they are no longer necessary in general as section 617 of the CPEO 2014 confers power to order deprivation of relevant items in all cases where there is a conviction. However, specific forfeiture powers are included at section 573 in relation to things found on premises that do not lead to a conviction. The more likely scenario, however, is that if no charge is brought in respect of seized material, either the items are not obscene and can be returned, or they are and the owner signs a disclaimer and they are destroyed.

### **Notes on sections**

Section 567 contains definitions for the Part other than those in the IGCO or in section 2. The term ‘article’ includes moving images, so that video games will be covered by the term.

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

Sections 568 to 575 relate to obscene publications. They are based on the UK Obscene Publications Act 1959 as amended by the Courts Act 1971, the Criminal Law Act 1977 and the Criminal Justice and Public Order Act 1994. In the UK the search and seizure provisions have been amended by the PACE Act 1984, but the 1959 powers have not been repealed. The penalties have also been altered by the Criminal Justice Act 2003.

In the UK, the 1959 Act has been extended to broadcasts by the Broadcasting Act 1990. The Postal Services Act 2000 also has provisions about obscene articles and the Theatres Act 1968 has provisions about obscenity on the stage. These provisions are either covered by the definition of ‘article’ and ‘publication’ or are not required in the Falkland Islands.

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

Section 568 provides the basic definition of obscenity, by reference to the circumstances in which a publication or article is likely to be seen. The UK case law has added the words ‘as a result of the publication’ to the words ‘read, see or hear’, but they not included as they are self-evident. The term ‘programme service’ is defined in section 2.

Section 569 defines the term ‘distribution’ in a similar way to the definition of ‘publication’ as an activity in the UK law.

Section 570 prohibits the distribution or possession for gain of obscene publications or articles.

Section 571 prohibits the manufacture, import or export of obscene publications or articles.

Section 572 abolishes the common law offence, but not the offence of conspiracy to corrupt public morals, as the agreement is the essence of that offence.

Section 573 confers a power of forfeiture of publications or articles on suspicion of them being obscene. This power is different from that in s. 617 of the CPEO 2014 as it is available on suspicion without a conviction following. It provides for the owner of a publication or article to apply for its return.

Section 574 provides a defence in relation to the publication of obscene matter based on the public good in the promotion of the arts etc. This is the ‘Lady Chatterley’ defence and makes prosecutions under this Part quite problematical, but it is needed to meet Human Rights requirements and was included in the UK law by the Criminal Law Act 1977. The UK makes separate provision for films but as they are within the definition of ‘article’ this section treats them in the same way.

Section 575 creates an offence of assisting the commission of an offence overseas. It is based on a provision in the St Helena law but is also necessary in the Falkland Islands as it implements an international agreement entered into by the UK in 1923 in respect of all its territories.

#### Other provisions

Section 576 makes it an offence to send unsolicited publications with a sexual content through the post. It is based on a provision in the UK Unsolicited Goods and Services Act 1971. Other provisions of that Act are in Part 15.

Section 577 prohibits the public display of indecent material, based on the UK Indecent Displays (Control) Act 1981. The Act permits ‘sex shops’ to operate if they display signs indicating the nature of the display and prevent people under 18 from passing beyond the signs but that provision is not required in the Falkland Islands so there is no exception to the prohibitions. A deprivation order under section 617 of the CPEO 2014 can be made in respect of material the subject of a conviction under this section.

## **CHAPTER 4 – SUPPLEMENTARY PROVISIONS**

### **PART 26 – MISCELLANEOUS AND TRANSITIONAL**

#### **Introduction**

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

#### **Notes on sections**

Section 578 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 Sections Ordinance (IGCO). It includes service by electronic means, if the recipient has facilities to receive such communications. Sub-section (2) governs service on corporations.

Section 579 enables the Chief Justice to make criminal procedure rules, after consulting the Criminal Justice Council as constituted by Part 35 of the CPEO 2014 and to issue practice directions after so consulting. Such directions usually supplement the rules but could be displaced by them if necessary. There are similar powers in section 785 of the CPEO 2014, but it is appropriate to have them in both Ordinances as the rules and directions may cover issues specific to one Ordinance or the other.

Section 580 enables the Governor, after consulting the Criminal Justice Council, to amend any of the Schedules. An order would need to be laid on the table of the Legislative Assembly and would be subject to section 36 of the IGCO.

Section 581 repeals the Ordinances listed in Part A of Schedule 5 and the individual sections listed in Part B. It also disapplies the UK enactments listed in Part C of that Schedule. The term ‘disapply’ is given a meaning for this purpose, by reference to the powers in Chapter X of the IGCO which enables the Governor to declare UK enactments never to have been adopted.

One of the repealed Ordinances is the previous Crimes Ordinance, which has in Schedule 1 a list of UK enactments on criminal law that apply to the Falkland Islands. The effect of section 580 is that Schedule 1 and all the UK Acts listed in it cease to have effect. The section also declares there to be no more common law offences in the Falkland Islands. This reverses the effect of section 3 of the previous Crimes Ordinance and is consistent with a codification of laws exercise.

Section 582 saves subsidiary legislation made under the repealed and disapplied laws that could be made under this Ordinance. It also saves directions, exemptions, notices and other non-legislative instruments made or issued by the Governor or any person or body under any of the repealed Ordinances.

Section 583 makes transitional provisions in respect of criminal cases and appeals that were in progress when the Ordinance came into force. They are the rules that normally apply when replacing criminal offence provisions. The term ‘proceedings’ is not defined in the Ordinance or in the CPEO 2014 (nor in UK law) but criminal proceedings before the Magistrate’s Court or the Summary Court are at present instituted by the laying of an information before a justice of the peace or by bringing before the court a person arrested without a warrant. Charging a person is not a step in proceedings, therefore, and a person may be charged under the repealed Ordinances but brought to court under the new Ordinance, if it comes into force overnight.

Section 584 makes consequential amendments to other enactments arising from the enactment of this Ordinance. It does this in broad terms by way of reference, and does not spell out the textual changes. These will be included in the ongoing revision of the Laws of the Falkland Islands.

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

Section 585 provides that the Ordinance is binding on Crown. This is needed to displace the opposite rule in section 66 of the IGCO. All Government officers will therefore be liable to prosecution for offences under the Ordinance.

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

**CRIMES ORDINANCE 2014  
DERIVATION TABLE**

**CHAPTER 1 - PRELIMINARY**

<i>Section</i>	<i>Derivation</i>
1	--
2	UK Theatres Act 1968 s.18; PACE Act 1984 s.23; Criminal Justice & Police Act 2001 s.66(1); Broadcasting Act 1990 s.201; Gibraltar Criminal Offences Act s.2
<b>PART 2 – GENERAL PRINCIPLES</b>	
3	Crimes Ord. s.37; UK Children & Young Persons Act 1933 s.50 am. by Children & Young Persons Act 1963 s.16; UK Crime and Disorder Act 1998 s.34
4	UK CJ Act 1967 s.8
5	Crimes Ord. s.26; UK case law
6	Common law
7 to 13	UK CJ Act 1993 ss.1 to 6
14	Crimes Ord. s.8; UK Criminal Law Act 1967 s.6
15	UK Criminal Law Act 1967 s.4(2)
16	UK Theft Act 1968 s.30 adapted; Common law
17	Crimes Ord. s.51; UK Public Order Act 1986 s.28; UK Knives Act 1997 s.10 etc.
18	Crimes Ord. s.49; UK CJ Act 1988 s.34; Criminal Justice & Public Order Act 1994 s.32
<b>PART 3 – ANCILLARY OFFENCES</b>	
19	Crimes Ord. s.10; UK Criminal Attempts Act 1981 s.1 (part)
20	UK Criminal Attempts Act 1981 s.2 adapted
21	UK Criminal Attempts Act 1981 s.4
22	UK Criminal Attempts Act 1981 s.6
23	UK Criminal Law Act 1977 s.1 am. by Criminal Attempts Act 1981
24	UK Criminal Law Act 1977 s.1A ins. by Criminal Justice (Terrorism & Conspiracy) Act 1998
25 to 30	UK Criminal Law Act 1977 ss.2 to 5
31	UK Serious Crime Act 2007 ss.44, 45 and 46 adapted
32	UK Serious Crime Act 2007 ss.47 and 48 adapted
33	UK Serious Crime Act 2007 s.49 and Schedule 3 adapted
34	UK Serious Crime Act 2007 ss.50 and 51 adapted
35	UK Serious Crime Act 2007 s.52 adapted
36	UK Serious Crime Act 2007 Schedule 4
37	UK Serious Crime Act 2007 ss.53, 54 (part) and 55, with s.34 definitions
38 to 41	UK Serious Crime Act 2007 ss. 56 to 59

- 42 UK Accessories & Abettors Act 1861 am. by Criminal Law Act 1977;  
Magistrates' Courts Act 1980 s.44
- 43 UK Criminal Law Act 1967 s.4(1) and (3) adapted
- 44 UK Criminal Law Act 1967 s.5
- 45 Crimes Ord. s.11 modified

## CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

### PART 4 – OFFENCES AGAINST THE PERSON

- 46 Common law; Crimes Ord. ss.22 and 23B; UK Murder (Abolition of  
Death Penalty) Act 1965 s.1 adapted
- 47 Crimes Ord. s.23 modified; UK Homicide Act 1957 s.1
- 48 Crimes Ord. s.24 modified; UK Homicide Act 1957 s.2 am. by Coroners  
& Justice Act 2009 s.52
- 49 Crimes Ord. s.25 modified; Coroners and Justice Act 2009 ss.54 & 55
- 50 Common law; UK OAP Act 1861 s.5 adapted; Road Traffic Offences Act  
1988
- 51 UK OAP Act 1861 s.9
- 52 UK OAP Act 1861 s.4 am by Criminal Law Act 1977
- 53 UK OAP Act 1861 s.16 subst. by Criminal Law Act 1977
- 54 UK Homicide Act 1957 s.4 am. by Suicide Act 1961
- 55 UK Suicide Act 1961 s.2 am. by Coroners and Justice Act 2009 s.59
- 56 UK Infanticide Act 1938 s.1 am. by Coroners and Justice Act 2009 s.57
- 57 UK Infant Life Preservation Act 1929 ss.1 and 2; Abortion Act 1967 s.5
- 58 UK OAP Act 1861 s.58 am. by CJ Act 1948 s.1
- 59 UK OAP Act 1861 s.59 am by CJ Act 1948 s.1
- 60 UK Abortion Act 1967 ss.1 and 2 as amended and adapted
- 61 UK Abortion Act 1967 s.4 am. by the Human Fertilisation & Embryology  
Act 1990
- 62 UK OAP Act 1861 s.60
- 63 UK OAP Act 1861 s.17 adapted
- 64 UK OAP Act 1861 s.18 am. by Criminal Law Act 1967
- 65 UK OAP Act 1861 s.20
- 66 UK OAP Act 1861 s.21 am. by CJ Act 1948 and Criminal Law Act 1967
- 67 UK OAP Act 1861 s.22 am. by CJ Act 1948
- 68 UK OAP Act 1861 ss.23 to 25 am. by CJ Act 1948 and Criminal Law Act  
1967
- 69 UK OAP Act 1861 s.31 am. by CJ Act 1948
- 70 Common law; UK OAP Act 1861 s.42 replaced by CJ Act 1988 s.39
- 71 UK OAP Act 1861 s.47
- 72 Crimes Ord. s.33; Police Ord. s.55; UK Police Act 1996 s.89 adapted
- 73 UK OAP Act 1861 s.38 am. by Criminal Law Act 1967
- 74 UK OAP Act 1861 s.37 am. by CJ Act 1948
- 75 UK OAP Act 1861 s.36
- 76 UK OAP Act 1861 ss.44 and 45 am. by CJ Act 1988 and Courts Act 2003
- 77 UK Domestic Violence, Crime & Victims Act 2004 s.5 am. by DVCV

	(Am) Act 2012
78	UK Domestic Violence, Crime and Victims Act 2004 s.6 am. by DVCV (Am) Act 2012 and adapted
79	UK Domestic Violence, Crime and Victims Act 2004 s.6A ins. by DVCV (Am) Act 2012 and adapted
80	UK OAP Act 1861 s.27 am by CJ Act 1948
81	UK Licensing Act 1902 s.2
82.	UK Children & Young Persons Act 1933 s.1 as amended; Child Maltreatment Bill 2014
83.	UK Tattooing of Minors Act 1969
84.	UK Child Abduction Act 1984 s.1 am. by Children Act 1989
85.	UK Child Abduction Act 1984 s.2 am. by Children Act 1989
86.	UK Child Abduction Act 1984 ss.3, 4 and 105 and Schedule am. by Children Act 1989
87.	UK Immigration & Asylum (Treatment of Claimants) Act 2004 am. by Protection of Freedoms Act 2012 s.110
88.	UK Female Genital Mutilation Act 2003 ss.1 and 5 replacing Prohibition of Female Circumcision Act 1985
89.	UK Female Genital Mutilation Act 2003 ss.2, 3 and 4
90.	UK Anti-social Behaviour, Crime & Policing Act 2014 s.121
91.	UK Mental Capacity Act 2005 ss.1 and 2 adapted
92 to 101	UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007
102	UK Crime & Security Act 2010 s.24; Family Law Act 1996 s.62
103 to 108	UK Crime & Security Act 2010 ss. 25 to 31
109 to 111	UK Human Organs Transplant Act 1989 ss.1 to 3
112 and 113	UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57
114	UK Piracy Act 1837 s.2 adapted
115	Common law and UK case law
116	UK CJ Act 1988 ss.134, 135; CJ Act (OT) Order 1988
117	UK Coroners and Justice Act 2009 s.71
118	UK OAP Act 1861 s.57
119	--
120	UK Criminal Justice & Immigration Act 2008 s.76 am. by LASPO Act 2012 s.148

#### PART 5 - CORPORATE MANSLAUGHTER

121	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.25 adapted; Human Rights Act 1998 s.6; UK Trade Union and Labour (Consolidation) Act 1992 s.122
122 to 129	UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8
130	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.11
131	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.13
132	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.14

133	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.9
134	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.10
135	UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.15, 17 and 18
136	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.19
137	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.16
138	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.20
139	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.21
140	UK Corporate Manslaughter and Corporate Homicide Act 2007 s.23

#### PART 6 – PROTECTION FROM HARASSMENT

141	UK Protection from Harassment Act 1997 s.7 am. by Serious Organised Crime & Police Act 2005
142	UK Protection from Harassment Act 1997 s.1 am. by Serious & Organised Crime & Police Act 2005
143	UK Protection from Harassment Act 1997 s.2
144	UK Protection from Harassment Act 1997 s.2A ins. by Protection of Freedoms Act 2012 s.111
145	UK Protection from Harassment Act 1997 s.4
146	UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111
147	UK Criminal Justice & Police Act 2001 s.42A ins. by Serious & Organised Crime and Police Act 2005 s.126
148	UK Protection from Harassment Act 1997 s.3
149	UK Protection from Harassment Act 1997 s.3A ins. by Serious & Organised Crime Act 2005 s.125
150	UK Protection from Harassment Act s.2B ins. by Protection of Freedoms Act 2012 s.112
151	UK Protection from Harassment Act 1997 s.5 am. by Domestic Violence, Crime and Victims Act 2004 s.12
152	UK Protection from Harassment Act 1997 s.5A ins. by Domestic Violence, Crime and Victims Act 2004 s.12
153	UK Malicious Communications Act 1988 s.1
154	UK Communications Act 2003 ss.127 and 32

#### PART 7 – OFFENSIVE WEAPONS

155	--
156 to 159	UK Knives Act 1997 ss.1 to 4
160	Gibraltar Criminal Offences Act s.41
161	UK CJ Act 1988 s.141A ins. by Offensive Weapons Act 1996
162 to 164	UK Knives Act 1997 ss.5 to 7
165	Crimes Ord. s.17; UK Crossbows Act 1987 ss.1, 2 and 6
166.	Crimes Ord. s.18; UK Crossbows Act 1987 ss.3 and 6
167.	Crimes Ord. s.19
168.	Crimes Ord. s.20; UK Crossbows Act 1987 s.7 (part)
169	Crimes Ord. s.16; UK CJ Act 1988 s.139

170	Crimes Ord. s.16A; UK CJ Act 1988 s.139A
171	UK CJ Act 1988 s.139AA ins. by LASPO Act 2012 s.142
172	UK CJ Act 1988 s.139B
173	UK Prevention of Crime Act 1953 s.1 am. by Offensive Weapons Act 1996 and s.1A ins. By LASPO Act 2012
174	UK CJ Act 1988 s.141; CJ Act 1988 (Offensive Weapons) Order 1988 (S.I. 1988/2019 as am. by 2002/1668, 2004/1271 and 2008/97)
175	UK Knives Act 1997 s.8 incorporating s.60 of the CJ and PO Act 1994 as am by Anti-terrorism, Crime & Security Act 2001
176	UK Knives Act 1997 s.8 incorporating s.60 & 60A of the CJ and PO Act 1994 as am. by Anti-terrorism, Crime & Security Act 2001

#### PART 8 – EXPLOSIVE SUBSTANCES

177	UK Explosives Act 1875 ss.3 and 104; Explosive Substances Act 1883 s.9
178	UK OAP Act 1861, s.28
179	UK OAP Act 1861, s.29
180	UK Explosive Substances Act 1883 s.2 am. by CJ Act 1975
181	UK Explosive Substances Act 1883 s.3 am. by CJ Act 1975
182	UK OAP Act 1861 s.30
183	UK Explosive Substances Act 1883 s.4 adapted
184	UK OAP Act 1861 s.64 adapted
185	UK Explosive Substances Act 1883 s.5 amplified
186	UK Explosive Substances Act 1883 s.8
187	Crimes Ord. s.12
188	Crimes Ord. s.13
189	Crimes Ord. s.14
190	Crimes Ord. s.15
191	UK Explosive Substances Act 1883 s.7
192	UK Explosives Act 1875 s.74
193	UK Explosives Act 1875 s.89

#### PART 9 - CRIMINAL DAMAGE

194	UK Criminal Damage Act 1971 s.10 am. by Police & Justice Act 2006
195 to 198	UK Criminal Damage Act 1971 ss.1 to 3
199	UK Criminal Damage Act 1971 s.5
200	UK Criminal Damage Act 1971 s.6
201	UK Criminal Damage Act 1971 s.9

#### PART 10 – SEXUAL OFFENCES

202	UK Sexual Offences Act 2003 ss.78 and.79
203 to 216	UK Sexual Offences Act 2003 ss.1 to 14
217	UK Sexual Offences Act 2003 s.15 am. by Criminal Justice & Immigration Act 2008
218 to 221	UK Sexual Offences Act 2003 ss.16 to 19
222	UK Sexual Offences Act 2003 s.21 am. by Children Act 2004 and adapted

