



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*Vol. CIII*


---

*31st JANUARY 1994*


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*No. 1*


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## Appointments

Miss Anita Alazia, Cook, Government House, 1.1.94.

Miss Lisa Jeraine Newman, Trainee Printer, Printing Office, 4.1.94.

Quentin James Fairfield, Data Clerk, Fisheries Department, 4.1.94.

Ben Watson, Trainee Computer Co-ordinator, Secretariat, 10.1.94.

Miss Lynette Ann Hepworth, Travelling Teacher, Education Department, 11.1.94.

Miss Katy Lee, Travelling Teacher, Education Department, 11.1.94.

## Acting Appointment

Robert Mark Titterington, Acting Attorney General, 31.10.93 - 25.1.94.

## Confirmation of Appointments

Leslie Harris, Superintendent, Power Station, Public Works Department, 1.10.83.

Atilio Laffi, Engineman, Power Station, Public Works Department, 21.11.93.

Miss Helen Jean Blades, Clerk, Public Works Department, 13.1.94.

## Completion of Contracts

Robin Geoffrey Stedman, Hospital Engineer, Medical Department, 22.12.93.

Timothy Stewart Cotter, Teacher, Education Department, 24.1.94.

## Re-Appointments

Sidney John Salter, Senior Plumber, Public Works Department, 11.1.94.

Robin Geoffrey Stedman, Hospital Engineer, Medical Department, 25.1.94.

Timothy Stewart Cotter, Teacher, Education Department, 25.1.94.

## Resignation

Miss Josephine Hunter, Fisheries Observer, Fisheries Department, 8.2.94.

## NOTICES

No. 1

19th January 1994.

### Certificate of Registration as a Minister for Celebrating Marriage

I DAVID EVERARD TATHAM, Companion of the most Distinguished Order of St. Michael and St. George, Governor of the Colony of the Falkland Islands GRANT to the REVEREND (Sqn Ldr) GORDON THOMAS CRAIG this Certificate of Registration as a Minister for celebrating marriages in the Colony.  
Given under my hand and the Public Seal at Stanley this 19th day of January 1994.

D. E. TATHAM,  
*Governor.*

No. 2

27th January 1994.

**Cost of Living Increase**

The findings of the Cost of Living Committee for the quarter ended 31st December 1993 are published for general information.

QUARTER ENDED	PERCENTAGE INCREASE OVER JUNE 1989 PRICES
31st December 1993	25.728%

2. Hourly paid employees in Stanley coming within the scope of the wages agreement qualified for an increase of 0.81% per hour with effect from 1st January 1994.

Ref. Int/2/2

D. CHEEK,  
*for Senior Assistant Secretary.*

**Application for Naturalisation**

Notice is hereby given that Mr. Miguel Angel Hernandez Manterola, of Stanley, Falkland Islands, is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted should send a written and signed statement of the facts to the Immigration Officer, Customs and Immigration Department, Ross Road, Stanley.

**Appointment of Temporary Customs Officer**  
Customs Ordinance (Cap. 16)

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

Sgt. S. R. HALL, K8111628.

to be a temporary Customs Officer with effect from 1st January, 1994 to 1st May 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer**  
Customs Ordinance (Cap. 16)

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

Cpl. K. E. DAVIES, F8241209.

to be a temporary Customs Officer with effect from 1st January, 1994 to 1st May 1994.

R. KING,  
*Collector of Customs.*

**NOTICE****CORRIGENDUM**

The Falkland Islands Gazette Vol. CII No. 21 dated 24th November 1993 should in fact have been dated 24th December 1993.





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*Vol. CIII*
*28th FEBRUARY 1994*
*No. 2*


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## Appointments

Jaime Reinaldo Correa Vera, Spanish Teacher, Education Department, 28.1.94.

Myrian Beatris Smith, Auxiliary Nurse, Medical Department, 29.1.94.

Christopher James Ford, Electrician, Power and Electrical Section, Public Works Department, 1.2.94.

Janette Mary Vincent, Nursing Sister, Medical Department, 9.2.94.

John Harvey Adams, Fisheries Protection Officer, Fisheries Department, 14.2.94.

Trevor Grocock, Pharmacy Technician, Medical Department, 15.2.94.

Andrew Shirley Jones, Senior Magistrate, Justice Department, 23.2.94.

## Confirmation of Appointments

Morgan Edmund Goss, Pilot, Falkland Islands Government Air Service, 22.1.94.

Anna Doughty, Radio Teacher, Education Department, 6.2.94.

## Completion of Contracts

Michelle Debra Hartley, Travelling Teacher, Education Department, 17.12.93.

Timothy Simon Clarke, Teacher, Education Department, 27.1.94.

Anne Patricia Halmshaw, P.E. Teacher, Education Department, 27.1.94.

## Re-Appointments

Anne Patricia Halmshaw, P.E. Teacher, Education Department, 28.1.94.

Timothy Simon Clarke, Teacher, Education Department, 28.1.94.

Michelle Debra Hartley, Travelling Teacher, Education Department, 1.2.94.

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## NOTICES

No. 3

25th February 1994.

### Appointment of Notary Public

In accordance with section 43 of the Administration of Justice Ordinance, His Excellency, David Everard Tatham C.M.G., Governor of the Colony of the Falkland Islands

Hereby Appoints —

Andrew Shirley Jones,

to be a Notary Public.

Given under my hand the 25th day of February 1994.



D. E. TATHAM,  
Governor.

No. 4

25th February 1994.

**Appointment of Commissioner of Oaths**

In accordance with Section 2(2) of the Commissioners for Oaths Ordinance 1969, **Andrew Shirley Jones** is appointed Commissioner for Oaths.

Dated this 25th day of February 1994.



D. E. TATHAM,  
*Governor.*

No.5

25th February 1994.

**Appointment of Senior Magistrate**

In accordance with Section 7B of the Administration of Justice Ordinance, I, **David Everard Tatham C.M.G.**, Governor of the Colony of the Falkland Islands —  
**Hereby Appoint —**

**Andrew Shirley Jones**, a Senior Magistrate with effect from the 25th day of February 1994.

Given under my hand and the Public Seal at Stanley the 25th day of February 1994.



D. E. TATHAM,  
*Governor.*

**Cost of Living Committee**

The following change of membership to the Cost of Living Committee took place with effect from the quarter ended 31st December 1993 —

Representative of the General Employees' Union :

Ms J. Brock is replaced by Mrs. Catherine A. Rowlands.

**The Electricity Supply Tariff Rebate**

Notice is hereby given that the rebate of 2½p per unit currently available to electrical energy consumers who are in receipt of a Contributory or Non Contributory Old Age Pension has been reviewed by the Governor in Council and has been extended to allow the following Categories of persons to qualify for the rebate with effect from quarter ending 31st March 1994 :

- i) any consumer who in receipt of a Falkland Islands or a United Kingdom Old Age Pension ; and
- ii) any other consumer on attaining the age of 64 years.

The rebate limit has also been increased to 400 units per quarter for all consumers (married and single) of pensionable age and over with effect from quarter ending 31st March 1994.

**Application for a Publican's Retail Licence**

In accordance with section 7(1) of the licensing Ordinance —

**Mr. B. J. L. Harper**

has applied for a Publican's Retail Licence in respect of bar premises known as the "Malvina House Hotel".

2. Any objection to the granting of a licence must be made to the Treasury within 21 days from the appearance of this notice in the Gazette and the Penguin News.

The Treasury,  
Stanley.  
14th February 1994

D. F. HOWATT,  
*Financial Secretary.*

**The Falkland Islands Constitution Order 1985****Schedule 1 (Section 80 (1))****Appointment of acting Judge**

**Whereas** it appears to me, after consulting the Chief Justice, Sir Dermot Renn Davis, Officer of the Most Excellent Order of the British Empire, that the state of business in the Supreme Court during such time or times as the Chief Justice is absent from the Falkland Islands so requires;

**And Whereas** after such consultation as aforesaid I am satisfied that **Andrew Shirley Jones** possesses such legal qualifications and experience as are appropriate for him to be so appointed;

Now I, **David Everard Tatham CMG**, Governor of the Falkland Islands, **In Exercise** of my powers under section 80(1) of Schedule 1 to the Falkland Islands Constitution Order 1985 **Do Appoint** the said **Andrew Shirley Jones** to sit as an acting judge of the Supreme Court during such time or times as the Chief Justice is absent from the Falkland Islands, but in relation only to such causes matters proceedings or things as are hereinafter specified, **And Further** appoint the said **Andrew Shirley Jones** to discharge the functions in the Falkland Islands of the Chief Justice but in relation to such causes matters and proceedings and only insofar as may be reasonably necessary and incidental thereto **And Provided** that nothing in these presents shall operate so as to prevent the Chief Justice himself adjudicating in any such cause matter or proceeding or from exercising any of his functions in relation thereto.

**And I Declare** that the causes, matters proceedings and things to which this appointment relates are such causes matters and proceedings below described as in relation to which the Chief Justice has not indicated to the said Andrew Shirley Jones that he wishes himself to exercise his powers and are also of one or other or more of the following descriptions -

- (a) undefended causes matters or proceedings falling within the ambit or purview of Part II of the Matrimonial Causes Ordinance 1979;
- (b) matters (defended or not) falling within the ambit or purview of Parts III, IV or V of the Matrimonial Causes Ordinance 1979;
- (c) applications for a minor to be made a Ward of Court;
- (d) applications by way of interlocutory relief for any injunction or other order (but so that any injunction or order made on any such application shall be made ex parte only with liberty to apply to the Chief Justice for its variation or discharge and shall not, in any case be expressed so as to have effect for a period exceeding three months from the date thereof unless extended by the Chief Justice);
- (e) non-contentious probate matters and contentious probate jurisdiction to the extent that the order or relief sought could be granted in England ex parte by a Judge Master or District Probate Registrar of the High Court and would be within the jurisdiction of the Chief Justice to grant and subject as expressed in (d) above;

(f) jurisdiction of the Chief Justice which, in England, would be within the jurisdiction of a judge or master of the High Court sitting as a Judge or Master of the Court of Protection;

(g) such interlocutory matters in proceedings in the Supreme Court (not being matters included in any of the foregoing descriptions) as in England would be within the jurisdiction of a Master, District Judge or Registrar of the High Court.

**And This** appointment shall be effective until such time as the Governor of the Falkland Islands for the time being signifies to the contrary.

**Given** under my hand and the Public Seal this 25th day of February 1994.



A handwritten signature in dark ink, appearing to be "D. E. Tatham".

**D. E. Tatham**  
Governor



**THE  
FALKLAND ISLANDS GAZETTE  
(Extraordinary)  
PUBLISHED BY AUTHORITY**

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*Vol. CIII*

*7th MARCH 1994*

*No. 3*

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The Following are published in this Gazette —

**Registration of Trade Marks and Service Marks in the Falkland Islands during the period 1st January 1993 to 31st December 1993;**

**Renewed Registration of Trade Marks in the Falkland Islands during the period 1st January 1993 to 31st December 1993.**

# REGISTRATION OF UNITED KINGDOM TRADE MARKS ORDINANCE (CAP.59)

The following list of Trade Marks and Service Marks Registered in the Falkland Islands during the period 1st January 1993 to 31st December 1993 is published for general information. The Trade Marks Register may be inspected at the Office of the Registrar General, Stanley.