223 to 227	UK Sexual Offences Act 2003 ss.22 to 26
228	UK Sexual Offences Act 2003 s.27 am. by Criminal Justice & Immigration Act 2008
229	UK Sexual Offences Act 2003 s.28
230	UK Sexual Offences Act 2003 s.29 am. by Criminal Justice & Immigration Act 2008
231 to 245	UK Sexual Offences Act 2003 ss.30 to 44
246	UK CJ Act 1988 s.160 am. by Criminal Justice & Public Order Act 1994
247	UK Protection of Children Act 1978 s.1 as am. by Sexual Offences Act 2003
248	UK CJ Act 1988 s.160A; UK Protection of Children Act 1978 s.1A ins. by Sexual Offences Act 2003
249	UK Protection of Children Act 1978 s.1B ins. by Sexual Offences Act 2003 and adapted
250	UK Protection of Children Act 1978 s.4 as am. by Sexual Offences Act 2003
251	UK Protection of Children Act 1978 ss.2 and 7 as am. by Sexual Offences Act 2003
252	UK Coroners & Justice Act 2009 ss.62 and 66
253	UK Coroners & Justice Act 2009 s.63
254	UK Coroners & Justice Act 2009 s.64
255	UK Coroners & Justice Act 2009 ss.65 and 67
256	UK Criminal Justice & Immigration Act 1998 ss.63 and 67
257	UK Criminal Justice & Immigration Act 1998 s.64
258	UK Criminal Justice & Immigration Act 1998 ss.65 and 66
259	UK Sexual Offences Act 2003 s.47 adapted
260 to 265	UK Sexual Offences Act 2003 ss.48 to 53
266	UK Sexual Offences Act 2003 s.53A ins. by Policing and Crime Act 2009
267	UK Street Offences Act 1959 s.1 am. by CJ Act 1982, Sexual Offences Act 2003 and Policing and Crime Act 2009
268	UK Sexual Offences Act 2003 s.51A ins. by Policing and Crime Act 2009
269	UK Sexual Offences Act 1985 s.4 am. by Sexual Offences Act 2003; Sexual Offences Act 2003 s.54
270 to 273	UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003
274	UK Children & Young Persons Act 1933 s.3
275	UK Sexual Offences Act s.59A ins. by Protection of Freedoms Act 2012
276	UK Sexual Offences Act 2003 s.60A ins. by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms Act 2012
277	UK Sexual Offences Act 2003 s.60B ins. by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms Act 2012
278	UK Sexual Offences Act 2003 s.60C ins. by Violent Crime Reduction Act 2006
279 to 281	UK Sexual Offences Act 2003 ss.61 to 63
282	UK Sexual Offences Act 2003 s.64 am. by Criminal Justice &

	Immigration Act 2008
283	UK Sexual Offences Act 2003 s.65 am. by Criminal Justice & Immigration Act 2008
284 to 288	UK Sexual Offences Act 2003 ss.66 to 71
289	UK Sexual Offences Act 2003 s.72 replaced by s.72(1) Criminal Justice & Immigration Act 2008
290	UK Sexual Offences (Conspiracy & Encouragement) Act 1996 ss.2 and 3 and Schedule am. by Sexual Offences Act 2003
291 to 294	UK Sexual Offences Act 2003 ss.73 to 77

#### PART 11 – SEXUAL OFFENCE ORDERS

295	UK Sexual Offences Act 2003 ss.22, 113, 131, 135 and passim
296	UK Sexual Offences Act 2003 s.80
297	UK Sexual Offences Act 2003 s.82 am. by Violent Crime Reduction Act 2006
298 to 300	UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008
301	UK Sexual Offences Act 2003 s.86 adapted; S.I 2004/1220
302	UK Sexual Offences Act 2003 ss.87 and 88
303 to 306	UK Sexual Offences Act 2003 ss.89 to 92
307 to 309	UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted
310	UK Sexual Offences Act 2003 s.93 and Schedule 4, part
311	UK Sexual Offences Act 2003 s.93 and Schedule 4, part
312 to 314	UK Sexual Offences Act 2003 ss.94 to 96
315	UK Sexual Offences Act 2003 s.96B ins. by Violent Crime Reduction Act 2006
316 to 320	UK Sexual Offences Act 2003 ss.97 to 101
321 to 331	UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5
332 to 341	UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5
342	UK Sexual Offences Act 2003 s.130
343	UK Sexual Offences Act 2003 Sched.3
344	UK Sexual Offences Act 2003 s.132
345	UK Sexual Offences Act 2003 s.136ZB ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5 adapted

#### PART 12 - THEFT AND FRAUD

346	UK Theft Act 1968 s. 34
347	UK Theft Act 1968 ss.1 and 7
348 to 352	UK Theft Act 1968 ss.2 to 6
353 to 355	UK Theft Act 1968 ss.8 to 10
356	UK Theft Act 1968 s.25 as am. by Fraud Act 2006
357	UK Theft Act 1968 s.14; Postal Services Act 2000 s.125
358	UK Theft Act 1968 s.24 as am. by Fraud Act 2006

359	UK Theft Act 1968 s.22 as am. by Fraud Act 2006
360	UK Theft Act 1978 s.23
361	UK Theft Act 1968 s.26
362	Road Traffic Ordinance s.30, replacing UK Theft Act 1968 s.12
363	UK Theft Act 1968 s.12A ins. by Aggravated Vehicle Taking Act 1992
364	UK Theft Act 1968 s.11
365	UK Theft Act 1978 s.3
366	UK Theft Act 1968 s.13
367	UK Theft Act 1968 s.21
368 to 371	UK Fraud Act 2006 ss.1 to 4
372	UK Fraud Act 2006 s.6
373	UK Fraud Act 2006 s.7
374	UK Fraud Act 2006 s.9 adapted
375	UK Fraud Act 2006 s.11
376	UK Fraud Act 2006 s.8 adapted
377	UK Fraud Act 2006 s.13
378	UK Theft Act 1968 s.17
379	UK Theft Act 1968 s.19
380	UK Theft Act 1968 s.20
381	UK Theft Act 1968 s.24A inserted by Theft (Am.) Act 1996
382	Common law
383	Crimes Ord. s.30; UK Regulation of Investigatory Powers Act 2000, s.1
384	UK Theft Act 1968 s.27
385	UK Theft Act 1968 s.31

#### PART 13 - FORGERY AND COUNTERFEITING

386	UK Forgery & Counterfeiting Act 1981 passim; Stamp Duties Act 1981 s.127
387 to 389	UK Forgery & Counterfeiting Act 1981 ss.8 to 10
390 to 394	UK Forgery & Counterfeiting Act 1981 ss.1 to 6
395	UK Forgery & Counterfeiting Act 1981 s.13
396 to 399	UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22
400	UK Forgery & Counterfeiting Act 1981 s.28
401	UK Forgery & Counterfeiting Act 1981 ss.18 and 22 adapted
402	UK Forgery & Counterfeiting Act 1981 ss.19 and 22
403	UK Forgery & Counterfeiting Act 1981 ss.20 to 22 adapted
404 to 406	UK Identity Documents Act 2010 ss.4 to 6
407	UK Identity Documents Act 2010 ss.7 to 9

#### PART 14 - COMPUTER MISUSE

408	UK Computer Misuse Act 1990 s.17 and EU Convention Art.1
409	UK Computer Misuse Act 1990 s.1 am. by Police & Justice Act 2006 s.35
410	UK Computer Misuse Act 1990 s.2
411	UK Computer Misuse Act 1990 s.3 replaced by Police & Justice Act 2006 s.36
412	EU Convention Art 3

413	UK Computer Misuse Act 1990 s.3A ins. by Police & Justice Act 2006 s.37
414	EU Convention Art 11
415 to 418	UK Computer Misuse Act 1990 ss.4 to 9
419	UK Computer Misuse Act 1990 s.11
420	EU Convention Arts 15 & 19
421	Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention
422	EU Convention Art. 16
423	EU Convention Art. 20
424	EU Convention Art. 17
425	EU Convention Art. 18
426	EU Convention Art. 21
427	EU Convention Arts. 20.3, 21.3
428	UK Computer Misuse Act 1990 s.10
429	EU Convention Art.12
430	Gibraltar Crimes Bill - Not in EU Convention
431	Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention
432	EU Convention Art 28
433	Gibraltar Crimes Act; SH Crimes Bill – Not in EU Convention but required by FCO

#### PART 15 - COMMERCIAL TRANSACTIONS

434	UK Auctions (Bidding Agreements) Act 1927 s.1 amended
435	Auctions (Bidding Agreements) Act 1969 s.2
436	Auctions (Bidding Agreements) Act 1969 s.3
437	UK Auctioneers Act 1845 s.7 applied by Auctions (Bidding Agreements) Acts 1927 and 1969
438	UK Mock Auctions Act 1961 s.1
439	UK Mock Auctions Act 1961 s.3
440	UK Unsolicited Goods and Services Act 1971 s.1
441	UK Unsolicited Goods and Services Act 1971 s.2

### CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

#### PART 16 – TREASON

442	Treason Act 1351; Treason Act 1702, s.3
443	Treason Felony Act 1848, ss.3, 7
444	Treason Act 1695 ss.5, 6
445	Treason Act 1842 ss.2, 3

#### PART 17 – SECURITY

446	UK Incitement to Disaffection Act 1934 ss.1 and 2 adapted
447	UK Armed Forces Act 2006 ss.8 and 10 adapted
448	UK Uniforms Act 1894 s.3
449	UK Unlawful Drilling Act 1819 ss.1, 2 and 7
450	Crimes Ord. s.31; Police Ord. s.57; UK Police Act 1996 s.91

451 Crimes Ord. s.34 modified; UK Police Act 1996 s.89  
452 UK Police Act 1996 s.90; Commissioners for Revenue and Customs  
Act 2005 s.30  
453 Crimes Ord. ss.35 and 36  
454 Crimes Ord. s.38 modified  
455 Crimes Ord. ss.37 and 39 modified  
456 UK CJ Act 1961 s.22  
457 Crimes Ord.ss.42, 43, 44

#### PART 18 - JUDICIAL PROCEEDINGS

458 UK CJ Act 1925 s.1 (repealed)  
459 UK Administration of Justice Act 1960 s.12 adapted  
460 UK Magistrates' Courts Act 1980 s.8; UK Crime & Disorder Act 1998  
Sched. 3 expanded  
461 UK CJ Act 1925 s.41 adapted  
462 UK Criminal Law Act 1967 s.5 and common law  
463 Crimes Ord. s.50; UK Criminal Justice & Public Order Act 1994 s.51  
464 Common law; UK Contempt of Court Act 1981 s.6  
465 Contempt of Court Ord. Schedule; UK Contempt of Court Act 1981  
ss.1 to 5  
466 UK Contempt of Court Act 1981 s.8  
467 UK Contempt of Court Act 1981 s.9  
468 UK Contempt of Court Act 1981 s.12  
469 UK Contempt of Court Act 1981 ss.7, 14 and 16  
470 UK Contempt of Court Act 1981 Sched.1  
471 UK Contempt of Court Act 1981 ss.10 and 11

#### PART 19 – PERJURY, ETC.

472 UK Perjury Act 1911 s.15  
473 UK Perjury Act 1911 s.1  
474 UK European Communities Act 1972 s.11(1) adapted  
475 UK Perjury Act 1911 s.7 adapted  
476 UK Youth Justice and Criminal Evidence Act 1999 s.57  
477 UK CJ Act 1967 s.89  
478 UK Perjury Act 1911 s.1A; Evidence (Proceedings in other  
Jurisdictions) Act 1975  
479 UK Perjury Act 1911 s.2  
480 UK Perjury Act 1911 s.3; CJ Act 1925 s.28  
481 UK Perjury Act 1911 s.4; CJ Act 1925 s.28  
482 UK Perjury Act 1911 s.5  
483 UK Perjury Act 1911 s.6  
484 UK CJ Act 1925 s.36  
485 UK British Nationality Act 1981 s.46 (part)  
486 UK Perjury Act 1911 s.13 adapted  
487 UK Perjury Act 1911 s.14  
488 UK Perjury Act 1911 s.12

489 UK Perjury Act 1911 s.16(1)

#### PART 20 – BRIBERY AND PUBLIC OFFICE OFFENCES

490 to 498 UK Bribery Act 2010 ss.1 to 9 and 11

499 Common law

500 UK Bribery Act 2010 s.10

501 to 506 UK Bribery Act 2010 ss.12 to 17(1)

#### PART 21 - PUBLIC ORDER

507 UK Public Order Act 1986 as am by Criminal Justice & Public Order Act 1994

508 to 511 UK Public Order Act 1986 ss.1 to 4 adapted

512 UK Public Order Act 1986 s.4A, inserted by Criminal Justice & Public Order Act 1994

513 UK Public Order Act 1986 s.5 am. by Crime & Courts Act 2013

514 UK Public Order Act 1986 s.6 am. by Crimes & Courts Act 2013

515 UK Public Order Act 1986 s.7

516 UK Public Order Act 1986 ss.9 & 10

517 and 518 UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24

519 UK Public Order Act 1986 s.38

520 UK Criminal Law Act 1977 s.51

521 UK Public Order Act 1936 s.2

522 UK Public Order Act 1936 s.1

523 UK Public Order Act s.40(4); Magistrates Courts Act 1980 s.115(3)

524 UK Town Police Clauses Act 1847 s.29

525 UK CJ Act 1967 s.91

#### PART 22 – HATE CRIMES

526 UK Public Order Act 1986 passim

527 to 532 UK Public Order Act 1986 ss.18 to 23 am. by Racial and Religious Hatred Act 2006

533 to 538 UK Public Order Act 1986 ss.29B to 29G ins. by Schedule to the Racial and Religious Hatred Act 2006 and am. by the Criminal Justice and Immigration Act 2008 Schedule 16

539 UK Public Order Act 1986 ss.24 and 29G; UK Theatres Act 1968 s.15

540 UK Theatres Act 1968 s.9

541 UK Theatres Act 1968 s.10

542 UK Public Order Act 1986 ss.25 and 29H

543 UK Public Order Act 1986 ss.26 and 29K

544 UK Racial and Religious Hatred Act 2006 s.29J adapted

545 UK Public Order Act 1986 s.27 and 29L

546 UK Crime and Disorder Act 1998 s.28 am. by Anti-Terrorism Crime and Security Act 2001

547 UK Crime & Disorder Act 1998 s.29 am. by Anti-Terrorism, Crime & Security Act 2001

548 to 550 UK Crime & Disorder Act 1998 ss.30 to 32 adapted  
551 UK Crime & Disorder Act 1998 ss.31(6) and 32(5) adapted

#### PART 23 – PUBLIC NUISANCES

552 Gibraltar Crimes Act 2012; SH Crimes Bill  
553 Gibraltar Crimes Ord. and SH Crimes Bill  
554 Metropolitan Police Act 1839 s.60(8); UK Town Police Clauses Act  
1847 s.28  
555 UK Metropolitan Police Act 1839 ss.54(17) and 60(2); UK Town  
Police Clauses Act 1847 s.28.  
556 UK Metropolitan Police Act 1839 ss.54 and 60; UK Town Police Clauses  
Act 1847 s.28.

#### PART 24 – CRIMINAL TRESPASS

557 UK Criminal Law Act 1977 s.12 (part)  
558 UK Criminal Justice & Public Order Act 1994 ss.61 & 62 adapted  
559 UK Criminal Law Act 1977 s.6  
560 Gibraltar Crimes Act; SH Crimes Bill  
561 UK LASPO Act 2012 s.144  
562 UK Criminal Justice & Public Order Act 1994 s.68  
563 UK Criminal Justice & Public Order Act 1994 s.69  
564 UK Criminal Law Act 1977 s.8  
565 Gibraltar Criminal Offences Act s.165B to E  
566 UK Serious Organised Crime & Police Act 2005 s.128

#### PART 25 – OBSCENE PUBLICATIONS

567 UK Children and Young Persons (Harmful Publications) Act 1955 ss.1  
and 4 (part); Customs Consolidation Act 1876; Customs & Excise  
Management Act 1979  
568 UK Obscene Publications Act 1959 s.1 am. by Criminal Law Act 1977  
and Criminal Justice and Police Act 1994 adapted  
569 UK Obscene Publications Act 1959 s.2 am. by Criminal Law Act 1977  
and Criminal Justice and Police Act 1994 adapted  
570 UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene  
Publications Act 1964 and Criminal Law Act 1977; Customs and  
Excise Management Act 1979  
571 SH Obscene Publications Ordinance s.2 modified; UK Customs and  
Excise Management Act 1979  
572 UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene  
Publications Act 1964 and Criminal Law Act 1977  
573 UK Obscene Publications Act 1959 s.3 (part) as am. by Courts Act  
1971, Criminal Law Act 1977 and PACE Act 1984; Video Recordings  
Acts 1984 and 2010  
574 UK Obscene Publications Act 1959 s.4 as am. by Criminal Law Act 1977  
575 SH Obscene Publications Ordinance s.3  
576 UK Unsolicited Goods and Services Act 1971 s.5

577

UK Indecent Displays (Control) Act 1981 ss.1 and 4

## CHAPTER 4 – SUPPLEMENTARY PROVISIONS

### PART 26 – MISCELLANEOUS AND TRANSITIONAL

578 to 582

--

583

UK Criminal Justice & Public Order Act 1994 s.35

584

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585

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#### Note:

Crimes Ord.

Crimes Ordinance

OT

Overseas Territories

UK CJ Act

Criminal Justice Act 1972, 1988 or 2003, as indicated

UK CYP Act

Children & Young Persons Act 1933

UK DVCV Act

Domestic Violence, Crime and Victims Act 2004

UK LASPOA

Legal Aid, Sentencing & Punishment of Offenders Act 2012

UK MC Act

Magistrates' Courts Act 1980

UK PACE Act

Police & Criminal Evidence Act 1984

UK SO (Am) Act

Sexual Offences (Amendment) Act 1992

UK SO (PM) Act

Sexual Offences (Protected Material) Act 1997

UK YJCE Act

Youth Justice & Criminal Evidence Act 1999

SH

St Helena Criminal Offences Ordinance or the Crimes Bill

Gibraltar

Gibraltar Crimes Bill or the Crimes Act (the Bill as enacted)

--

No direct precedent for the section

'am'

amended by

'ins'

inserted by

'adapted'

adapted from a non-FI precedent

'modified'

modified from an existing FI law

All UK laws are as amended to the middle of 2014 by e.g. LASPOA, Coroners & Justice Act 2009, Anti-social Behaviour, Crime and Policing Act 2014

## CRIMES ORDINANCE 2014 DESTINATION TABLE

Most of the criminal offence laws of the Falkland Islands are to be repealed or disappplied by the CPE Ordinance. This table shows where provisions equivalent to the repealed Ordinances and sections listed in Parts A and B of Schedule 5 can be found. Some are derived directly from the FI law, others are substantially modified.

A blank against a section means there is no equivalent in the Crimes Ordinance.

The destination of UK laws listed in Schedule 1 to the Crimes Ordinance is shown in a separate table at the end.