B. Greenland  
Registrar General

Registration No	Date of Registration	Proprietor	Description of Goods
9721	2.3.1993	Mastercard International Incorp.	Electronic data carriers in the form of Identity Cards; all included in Class 9.
9733	23.3.1993	The Wellcome Foundation Ltd.	Pharmaceutical, medical and veterinary substances.
9734	23.3.1993	Hertz System Inc.	Vehicle rental and vehicle leasing services; all included in Class 39.
9736	24.3.1993	American Telephone and Telegraph Co.	Telecommunications services; transmission broadcast and diffusion of radio and television programmes; all included in Class 38. AT&T
9767	5.5.1993	Mastercard International Incorp.	Printed matter, forms, publications, periodicals and cards, credit, debit, and charge cards, travellers cheques, pamphlets, brochures, newsletters, decalcomanias and magazines; all included in Class 16.
9772	7.5.1993	Berry Bros. & Rudd Ltd	Spirits included in Class 43. CUTTY SARK
9773	7.5.1993	Berry Bros. & Rudd Ltd	Scotch whisky for export. ++This Trade Mark is hereby altered under Section 35 of the of the Trade Marks Act, 1938. Representations of the Mark as altered were deposited on the 7th September, 1943.
9774	10.5.1993	Imperial Tobacco Ltd.	Tobacco whether manufactured or unmanufactured; substances for smoking, sold separately or blended with tobacco, none being for medicinal or curative purposes; smokers' articles included in Class 34 and matches.
9775	10.5.1993	Imperial Tobacco Ltd.	Tobacco whether manufactured or unmanufactured, substances for smoking sold separately or blended with tobacco, none being for medicinal or curative purposes; smokers articles and matches; all included in Class 34.

9778	10.5.1993	Mastercard International Incorp	Banking and credit services; charge card, debit card and credit card services; account debiting services; automatic cash dispensing services; administration of issuance, processing, verification and redemption of cheques, travellers cheques, vouchers, electronic funds transfer services, electronic payment services; all included in Class 36. <b>MASTERCARD</b>
9786	9.6.1993	Chanel Limited	Articles of clothing for women and for girls; stockings, tights; shirts, t-shirts, sweatshirts, pullovers, sweaters, cardigans; articles of outer clothing; hats, scarves, socks, gloves, belts, ties, cravats; footwear; all included in Class 25.
9787	9.6.1993	Chanel Limited	Preparations for application to the skin, scalp hair or nails; soaps; perfumes; eau de cologne; toilet water; cosmetics; essential oils; dentifrices; non-medicated toilet preparations; talcum powder for toilet use; preparations for the hair; non-medicated preparations for the care of the skin; cleansing masks; anti-perspirants; deodorants for use on the person; mouth washes, not for medical use; nail care preparations; all included in Class 3. <b>CHANEL</b>
9788	9.6.1993	Chanel Limited	Soaps; perfumes; eau de colognes; toilet waters, cosmetics; essential oils, non-medicated toilet preparations; talcum powders for toilet use; non-medicated preparations for the care of the skin; cleansing masks; deodorants for use on the person; nail care preparations; all included in Class 3.
9789	9.6.1993	Chanel Limited	Articles of clothing for women and for girls; stockings, tights, shirts, T-shirts, sweatshirts, pullovers, sweaters, cardigans; articles of outer clothing; hats; scarves, socks, gloves, belts, ties, cravats; footwear; all included in Class 25. <b>CHANEL</b>
9796	21.6.1993	Sony Music Entertainment Inc.	Audio and audio-visual recordings, phonograph records and pre-recorded magnetic tapes, discs and cassettes; motion picture films; all included in Class 9.
9806	1.7.1993	Maestro International Incorp.	Financial services related to the issuance of bank cards and debit cards; all included in Class 36. <b>MAESTRO</b>
9807	7.7.1993	Mastercard International Incorp.	Provision of credit card, debit card and cash disbursement services; all included in Class 36.
9808	7.7.1993	Imperial Tobacco Limited	Tobacco whether manufactured or unmanufactured. ++Entry cancelled under Section 34(1)(d) of the Trade Marks Act, 1938, on the 19th October 1972, in respect of all goods except tobacco whether manufactured or unmanufactured for sale in the United Kingdom and for export to the Republic of Ireland. <b>OLD PORT</b>
9823	8.7.93	Mars G.B. Limited	Malt; foodstuffs for animals, fish or for birds, and preparations included in Class 31 for use as additives to such foodstuffs; animal litter; fresh fruits and fresh vegetables, not including any such goods for propagation purposes. <b>PEDIGREE WALTHAM</b>

9824	8.7.93	Mars G.B. Limited	Printed matter, none relating to genealogy; sanded paper for use in animal cages or bird cages; containers made of cardboard for use in the transportation of pet animals; all included in Class 16. PEDIGREE WALTHAM
9830	8.7.93	Cable & Wireless Plc.	Telecommunications apparatus and instruments; computers; signalling, telephonic, telegraphic, telex and facsimile apparatus and instruments; electrical and electronic switching apparatus and instruments; all included in Class 9.
9831	15.7.93	MasterCard International Incorp.	Credit card, and debit card services; issue of travellers' cheques; bankers clearing services; all included in Class 36.
9832	15.7.93	MasterCard International Incorp.	Credit, and debit and charge card services; travellers cheque services; cash disbursement services; transaction authorization and settlement services; all included in Class 36.
9846	3.8.93	Mars G.B. Limited	Food for cats and litter for cats.
9915	28.10.93	Mars U.K. Limited	Chocolate , non-medicated confectionery; all included in Class 30
9916	28.10.93	Mars U.K. Limited	Rice, pasta, cereals; and cereal preparations; tea, coffee, cocoa, coffee essence, coffee extracts, mixtures of coffee and chicory, chicory and chicory mixtures, all for use as substitutes for coffee; non-medicated confectionery, pastries, cakes, biscuits; ices, ice-cream, ice-cream products and frozen confections; bread, pastry; drinks, fillings, spreads snack foods, meals and constituents for meals; chocolate, sauces; all included in Class 30. CANCELLED IN RESPECT OF ALL goods except non-medicated confectionery, biscuits; ices, ice-cream, ice cream products and frozen confections; snack foods; chocolate.
9920	29.10.93	Carlton and United Breweries Limited	Beer, ale, lager, porter and stout; all included in Class 32.
9935	26.11.93	Amadeus Marketing S.A.	Reservation and booking services relating to land, sea and air transportation, travel and tourism; all included in Class 39.



# REGISTRATION OF UNITED KINGDOM TRADE MARKS ORDINANCE (Cap.59)

The following list of Trade Mark registrations renewed in the Falkland Islands during the period 1st January 1993 to 31st December 1993 is published for general information. The Trade Marks Register may be inspected at the Office of the Registrar General, Stanley.

B. Greenland  
Registrar General

Registration No	Renewal No	Effective date of Renewal	Proprietor	Description of Goods
5568	9686	5.2.1990	American Brands Inc.	Alcoholic beverages and preparations for making such beverages, all included in Class 33.
5570	9687	5.2.1990	American Brands Inc.	Tobacco, whether manufactured or unmanufactured; cigarettes and cigars; and smokers' articles included in Class 34.
5733	9722	24.8.1992	Imperial Tobacco Limited	Tobacco, whether manufactured or unmanufactured.
8395	9725	15.4.1992	Religious Technology Center	Printed matter, periodical publications, books; instructional and teaching materials (other than apparatus).
8605	9727	26.11.1992	The Coca-Cola Company	Cherry-flavoured non-alcoholic beverages and preparations for making such beverages, all included in Class 32.
8606	9728	26.11.1992	The Coca-Cola Company	Cherry-flavoured non-alcoholic beverages and preparations for making such beverages, all included in Class 32.
8607	9729	18.12.1992	The Coca-Cola Company	Non-alcoholic beverages and preparations for making such beverages; mineral waters; all included in Class 32; fruit juices for use as beverages.
5513	9731	9.9.1992	British American Tobacco Co. Ltd.	Cigarettes for export from the United Kingdom to and sale in countries outside the United Kingdom.
5007	9735	28.12.1988	Colt Breweries of America B.V.	Malt beverages included in Class 32.
6474	9737	17.1.1993	Castrol Limited	Anti-freezing preparations in fluid form.

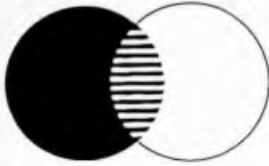
3671	9738	24.10.1992	British American Tobacco Co. Ltd.	Tobacco whether manufactured or unmanufactured. ++This application is subject to the terms of an Agreement dated 6th June, 1907, and made between the Imperial Tobacco Company of (Great Britain and Ireland) Limited, of the one part, and British-American Tobacco Company Limited of the other part, the goodwill so far as relates to Export business as defined in the said Agreement being vested in British-American Tobacco Company Limited. ++Registered as proprietors in so far as their rights are concerned. ++Entry cancelled on the 14th September, 1965, under Section 34 (1) (d) of the Trade Marks Act, 1938, in respect of:- "The goods of the present specification except for export from the United Kingdom except to the Republic of Ireland, the United States of America, Cuba, Puerto Rico, and the Philippines Islands."
9141	9757	24.9.1992	Cirrus System Inc.	Electrical and electronic apparatus.
9142	9758	24.9.1992	Cirrus System Inc.	Identity cards (printed matter) for use with electronic fund transfer systems and with the like systems; credit cards and machine access cards (printed matter).
9194	9766	14.3.1993	R.J.Reynolds Tobacco Co.	Cigarettes and tobacco for making cigarettes; all included in Class 34.
1905	9776	30.11.1992	United Distillers plc.	Whisky.
5937	9777	27.3.1993	Gallaher Limited	Tobacco manufactured or unmanufactured.
6374	9790	12.6.1993	C & J Clark International Ltd.	Boots, shoes and slippers.
5877	9797	25.2.1993	Amstel Brouwerij B.V.	Beer, ale and porter.
8761	9801	21.5.1993	Champagne Moet et Chandon	Champagne wines.
5849	9802	28.3.1993	United Distillers Plc.	Whisky
3457	9803	27.4.1993	William Grant & Sons Ltd.	Whisky
5755	9804	16.6.1993	British American Tobacco Co. Ltd.	Tobacco whether manufactured or unmanufactured, all being goods for export except to the Republic of Ireland, the United States of America, Cuba, Puerto Rico and the Philippine Islands. Registered as proprietors in so far as their rights are concerned.
4119	9819	18.5.1993	Rothmans of Pall Mall Ltd.	Manufactured tobacco.
6646	9820	6.6.1993	Carreras Ltd.	Cigarettes.