The destination of disappplied UK enactments listed in Part C of Schedule 5 can be identified by reference to the Derivation Table. If the enactment is not in that table, it has been allowed to lapse as being of no current relevance (or repealed in the UK.)

### Crimes Ordinance

#### PART I - INTRODUCTORY

1.	Short title and commencement	Section 1
2.	Interpretation	Section 2
3.	Common law offences	--
4.	Punishment of common law offences triable summarily	--
5.	Statutory offences replacing common law offences	Part 26
6.	English statutes adopted	--
7.	Modification of Interpretation and General Clauses Ordinance	--
8.	Prosecution of an act or omission which is an offence under two or more statutory provisions	Constitution s.6(6) Part 2
9.	Prosecution of an act or omission which is an offence by statute and at common law	--

#### PART II - OFFENCES

10.	Attempts to commit offences	Part 3
11.	Powers exercisable on convictions for attempts, etc.	Part 3
12.	Offences related to minefields	Part 8
13.	Possession of unexploded ordinance	Part 8
14.	Sale of explosives	Part 8
15.	Casting fireworks, etc.	Part 8
16.	Offence of having article with blade or point in public place	Part 7
16A.	Offence of having article with blade or point on school premises	Part 7
17.	Sale, etc., of crossbows to young persons	Part 7
18.	Possession of crossbow by person under the age of seventeen	Part 7
19.	Prohibited use of crossbow	Part 7
20.	Punishment of offences under sections 17 to 19	Part 7

21.	Powers of search and seizure	Part 7
22.	Sentencing for murder	Part 4
23.	Abolition of "constructive malice"	Part 4
23A.	Abolition of "Year and a Day Rule"	Part 4
23B.	Restrictions on institutions of proceedings for a fatal offence	Part 4
24.	Persons suffering from diminished responsibility	Part 4
25.	Provocation <i>(Abolished)</i>	
26.	Automatism	Part 2
27.	<i>[Repealed]</i>	
28.	<i>[Repealed]</i>	
29.	Conspiracy to defraud	Parts 2, 3
30.	Prohibition on interception	Part 12
31.	Causing disaffection among members of the police force	Part 17
32.	Duty to aid police officer	Part 17
33.	Assaults on police officers	Part 4
34.	Obstructing a police officer in the execution of his duty	Part 17
35.	Negligently permitting person to escape	Part 17
36.	Offence of escape	Part 17
37.	Meaning of legal custody	Part 17
38.	Assisting persons to escape	Part 17
39.	Using violence to escape	Part 17
40.	Obstruction of highways	Part 23
41.	Damage to highway	Part 9
42.	False alarm of fire	Part 17
43.	Wasting time of police	Part 17
44.	Wrongfully summoning ambulance or doctor	Part 17
45.	Endeavouring to break up lawful public meetings, disruption of religious worship, etc.	Part 21

### PART III - GENERAL

46.	Abolition of blasphemy and sedition	Part 26
47.	Age of criminal responsibility	Part 2
48.	Abolition of defence of marital coercion	Part 26
49.	Abolition of corroboration rules	Part 2
50.	Intimidation, etc., of witnesses, jurors and others	Part 18
51.	Liability of directors, etc.	Part 2
52.	Amendment of existing Ordinances	--
53.	No retrospective effect	Part 26

Schedule 1: English Acts applied to the Falkland Islands  
See the Derivation Table

### Contempt of Court Ordinance

1.	Short title and commencement	--
2.	Application of Contempt of Court Act 1981	Part 18

### **Sexual Offences Ordinance 2005**

All the provisions of Part 1 of the UK Sexual Offences Act 2003 applied by this Ordinance are reproduced, duly adapted, in Part 10 of this Bill. The provisions of Part 2 of the 2003 Act are reproduced, with recent UK amendments, in Part 11 of this Bill.

### **Police Ordinance**

Section 55	Section 72
Section 57	Section 453

### **Road Traffic Ordinance**

Section 30	Section 363
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## **UK ACTS LISTED IN SCHEDULE 1 TO THE CRIMES ORDINANCE**

Many of these have been replaced or amended in the UK. They will all cease to have effect in the Falkland Islands by the repeal of the Crimes Ordinance. Equivalent provisions (if not the actual text) can be found in the Parts listed opposite. If no Part is shown, the provision is no longer required.

Treason Acts 1351, 1495, 1695, 1790, 1795, 1814, 1842 Treason Felony Act 1848	Part 16
Sale of Offices Act 1551, 1809 Public Bodies Corrupt Practices Act 1889 Prevention of Corruption Acts 1906 and 1916	Part 20
Piracy Acts 1698, 1721, 1837, 1850	Part 4
Disorderly Houses Act 1751	--
Servants Characters Act 1792	--
Incitement to Mutiny Act 1797 Unlawful Drilling Act 1819 Incitement to Disaffection Act 1934	Part 17
Libel Act 1843 (repealed in UK)	--
Gaming Act 1845	Part 12
Malicious Damage Act 1861 Criminal Damage Act 1971	Part 9
Forgery Act 1861 Forgery & Counterfeiting Act 1981	Part 12

Offences against the Person Act 1861	Part 4
Newspapers etc. Repeals Act 1869 (spent)	
Conspiracy and Protection of Property Act 1875	Part 3
Explosive Substances Act 1883	Part 8
Perjury Act 1911	Part 19
Firearms Act 1920	Part 8
Judicial Proceedings (Regulation of Reports) Act 1926	Part 18
Infant Life Preservation Act 1929	Part 4
Infanticide Act 1938	
Children and Young Persons Acts 1933 and 1963	Part 10
CYP (Harmful Publications) Act 1955	Parts 10 and 25
Post Office Act 1953	Part 25
Indecency with Children Act 1960	Part 10
Tattooing of Minors Act 1969	Part 4
War Charities Act 1940 (repealed in UK)	
Fraudulent Mediums Act 1951	Part 12
Prevention of Crime Act 1953	Part 7
Restriction of Offensive Weapons Act 1959	
Sexual Offences Acts 1956, 1967 and 1976	Part 10
Street Offences Act 1959	
Obscene Publications Acts 1959 and 1964	Part 25
Indecent Displays (Control) Act 1981	
Suicide Act 1961	Part 4
Theft Acts 1968 and 1978	Part 12
Unsolicited Goods and Services Act 1971	Part 12
Public Order Acts 1936 and 1986	Part 4

Criminal Justice and Public Order Act 1994	
Protection of Children Act 1978	Part 10
Criminal Attempts Act 1981	Part 3
Video Recordings Act 1984 (repealed in UK)	--
Child Abduction Act 1984	Part 4
Malicious Communications Act 1988	Parts 14 and 6
Computer Misuse Act 1990	Part 14
Broadcasting Act 1990	Part 22
Theatres Act 1968	
Auctions (Bidding Agents) Acts 1927 and 1969	Part 12
Mock Auctions Act 1961	
Criminal Law Act 1977	Part 3
Criminal Justice Act 1925	Parts 18 and 19
Criminal Justice Act 1972	--
Criminal Justice Act 1988	Various
Criminal Justice Act 1993	Part 2

Schedule 1 also lists a number of UK Acts dealing with the protection and control of animals. These will be the subject of a separate Bill.



# FALKLAND ISLANDS GAZETTE

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30 November 2016

No. 12

## Appointment

Wayne Philip Petty, Internal Auditor, Treasury, 28.07.16.

Charlotte Jane Baker, Learning Support Assistant, Education Department, 31.10.16.

Sally Hermione Heathman, Legal Secretary, Law and Regulation Department, 01.11.16.

Samantha Catherine Addison, Personal Assistant, Health and Social Services Department, 08.11.16.

Richard Howard Moorhouse, Senior Constable, Royal Falkland Islands Police, Emergency Services Department, 11.11.16.

Andrew Mark Francis, Head of Finance, Treasury, 18.11.16.

Henna Karen Lazcano Riquelme, Receptionist, Stanley Leisure Centre, Central Services Department, 21.11.16.

Maria Isabel Garcia Rojas, Intern/Field Science Project Officer - Cetaceans, South Atlantic Environmental Research Institute, 28.11.16.

## Renewal of contract

Ian Sargent, Prison Manager, Emergency Services Department, 08.11.16.

## Resignation

Cristina Gonzalez-Fernandez, Pharmacy Technician, Health and Social Services Department, 27.09.16.

Sofia Lorena Torres, Law Clerk, Law and Regulation Department, 02.11.16.

Terrence Browning, Labourer, Highways Section, Public Works Department, 03.11.16.

Alison Cunningham, Examinations and Administration Officer, Education Department, 04.11.16.

## Retirement

Mally McLeod, Cleaner, Various Departments, 07.11.16.

## Transfer

Lee Perry Adrian John Williams, from Licensed Aircraft Engineer to Maintenance Manager, Falkland Islands Government Air Services, Central Services Department, 20.09.16.

## NOTICES

No. 78

31 October 2016

### Museum and National Trust Ordinance

*section 4(1)*

#### Appointment of Trustees of Museum and National Trust

1. Section 4(1) of the Museum and National Trust Ordinance (Title 34.2) provides that the Governor shall appoint members to the Museum and National Trust.

2. In exercise of my powers under section 4(1) of the Museum and National Trust Ordinance, I appoint the following persons to be Trustees of the Museum and National Trust:-

**Janet Lynda Cheek** from 1 June 2016 to 1 June 2019;

**Vernon Robert Steen** from 1 November 2016 to 1 November 2019; and

**Kurt Ian Whitney** from 1 November 2016 to 1 November 2019.

3. The appointments have effect as indicated above and continue in effect unless terminated sooner.

Dated 31 October 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 79

2 November 2016

**Currency Notes Rules (Title 25.1.1)**  
*(rule 3)*

**Currency Officers**

In exercise of the powers conferred by rule 3 of the Currency Notes Rules, His Excellency the Governor has approved the following change to the list of Currency Officers with effect from 1 November 2016:

Appointments:

**Pollard, Cathy**

The following is a full list of Currency Officers with effect from 1 November 2016:

Aldridge, Jody May  
Butler, Margaret Orlanda  
Hancox, Alice  
Heath, Daniel Robert  
Henry, Donna Louise  
Jaumotte, Helene  
Morrison, Lydia  
Pollard, Cathy  
Short, Celia Soledad

Dated 2 November 2016

J. M. ALDRIDGE, D. L. HENRY, L. MORRISON,  
*Commissioners of Currency.*

No. 80

24 November 2016

**Application for Falkland Islands Status**

Notice is hereby given that:

**Paula Cristina Munoz Garcia;** and  
**Faron Harvey Greentree**

have applied through the Principal Immigration Officer for Falkland Islands Status to be granted by His Excellency the Governor. Any person who knows of any reason why such status should not be granted, should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 December 2016.

Dated 24 November 2016

J. E. SMITH,  
*Immigration Officer.*

No. 81

25 November 2016

**Register of Members' Interests**

The information contained in this Register is provided by every member of the Legislative Assembly and the Attorney General in accordance with clause 22 of the Falkland Islands Legislative Assembly Standing Rules and Orders.

The information is current to 30 November 2016.

**Information to be provided**

Every member of the Legislative Assembly and the Attorney General is required to notify the Clerk of the Assembly of the following registrable interests.

1. Remunerated directorships, whether or not in companies incorporated in the Falkland Islands, including directorships which are unremunerated, but where remuneration is paid through another company in the same group.
2. Remunerated employment, office or profession.
3. Clients in respect of whom the Member holds a general retainer or in respect of whom he has in the last 12 months, or expects in the next 12 months, to provide services for payment where a member of the public might reasonably think that the Member's conduct in or in relation to the business of the Legislative Assembly might have been or might be influenced by the client's interests.
4. Sponsorships. Any form of sponsorship or financial or material support of a Member which involves any payment, benefit or advantage whether to the Member or any other person with whom the Member is closely connected.
5. Gifts, benefits and hospitality.
6. Overseas visits relating to or arising out of membership of the Legislative Assembly where the cost of any such visit has not been borne wholly by the Member or out of the Falkland Islands public funds.
7. Any gifts or material benefits or advantages received by the Member or the Member's spouse or partner from or on behalf of overseas Governments, organisations or persons.
8. Land or property of a substantial value or from which a substantial income is gained.
9. The names of companies or other bodies in which the Member, or his spouse or partner has, to his knowledge, either solely, or with or on behalf of his spouse, partner or children under the age of 18 years, a beneficial interest in shareholdings of a nominal value greater than one percent of the issued share capital, or if less than one percent of more than £25,000.
10. Any relevant interest not covered by one of the main categories which falls within the main purpose of the Register, which is to provide information on any pecuniary benefit which a Member receives and which might reasonably be thought by others to influence his or her actions, speeches or votes in the Legislative Assembly or actions taken in his or her capacity as a Member of the Legislative Assembly OR which the Member considers might be thought by others to influence his or her actions in a similar manner, (even though the Member receives no financial benefit).

**Notification of registrable interests**

Every Member of the Legislative Assembly and the Attorney General notified the following interests.

**Janet Lynda Cheek**

1. Director Consolidated Fisheries Ltd incorporated in the Falkland Islands  
Unicorn Adventure Ltd (unremunerated)
2. Member of the Legislative Assembly
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. Property and Land 35 Ross Road East  
Johnsons Harbour Farm (licenced to tenants)  
Shared ownership of land on San Carlos River  
Flat in Millar Place, Edinburgh, Scotland
9. Kelper Stores Ltd (Retail sales)  
Consolidated Fisheries Ltd (Toothfish, SAAS & FFFL)  
Unicorn Adventure Ltd (Volunteer Point Tourism)
10. Director/Trustee Falklands Conservation (UK charitable company)  
Director/Trustee South Georgia Heritage Trust  
Trustee Falkland Islands Museum and National Trust  
Director Kelper Stores Ltd (unremunerated)  
Chairman Stanley Services Ltd on behalf of FIG  
One share in Falkland Farmer.

**Roger Anthony Edwards**

1. Nil
2. Member of Legislative Assembly
3. Nil
4. Nil
5. Nil
6. Nil
7. Royal Navy Pension, HM Paymaster General
8. Lake Sullivan House, Fox Bay  
8 Sullivan Street  
20 Mink Park
9. One share in Falkland Farmers Ltd
10. Nil.

**Barry Elsbey**

1. Nil
2. Member of the Legislative Assembly
3. Nil
4. Nil
5. Nil
6. Commonwealth Parliamentary Association funded attendance at the Caribbean Network of Public Accounts Committees, Jamaica, October 2016
7. Nil
8. House and land in the Falkland Islands owned jointly with my wife
9. I retain 800 shares in Argos Ltd and 550 in Borders and Southern for my children  
Shares in Falkland Farmers
10. My wife runs her own medical company, Medica South. I have no interest or directorship in this. I have never worked for this company.

**Ian Hansen**

1. Nil
2. Member of the Legislative Assembly
3. Nil
4. Nil

5. Nil
6. Nil
7. Nil
8. Nil
9. Nil
10. Nil.

**Michael James Poole**

1. Nil
2. Member of the Legislative Assembly  
Member of the Falkland Islands Defence Force
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. 19 Davis Street – co-owned with Mr T Poole (main place of residence)  
31 Fitzroy Road (shop only) rental income of £150 per month  
West Tyssen Island – owned, but no income derived from it  
9B Sullivan Street – owned and rented
9. Nil
10. Chairman of Falkland Islands Football Club  
Local secretary of Falkland Islands Association

**Phyllis Mary Rendell**

1. Nil
2. Member of the Legislative Assembly
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. 8 Ross Road West co-owned with M Rendell  
Bleaker Island co-owned with M Rendell
9. 121,000 Seafish shares M Rendell
10. Trustee YMCA  
Trustee New Island Conservation Trust  
Trustee Susan Whitley Trust  
Justice of the Peace  
Director of SAAS

**Gavin Phillip Short**

1. Nil
2. Member of the Legislative Assembly  
Falkland Islands Security Services – Security Officer
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. Nil
9. Nil
10. Director SAAS  
Member of General Employees Union  
Tenant of Falkland Islands Government Housing.

**Michael Victor Summers OBE**

1. Quark Fishing Ltd – not trading  
Pioneer Seafood Ltd  
Concordia Ltd – not trading  
Port Howard Farm Ltd – not remunerated
2. Member of the Legislative Assembly
3. Nil
4. Nil

5. Nil
6. Nil
7. Nil
8. 12 Pioneer Row  
Mount Maria House, Port Howard
9. Quark Fishing Ltd 25.1% (not trading)  
Pioneer Seafood Ltd 90% (M&J Summers), 10% (S Clement)  
Pioneer Seafood owns 7.86% of A/Y (unrestricted finfish) quota, excluding only Toothfish, approximately 65 days fishing. 2.52% of the Illex squid/Finfish ITQ, c20 days and as of 2015 2 Illex Jigger licences (as agent)  
Concordia Ltd 100% (not trading)
10. Trustee, FI YMCA  
Trustee, Stanley Golf Club  
Chairman, Falkland Islands Overseas Games Association

**Barry Rowland**

1. Director of Barry Rowland Consultancy
2. Chief Executive, FIG
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. House in UK jointly owned with spouse
9. Nil
10. Nil

**Lydia Morrison**

1. Nil
2. Financial Secretary, FIG
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. Nil
9. House, UK
10. Nil

**Charles Peter Judge MBE**

1. Nil
2. Attorney General, FIG
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. My wife owns a flat in the UK. I own a 50% interest in a house in the UK
9. I hold various listed securities in the UK (all listed on the UK stock market). My wife and I jointly hold 100% of the shares in two UK private companies: (1) peace ladder Limited; and (2) Judge Consulting Limited
10. Nil.

**Keith Biles**

1. Nil
2. Speaker of the House, Legislative Assembly

3. Nil
4. Nil
5. Nil
6. Nil
7. Pensioner – Standard Chartered Bank Pension Fund  
Pensioner – UK State Pension Scheme
8. Joint Owner – House and Land 14 Kent Road  
Joint Owner – House and Land New House Farm, East Falklands
9. Nil
10. Unremunerated:  
Company Secretary – Energise Group Ltd  
Director (Trustee) Falklands Conservation (a UK Limited Company and Registered Charity)  
Share Holdings:  
Minority shareholding: Energise Group Ltd,  
Pecuniary Interest:  
Décor Services Ltd.

**Anton Livermore CPM JP FCMI**

1. Nil
2. Estates Manager, Government House, Foreign and Commonwealth Office, Stanley  
Deputy Speaker of the Falkland Islands Legislative Assembly  
Justice of the Peace (unremunerated)
3. Nil
4. Nil
5. Nil
6. Nil
7. Nil
8. Nil
9. Nil
10. Director, Stanley Kidzone (unremunerated)

Dated 25 November 2016

C. Y CLIFFORD,  
*Deputy Clerk of the Legislative Assembly.*

No. 82

27 November 2016

**Marriage Ordinance**  
*(section 25)*

**Appointment of Registrar**

I, Colin Roberts CVO Governor of the Falkland Islands in exercise of my powers under section 25(2) of the Marriage Ordinance and all other powers enabling me hereby appoint **Shiralee Collins Finlay** to be a Registrar for the purposes of marriages on West Falkland, whilst Shiralee Collins Finlay holds the position of Fox Bay Agent, unless terminated sooner.