6583	9822	10.1.1993	Mars G.B. Ltd.	Food for animals and for birds.
9298	9825	5.2.1993	Societe Des Produits Nestle S.A.	Farinaceous products; preparations made from cereals or from rice, all for food for human consumption; rice, sugar, ice cream, sauces (other than salad dressings), cocoa, chocolate, tea, tea extracts, coffee, coffee extracts and coffee essences; chicory and chicory mixtures all for use as substitutes for coffee; non-medicated confectionery, vinegar, condiments; food preparations included in Class 30 for use as sandwich spreads and for making puddings.
9297	9826	5.2.1993	Societe Des Produits Nestle S.A.	Non-alcoholic beverages; syrups essences and extracts, all for the preparation of non-alcoholic beverages; all included in Class 32; fruit juices for use as beverages.
9296	9827	5.2.1993	Societe Des Produits Nestle S.A.	Extracts from vegetables, fruit, meat, poultry, fish and from vegetal sea foods; jellies and dairy products; all for food; fruit preserves and vegetable preserves; prepared meals consisting principally of foodstuffs included in Class 29; milk; protein derived from soya beans for use as a substitute for dairy products; yoghurt; edible oils and edible fats; mayonnaise, eggs, jams; food preparations having a base of vegetable, milk fish or of edible fats, all for use as sandwich spreads; soups and bouillons.
9295	9828	5.2.1993	Societe Des Produits Nestle S.A.	Pharmaceutical substances; food substances adapted for medical use; food for babies
6935	9833	23.7.1993	Burberry's Limited	Cloths and stuffs of wool, worsted and hair.
2329	9835	11.1.1993	Brown & Williamson Tobacco Corporation	Manufactured tobacco.
4659	9836	12.3.1993	Schimmelpenninck Sigarenfabrieken V/H Geurts En Van Schuppen B.V.	All goods included in Class 34.
5104	9838	28.5.1993	Cussons (International) Ltd.	Perfumes, toilet preparations (not medicated), cosmetic preparations, dentifrices depilatory preparations, toilet articles (not included in other classes) sachets for use in waving the hair, toilet soaps and essential oils, in so far as they relate to goods for export.
1617	9839	17.7.1993	Cadbury Limited.	Cocoa, chocolate, chocolate confectionery, chocolate biscuits, sugar confectionery, bon-bons, composed of nuts or fruits, crystallized flowers being boiled sugar goods included in Class 42.

8707	9842	28.7.1993	Standard Chartered, Plc.	Computerised automatic machines for use in banks for cash withdrawing, deposits, payments, account transfers and for the like banking transactions; telecommunications apparatus; surveillance apparatus included in Class 9; scientific apparatus and instruments; computers; digital apparatus included in Class 9; apparatus included in Class 9 for use with computers or the aforesaid digital apparatus; electronic apparatus and instruments, all for the processing and retrieval of data; electrical; and electronic digital control apparatus and instruments; word processors; apparatus and instruments, all for receiving, transmitting, recording or reproducing sound; all relating to financial matters; parts and fittings included in Class 9 for all the aforesaid goods; computer programmes; computer software; materials included in Class 9 for recording data for use with all the aforesaid apparatus and instruments.
6826	9845	3.2.1993	Healthtex Inc.	Articles of clothing for children.
4414	9847	12.6.1993	Reckitt & Colman (Overseas) Ltd.	Polishing and cleaning preparations included in Class 50. ++ Registered as Proprietors in so far as concerns the exclusive use of the Trade Mark in relation to goods for export to countries outside the United Kingdom but not including the Irish Republic. ++This Trade Mark is hereby altered under Section 35 of the Trade Marks Act, 1938. Representations of the Mark as altered were deposited on 25th February 1981.
3616	9848	24.12.1992	Sony Kabushiki Kaisha	Radio and television sets (complete), gramophones and electro-phones, parts of all these goods included in Class 9; electric batteries, electric vacuum tubes, loud speakers, electric apparatus for transmitting and receiving photographs, sound amplifying apparatus, sound-recording machines, electric converters, electric transducers; magnetic tape and magnetic wire, all for use as sound recording media and sound records produced from such media; electric telecommunications apparatus, dictating machines; transistors; mechanically-grooved phonograph records; and record players.
2886	9849	22.6.1993	EMI Records Limited	Apparatus, instruments and devices for the recording, reproducing, transmission or reception of sound, included in Class 8.
6745	9850	8.8.1993	Benson & Hedges (Overseas) Ltd.	Tobacco, whether manufactured or unmanufactured, all being goods for export except to the Irish Republic, Denmark, Italy, France, Belgium, Holland, Luxembourg and the Channel Islands.

7517	9856	28.1.1993	The Hiram Walker Group Ltd.	All goods included in Class 33.
6260	9857	21.8.1993	B.A.T. Cigaretten-Fabriken, GmbH	Tobacco whether manufactured or unmanufactured.
5785	9858	22.8.1993	British-American Tobacco Co. Ltd.	Substances for smoking, all for use as substitutes for tobacco, none being for medical or curative purposes; tobacco, whether manufactured or unmanufactured; all being in flake form or produced from flake tobacco.
9314	9859	4.4.1993	Societe Des Produits Nestle S.A.	Coffee, tea, cocoa, sugar, rice; mixtures of coffee and chicory, coffee essences and coffee extracts; chicory and chicory mixtures, all for use as substitutes for coffee; flour, preparations made from cereals for food for human consumption, bread, biscuits (other than biscuits for animals), cakes, pastry, non-medicated confectionery; chocolate, chocolates, chocolate products (for food); ice cream and preparations included in Class 30 for making ice cream; sauces (other than salad dressings), spices (other than poultry spice); ice; snack foods included in Class 30.
7963	9904	18.9.93	The Dow Chemical Co.	Chemical products for use in industry and science; synthetic resins; chemical preparations for use as coolants; anti-freeze preparations, de-icing compositions, brake fluid; surface active agents, chelating agents and flocculating agents, all for use in industry
6031	9905	6.10.93	BASF Aktiengesellschaft	Electronic data processing apparatus and instruments; peripheral apparatus and instruments, all for process control in industrial processes; electronic storage and retrieval information apparatus for use with data processing systems; electronic sound and video recording and reproducing apparatus and instruments; magnetic heads; automatic controls for speed, tone and picture quality; pick-ups; microphones; loudspeakers and headphones; radio and television sets; audiovisual apparatus and instruments; picture and film production apparatus; programming testing devices and electronic instructional apparatus; teaching and instruction programmes recorded on films, magnetic tapes, discs and disc-packs; unrecorded and pre-recorded magnetic tapes; discs and disc-packs, all for sound recording and for use with motion pictures and motion picture stills, data processing apparatus, measured value recordings and control signals; cassettes containing magnetic tapes, discs and discs-packs; gramophone records and video-discs; cassettes for the storage of magnetic tapes, discs, disc-packs, audio and video discs; reels for magnetic tapes; electric batteries and accumulators.

1737	9906	5.8.93	Cadbury Limited	Confectionery, cocoa, chocolate, chocolate biscuits and tea.
7160	9907	1.8.93	Bass Public Ltd Co.	Beer preparations included in Class 32 for making beer.
7464	9908	1.8.93	Bass Public Ltd Co.	Beer, ale, stout and porter; shandy; beverages containing beer and included in Class 32; and preparations included in Class 32 for making all the aforesaid goods
7599	9911	17.8.93	Religious Technology Center	Books and printed publications, all relating to philosophy.
6829	9913	5.9.93	Kohler Co.	Internal combustion engines for agricultural tractors and parts included in Class 12, of such engines
6478	9914	27.9.93	Castrol Limited	Preparations and substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps.
9734	9917	1.10.93	Hertz System Inc.	Vehicle rental and vehicle leasing services; all included in Class 39
5196	9918	11.8.93	United Distillers plc	Whisky
8854	9934	29.9.93	Glaxo Group Limited	Pharmaceutical preparations and substances, all included in Class 5
5819	9936	15.11.93	The Drambuie Liqueur Co Ltd	Liqueurs
9287	9939	1.11.93	Cirrus System Inc.	Cash dispenser services; electronic funds transfer and electronic payment services; bank account information services; all included in Class 36.



Reg. Nos. 9721, 9767 & 9832.



**Wellcome**

Reg. No. 9733.

**HERTZ**

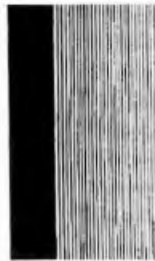
Reg. No. 9734.



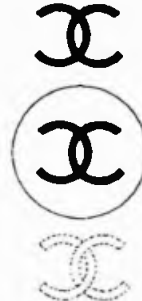
Reg. No. 9773.



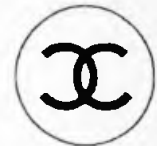
Reg. No. 9774.



Reg. No. 9775.



Reg. No. 9786.



Reg. No. 9788.



Reg. No. 9796.



Reg. No. 9807.



Reg. No. 9830.



Reg. No. 9831.



Reg. No. 9846.



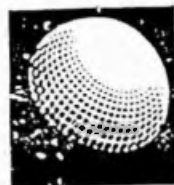
Reg. No. 9915.



Reg. No. 9916.



Reg. No. 9920.



**amadeus**

Reg. No. 9935.







# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CIII

31st MARCH 1994

No. 4

**Appointments**

Jonathan Roy May, Fireman, Fire & Rescue Department, 1.3.94.

Gardner Walker Fiddes, Fireman, Fire & Rescue Department, 1.3.94.

Miss Janice Vanessa Jaffray, Nursing Sister, Medical Department, 4.3.94.

John Aiden Kerr, Senior Scientist/Agronomist, Department of Agriculture, 8.3.94.

Thomas Blasdale, Fisheries Observer, Fisheries Department, 11.3.94.

**Promotions**

Mrs. Danuta Cecelia Krystyn Valler, from Senior Clerk, Department of Agriculture, to Accounting Officer, Treasury Department, 7.3.94.

Miss Diana Christine Roberts, from Laboratory Technician, Department of Agriculture, to Senior Laboratory Technician, Department of Agriculture, 22.3.94.

**Transfer**

Nigel Keith Dodd, from Accounting Officer, Treasury Department, to Chief Clerk, Philatelic Bureau, Posts & Telecommunications Department, 1.3.94.

**Completion of Contracts**

Robert Mark Titterington, Senior Crown Counsel, Justice Department, 17.2.94.

Miss Deborah Collins, Pharmacy Technician, Medical Department, 11.3.94.

David John Baber, Senior Laboratory Technician, Department of Agriculture, 22.3.94.

**Renewal of Contract**

Robert Mark Titterington, Senior Crown Counsel, Justice Department, 18.2.94.

**NOTICES**

No. 7 23rd March 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)**

**Companies Act 1948**

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the name of **KELVIN BAKERIES LIMITED** is struck off the register and the company is dissolved subject to the proviso to sub-section (5) of section 353 aforesaid.

Dated this 23rd day of March 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 8 24th March 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)**

**Companies Act 1948**

NOTICE IS HEREBY GIVEN that **A.L. LEE & SON LIMITED** was dissolved pursuant to section 290(4) of the Companies Act 1948 on the 2nd day of August 1990.

Dated this 24th day of March 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 9

28th March 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that the Companies listed below were deemed to have been dissolved pursuant to section 300(4) of the Companies Act 1948 on the following dates —

STANKOR LIMITED	14th January 1993
STANCO LIMITED	21st July 1990
STANCAL LIMITED	21st July 1990
AGS FISHERIES LIMITED	21st July 1990
SNZ FISHERIES LIMITED	21st July 1990
FALCONVIEW FISHERIES COMPANY LIMITED	21st July 1990

Dated this 28th day of March 1994.

B. GREENLAND,  
*Registrar of Companies.*

No.10

28th March 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that the Companies listed below were deemed to have been dissolved pursuant to section 290(4) of the Companies Act 1948 on the following dates —

STARFISH LIMITED	31st March 1993
STANCROSS LIMITED	14th January 1993
CLIPPER (FALKLANDS) LIMITED	31st October 1992
GROUP ONE LIMITED	6th January 1993
FALKSPAN LIMITED	14th January 1993

Dated this 28th day of March 1994.