Dated 27 November 2016

C. ROBERTS C.V.O.,  
*Governor.*



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 27*

*2 December 2016*

*No. 12*

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The following are published in this Supplement –

**Fisheries (Individual Transferable Quota Fees)(No 2) Regulations 2016 (SR&O No 22 of 2016);**

**Illex Fishing Licences (Applications, Fees and Refunds)(No 2) Regulations 2016 (SR&O No 23 of 2016); and**

**Supplementary Appropriation (2016-2017) Ordinance 2016 (No 10 of 2016).**

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## SUBSIDIARY LEGISLATION

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### FISHERIES

#### **Fisheries (Individual Transferable Quota Fees) (No 2) Regulations 2016**

S. R. & O. No. 22 of 2016

*Made: 24 November 2016*

*Published: 2 December 2016*

*Coming into force: see regulation 2*

I make the following regulations under section 35 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) on the advice of Executive Council.

#### **1. Title**

These regulations are the Fisheries (Individual Transferable Quota Fees) (No 2) Regulations 2016.

#### **2. Commencement**

These regulations come into force on 1 January 2017 and cease to have effect on 31 December 2017.

#### **3. Interpretation**

In these regulations —

“Director” means the Director of Fisheries; and

“ITQ” means Individual Transferable Quota.

#### **4. Fees and Payment Schedule**

(1) The fees set out under Schedule 1 are the total fees payable in respect of the entire Individual Transferable Quota granted to any company for the specified fisheries.

(2) The fees payable by each company holding ITQ in an established fishery are calculated by reference to the proportion of the total ITQ held by that company.

(3) A company holding ITQ in an established fishery must pay the applicable fees annually in respect of the calendar year for which ITQ has been granted to that company.

(4) The fees must be paid on or before the dates specified under Schedule 2.

**SCHEDULE 1**  
**FISHERY FEES**  
(regulation 4(1))

<b>Description of Fishery</b>	<b>Licence Code</b>	<b>Fees (£)</b>
Finfish	A	<b>1,129,012</b>
Squid – Jig or Trawl	B	<b>ITQ not currently granted</b>
Squid (Summer)	C	<b>2,133,230</b>
Skate	F	<b>247,121</b>
Squid and Restricted Finfish	G	<b>845,900</b>
Restricted Finfish - Pelagic	S	<b>60,419</b>
Restricted Finfish	W	<b>1,341,160</b>
Toothfish – Longline	L	<b>836,770</b>
Squid (Winter)	X	<b>4,242,082</b>

**SCHEDULE 2**  
**PAYMENT SCHEDULE**  
(regulation 4(4))

<b>Description of Fishery</b>	<b>Licence Code</b>	<b>Payment Schedule</b>
Finfish	A	Quarterly: 31 March, 30 June, 30 September, 17 December
Scallops		
Squid – Jig or Trawl	B	See B licence conditions
Squid (Summer)	C	30 June
Skate	F	Quarterly: 31 March, 30 June, 30 September, 17 December
Squid and Restricted Finfish	G	31 March and 30 June
Restricted Finfish - Pelagic	S	30 September and 17 December
Restricted Finfish	W	Quarterly: 31 March, 30 June, 30 September and 17 December
Toothfish – Longline	L	Monthly (beginning of each month)
Squid (Winter)	X	17 December

Made 24<sup>th</sup> November 2016

C. Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE

These Regulations are made under section 35 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) which requires that sums (payable to the Crown) be prescribed for different companies in relation to the amount of ITQs held by those companies.

The fees for 2017 are set out under Schedule 1 and Schedule 2 (the payment Schedule) indicates dates when payments are due in respect of all the different fishery licences.

*Regulation 2* provides for the period within which these fees remain valid – which is from 1 January to 31 December 2017, as the fees are set annually.

Regulation 4 sets out the fees and how they are calculated as well as the dates or times when those fees are payable. These are specified under Schedules 1 and 2.

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## SUBSIDIARY LEGISLATION

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### FISHERIES

#### ***Illex* Fishing Licences (Applications, Fees and Refunds) (No 2) Regulations 2016**

S. R. & O. No. 23 of 2016

*Made:* 24 November 2016

*Published:* 2 December 2016

*Coming into force:* see regulation 2

I make the following regulations under section 41, section 223(2)(b) and (p) of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005) on the advice of Executive Council.

#### **1. Title**

These regulations are the *Illex* Fishing Licences (Applications, Fees and Refunds) (No 2) Regulations 2016.

#### **2. Commencement**

Except where it is specifically provided for a particular provision to come into force at a later, specified date, these regulations come into force on 1 January 2017 and cease to have effect on 31 December 2017.

#### **3. Interpretation**

In these regulations —

“Director” means the Director of Fisheries;

“exploratory or scientific purposes” means purposes related to the assessment of the commercial or practical viability of fishing for fish generally or for a particular species of fish or to the assessment or quantification of stocks of any species of fish or fish of any age, stage of maturity or size of a species of fish or the location in which they or any species of fish or fish of any age, stage of maturity or size may be found;

“FIPASS” means the Falkland Interim Port and Storage System as defined under the Falkland Interim Port and Storage System Ordinance (Title 57.1);

“*Illex* fishing season” means the period between 15 February to 15 June in any given year;

“fishing waters” has the same meaning under the Ordinance;

“Licence Allocation Policy” means the policy relating to *Illex* fishing licences set by Executive Council from time to time;

“refund policy” means the policy approved by Executive Council from time to time as set out under Schedule 2; and

“the Ordinance” means the Fisheries (Conservation and Management) Ordinance.

#### **4. *Illex* fishing licences – applications and fees**

(1) All applications for fishing licences must be made to the Director so as to reach the Director before 18 December 2016 or such earlier date as may be set by the Director and the Director is not bound to receive any application received after this date.

(2) The fees payable for an *Illex* fishing licence is determined by the formula set out under Part A of Schedule 1.

(3) The percentage of the fees and the period within which the fees are payable is specified under Part B of Schedule 1.

(4) When issuing fishing licences under these regulations the Director must take into account the Licence Allocation Policy.

#### **5. Refund policy**

(1) The Director in consultation with the Financial Secretary may, in any fishing season, implement the refund policy as set from time to time by Executive Council.

(2) In any assessment for a refund the Director may take into account the following —

- (a) the average catch in any fishing season;
- (b) the average catch value in any fishing season;
- (c) the full season catch taken by all licensed vessels;
- (d) the full high seas catches taken by all licensed vessels; or
- (e) any other factors as may be relevant.

(3) The refund policy for the 2017 fishing season is set out under Schedule 2.

#### **6. Exploratory licences**

(1) The Director may issue such number of exploratory licences as may be appropriate to verify the presence of *Illex* in any fishing waters.

(2) The Director must specify the expiry date for each exploratory licence issued.

(3) The Director must set the fees payable for exploratory licences.

## **7. Transhipment and export fees**

(1) No transhipment fees are payable —

- (a) for any fishing vessel with a valid fishing license;
- (b) for any Falkland Islands fishing vessel; and
- (c) for any vessel transhipping at FIPASS where cargo is crossing the dock.

(2) The following must pay a transhipment fee of £1650 for the period January to December 2017 —

- (a) subject to subsection (1)(b), any fishing vessel that is transhipping outside the period of validity of the fishing licence;
- (b) a reefer vessel; or
- (c) any unlicensed vessel.

### **SCHEDULE 1 FISHERY FEES** *(regulation 4)*

#### **PART A Fee Formula**

#### **Jigging Vessels:**

$$\text{Fee (£)} = \mathbf{£0.401 * (GT*(S+1.5D)) + 107250}$$

GT = Gross Tonnage

S = Number of Single Jigging Machines

D = Number of Double Jigging Machines

#### **Trawling Vessels:**

$$\text{Fee (£)} = \mathbf{(4.064*GT) + 116640}$$

GT = Gross Tonnage

**PART B**  
**Payment Periods and Proportion of Fee Payable**

<b>Payment Period</b>	<b>Proportion of Fee %</b>
15 February – 15 March	5%
16 March – 15 May	80%
16 May – 15 June	15%
<b>Total</b>	<b>100%</b>

---

**Explanatory Notes** (for guidance only)

A minimum time period of 80% must be purchased.

A 10% deposit must be paid before **27 January 2017**

Outstanding payments for each period must be paid (received by FIG's bank) at least 15 days in advance of the relevant fishing period.

Payments will be eligible for the ^early payment discounts set out below, providing the payment is made on time by the relevant date (for example in order to receive a 6% early payment discount on the full fee (100%), the entire fee would have to be received by FIG by 31 January 2017.

Letters of Credit must have an expiry date of **31 August 2017** no other date will be accepted.

^early payment discounts are as follows:

6% for payment by 31 January 2017

5% for payment by 31 May 2017 \*

4% for payment by 30 June 2017 \*

\*Payments can be held until these dates but must be guaranteed by an Irrevocable Letter of Credit or equivalent.

**Vessel History Discount:**

A discount of 1% per year is available for any season fished by the vessel in the last 10 years.  
The maximum discount which may be claimed is 10%.

**SCHEDULE 2**  
**2017 REFUND POLICY**  
*(regulation 5(3))*

**(a) Licence Fee Refund Policy**

In the event of a poor season the Falkland Islands government will take account of the average catch in assessing refunds. The refund policy will be based on catch as follows:

<b>Catch (MT)</b>	<b>Column A Percentage Refund based on catch volume only. For use where average catch ≥ 1000 tonnes</b>	<b>Column B Percentage Refund using catch volume and value. For use where average catch &lt; 1000 tonnes</b>
> 1500	No refund	0%
1500 – 1250	No refund	10%
1249 – 1000	No refund	25%
999 – 750	40%	40%
749 – 500	50%	50%
499 – 250	70%	70%
< 250	90%	90%

---

**Explanatory Notes** (for guidance only)

Referring to the above table if the average catch is 1000 tonnes or exceeds that level there will not be any refund as set out in column A.

If the average catch is less than 1000 tonnes and taking account of catch value results in an ‘adjusted catch’ less than 1500 tonnes the refund levels set out in column B will apply.

An example of the adjusted catch value is set out in below –

**(b) Licence Fee Refund Policy – Catch Value**

The refund policy is intended to be linked to catch and catch value. The base price used to calculate the figures in the table at (a) above is \$ 936 per tonne (whole *Illex*). If the 2017 *Illex* price is higher than the current base rate this will be factored into the refund calculation. In any case where the average *Illex* price is above \$ 936 the calculation will be:

$$(Average Price \$ / \$ 936) * Average Catch = Revised average catch for refund.$$

For example if the 2017 *Illex* price is \$ 3000 and the average catch is 400 tonnes the calculation will be:

$$(\$ 3000 / \$ 936) = 3.2$$

*Average catch (400 tonnes) \* 3.2 = 1280 tonnes (This is the adjusted catch figure used for the refund calculation in column B of the table above).*

The adjustment will only be made if the price is above \$ 936. Price information will be collected from available sources.

### **(c) Refund Policy to take account of Full Season equivalent catch**

The catch total used in the refund policy will take account of full season catches (15 February – 15 June). If the average catch of vessels fishing for 100% of the season exceeds 1000 tonnes there will be no refund for any vessels; including those which have fished for 80% of the season only and whose catches may be less than 1000 tonnes.

### **(d) Refund Policy to take account of High Seas Catches**

The calculation of catch rates and totals in relation to the refund policy will take account of high seas catches taken by licensed vessels during 15 February – 15 June. Owners/operators of licensed vessels wishing to access the refund policy set out here in section 6 must provide catch reports for any days spent fishing on the high seas during the period of validity of their Falkland Islands fishing licence.

Owner/operators electing not to report high seas catches in accordance with the above may still be eligible for a refund but it is likely to be at a reduced rate compared to the refund policy calculation set out here (to be determined according to the relevant circumstances).

### **(e) Monitoring of Catch Levels**

FIG will be the ultimate arbiter of catch levels and reserves the right to weight the assessment in favour of verified information. In order for this to work vessels may need to undergo additional inspections and give adequate notice of departure from the fishing zone etc.

This will be calculated on the basis of average vessel catch and not on an individual vessel basis.

The refund policy set out here in regulation 5 will only apply to vessels which comply with the requirements of catch monitoring. A number of these are covered by mandatory requirements which in any case are covered by the Fisheries Ordinance and regulations, such as:

- Full and reliable catch reporting
- Other fishery monitoring reports (Fishcom/end etc)
- Embarkation of an observer if required
- Sufficient notice of intention to leave fishing zones to allow for inspection

Additionally, the refund policy set out above will only apply to fishing vessels which report high seas catches during the fishing season (15 February – 15 June) and conduct transshipment operations in Falkland Island ports and harbours. Vessels not satisfying the criteria set out above

will not ordinarily be eligible for a refund. If, in exceptional circumstances, it is determined that a vessel which has not complied should still receive a refund, that refund will be at a reduced rate (to be determined according to the relevant circumstances).

Made 24<sup>th</sup> November 2016

C. Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of these regulations)*

These regulations are made under sections 41 and 223 of the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005).

Section 41(1) provides for applications and fees for a fishing licence. *Regulations 1 and 2* provide for introductory matters while *regulation 3* provides for interpretation of different words and phrases used within the regulations.

*Regulation 4* provides for the application process including dates for making applications. It further provides for the fees and the formula; and this is set out under Schedule 1.

Section 223(2)(b) of the Ordinance provides that the Governor may make regulations for the refund of fees, charges or levies payable under any provision of the Ordinance. *Regulation 5* provides for the manner of making refunds and this is set out under Schedule 2 and it is based on a refund policy approved by Executive Council.

*Regulation 6* provides for exploratory licences which give effect to section 42 of the Ordinance which deals with licences that may be issued for research purposes.

*Regulation 7* provides for transshipment and export fees and under subsection (2) sets the fee at £1650 for any unlicensed fishing vessel, any fishing vessel (not being a Falkland Island vessel) that transships outside the validity of a licence as well as any reefer vessel. A Falkland Islands fishing vessel is exempted from paying any transshipment fees as well as any vessel with a valid fishing licence. Fishing vessels transshipping through FIPASS are also excluded from paying any transshipment fees.

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**Supplementary Appropriation (2016-2017) Ordinance 2016**

(No: 10 of 2016)

**ARRANGEMENT OF PROVISIONS**

**Section**

1. Title
2. Commencement
3. Withdrawal of additional sum
4. Replenishment of Contingencies Fund

**Schedule**

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**SUPPLEMENTARY APPROPRIATION (2016-2017) ORDINANCE 2016**

(No: 10 of 2016)

*(assented to: 24 November 2016)*  
*(commencement: on publication)*  
*(published: 2 December 2016)*

**AN ORDINANCE**

To authorise the withdrawal from the Consolidated Fund of the additional sum of £2,919,350.00 for the financial year ending 30 June 2017.

ENACTED by the Legislature of the Falkland Islands —

**1. Title**

This Ordinance is the Supplementary Appropriation (2016-2017) Ordinance 2016.

**2. Commencement**

This Ordinance comes into force on publication in the Gazette.

**3. Withdrawal of additional sum**

(1) The Financial Secretary may withdraw an additional sum of £2,919,350.00 from the Consolidated Fund.

(2) Any additional sum withdrawn under subsection (1) may be applied in the financial year ending 30 June 2017 in accordance with section 4 and the Schedule.

#### 4. Replenishment of Contingencies Fund

If any sum has been withdrawn from the Contingencies Fund by the authority of Contingencies Warrant No 1 of 2016/2017, the Financial Secretary will replenish the fund from the additional sum withdrawn under section 3.

#### SCHEDULE

<b>Number</b>	<b>Head of Service</b>	<b>Amount</b> £
<b>Operating Budget</b>		
0110	Central Services	166,540.00
0120	Human Resources	118,950.00
0200	Health & Social Services	483,930.00
0250	Education & Training	21,970.00
0350	Public Works	197,680.00
0410	Natural Resources	80,600.00
0450	Law & Regulation	153,450.00
0550	Emergency Services	242,970.00
0600	Executive Management	494,180.00
0700	The Treasury	447,060.00
0620	Mineral Resources	8,310.00
0997	Oil and Gas Development	94,450.00
0999	Island Plan Investments	409,260.00
<b>Total Operating Budget</b>		<b>2,919,350.00</b>
<b>Total Schedule</b>		<b>2,919,350.00</b>

Passed by the Legislature of the Falkland Islands on 27 October 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

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# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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The following are published in this Supplement –

**Animals (Welfare and Protection) Ordinance 2016 (No 11 of 2016);**

**Code of Practice for the Welfare of Animals Kept as Pets; and**

**Taxes and Duties (Defence Contractors' Employees Exemption) Order 2016 (SR&O No 24 of 2016).**

# ELIZABETH II



## FALKLAND ISLANDS

COLIN ROBERTS C.V.O.,  
*Governor.*

### **Animals (Welfare and Protection) Ordinance 2016**

(No: 11 of 2016)

#### ARRANGEMENT OF PROVISIONS

##### **PART 1 - PRELIMINARY**

###### Section

1. Title and commencement
2. Interpretation
3. Responsibility for animals
4. Meaning of “animal”
5. Application of the Ordinance

##### **PART 2 - ANIMAL WELFARE**

###### *Unnecessary suffering - domestic animals*

6. Unnecessary suffering

###### *Promotion of welfare*

7. Duty of person responsible for animal to ensure welfare
8. Improvement notices
9. Transfer of animals by way of sale or prize to persons under 16
10. Regulations to promote welfare
11. Licensing of activities involving animals

###### *Domestic animals in distress*

12. Powers in relation to animals in distress
13. Power of entry for section 12 purposes
14. Orders in relation to animals taken under section 12(5)
15. Orders under section 14: Appeals

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16. Poisoning, etc. of domestic animals
17. Other offences in connection with poisons
18. Prohibited or restricted use of poisons

#### *Traps*

19. Inspection of traps
20. Restriction on type of trap
21. Open trapping of hares and rabbits

#### *Performing animals*

22. Prohibition of exhibiting and training performing animals

#### *Films*

23. Prohibition of films involving cruelty to domestic animals
24. Section 23: Supplementary

#### *Mutilation of domestic animals*

25. Mutilation
26. Docking of dogs' tails

#### *Animals fighting*

27. Fighting, etc.
28. Seizure of animals involved in fighting offences
29. Reimbursement of expenses relating to animals involved in fighting offences
30. Destruction of animals involved in fighting offences

#### *Non-native and unsuitable animals*

31. Prohibition of importing or keeping unsuitable animals
32. Inspection of premises
33. Power to seize and to dispose of animals without compensation

#### *Dogs and cats*

34. Identification of dogs and cats
35. Seizure and destruction of stray dogs and cats
36. Dogs and cats: Inspection powers

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#### *Inspection*

37. Inspection powers generally
38. Entry and search under warrant in connection with offences
39. Conditions for issue of warrant

#### *Disqualification and deprivation*

40. Orders with respect to licences
41. Disqualification generally

42. Termination of disqualification under section 40 or 41
43. Seizure of animals in connection with disqualification
44. Deprivation orders
45. Destruction in the interests of the animal
46. Sections 43 to 45: Supplementary provisions
47. Forfeiture of equipment used in offences
48. Orders under sections 43 to 47: Pending appeals

*Enforcement generally*

49. Time limits for prosecutions
50. Power to stop and detain vehicles
51. Power to detain vessels and aircraft
52. Obtaining of documents in connection with carrying out orders, etc.