B. GREENLAND,  
*Registrar of Companies.*

No.11

24th March 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that AUSTRALIS FISHERIES LIMITED was deemed to have been dissolved pursuant to section 300(4) of the Companies Act 1948 on the 16th day of May 1990.

Dated this 29th day of March 1994.

B. GREENLAND,  
*Registrar of Companies.*

**Supreme Court of the Falkland Islands**

NOTICE UNDER THE ADMINISTRATION OF ESTATES ORDINANCE (Cap. 1)

**TAKE NOTICE THAT** Henry John Alazia, deceased, of Mullet Creek Farm died at Stanley, on the 7th day of March 1994 intestate.

**WHEREAS** Hazel Alazia, Wife of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

**NOTICE IS HEREBY GIVEN** pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony 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.

Stanley,  
Falkland Islands.  
14th March 1994.  
Ref. : PRO/2/94.

B. GREENLAND,  
*Registrar, Supreme Court.*



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CIII

29th APRIL 1994

No. 5

**Appointments**

Mrs. Leonie Elizabeth Dowrick, Nursing Sister/Midwife,  
Medical Department, 12.4.94.

**Acting Appointment**

Mrs. Marjorie May McPhee, Acting Postmistress, Posts  
& Telecommunications Department, 13.4.94 - 24.5.94.

**Confirmation of Appointment**

Miss Jacqueline Elizabeth Eamshaw, Nursing Sister/Midwife,  
Medical Department, 14.4.94.

**Completion of Contracts**

Graham Brian France, Building Adviser, Public Works  
Department, 29.3.94.

Mrs. Maria Esther Wilson, Nursing Sister/Midwife,  
Medical Department, 13.4.94.

**Renewal of Contract**

Graham Brian France, Building Adviser/Planning  
Officer, Public Works Department, 29.3.94.

**NOTICES**

No. 12 29th April 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that STANLEY FUELS  
LIMITED was dissolved pursuant to section 290(4) of the  
Companies Act 1948 on the 14th day of January 1993.

Dated this 19th day April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No.13

29th April 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN pursuant to section 2 of the  
Companies and Private Partnership Ordinance and sec-  
tion 353 of the Companies Act 1948 in its application to  
the Falkland Islands that with effect from the publication  
of this Notice the name of SCHOONER CO (FALKLAND  
ISLANDS) LIMITED is struck off the register and the  
company is dissolved subject to the proviso to sub-  
section (5) of section 353 aforesaid.

Dated this 19th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No.14

29th April 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that ITALSTAN LIMITED was  
dissolved pursuant to section 290(4) of the companies  
Act 1948 on the 14th day of January 1993.

Dated this 19th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 15

29th April 1994.

**THE FALKLAND ISLANDS  
SOLANDER FISHERIES (FALKLANDS) LIMITED**

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

Dated this 19th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

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No. 16

29th April 1994.

**THE FALKLAND ISLANDS  
PEBBLE HOTEL LIMITED**

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

Dated this 19th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

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No. 17

29th April 1994.

**The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948**

NOTICE IS HEREBY GIVEN that THE HOUSING CORPORATION LIMITED was dissolved pursuant to section 290(4) of the Companies Act 1948 on the 11th of April 1994.

Dated this 25th day April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 18

29th April 1994.

**THE FALKLAND ISLANDS  
FALKLANDSQUID FISHING COMPANY LIMITED**

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

Dated this 25th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

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No. 19

29th April 1994.

**COASTAL SHIPPING LIMITED  
Notice to Creditors**

The Directors of Coastal Shipping Limited are making arrangements for the winding-up of the Company which has not traded for some considerable time.

Any business, individuals or persons who claim to be owed money by the Company are requested to notify the manager of the Falkland Islands Company Limited, Crozier Place, Stanley on or before 30th June 1994. The Falkland Islands Company Limited have been appointed as a managing agent for Coastal Shipping Limited.

By order of the board.

25th April 1994.

R. M. TITTERINGTON,  
*Company Secretary.*

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No. 20

29th April 1994.

**THE FALKLAND ISLANDS  
STANMARR LIMITED**

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

Dated this 25th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 21

29th April 1994.

**THE FALKLAND ISLANDS  
JOHN HAMILTON (ESTATES) LIMITED**

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

Dated this 25th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No.22

29th April 1994.

**THE FALKLAND ISLANDS  
WADNOR FALKLANDS LIMITED**

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

Dated this 26th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 23

29th April 1994.

In the Supreme Court of the Falkland Islands

**In the matter of Seamount Limited**

Case No. SC/CIV/7/94

and

In the matter of the Companies Act 1948 in its application in the  
Falkland Islands

A Petition to wind up the above-named company of the Old Transmitting Station, Stanley, Falkland Islands  
presented on 31st March 1994

by Midland Bank plc 27/32 Poultry, London EC2P 2BX claiming to be a creditor of the company will be heard at the  
Court House, Town Hall, Stanley, Falkland Islands.

Date: 16th May 1994

Time: 10.00 hours (or as soon thereafter as the petition can be heard)

Any person intending to appear on the hearing of the petition (whether or support or oppose it) must give notice of  
intention to do so to the petition or its Legal Practitioner by 16.00 hours on 13th May 1994.

The petitioner's Legal Practitioner is;

Ledingham Chalmers  
56 John Street  
Stanley  
Falkland Islands

Tel.: 01050022690  
Fax.: 01050022689  
Correspondents for:  
Norton Rose  
Blackfriars House  
19 New Bridge Street  
London EC4V 6DH  
Tel: 044 71 283 2434  
Fax: 044 71 588 1881  
Ref. AJFR/63/V158261

Dated 28th April 1994.