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54. Regulations
55. Codes of practice
56. Amendment of Schedule
57. Repeal of laws
58. Savings
59. Transitional provisions
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61. Crown application

Schedule – Consequential amendments

**ELIZABETH II**



**FALKLAND ISLANDS**

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COLIN ROBERTS C.V.O.,  
*Governor.*

**ANIMALS (WELFARE AND PROTECTION) ORDINANCE 2016**

(No: 11 of 2016)

*(assented to: 19 December 2016)*  
*(commencement: in accordance with section 1)*  
*(published: 23 December 2016)*

**AN ORDINANCE**

To provide for the welfare and protection of animals and for connected matters.

ENACTED by the Legislature of the Falkland Islands —

**PART 1 - PRELIMINARY**

**1. Title and commencement**

- (1) This Ordinance may be cited as the Animals (Welfare and Protection) Ordinance 2016.
- (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 —

“animal” has the meaning given to that term by section 4(1);

“bull” includes any cow, bullock, heifer, calf, steer or ox;

“cat” includes a kitten;

“damage” includes the death of, or injury to, any person;

“Director” means the person performing the functions of Director of Natural Resources;

“dog” includes any bitch or puppy;

“domestic animal” has the meaning given that term by section 5(3);

“exhibit” means exhibit at any entertainment to which the public are admitted, whether on payment of money or otherwise; and “exhibitor” has the corresponding meaning;

“fowl” includes any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea-fowl, peacock, peahen, swan, or pigeon;

“goat” includes a kid;

“horse” includes any mare, gelding, pony, foal, colt, filly, or stallion;

“humanely destroy”, in relation to an animal, means —

(a) to put to death by means of the administration of a lethal injection in such a way as not to be likely to cause unnecessary pain or suffering to the animal; or

(b) otherwise to put to death in a way not likely to cause unnecessary pain or suffering to the animal;

“inspector” includes a veterinary officer or any person appointed by the Governor to be an inspector for the purposes of this Ordinance;

“keeper” has the meaning given that term by section 3(3);

“licence” means a licence issued under regulations made under section 54;

“non-native animal” has the meaning given that term by section 31;

“owner”, in relation to an animal, means the person to whom the animal lawfully belongs and includes an agent of the owner;

“pig” includes any boar, hog, sow or piglet;

“post-conviction powers” means the powers in any of sections 40 to 47;

“premises” includes —

(a) any place;

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

(c) any tent or movable structure;

“Senior Veterinary Officer” means the person performing the duties of the senior veterinary officer of the Government;

“sheep” includes any lamb, ewe, or ram;

“suffering” means physical or mental suffering and related expressions are to be construed accordingly;

“train” means train for the purpose of exhibiting; and “trainer” has the corresponding meaning;

“unsuitable animal” means an animal specified as such by an order made under section 31;

“veterinary surgeon” means a person qualified in veterinary medicine and surgery and registered with a body established or recognised for that purpose under the laws of a country or territory.

(2) In this Ordinance —

(a) references to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied premises” are to be construed accordingly;

(b) references to a part of premises which is used as a private dwelling include any yard, garden, garage or outhouse which is used for purposes in connection with it;

(c) references to responsibility, in relation to an animal, are to be read in accordance with section 3;

(d) references to the needs of an animal are to be read in accordance with section 7(2).

*[UK Animal Welfare Act 2006 s.3; Dangerous Wild Animals Act 1976 s.7]*

### **3. Responsibility for animals**

(1) In this Ordinance —

(a) references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis;

(b) references to being responsible for an animal include being in charge of it.

(2) For the purposes of this Ordinance —

(a) the owner of an animal is to be regarded as responsible for it;

(b) a person (‘A’) is to be regarded as responsible for any animal for which a person under the age of 16 years of whom A has actual care and control is responsible.

(3) In this Ordinance —

(a) “keeper”, in relation to an animal, means a person, not being the owner of that animal, by whom that animal is for the time being ordinarily kept;

(b) a person is a keeper of an animal if the person has it in the person’s possession;

(c) if at any time an animal ceases to be in the possession of a person, any person who immediately before that time was a keeper of the animal by virtue of paragraph (a) or (b) continues to be a keeper of the animal until another person becomes its keeper by virtue of those provisions;

(d) if an animal is in the possession of any person only so that the person can —

(i) prevent it from causing damage;

(ii) restore it to its owner;

(iii) arrange for it to undergo veterinary treatment; or

(iv) transport it on behalf of another person,

the person is not because of that possession to be treated for the purposes of this Ordinance as a keeper of the animal;

(e) expressions cognate with “keeper” must be construed in accordance with this subsection.

*[Animals (Amendment) Ordinance; UK Protection of Animals Act 1911 s.15; Animal Welfare Act 2006 s.3 etc.]*

#### **4. Meaning of “animal”**

(1) In this Ordinance, except subsections (4) and (5) of this section, “animal” means a vertebrate other than a human.

(2) Nothing in this Ordinance applies to an animal while it is in its foetal or embryonic form.

(3) The Governor may by order for all or any of the purposes of this Ordinance —

(a) extend the definition of “animal” so as to include invertebrates of any description;

(b) make provision in place of subsection (2) as respects any invertebrates included in the definition of “animal”; and

(c) amend subsection (2) to extend the application of this Ordinance to an animal from an earlier stage of its development specified in the regulations.

(4) The power under subsection (3)(a) or (c) may only be exercised if the Governor is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.

(5) In this section, “vertebrate” means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and “invertebrate” means any animal not of that Sub-phylum.

*[UK Animal Welfare Act 2006 ss.1 and 59]*

## **5. Application of the Ordinance**

(1) This Ordinance applies to all animals, including animals of a kind that are commonly kept for slaughter, except that —

(a) provisions that are stated to apply to domestic animals apply only to the animals specified in subsection (3);

(b) if there is any conflict between the requirements of or under this Ordinance and the requirements of or under the Livestock and Meat Products Ordinance in relation to animals kept for slaughter, the latter requirements prevail.

(2) This Ordinance —

(a) does not apply in relation to anything which occurs in the normal course of fishing;

(b) does not displace or affect any of the written laws relating to fishing and fisheries;

(c) does not displace or affect any enactment relating to animals except as provided in Schedule 2.

(3) An animal is a “domestic animal” for the purposes of this Ordinance if it is —

(a) a horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl;

(b) an animal of any other kind or species, whether a quadruped or not, which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man;

(c) under the control of man whether on a permanent or temporary basis; or

(d) not living in a wild state.

*[UK Animal Welfare Act 2006 s.2 adapted]*

## **PART 2 – ANIMAL WELFARE**

### *Unnecessary suffering - domestic animals*

## **6. Unnecessary suffering**

(1) A person (‘A’) commits an offence if —

(a) an act of A, or a failure of A to act, causes an animal to suffer;

(b) A knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so;

(c) the animal is a domestic animal; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if —

(a) A is responsible for an animal;

(b) an act, or failure to act, of another person ('B') causes the animal to suffer;

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) For the purposes of this Ordinance, any pain or suffering is unnecessary if, in all the circumstances of the case, it is reasonably avoidable or preventable.

(4) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include whether —

(a) the suffering could reasonably have been avoided or reduced;

(b) the conduct which caused the suffering was in compliance with this Ordinance, or any provisions of a licence or code of practice issued under this Ordinance;

(c) the conduct which caused the suffering was for a legitimate purpose, such as —

(i) the purpose of benefiting the animal; or

(ii) the purpose of protecting a person, property or another animal;

(d) the suffering was proportionate to the purpose of the conduct concerned;

(e) the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

(5) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

*[UK Animal Welfare Act 2006 s.4]*

## *Promotion of welfare*

### **7. Duty of person responsible for animal to ensure welfare**

(1) A person who is responsible for any animal commits an offence if the person does not take such steps as are reasonable in all the circumstances to ensure that the needs of the animal are met to the extent required by good practice.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(2) For the purposes of this Part, an animal's needs are to be taken to include —

- (a) its need for a suitable environment;
- (b) its need for a suitable diet;
- (c) its need to be able to show normal behaviour patterns;
- (d) any need it has to be housed with, or apart from, other animals; and
- (e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular —

- (a) any lawful purpose for which the animal is kept; and
- (b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

*[UK Animal Welfare Act 2006 s.9]*

### **8. Improvement notices**

(1) If an inspector is of the opinion that a person is failing to comply with section 7(1), the inspector may serve on the person a notice which —

- (a) states that the inspector is of that opinion;
- (b) specifies the respects in which he or she considers the person is failing to comply with that provision;
- (c) specifies the steps he or she considers need to be taken in order to comply with the provision;
- (d) specifies a period for the taking of those steps (“the compliance period”); and
- (e) explains the effect of subsections (3) and (4).

(2) An improvement notice may —

(a) be in the form of a letter;

(b) specify a compliance period according to the severity of the harm and the nature of the conditions.

(3) If a notice under subsection (1) (“an improvement notice”) is served, no proceedings for an offence under section 7(1) may be instituted before the end of the compliance period in respect of —

(a) the non-compliance which gave rise to the notice; or

(b) any continuation of that non-compliance.

(4) If the steps specified in an improvement notice are taken at any time before the end of the compliance period, no proceedings for an offence under section 7(1) may be instituted in respect of —

(a) the non-compliance which gave rise to the notice; or

(b) any continuation of that non-compliance prior to the taking of the steps specified in the notice.

(5) An inspector may extend, or further extend, the compliance period specified in an improvement notice.

*[UK Animal Welfare Act 2006 s.10]*

## **9. Transfer of animals by way of sale or prize to persons under 16**

(1) A person who sells an animal to a person under the age of 16 years commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) For the purposes of subsection (1), selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

(3) Subject to subsections (4) to (6), a person (‘A’) who enters into an arrangement with a person (‘B’) under which B has the chance to win an animal as a prize commits an offence if B is under the age of 16 years.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(4) A does not commit an offence under subsection (3) if —

(a) A enters into the arrangement in the presence of the person with whom the arrangement is made; and

(b) A has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16 years.

(5) A does not commit an offence under subsection (3) if —

(a) A enters into the arrangement otherwise than in the presence of the person with whom the arrangement is made; and

(a) A has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement.

(6) A does not commit an offence under subsection (3) if A enters into the arrangement with A's own child or grandchild (including by adoption), cousin, nephew, niece or sibling.

*[UK Animal Welfare Act 2006 s.11 expanded]*

## **10. Regulations to promote welfare**

(1) The Governor may by regulations under section 54 make any provision the Governor thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the offspring of such animals.

(2) Without limiting subsection (1), regulations made for the purpose mentioned in that subsection may include provision —

(a) imposing specific requirements for the purpose of securing that the needs of animals are met;

(b) to facilitate or improve co-ordination in relation to the carrying out by different persons of functions relating to the welfare of animals;

(c) either —

(i) conferring on a department of the government functions relating to advice about the welfare of animals; or

(ii) for the establishment of a statutory body with those functions.

*[UK Animal Welfare Act 2006 s.12]*

## **11. Licensing of activities involving animals**

(1) A person must not carry on an activity to which this section applies except under the authority of a licence issued under regulations made under section 54.

(2) Subsection (1) applies to an activity which —

(a) involves animals for which a person is responsible; and

(b) is specified for the purposes of the subsection by regulations.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

[UK Animal Welfare Act 2006 s.13]

### *Domestic animals in distress*

## **12. Powers in relation to animals in distress**

(1) If —

(a) an inspector or a police officer (within Stanley) reasonably believes that a domestic animal is suffering; or

(b) any person outside of Stanley reasonably believes that a domestic animal is suffering,

the inspector, officer or the person may take, or arrange for the taking of, such steps as appear to him or her to be immediately necessary to alleviate the animal's suffering.

(2) Subsection (1)(a) does not authorise destruction of an animal but a person under subsection (1)(b) may destroy an animal where the animal is under severe distress and the person is able to carry out the destruction.

(3) If the Senior Veterinary Officer certifies that the condition of a domestic animal is such that it should in its own interests be destroyed, an inspector or a police officer may —

(a) destroy the animal where it is or take it to another place and destroy it there; or

(b) arrange for the doing of any of the things mentioned in paragraph (a).

(4) An inspector or a police officer may act under subsection (3) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the condition of the animal is such that there is no reasonable alternative to destroying it; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(5) An inspector or a police officer may take a domestic animal into possession if the Senior Veterinary Officer certifies that it is —

(a) suffering; or

(b) likely to suffer if its circumstances do not change.

(6) An inspector or a police officer may act under subsection (5) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the animal is suffering or that it is likely to do so if its circumstances do not change; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) If an animal is taken into possession under subsection (5), an inspector or a police officer may —

(a) remove it, or arrange for it to be removed, to a place of safety;

(b) care for it, or arrange for it to be cared for —

(i) on the premises where it was being kept when the decision was made that it should be taken into possession; or

(ii) at any other place the inspector or officer thinks fit;

(c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision, may make use of any equipment on the premises.

(10) The Senior Veterinary Officer may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person ('A') exercises a power under this section otherwise than with the knowledge of a person ('B') who is responsible for the animal concerned, A must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of B.

(12) A person who intentionally obstructs another person in the exercise of a power conferred by this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(13) The Magistrate's Court or the Summary Court may, on application by a person who incurs expenses in acting under this section, order that the person be reimbursed by such other person as the court thinks fit.

(14) A person affected by a decision under subsection (13) may appeal against the decision to the Supreme Court.

*[UK Animal Welfare Act 2006 s.18]*

### **13. Power of entry for section 12 purposes**

(1) An inspector or a police officer may enter premises for the purpose of searching for a domestic animal and of exercising any power under section 12 in relation to it if the inspector or officer reasonably believes that —

(a) there is a domestic animal on the premises; and

(b) the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer.

(2) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling.

(3) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(4) An inspector or a police officer may (if necessary) use reasonable force in exercising the power conferred by subsection (1), if it appears to the inspector or officer that entry is being refused and is required before a warrant under section 38 can be obtained and executed.

*[UK Animal Welfare Act 2006 s.19]*

### **14. Orders in relation to animals taken under section 12(5)**

(1) The Magistrate's Court or the Summary Court may order in relation to an animal taken into possession under section 12(5) that —

(a) specified treatment be administered to the animal;

(b) possession of the animal be given up to a specified person;

(c) the animal be sold;

(d) the animal be disposed of otherwise than by way of sale; or

(e) the animal be destroyed.

(2) If an animal is taken into possession under section 12(5) when it is pregnant, the power conferred by subsection (1) is also exercisable in relation to any offspring that results from the pregnancy.

(3) The power conferred by subsection (1) is exercisable on application by —

(a) the owner of the animal; or

(b) any other person appearing to the court to have a sufficient interest in the animal.

(4) A court must not make an order under subsection (1) unless it —

(a) has given the owner of the animal an opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the owner.

(5) If a court makes an order under subsection (1), it may —

(a) appoint a person to carry out, or arrange for the carrying out, of the order;

(b) give directions with respect to the carrying out of the order;

(c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(d) order a person to reimburse the expenses of carrying out the order.

(6) In determining how to exercise its powers under this section, the court must have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person might be ordered to reimburse.

(7) A person who intentionally obstructs a person in the exercise of any power conferred by virtue of this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(8) If the owner of the animal is subject to a liability by virtue of section 12(13) or subsection (5)(d) above, any amount to which the owner is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

*[UK Animal Welfare Act 2006 s.20]*

## **15. Orders under section 14: Appeals**

(1) If a court makes an order under section 14(1), the owner of the animal to which the order relates may appeal against the order to the Supreme Court.

(2) Nothing may be done under an order under section 14(1) unless —

(a) the period for giving notice of appeal against the order has expired; and

(b) if the order is the subject of an appeal, the appeal has been determined or withdrawn.

(3) If the effect of an order is suspended under subsection (2) —

(a) no directions given in connection with the order have effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under subsection (3)(b) may, in particular —

- (a) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (b) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (d) provide for the recovery of any expenses which are reasonably incurred in carrying out the directions.

(5) If a court decides on an application under section 14(3) not to exercise the power conferred by subsection (1) of that section, the applicant may appeal against the decision to the Supreme Court.

(6) If a court makes an order under section 14(5)(d), the person against whom the order is made may appeal against the order to the Supreme Court.

*[UK Animal Welfare Act 2006 s.21]*

### **PART 3 - PROTECTION OF ANIMALS**

*Poison, etc.*

#### **16. Poisoning, etc. of domestic animals**

(1) A person who, without lawful authority or reasonable excuse —

- (a) administers any poisonous or injurious drug or substance to a domestic animal, knowing it to be poisonous or injurious; or
- (b) causes any poisonous or injurious drug or substance to be taken by a domestic animal, knowing it to be poisonous or injurious,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if —

- (a) A is responsible for an animal;
- (b) without lawful authority or reasonable excuse, another person ('B') administers a poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance; and
- (c) A permitted that to happen or, knowing the drug or substance to be poisonous or injurious, failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

*[UK Animal Welfare Act 2006 s.7]*

## **17. Other offences in connection with poisons**

(1) A person who —

- (a) sells, or offers or exposes for sale, or gives away;
- (b) causes or procures any person to sell or offer or expose for sale or give away; or
- (c) knowingly is a party to the sale or offering or exposing for sale or giving away,

of any grain or seed which has been rendered poisonous, except for genuine use in agriculture, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(2) A person who —

- (a) knowingly puts or places;
- (b) causes or procures any person to put or place; or
- (c) knowingly is a party to the putting or placing,

in or upon any land or building, of any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) In any proceedings under subsection (2), it is a defence that the poison was placed by the defendant for the purpose of destroying insects and other invertebrates, rats, mice, or other small ground vermin, if that is reasonably necessary —

- (a) in the interests of public health, agriculture, or the preservation of other animals, domestic or wild and that the defendant took all reasonable precautions to prevent injury from the poison or other matter to dogs, cats, fowls, or other domestic animals and wild birds; or
- (b) for the purpose of conservation or restoration of habitats as provided for under guidance issued by the Environmental and Planning Department.

(4) Subject to section 18, a person is not guilty of an offence under this section by reason only that the person uses poisonous gas in a rabbit hole, or places in a rabbit hole a substance which, by evaporation or in contact with moisture generates poisonous gas.

*[UK Protection of Animals Act 1911 s.8; Prevention of Damage by Rabbits Act 1939 ss.1 and 5]*

## **18. Prohibited or restricted use of poisons**

(1) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations under section 54, the fact that the poison was used as mentioned in section 17(4) is not a defence in proceedings under that section if the poison was used in contravention of the regulations.

(2) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations made under section 54, any person convicted in such proceedings of an offence committed by or in connection with the use of the poison in contravention of the regulations commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 1 on the standard scale.

*[UK Animals (Cruel Poisons) Act 1962 ss.1 and 2]*

### *Traps*

## **19. Inspection of traps**

(1) Any person who sets, or causes or procures to be set, any spring trap for the purpose of catching any animal, or which is so placed as to be likely to catch any animal, must inspect, or cause some competent person to inspect, the trap at reasonable intervals of time and at least once every day between sunrise and sunset.

(2) A person as mentioned in subsection (1) who fails to comply with that subsection commits an offence.

Penalty: A fine at level 1 on the standard scale.

*[UK Protection of Animals Act 1911 s.10]*

## **20. Restriction on type of trap**

(1) Subject to this section, a person who —

(a) for the purpose of killing or taking animals, uses, or knowingly permits the use of, any trap other than a humane spring cage trap;

(b) sells, or exposes or offers for sale, any trap other than a humane spring cage trap;  
or

(c) has in possession any animal trap other than a humane spring cage trap,

commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 21, a fine at level 5 on the standard scale.

(2) Subsection (1) does not apply to traps of any description adapted solely for the destruction of rats, mice or other small ground vermin.

*[UK Pests Act 1954 s.8 adapted]*

## **21. Open trapping of hares and rabbits**

Subject to this section, a person who, for the purpose of killing or taking hares or rabbits, uses, or knowingly permits the use of, a spring trap elsewhere than in a hare form or rabbit hole, commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 20, a fine at level 5 on the standard scale.

*[UK Pests Act 1954 s.9]*

### *Performing animals*

## **22. Prohibition of exhibiting and training performing animals**

(1) No person may exhibit or train any performing animal in the Falkland Islands.

(2) Any inspector and any police officer may enter at all reasonable times and inspect any premises in which the inspector or police officer reasonably suspects that animals are being trained or exhibited, or kept for training or exhibition, and any such animals found on the premises.

(3) A person who —

(a) exhibits or trains any performing animal;

(b) obstructs or wilfully delays any inspector or police officer in the execution of powers under subsection (2) as to entry or inspection;

(c) conceals any animal with a view to avoiding such inspection,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) This section does not apply to the training of animals for genuine military, police, agricultural or sporting purposes, or the exhibition of any animals so trained.

*[UK Performing Animals (Regulation) Act 1925 ss.3 to 5]*

### *Films*

## **23. Prohibition of films involving cruelty to domestic animals**

(1) It is an offence for a person ('A') to exhibit to the public, or supply to any other person for public exhibition (whether by A or by another person), any cinematograph film (whether produced in the Falkland Islands or elsewhere) if in connection with the production of the film any scene represented in the film was organised or directed in such a way as to involve—

(a) the cruel infliction of pain or terror on any domestic animal; or

(b) the cruel goading of any such animal to fury.

(2) In any proceedings under this section in respect of any film —

(a) the court may (without prejudice to any other mode of proof) infer from the film as exhibited to the public or supplied for public exhibition, as the case may be, that a scene represented in the film as so exhibited or supplied was organised or directed in such a way as to involve the cruel infliction of pain or terror on an animal or the cruel goading of an animal to fury; but

(b) (whether the court draws such an inference or not) it is a defence for A to prove that A believed, and had reasonable cause to believe, that no scene so represented was so organised or directed.

(3) A person who contravenes this section commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

#### **24. Section 23: Supplementary**

(1) In section 23, “film” means any medium on which moving images are recorded so that they can be replayed.

(2) For the purposes of section 23, a cinematograph film is deemed to be exhibited to the public when, it is exhibited in a place to which for the time being members of the general public as such have access, whether on payment of money or otherwise, and the expression “public exhibition” is to be construed accordingly.

(3) Nothing in section 23 applies to a film of a steer-riding competition in the Falkland Islands.  
*[UK Cinematograph Films (Animals) Act 1937 s.1]*

#### *Mutilation of domestic animals*

#### **25. Mutilation**

(1) Subject to subsection (3), a person other than a veterinary surgeon who —

(a) carries out a surgical procedure on a domestic animal; or

(b) causes such a procedure to be carried out on a domestic animal,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) Subject to subsection (3), a person (‘A’) commits an offence if —

(a) A is responsible for a domestic animal;

(b) another person (‘B’), not being a veterinary surgeon, carries out a surgical procedure on the animal; and

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) If—

(a) the animal is livestock; and

(b) the surgical procedure is carried out in conformity with a relevant code of practice,

the procedure may be carried out by a person other than a veterinary surgeon.

(4) A veterinary surgeon may carry out a surgical procedure on an animal other than in conformity with a relevant code of practice if the procedure is —

(a) necessary for the purpose of the medical treatment of the animal; and

(b) carried out under appropriate anaesthesia.

(5) For the purpose of this section —

(a) a “surgical procedure” on an animal is a procedure which involves interference with the sensitive tissues or bone structure of the animal;

(b) a “relevant code of practice” is a code of practice for the welfare of livestock issued under section 55, or under the Livestock and Meat Products Ordinance.

*[UK Animal Welfare Act 2006 ss.5 and 6 (part) adapted]*

## **26. Docking of dogs’ tails**

(1) A veterinary surgeon may only remove the whole or part of a dog’s tail under appropriate anaesthesia.

(2) Contravention of subsection (1) is an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person commits an offence if the person –

(a) shows a dog at an event to which members of the public are admitted on payment of a fee;

(b) the dog’s tail has been wholly or partly removed (in the Falkland Islands or elsewhere) in contravention of this section; and

(c) removal took place on or after the commencement of this section.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

*[UK Animal Welfare Act 2006 s.6 (part) adapted]*

*Animals fighting*

**27. Fighting, etc.**

(1) It is an offence for a person to —

- (a) cause an animal fight to take place, or attempt to do so;
- (b) knowingly receive money for admission to an animal fight;
- (c) knowingly publicise a proposed animal fight;
- (d) provide information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;
- (e) make or accept a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;
- (f) take part in an animal fight;
- (g) have in the possession of the person anything designed or adapted for use in connection with an animal fight with the intention of its being so used;
- (h) keep or train an animal for use for or in connection with an animal fight; or
- (i) keep any premises for use for an animal fight.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person who, without lawful authority or reasonable excuse, is present at an animal fight commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person who, without lawful authority or reasonable excuse —

- (a) knowingly supplies a digital recording of an animal fight;
- (b) knowingly publishes a digital recording of an animal fight;
- (c) knowingly shows a digital recording of an animal fight to another; or
- (d) possesses a digital recording of an animal fight, knowing it to be such a recording, with the intention of supplying it,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(4) Subsection (3) does not apply if the digital recording is of an animal fight that took place —

(a) outside the Falkland Islands; or

(b) before the commencement of this section.

(5) Subsection (3) does not apply —

(a) in the case of paragraph (a), to the supply of a digital recording for inclusion in a programme service;

(b) in the case of paragraph (b) or (c), to the publication or showing of a video recording by means of its inclusion in a programme service;

(c) in the case of paragraph (d), by virtue of intention to supply for inclusion in a programme service.

(6) In this section —

“animal fight” means an occasion on which a domestic animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting;

“programme service” has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014;

“digital recording” means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image.

(7) In this section —

(a) references to supplying or publishing a digital recording are to supplying or publishing a digital recording in any manner, including, in relation to a digital recording in the form of data stored electronically, by means of transmitting such data;

(b) references to showing a digital recording are to showing a moving image reproduced from any device capable of digital recording.

*[UK Animal Welfare Act 2006 s.8]*

## **28. Seizure of animals involved in fighting offences**

(1) An inspector or a police officer may seize an animal if it appears to the inspector or officer that it is one in relation to which an offence under section 27(1) or (2) has been committed.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) In this section, references to an animal in relation to which an offence under section 31(1) or (2) has been committed include an animal which took part in an animal fight in relation to which such an offence was committed.

*[UK Animal Welfare Act 2006 s.22]*

## **29. Reimbursement of expenses relating to animals involved in fighting offences**

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the offender or another person to reimburse any expenses incurred by the Crown in connection with the keeping of an animal in relation to which the offence was committed.

(2) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed.

(3) If an order is made under this section for reimbursement of expenses incurred by the Crown—

(a) the expenses are recoverable summarily as a civil debt;

(b) the person against whom the order is made may appeal against the order to the Supreme Court.

*[UK Animal Welfare Act 2006 s.39]*

## **30. Destruction of animals involved in fighting offences**

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.

(2) A court may not make an order under subsection (1) unless —

(a) it has given the owner of the animal an opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

(a) appoint a person to carry out, or arrange for the carrying out of, the order;

(b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;

(c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);

(d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may appeal against the order to the Supreme Court.

(5) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

*[UK Animal Welfare Act 2006 s.38]*

### *Non-native and unsuitable animals*

#### **31. Prohibition of importing or keeping unsuitable animals**

(1) It is an offence for a person to import, for the purpose of keeping, selling or transferring any non-native or unsuitable animal without a licence from the Department of Natural Resources.

Penalty: Imprisonment for 6 months or a fine at level 6 on the standard scale.

*[UK Dangerous Wild Animals Act 1976 s.1 adapted]*

(2) In this section —

(a) “non-native animal” means any animal which is not indigenous or native to the Falkland Islands;

(b) “unsuitable animal” means an animal prescribed by the Director by order as unsuitable for keeping in the Falkland Islands.

(3) The Director may include in an order under subsection (2)(b) any animal of a species that is invasive and could become predatory in the Falkland Islands, and any animal of any other species that could represent a danger to wildlife or people.

#### **32. Inspection of premises**

(1) An inspector or a police officer may inspect any premises where the inspector or officer reasonably suspects that an unsuitable animal is held.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) A person who wilfully obstructs or delays any person in the exercise of a power of entry or inspection under this section commits an offence.

Penalty: A fine at level 5 on the standard scale.

*[UK Dangerous Wild Animals Act 1976 s.3]*

### **33. Power to seize and to dispose of animals without compensation**

(1) If an unsuitable animal is being kept in any place, an inspector or a police officer may seize the animal and deal with it in any manner the Governor directs, including the destruction of the animal, and neither the Crown, the Governor nor any public officer is, subject to the provisions of the Constitution, liable to pay any compensation to any person in respect of the exercise of powers under this subsection.

(2) Any expenditure incurred in the exercise of powers under subsection (1) is recoverable by the Crown as a civil debt from the person who was at the time of the seizure a keeper of the animal concerned.

*[UK Dangerous Wild Animals Act 1976 s.4 adapted]*

### *Dogs and cats*

### **34. Identification of dogs and cats**

(1) The Governor may by order require any or any specified class or breed of dog or cat to have implanted in it an approved identification device.

(2) A veterinary surgeon may, at the request of the owner or keeper of a dog or cat, whether for compliance with an order under subsection (1) or otherwise, implant in the dog or cat an approved identification device and may for that service charge a fee approved by the Director.

(3) The Director must maintain a register and enter in it particulars —

(a) of every dog and cat in which an approved identification device has been implanted under subsection (1) or (2), whether before or after the commencement of this section;

(b) of the owner and keeper (if any) of the animal; and

(c) of any changes in the owner or keeper of the animal notified to the Director.

(4) The register may, if the Director so determines, be kept in electronic form.

(5) In this section, “approved identification device” means —

(a) a microchip, enabling the animal in which it is implanted to be identified by being electronically scanned by a suitable scanning device; and

(b) any other device, approved by the Director, implanted in an animal, whereby the animal may readily be identified by the use of suitable equipment.

*[Animals (Amendment) Ordinance ss.2 (part) and 3]*

### **35. Seizure and destruction of stray dogs and cats**

(1) The Director and any inspector or police officer may seize any dog or cat which is a stray, that is to say, and dog or cat —

(a) that is found by any person wandering abroad and not apparently under the control of any other person; and

(b) that the Director or inspector or police officer reasonably believes to have been abandoned or neglected by its owner or keeper or to be feral, i.e. existing in a wild state,

and take it to a place authorised by the Director for its detention.

(2) A stray may be detained in an authorised place until —

(a) it is claimed by a person who shows himself or herself to be the animal's owner or keeper; or

(b) it is —

(i) allocated to a new keeper; or

(ii) humanely destroyed in accordance with subsection (8), (9) or (10).

(3) As soon as possible after it has been seized, a stray must be examined by the person seizing it to ascertain whether its owner or keeper can be identified, whether by means of an approved identification device, collar or tag that it bears or otherwise.

(4) If as a result of the examination of a stray in accordance with subsection (3) the owner or keeper of the stray is identified, the person examining the stray must notify, or ensure that some other public officer notifies, the owner or keeper of the detention of the stray.

(5) Notification under subsection (4) must be done by the quickest means which is both practicable and reasonable at any place in the Falkland Islands where the owner or keeper of the stray is known to be likely to be found and otherwise at that person's last known address in the Falkland Islands.

(6) If the stray is a dog the owner or keeper of which is not identified on examination under subsection (3), the person examining the dog must cause, or ensure that some other public officer causes, notification of the seizure of the dog to be made through any appropriate media.

(7) A notification under subsection (6) must include —

- (a) a description of the dog;
- (b) a statement of the place where and time at which it was seized; and
- (c) a statement as to where and how, and the time within which, the dog may be claimed.

(8) A dog may be —

- (a) allocated a new keeper; or
- (b) humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon,

if its owner or keeper does not claim it within 72 hours of the notification under subsection (4) or (6), whichever in the circumstances of the case is appropriate.

(9) A cat —

- (a) the owner or keeper of which is not identified on examination of the cat in accordance with subsection (3); or
- (b) which is not claimed by its owner or keeper or his or her agent within 72 hours of notification under subsection (4),

may be humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon.

(10) Notwithstanding the previous subsections, a stray may be humanely destroyed at once by or on the authority of a veterinary surgeon if the veterinary surgeon reasonably believes that the stray is, or may be, suffering from —

- (a) rabies; or
- (b) any other disease that is —
  - (i) communicable to human beings;
  - (ii) if so communicated, may be fatal; and
  - (iii) has been specified for the purposes of this subsection by an order under subsection (11).

(11) The Governor may, by order under this section, extend the application of subsection (10) so that the power to humanely destroy a stray at once in circumstances specified in that subsection in relation to rabies extends also to any disease specified in the order; but an order under this

section may only specify a disease which the Governor believes may be fatal to a human being if communicated to him or her.

(12) A person claiming a dog or cat which has been seized as a stray may be required by the Director to pay to the Crown a sum that represents the reasonable cost of seizure of the animal and of detaining it and the sum so required is recoverable by the Crown as a civil debt due to the Crown.

*[Animals (Amendment) Ordinance ss.4 and 6]*

### **36. Dogs and cats: Inspection powers**

(1) An inspector may at any reasonable time on 48 hours' notice to the occupier of any premises in which the inspector reasonably believes that any dog or cat is in need of treatment or is being caused unnecessary suffering —

(a) enter and inspect the premises;

(b) cause any dog or cat kept on the premises to be produced to the inspector;

(c) on the premises treat any such animal if the inspector considers it to be in need of treatment;

(d) take away any such animal if the inspector considers that, in the circumstances of the case, it ought sensibly to be treated elsewhere; and

(e) humanely destroy any such animal on those premises which the inspector reasonably believes has any disease or affliction which —

(i) cannot practicably be treated; and

(ii) is causing the animal substantial pain or suffering.

(2) An inspector may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

*[Animals (Amendment) Ordinance s.5 adapted]*

## **PART 4 – ENFORCEMENT POWERS**

### *Inspection*

### **37. Inspection powers generally**

(1) An inspector may require the holder of a licence issued under this Ordinance to produce for inspection any records which the holder is required to keep as a condition of the licence.

(2) If records which a person is required to keep are stored in electronic form, the power under subsection (1) includes power to require the records to be made available for inspection in —

(a) a visible and legible form; or

- (b) a form from which they can readily be produced in a visible and legible form.
- (3) An inspector may inspect and take copies of any records produced for inspection pursuant to a requirement under this section.
- (4) An inspector may carry out an inspection in order to check compliance with —
- (a) the conditions subject to which a licence is granted;
  - (b) provision made by or under this Ordinance which is relevant to the carrying on of an activity to which a licence relates.
- (5) An inspector may, for the purpose of carrying out an inspection under subsection (4), enter —
- (a) premises specified in a licence as premises on which the carrying on of an activity is authorised;
  - (b) premises on which the inspector reasonably believes an activity to which a licence relates is being carried on.
- (6) Subsection (5) does not authorise entry to any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier.
- (7) An inspector may carry out an inspection in order to —
- (a) check compliance with regulations which relate to animals bred or kept for farming purposes;
  - (b) ascertain whether any offence under or by virtue of this Ordinance has been or is being committed in relation to such animals.
- (8) An inspector may enter premises which he or she reasonably believes to be premises on which animals are bred or kept for farming purposes in order to carry out an inspection under subsection (7).
- (9) Subsection (8) does not authorise entry to any part of premises which is used as a private dwelling.
- (10) An inspector or police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.  
*[UK Animal Welfare Act 2006 ss.25, 26 and 28]*

### **38. Entry and search under warrant in connection with offences**

- (1) Subject to subsection (2), a justice of the peace may, on the application of an inspector or a police officer, issue a warrant authorising an inspector or a police officer to enter premises, at any reasonable hour, accompanied by any person or persons authorised by the warrant, and if

necessary using reasonable force, in order to search for evidence of the commission of an offence under this Ordinance.

(2) The power to issue a warrant under subsection (1) is exercisable only if the justice of the peace is satisfied that —

(a) there are reasonable grounds for believing that —

(i) an offence under this Ordinance has been committed on the premises; or

(ii) evidence of the commission of an offence under this Ordinance is to be found on the premises; and

(b) section 39 is satisfied in relation to the premises.

(3) Section 22 of the Criminal Procedure and Evidence Ordinance 2014 (power of police officer to enter and search premises for purpose of arresting a person) applies to an offence under this Ordinance as if this Ordinance were expressly added to the list of provisions in that section.

(4) A person who wilfully hinders or obstructs the lawful execution of a warrant issued under subsection (1) by an inspector or police officer or any person authorised by that warrant to accompany the inspector or police officer, commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

*[UK Animal Welfare Act 2006 ss.23 and 24 adapted]*

### **39. Conditions for issue of warrant**

(1) This section is satisfied in relation to premises if any of the following 4 conditions is met.

(2) The first condition is that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant.

(3) The second condition is that any part of the premises is not used as a private dwelling and that the occupier of the premises has —

(a) been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) failed to allow entry to the premises on being requested to do so by an inspector or a police officer; and

(c) been informed of the decision to apply for a warrant.

(4) The third condition is that —

(a) the premises are unoccupied or the occupier is absent; and

(b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(5) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because —

(a) it would defeat the object of entering the premises; or

(b) entry is required as a matter of urgency.

[UK Animal Welfare Act 2006 s.52]

### *Disqualification and deprivation*

#### **40. Orders with respect to licences**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order —

(a) cancelling any licence held by the person;

(b) disqualifying the person, for a period it thinks fit, from holding a licence.

(2) The court by which an order under subsection (1)(b) is made may —

(a) specify a period during which the offender may not make an application under section 42(1) for termination of the order;

(b) suspend the operation of the order pending an appeal.

[UK Animal Welfare Act 2006 s.42; Dangerous Wild Animals Act 1976 s.6]

#### **41. Disqualification generally**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order disqualifying the person for a period the court thinks fit.

(2) Disqualification may be imposed on a person from taking part in one or more, or all, of the following (as specified in the order) —

(a) owning animals;

(b) keeping animals;

(c) participating in the keeping of animals;

(d) being party to an arrangement under which the person is entitled to control or influence the way in which animals are kept;

- (e) dealing in animals;
- (f) transporting animals; or
- (g) arranging for the transport of animals.

(3) Disqualification under subsection (1) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.

(4) The court by which an order under subsection (1) is made may specify a period during which the offender may not make an application under section 42 (1) for termination of the order.

(5) The court by which an order under subsection (1) is made may —

- (a) suspend the operation of the order pending an appeal; or
- (b) if it appears to the court that the offender owns or keeps an animal to which the order applies - suspend the operation of the order for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.

(6) If a court decides not to make an order under subsection (1) in relation to an offender, it must—

- (a) give its reasons for the decision in open court; and
- (b) cause them to be entered in the register of its proceedings.

(7) A person who breaches a disqualification imposed by an order under subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

*[UK Animal Welfare Act 2006 s.34 adapted]*

#### **42. Termination of disqualification under section 40 or 41**

(1) A person who is disqualified by virtue of an order under section 40 or 41 may apply to the appropriate court for the termination of the order.

(2) No application under subsection (1) may be made —

- (a) within a year of the order being made;
- (b) if a previous application under that subsection has been made in relation to the same order - within a year of the previous application being decided.
- (c) before the end of any period specified under subsection (5) in relation to the order.

(3) On an application under subsection (1), the court may —

- (a) terminate the disqualification;
- (b) vary the disqualification so as to make it less onerous; or
- (c) refuse the application.

(4) When deciding an application under subsection (1), the court must have regard to the character of the applicant, the applicant's conduct since the imposition of the disqualification and any other circumstances of the case.

(5) If the court refuses an application under subsection (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.

(6) The court may order an applicant under subsection (1) to pay all or part of the costs of the application.

(7) In subsection (1), the reference to the appropriate court is to —

- (a) the court which made the order under section 40 or 41; or

- (b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.  
*[UK Animal Welfare Act 2006 s.43 adapted]*

### **43. Seizure of animals in connection with disqualification**

(1) If —

- (a) a court makes an order under section 41(1); and

- (b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,

the court may order that all animals the person owns or keeps contrary to the disqualification be taken into possession.

(2) If a person is convicted of an offence under section 41(7) because of owning or keeping an animal in breach of disqualification under section 41(1), the court by or before which the person is convicted may order that all animals the person owns or keeps in breach of the disqualification be taken into possession.

(3) An order under subsection (1) or (2), so far as relating to any animal owned by the person subject to disqualification, has effect as an order for the disposal of the animal.

(4) Any animal taken into possession pursuant to an order under subsection (1) or (2) that is not owned by the person subject to disqualification must be dealt with in the manner the appropriate court may order.

(5) A court may not make an order for disposal under subsection (4) unless it —

- (a) has given the owner of the animal an opportunity to be heard; or
- (b) is satisfied that it is not reasonably practicable to communicate with the owner.

(6) If a court makes an order under subsection (4) for the disposal of an animal, the owner may appeal against the order to the Supreme Court.

(7) In subsection (4), the reference to the appropriate court is to —

- (a) the court which made the order under subsection (1) or (2); or
- (b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.

(8) In this section, references to disposing of an animal include destroying it.

*[UK Animal Welfare Act 2006 s.35]*

#### **44. Deprivation orders**

(1) If the person convicted of an offence under this Ordinance is the owner of an animal in relation to which the offence was committed, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order depriving the person of ownership of the animal and for its disposal.

(2) If the animal in respect of which an order under subsection (1) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

(3) If a court makes an order under subsection (1) or (2), it may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender to reimburse the expenses of carrying out the order.

(4) Directions under subsection (3)(c) may —

- (a) specify the manner in which an animal is to be disposed of; or

(b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (3)(a).

(5) If a court decides not to make an order under subsection (1) or (2) in relation to an offender, it must —

(a) give its reasons for the decision in open court; and

(b) cause them to be entered in the register of its proceedings.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27, an animal which took part in an animal fight in relation to which the offence was committed.

(7) In this section, references to disposing of an animal include destroying it.

*[UK Animal Welfare Act 2006 s.33]*

#### **45. Destruction in the interests of the animal**

(1) The court by or before which a person is convicted of any offence under this Ordinance may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by the Senior Veterinary Officer, that it is appropriate to do so in the interests of the animal.

(2) A court may not make an order under subsection (1) unless it —

(a) has given the owner of the animal an opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

(a) appoint a person to carry out, or arrange for the carrying out of, the order;

(b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;

(c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);

(d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1), the offender and, if different, the owner of the animal may appeal against the order to the Supreme Court;

(5) Subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27(1) or (2) (fighting), an animal which took part in an animal fight in relation to which the offence was committed.

*[UK Animal Welfare Act 2006 s.37]*

#### **46. Sections 43 to 45: Supplementary provisions**

(1) The court by which an order under any of sections 43 to 45 is made may —

(a) appoint a person to carry out, or arrange for the carrying out of, the order;

(b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;

(c) give directions with respect to the carrying out of the order;

(d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;

(e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

(2) Directions under subsection (1)(c) may —

(a) specify the manner in which an animal is to be disposed of; or

(b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).

(3) In deciding how to exercise its powers under sections 43 to 45 and this section, the court must have regard, amongst other things, to —

(a) the desirability of protecting the value of any animal to which the order applies; and

(b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.

(4) In deciding how to exercise a power delegated under subsection (2)(b), a person must have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).

(5) If the owner of an animal ordered to be disposed of under section 43, 44 or 45 is subject to a liability by virtue of subsection (1)(e), any amount to which the person is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

*[UK Animal Welfare Act 2006 s.36]*

#### **47. Forfeiture of equipment used in offences**

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be —

- (a) forfeited; and
- (b) destroyed or dealt with in a manner specified in the order.

(2) The reference in subsection (1) to a qualifying item is —

- (a) in the case of a conviction for an offence under section 6 - to anything designed or adapted for causing suffering to an animal;
- (b) in the case of a conviction for an offence under any of sections 16 to 18 - to anything designed or adapted for administering any poison or drug or substance to an animal;
- (c) in the case of a conviction for an offence under section 25 - to anything designed or adapted for carrying out a surgical procedure on an animal;
- (d) in the case of a conviction for an offence under section 26 in relation to a dog's tail - to anything designed or adapted for removing the whole or any part of a dog's tail;
- (e) in the case of a conviction for an offence under section 27(1) or (2) - to anything designed or adapted for use in connection with an animal fight;
- (f) in the case of a conviction for an offence under section 27(3) - to a video recording of an animal fight, including anything on or in which the recording is kept.

(3) The court must not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the person has been given an opportunity to show cause why the order should not be made.

(4) An expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

(5) This section does not limit the power of a court to make a deprivation order under section 44 of this Ordinance or under section 617 of the Criminal Procedure and Evidence Ordinance 2014. *[UK Animal Welfare Act 2006 s.40]*

#### **48. Orders under sections 43 to 47: Pending appeals**

(1) Nothing may be done under an order under any of sections 43 to 47 with respect to an animal, unless —

- (a) any period for giving notice of appeal against the order has expired;

(b) the period for giving notice of appeal against the conviction on which the order was made has expired; and

(c) if the order or conviction is the subject of an appeal - the appeal has been determined or withdrawn.

(2) If the effect of an order is suspended under subsection (1) —

(a) no requirement imposed or directions given in connection with the order has effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(3) Directions under subsection (3)(b) may, in particular —

(a) authorise the animal to be taken into possession;

(b) authorise the removal of the animal to a place of safety;

(c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;

(d) appoint a person to carry out, or arrange for the carrying out, of the directions;

(e) require any person who has possession of the animal to deliver it up for the purposes of the directions;

(f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;

(g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

(5) Any expenses a person is directed to pay under subsection (4)(g) are recoverable summarily as a civil debt.

(6) If the effect of an order under section 44 (Deprivation) is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

(7) A person who fails to comply with subsection (6) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

*[UK Animal Welfare Act 2006 s.41]*

### *Enforcement generally*

#### **49. Time limits for prosecutions**

A prosecution for an offence under this Ordinance must be brought —

(a) within 3 years after the commission of the offence; and

(b) within 6 months after the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the knowledge of the prosecution.

*[UK Animal Welfare Act 2006 s.31; Game Act 1831 s.41]*

#### **50. Power to stop and detain vehicles**

(1) A police officer in uniform or, if accompanied by such a police officer, an inspector may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred in relation to premises —

(a) by section 13(1); or

(b) by a warrant under section 48.

(2) A police officer in uniform may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred by —

(a) section 28(1); or

(b) a warrant under section 38.

(3) If accompanied by a police officer in uniform, an inspector may stop and detain a vehicle for the purpose of entering it and carrying out an inspection in the exercise of a power conferred by—

(a) section 37; or

(b) a warrant under section 38.

(4) A vehicle may be detained for as long as is reasonably required to permit a search or inspection to be carried out (including the exercise of any related power under this Ordinance either at the place where the vehicle was first detained or nearby).

*[UK Animal Welfare Act 2006 s.54]*

#### **51. Power to detain vessels and aircraft**

(1) If an inspector or a police officer certifies in writing that he or she is satisfied that an offence under this Ordinance is being or has been committed on board a vessel in port or a landed aircraft, the vessel or aircraft may be detained.

(2) A certificate under subsection (1) must —

(a) specify each offence to which it relates; and

(b) set out the inspector's or officer's reasons for being satisfied that each offence to which it relates is being or has been committed.

(3) An officer who detains a vessel or aircraft in reliance on a certificate under subsection (1) must as soon as reasonably practicable give a copy of it to the master or person in charge of the vessel or aircraft.

(4) A vessel or aircraft may be detained under subsection (1) until the Governor otherwise directs.

(5) The Governor may by regulations make such other provision for the detention of vessels or aircraft in relation to offences under or by virtue of this Ordinance as the Governor thinks fit.

*[UK Animal Welfare Act 2006 s.55 adapted]*

## **52. Obtaining of documents in connection with carrying out orders, etc.**

(1) If —

(a) an order is made or directions are given under this Ordinance for the deprivation, taking into possession, seizure or destruction of an animal is in effect; and

(b) documents which are relevant to the carrying out of the order or directions are in the possession or under the control of the owner of the animal,

the owner must, if so required by a person authorised to carry out the order, deliver the documents to that person as soon as practicable and in any event within 10 days after the owner is notified of the requirement.

(2) A person who fails without reasonable excuse to comply with subsection (1) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

*[UK Animal Welfare Act 2006 s.56 adapted]*

## **PART 5 – MISCELLANEOUS PROVISIONS**

### **53. 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.

(4) This section does not affect section 9 of the Interpretation and General Clauses Ordinance relating to service by post.

#### **54. Regulations**

(1) The Governor may by regulations make further provision about any matter provided for in this Ordinance.

(2) The regulations may include, but are not limited to, provisions regulating —

- (a) the functions and powers of inspectors;
- (b) the use of poisons to destroy animals;
- (c) the need for and issuing of licences for prescribed purposes.

(3) If the regulations include provisions relating to licences, they may include provisions —

- (a) to require persons to hold a licence for specified activities in relation to animals;
- (b) to prescribe —
  - (i) the form of an application for a licence;
  - (ii) the particulars to be provided in an application for a licence;
  - (iii) the fees payable for the issue of licences; or
  - (iv) the conditions that may be attached to a licence; or
- (c) that breach of a condition of a licence or of the regulations is an offence.

(4) Power to make regulations under this section includes power —

- (a) to provide that breach of a regulation is an offence carrying a maximum penalty of 6 months imprisonment or a fine at level 5 on the standard scale, or both;
- (b) to apply relevant post-conviction powers in relation to convictions for an offence under the regulations;
- (c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
- (d) to make different provision for different cases or areas;

(e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;

(f) to provide for any other matter needed to give effect to this Ordinance;

(g) to make incidental, supplementary, consequential or transitional provision or savings.

(5) Before making regulations under this section, the Governor must publish a draft of the regulations for public consultation.

*[UK Animal Welfare Act 2006 ss.6 and 12 (part)]*

## **55. Codes of practice**

(1) The Director may issue, and from time to time revise, one or more codes of practice for the purpose of providing practical guidance in respect of any provision made by this Ordinance or by regulations made under it.

(2) The Director must —

(a) keep the codes of practice under review; and

(b) issue new or revised codes when necessary.

(3) If the Director proposes to issue (or revise) a code of practice, the Director must publish a draft of the code for public consultation, specifying —

(a) whether it is a new code or a replacement for an existing one; and

(b) the date on which the code comes into force.

(4) If after consulting as required by subsection (3) the Director decides to proceed with a draft (either in its original form or with any modifications as the Director thinks fit), the Governor must lay a copy of it before the Legislative Assembly.

(5) A code (or revised code) —

(a) comes into force on a day the Director by order appoints; and

(b) may be published in any manner the Director considers appropriate.

(6) A person's failure to comply with a provision of a code of practice issued under this section does not of itself render the person liable to proceedings of any kind, but in any proceedings against a person for an offence under this Ordinance —

(a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability; and

(b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability.

*[UK Animal Welfare Act 2006 s.14 and reg. 4 of the Livestock & Meat Products (Welfare of Livestock) Regulations]*

#### **56. Amendment of Schedule**

(1) The Governor may by order amend the Schedule to this Ordinance.

(2) An order under subsection (1) —

(a) may make such transitional and consequential provision as appears to the Governor to be necessary or expedient; and

(b) requires the approval of the Legislative Assembly.

*[UK Dangerous Wild Animals Act 1976 s.8]*

#### **57. Repeal of laws**

The Animals (Amendment) Ordinance (“the repealed Ordinance”) is repealed.

#### **58. Savings**

(1) Subject to subsection (4), all items of subsidiary legislation made under the repealed Ordinance continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(2) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (1) could be made or the item is repealed, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal provided by section 59.

(3) Any legislative instrument made by a person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

(4) Any delegation, direction, exemption, notice or other non-legislative instrument made or issued by any person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

#### **59. Transitional provisions**

(1) A disqualification of a person convicted of cruelty to animals imposed under the Protection of Animals Act 1911 as amended, and as applied to the Falkland Islands before the commencement of this Part, is deemed to be a disqualification imposed under section 41 of this Ordinance and section 42 applies to such a disqualification.

(2) Any criminal or civil proceedings under the repealed Ordinance that were in progress at the date of commencement of this Part must continue as if this Part had not been enacted.

(3) The Governor may by order make such other transitional provision or savings as the Governor considers necessary or expedient in connection with the coming into force of any provision of this Ordinance.

(4) The power under subsection (1) includes power to make different provision for different cases.

*[UK Animal Welfare Act 2006 s.58 adapted]*

#### **60. Consequential amendments – Schedule**

(1) The Ordinance listed in column 1 of the Schedule is amended in the manner set out in column 2 of the Schedule.

(2) A reference in any other enactment to the repealed Ordinance is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

#### **61. Crown application**

(1) Subject to the provisions of this section, this Ordinance binds the Crown.

(2) No contravention by the Crown of any provision of or under this Ordinance makes the Crown criminally liable; but the Supreme Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (1), the provisions of this Ordinance apply to persons in the service of the Crown as they apply to other persons.

(4) If the Governor certifies that it appears to him or her appropriate in the interests of national security that powers of entry conferred by or under this Ordinance should not be exercisable in relation to premises held or used by or on behalf of the Crown and specified in the certificate, those powers are not exercisable in relation to those premises.

(5) In this section, “national security” has the meaning given to that term in section 2 of the Criminal Procedure and Evidence Ordinance 2014;

*[UK Animal Welfare Act 2006 s.60]*

### **SCHEDULE**

(section 60)

#### **CONSEQUENTIAL AMENDMENTS**

Conservation and Wildlife Ordinance  
section 10(4)

Delete “section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances) in its application to the Falkland Islands” and substitute “section 16(1) of this Ordinance (Poisoning, etc. of domestic animals)”.

Passed by the Legislature of the Falkland Islands on 24 November 2016.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CLAUDETTE PRIOR M.B.E.,  
*Clerk of the Legislative Assembly.*

## CODE OF PRACTICE FOR THE WELFARE OF ANIMALS KEPT AS PETS

The **Animals (Welfare and Protection) Ordinance 2016** states that the Director of Natural Resources may from time to time revise or issue Codes of Practice to give practical guidance for the keeping of animals.

Codes exist for the welfare of dogs, sheep, cattle, horses, pigs and for animals during transport. This code intends to give guidance for the general keeping of small pet animals, including back yard poultry.

### 1. Food and Water

#### 1.1 Food

Animals should have daily access to a diet which is nutritionally adequate to maintain health and meet the appropriate physiological requirements for the species and life stage at which it is in.

Owners should be aware of any specific dietary requirements of the species that they keep as a pet. Some basic feeding guidelines for some species are below:

SPECIES	FEEDING GUIDELINE
Cats	Commercial cat food and raw meat (do not feed kittens exclusively raw meat). Must not be fed a vegetarian or only fish diet as they require taurine which is found in red meat and is added to commercial food.
Guinea pigs	Ad lib access to good quality hay or grass is essential. Supplement diet with commercial guinea pig pellets, leafy greens, green and red pepper, broccoli, tomatoes and oranges. Need a dietary source of vitamin C and although commercial food is supplemented the vitamin C may not remain active in the food for more than 90 days so a supply of fresh food is important. Do not change food types suddenly as they are fastidious in their choice of food.
Rabbits	Ad lib access to good quality hay or grass is essential. Supplement diet with a measured amounts of commercial pellets and/or vegetables (greens, carrots, cabbage and salad crops).
Hamsters	Commercial feed blocks or pellets are better than seed mixes as rodents will select the high fat, low calcium seeds such as sunflower seeds and only eat them which can lead to obesity and osteoporosis. Seeds, grains fruit and green vegetables should be offered as a supplement rather than the main diet.
Caged birds Eg budgies	Commercial diets specific to breed. Need a varied diet but if allowed may just select specific seeds or one type of food so supplements to a commercial diet should be included greens (eg lettuce, watercress, chickweed, parsley), sprouted seeds, vegetables such as carrots, turnip, beetroot and fruit (oranges, apples, plums, grapes). You can make a mash with some of these items with added protein such as cooked egg, cheese or milk.
Poultry	Commercial food suitable for the stage of the bird's life is recommended. Feeding of large amounts of kitchen waste/scraps may attract rodents and adversely affect the hygiene of the area.

## **1.2 Water**

Animals must have ad lib access to water. Daily assessment should be made of the quality and quantity of the water supply.

Mechanical equipment controlling the delivery of water should be inspected regularly, and frequently in hot weather, and be maintained in good working order. It is also essential that a water supply is maintained in freezing weather when pipes, bowls or drinks bottles are liable to freeze up.

The quality of water provided should be adequate to maintain animal health.

## **2. Protection from Climatic Extremes**

All pet animals must have adequate housing that minimises the effects of weather that produces cold or heat stress. Shelter from rain and direct sunlight is necessary.

## **3. Supervision**

Pet animals must have adequate supervision relative to their specific requirements at all times.

## **4. Housing**

### **4.1 General**

All sheds, pens, hutches, kennels, runs and beds should be constructed and maintained so as to minimise stress and injury to the animals.

Objects such as water and feed bowls, doors and gate hinges and latches should be designed and located so as to avoid injury. Sharp projections must be avoided. Rabbits and rodents especially may chew hutches and cages rendering them unsafe.

Housing should be designed to minimise stress or injury and to allow animals space to display normal behaviour specific to their species. Cats must not be confined to cages unless for a medical reason and under the instruction of a veterinary surgeon (or for temporary kennelling). Cats that are kept as indoor cats must have several resource stations and a variety of toys and activities to meet their behavioural needs.

Housing and outside spaces for animals must be maintained in a state of cleanliness and provide an area of dry ground for sitting or lying on.

SPECIES	HOUSING AND SPACE REQUIREMENTS (if caged)
Guinea Pigs	Guinea pigs can tolerate a wide range of temperatures if acclimatised (12-20°C). Unless hutches are on stilts and very well insulated it is advisable to move hutches indoors or into a shed during colder winter months. A mobile run that can be moved around the lawn in better weather is most ideal for access to fresh grass. <u>Minimum</u> space requirements are 0.2m <sup>2</sup> per guinea pig. Bedding can be wood shavings, straw or hay or shredded paper.
Hamsters	Must have an enclosed nesting area containing hay, shredded paper, wood shavings or commercial wadding. Do not use cotton wool. Keep at 19-23°C. Avoid brightly lit and noisy areas. Due to fighting it is preferable to house hamsters singly. Supervise pairs closely if breeding and then remove the male. Cages should be easy to clean and cleaned every 1-2 weeks depending on number of animals and amount of soiling. Exercise wheels and toys and tunnels for activity must be provided.
Rabbits	Minimum floor space is 0.2m <sup>2</sup> per rabbit but for rabbits over 2kg an extra 0.1-0.2m <sup>2</sup> per kg body weight should be provided. Rabbits should be able to lie at full stretch and the hutch or cage should be tall enough for them to stand up tall on their hind legs. Hutches should be checked daily to see if they require cleaning out.
Poultry	For hens permanently enclosed in a hutch or coop there must be <u>at least 600cm<sup>2</sup></u> usable floor space per bird and perching space of at least 15cm per bird. There must be an indoor nesting/roosting area. One nest box per 7 birds is the minimum, more is recommended. For more information for larger flocks DEFRA (UK) have recommendations for laying hens.
Caged birds	The bigger the better. An aviary is always better than a cage. No cage should be so small that a bird cannot fully stretch its wings and its tail should not touch the floor when perched. For most birds the cage should be well off the floor and only have mesh on 1-2 sides so the bird does not feel vulnerable. A variety of non-slip perches and toys should be provided.

#### 4.2 Handling and Restraint

Animals should be handled in a manner appropriate for their species.

All pet owners should make themselves familiar with specific handling and restraint methods for any pet animals they own.

No animal should be handled, treated or restrained in a way that causes unnecessary pain, distress or suffering.

### 5. Management Practices

#### 5.1 Mating

Animals should be mated only when they have reached a sufficient size and maturity.

Pet owners must familiarise themselves with the specific husbandry requirements of a pet having a litter and must be prepared to care adequately for the dam and her offspring.

## **6. Husbandry Procedures - Surgical**

### **6.1 General**

All surgical procedures, must be carried out by a Veterinary Surgeon or under the direct supervision of a Veterinary Surgeon apart from non-invasive procedures such as trimming of nails and grooming practices.

### **6.2 Identification**

It is good practice to have dogs and cats identified with a microchip.

## **7. Health**

Sick, injured or diseased pet animals should receive prompt attention by an experienced person or veterinary surgeon.

## **8. Euthanasia**

Pet animals must be destroyed humanely by a veterinary surgeon or an experienced operator with a free bullet gun.

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## SUBSIDIARY LEGISLATION

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### TAXATION

#### **Taxes and Duties (Defence Contractors' Employees Exemption) Order 2016**

S. R. & O. No.: 24 of 2016

*Made: 21 December 2016*

*Published: 23 December 2016*

*Coming into force: on publication*

I make this order under section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) on the advice of the Standing Finance Committee, as required by section 9A(1) of the Ordinance.

#### **1. Title**

This order is the Taxes and Duties (Defence Contractors' Employees Exemption) Order 2016.

#### **2. Commencement**

This order comes into force on publication in the *Gazette*.

#### **3. Interpretation**

In this order —

“designated employer” means an employer listed in the Schedule;

“qualifying employee” means a person who —

- (a) satisfies the requirements of section 9A of the Ordinance; and
- (b) is employed by a designated employer;

“relevant employment” means —

- (a) employment only for the purpose of providing services in the Falkland Islands to either —
  - (i) Her Majesty's regular armed forces; or
  - (ii) the Ministry of Defence of Her Majesty's Government in the United Kingdom; or

(b) employment only for the purposes of providing services to persons who are themselves in relevant employment by virtue of paragraph (a) of this definition or by virtue of this paragraph of this definition;

“relevant income” means income from relevant employment; and

“retirement pension contributions” means contributions that an employee is required to pay under the Retirement Pensions Ordinance (No. 20 of 1996).

#### **4. Application**

(1) Subject to article 5, a qualifying employee is exempt from liability under any law of the Falkland Islands to pay —

(a) income tax on relevant income from a designated employer; and

(b) retirement pension contributions in respect of that employment.

(2) The exemption applies whether the liability arises before or after this order comes into force.

#### **5. Duration**

Nothing in this order confers any exemption to pay either —

(a) income tax in relation to earnings after 31 December 2017; or

(b) retirement pension contributions in respect of employment after that date.

#### **6. Condition: returns**

(1) A designated employer must complete a return relating to the relevant income of qualifying employees.

(2) A return under this article must —

(a) include such particulars as the Commissioner may require;

(b) be lodged with the Commissioner of Taxes within 60 days from the 31<sup>st</sup> December 2017.

(3) The particulars referred to under sub-article (2)(a) may include the accounts of the designated employer for the period when the relevant income was earned.

#### **7 Revocation**

The Taxes and Duties (Defence Contractors’ Employees Exemption) Order 2015 (No. 17 of 2015) is revoked.

**SCHEDULE  
DESIGNATED EMPLOYERS**

(article 3)

AAR International Inc.  
Agrimarine Limited  
Airbus DS Limited  
Babcock Aerospace Limited  
Babcock Communications Limited  
BAE Systems (Military Air) Overseas Limited  
British International Helicopter Services Limited  
COLAS Limited  
David Lomas Limited  
Fujitsu Services Limited  
Gifford Global Limited  
Interserve Defence Limited  
Mott MacDonald Limited  
MPI Aviation Limited  
Navy, Army and Air Force Institutes  
Satec Limited  
Serco Limited  
Services Sound and Vision Corporation  
Sodexo Defence Services Limited  
Trant Construction Limited  
Van Wijngaarden Marine Services b.v.  
VolkerStevin Services Limited  
Westland Helicopters Limited

Made 21<sup>st</sup> December 2016

Colin Roberts C.V.O.,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of the order)*

Section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) gives the Governor power to make orders granting exemptions from income tax and retirement pension contributions to certain individuals engaged in defence-based employment.

This order means that employees who work for one of the employers listed in the Schedule are exempt from income tax and retirement pension contributions until the end of 2017, provided that they are engaged in relevant employment (as defined) and the other requirements set out in section 9A of the Ordinance are met.

The effect of section 21(1)(e) of the Medical Services Tax Ordinance (No 13 of 2010) provides that the earnings and benefits in kind that are exempt from income tax under this order are also exempt from Medical Services Tax.

The effects of this order (which replaces a previous order) are:

- (a) to extend the life of the exemption (which was due to expire on 31 December 2016) for another year; and
- (b) to add VolkerStevin Services Limited to the list of designated employers

Under section 9A, orders have to be made on the advice of the Standing Finance Committee subject to lawful conditions. The Standing Finance Committee has advised that an obligation be imposed for companies to complete an employer's return so article 6 provides for that.



# FALKLAND ISLANDS GAZETTE

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No. 13

## **Appointment**

Aimee-Jo Kirsty Mach'e Henry, Apprentice Business Administration, Education Department, 28.11.16.

Joshua Andres Sanchez, Apprentice Plumber, Education Department, 28.11.16.

Josefina Ximena Montes Labarca, Learning Support Assistant, Education Department, 29.11.16.

Martine Kushner, Senior Magistrate, Courts, 01.12.16.

Peter John Monypenny, Maths Teacher, Education Department, 01.12.16.

Sheena Margaret Ross, Licensing Officer, Natural Resources Department, 01.12.16.

Christopher Paul Reynolds, Plant Mechanical Handyperson/Filtration Plant Operator, Water Section, Public Works Department, 02.12.16.

Adam Leonard Dawes, Agriculture Adviser – Agronomy, Natural Resources Department, 12.12.16.

Wendy Jennifer Luxton, Residential Care Worker, Health and Social Services, 12.12.16.

Mark Andrew Brook, Police Constable, Royal Falkland Islands Police, Emergency Services Department, 19.12.16.

Arlene Dawn March, Administration Clerk, Training Centre, Education Department, 19.12.16.

## **Completion of contract**

Claudia Glatzmeier, Veterinary Officer, Natural Resources Department, 31.12.16

## **Renewal of contract**

Matthew Grahame Aston, Senior Police Constable, Royal Falkland Islands Police, Emergency Services Department, 08.12.16.

Timothy Wilson, Senior Police Constable, Royal Falkland Islands Police, Emergency Services Department, 16.12.16.

## **Resignation**

Charlotte Simpson, Learning Support Assistant, Education Department, 13.12.16.

James Nathaniel Henry, Handyperson, Property and Municipal Section, Public Works Department, 14.12.16.

Victor Manuel Guala Romero, Refueller/Handyperson, Falkland Islands Government Air Service, Central Services Department, 15.12.16.

Charlotte Jane Baker, Learning Support Assistant, Education Department, 16.12.16.

Samantha Laura McCormick, Administrator, Leisure Centre, Central Services Department, 31.12.16.

## **Retirement**

Bernard Leslie Eccles, Licensing Officer, Natural Resources Department, 09.12.16.

## **NOTICES**

No. 83

1 December 2016

**Special Resolution pursuant to sections 141(2), 278(1)(b) and 285(2) of the Companies Act 1948**

**Consultancy Services Falklands Limited  
Passed 29 November 2016**

At an Extraordinary General Meeting of the above named company, duly convened and held on 29 November 2016, the following Special Resolution was duly passed:-

“That the Company be wound up voluntarily, and that Ronnie MacLennan Baird be appointed Liquidator for the purposes of such winding up and that the directors powers be continued in order to assist the Liquidator.”

Dated 1 December 2016

P. COPP,  
*Chairman, Consultancy Services Falklands Ltd.*

No. 84 1 December 2016

**Stanley Bakery Limited  
Company Number: 8936**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 1 December 2016.

Dated 1 December 2016

E. J. DENT,  
*Registrar of Companies.*

No. 85 1 December 2016

**South Atlantic Inspection and Supply Services Limited  
Company Number: 15171**

Notice is hereby given that the above named company was struck-off the Register of Companies pursuant to section 652A of the Companies Act 1985 on 1 December 2016.

Dated 1 December 2016

E. J. DENT,  
*Registrar of Companies.*

No. 86 2 December 2016

**Judicial Appointments**

1. I appoint **Martine Kushner** to be —

**Senior Magistrate** under section 88(4) of the Constitution (SI 2008/2846) (Title 1) and section 26 of the Administration of Justice Ordinance (Title 22.1);

**Chairman of the Disputes Commission** under section 98 of the Fisheries (Conservation and Management) Ordinance 2005 (Title 39.1);

**Member and Chairman of the Tax Appeal Tribunal** under section 180 of the Taxes Ordinance (Title 69.1);

**Commissioner for Workmen’s Compensation** under section 22 of the Workmen’s Compensation Ordinance (Title 32.6); and

**Notary Public** under section 47 of the Administration of Justice Ordinance (Title 22.1).

2. These appointments have effect from 2 December 2016 until the expiry of the contract of employment of Martine Kushner

with the Falkland Islands Government, unless terminated sooner.

Dated 2 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 87 2 December 2016

**Falkland Islands Constitution Order (SI 2008/2846)  
section 89**

**Appointment of Acting Judge of the Supreme Court**

1. I make the following appointment in accordance with section 89 of the Constitution (Title 1), on the basis that:

(a) it appears to me that the state of business in the Supreme Court requires it; and

(b) I am satisfied that **Martine Kushner** possesses such legal qualifications and experience as are appropriate for her to be appointed.

2. I, Colin Roberts C.V.O., Governor, appoint **Martine Kushner**:

(a) to sit as Acting Judge of the Supreme Court; and

(b) to discharge the functions in the Falkland Islands of the Chief Justice as maybe necessary if the office of the Chief Justice is vacant, or if the holder of that office is for any reason unable to perform the functions of that office.

3. The appointment at paragraph 2(a) only has effect when the Chief Justice has not indicated that he wishes to exercise his powers in respect of any relevant matters.

4. Nothing in this appointment operates to prevent the Chief Justice adjudicating in any matters or from exercising any of his functions.

5. This appointment is effective from 2 December 2016 until the expiry of the contract of employment of **Martine Kushner** with the Falkland Islands Government, unless terminated sooner.

Dated 2 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 88 9 December 2016

**Falkland Islands Constitution  
section 38**

**Proclamation Appointing Dates, Times and Place  
for Sittings of the Legislative Assembly**

*(Proclamation No 1 of 2016)*

1. Section 38(1) of the Constitution provides that each sitting of the Legislative Assembly shall be held at such place and at

such time as the Governor may appoint by proclamation published in the Gazette.

2. I proclaim that the following places and times are appointed for sittings of the Legislative Assembly:

26 January 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
23 February 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
30 March 2017	9.00am North Arm
27 April 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
30 May 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
2 June 2017	9.45am Court and Assembly Chamber, Town Hall, Stanley
29 June 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
27 July 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
31 August 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
28 September 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
23 November 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley
14 December 2017	9.00am Court and Assembly Chamber, Town Hall, Stanley

3. If a change of place or time is necessary, reasonable efforts will be made to publish that change through appropriate means.

Dated 9 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 89 16 December 2016

**Falkland Islands Constitution Order (Title 1)**  
*section 83*

**Appointment of Chief Executive**

1. Section 83 of the Falkland Islands Constitution Order 2008 confers power on the Governor, acting in agreement with Executive Council, to appoint a Chief Executive.

2. In accordance with the advice I have received in exercise of my powers under section 83 of the Falkland Islands Constitution Order, I appoint **Barry Alan Rowland** to be Chief Executive.

3. This appointment is deemed to have effect from 4 October 2016 and continues whilst Barry Alan Rowland holds office as Chief Executive, unless terminated sooner.

Dated 16 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 90

16 December 2016

**Falkland Islands Constitution Order (Title 1)**  
*sections 83 and 84*

**Appointment of Acting Chief Executive**

1. Section 83 of the Falkland Islands Constitution Order 2008 confers power on the Governor, acting in agreement with Executive Council, to appoint a Chief Executive.

2. In accordance with the advice I have received in exercise of my powers under sections 83 and 84 of the Falkland Islands Constitution Order, I appoint **Charles Peter Judge** to be Acting Chief Executive at any time when the substantive holder of the post is unavailable to discharge the same through any absence from the Falkland Islands or inability to perform the functions and duties of the post.

3. This appointment has effect from 16 December 2016 and continues in effect whilst Charles Peter Judge holds office as Attorney General of the Falkland Islands, unless terminated sooner.

Dated 16 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

No. 91

16 December 2016

**Falkland Islands Constitution Order (Title 1)**  
*section 84*

**Appointment of Acting Attorney General**

1. Section 84(4) of the Falkland Islands Constitution Order 2008 provides that the power to appoint to the office of Attorney General shall be exercised by the Governor.

2. In exercise of my powers under section 84(4), I appoint **Rosalind Catriona Cheek** to be Acting Attorney General to carry out the duties of the Attorney General when:-

a) the substantive holder of the post is unavailable to discharge those duties due to appointment as Acting Chief Executive; and

b) the Head of Legal Services is absent from the Falkland Islands.

3. This appointment has effect from 16 December 2016 up to and including 30 January 2017 unless terminated sooner.

Dated 16 December 2016

C. ROBERTS C.V.O.,  
*Governor.*

**Falkland Islands Constitution Order (Title 1)**  
*section 84*

**Appointment of Acting Financial Secretary**

1. Section 84 of the Falkland Islands Constitution Order 2008 confers power on the Governor to make appointment to any public office, but that the Chief Executive shall exercise that power.

2. In exercise of my powers under section 84 of the Falkland Islands Constitution Order, I appoint **Daniel Robert Heath** to be Acting Financial Secretary at any time when:-

- a) the substantive holder of the post; and
- b) the Head of Finance,

are unavailable to discharge the functions and duties of the post through any absence from the Falkland Islands or other inability to perform the functions and duties of the post.

3. This appointment is deemed to have effect from 16 December 2016, and continues in effect whilst Daniel Robert Heath holds office as Chief Accountant, unless terminated sooner.

Dated 19 December 2016

C. P. JUDGE M.B.E.,  
*Acting Chief Executive.*

**Application for Permanent Residence**

Notice is hereby given that:-

**Richard Howard Moorhouse;**  
**Daniela Alejandra Cardenas Flores;**  
**Matthew David Anthony Jenkins;**  
**Isabel Echeverria Chiguaman;**  
**Mukhtar Ahmad Uqaili;**  
**Syeda Uzma Kazmi;**  
**Ross Brent James; and**  
**Zoe Dorothy May James**

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

Any person who knows of any reason why a permit should not be granted to any of the above named should send a written and signed statement of the facts, giving grounds for their objection, to the Immigration Officer, Customs and Immigration Department, Stanley by 22 January 2017.

Dated 20 December 2016

J. E. SMITH,  
*Immigration Officer.*