## **The Falkland Islands Constitution Order 1985**

### **Schedule 1 (Section 80 (1))**

#### **Appointment of Acting Judge**

**Whereas** it appears to me, after consulting the Chief Justice, Sir Dermot Renn Davis, Officer of the Most Excellent Order of the British Empire, that the state of business in the Supreme Court during such time or times as the Chief Justice is absent from the Falkland Islands so requires;

**And Whereas** after such consultation as aforesaid I am satisfied that **Andrew Shirley Jones** possesses such legal qualifications and experience as are appropriate for him to be so appointed;

Now I, **David Everard Tatham CMG**, Governor of the Falkland Islands, **In Exercise** of my powers under section 80(1) of Schedule 1 to the Falkland Islands Constitution Order 1985 **Do Appoint** the said **Andrew Shirley Jones** to sit as an acting judge of the Supreme Court for the purpose of hearing and determining the appeal by the owners of the M.V Antonio Lorenzo against the order of the Senior Magistrate sitting on the 2nd February 1994 whereby the Appellant was ordered to pay the costs of the Prosecution amounting to £23,166.93.

**And I Declare** that the powers contained in this appointment are granted in addition to the appointment of the said **Andrew Shirley Jones** dated 25th February 1994.

**And This** appointment shall be effective until such time as the Governor of the Falkland Islands for the time being signifies to the contrary.

**Given** under my hand and the Public Seal this 29th day of April 1994.



**D.E. Tatham**  
**Governor**



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CIII*

*31st MAY 1994*

*No.6*

## Appointment

Mrs. Claudette de Ceballos, Clerk of Councils, Legislature Department, 18.5.94.

## Acting Appointments

Miss Jacqueline Elizabeth Earnshaw, Acting Chief Nursing Officer, Medical Department, 31.1.94 - 25.4.94.

Mrs. Vera Joan Bonner, Acting Registrar General, Justice Department, 9.5.94.

## Confirmation of Appointments

Paul Ian Clarke, Junior Technical Assistant, Design Section, Public Works Department, 1.4.94.

Paul Robert Riddell, Housing Officer, Public Works Department, 21.4.94.

## Transfers

Mrs. Charlene Rose Rowland, from Senior Clerk, Immigration Department, to Senior Clerk, Public Service, 31.5.93.

Mrs. Charlene Rose Rowland, from Senior Clerk, Public Service, to Senior Clerk, Department of Agriculture, 25.2.94.

## Resignation

John Andrew Thomas Fowler, Radio Teacher, Education Department, 25.5.94.

## NOTICES

No. 24

27th May 1994.

### THE FALKLAND ISLANDS ASSET MANAGEMENT LIMITED AND FOX GUESTHOUSE LIMITED

TAKE NOTICE that in accordance with the provisions of S.353 of the Companies Act 1948 in its application to the

Falkland Islands and the requirements of the said section having been complied with the above-named Companies 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 to be taken.

Dated this 29th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 25

27th May 1994.

### THE FALKLAND ISLANDS ATLANTIC MARINE RECOVERIES LIMITED

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

Dated this 29th day of April 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 26

27th May 1994.

**THE FALKLAND ISLANDS  
FALKLAND SEAFOODS LIMITED**

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

Dated this 2nd day of May 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 27

27th May 1994.

**THE FALKLAND ISLANDS  
SAN CARLOS MARKETING COMPANY LIMITED**

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

Dated this 2nd day of May 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 28

27th May 1994.

**THE COLONY OF THE FALKLAND ISLANDS  
Appointment of Temporary Registrar**

In exercise of the powers conferred upon me by Section 4 of the Marriage Ordinance I, D.E. Tatham, C.M.G., Governor of the Falkland Islands —

HEREBY APPOINT —

ANDREW SHIRLEY JONES a Registrar for the purpose of solemnising marriages between 6th May 1994 and 27th September 1994.

Given under my hand at Stanley this 2nd day of May 1994.

D. E. TATHAM,  
*Governor.*

No. 29

27th May 1994.

**THE FALKLAND ISLANDS  
FALKLAND ISLANDS TRADING COMPANY  
LIMITED**

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

Dated this 2nd day of May 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 30

27th May 1994.

**THE COLONY OF THE FALKLAND ISLANDS  
Certificate of Registration as a Minister  
for Celebrating Marriage**

In accordance with Section 5 of the Marriage Ordinance, Cap. 45, I, DAVID EVERARD TATHAM, C.M.G., Governor of the Colony of the Falkland Islands Grant to REVEREND JONATHAN RICHARDS this Certificate of Registration as a Minister for celebrating marriages in the Colony.

Given under my hand and the Public Seal at Stanley this 2nd day of May 1994.

D. E. TATHAM,  
*Governor.*

No. 31

27th May 1994.

**THE FALKLAND ISLANDS  
SWB FISHING LIMITED**

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

Dated this 5th day of May 1994.

B. GREENLAND,  
*Registrar of Companies.*



No. 32

27th May 1994.

**ADMINISTRATION OF JUSTICE ORDINANCE 1949**  
**Section 42**  
**APPOINTMENT OF ADMIRALTY MARSHAL**

WHEREAS I *ANDREW SHIRLEY JONES* having been appointed to act as a Judge of the Supreme Court pursuant to the provisions of Section 8 Administration of Justice Ordinance 1949

AND WHEREAS I have sought and obtained the approval of His Excellency *DAVID EVERARD TATHAM C.M.G.* Governor of the Falkland Islands with regard to the appointment herein made

I *ANDREW SHIRLEY JONES* hereby appoint *BERNARD LESLIE ECCLES* to be Admiralty Marshal of the Supreme Court of the Falkland Islands from the date hereof until the 27th day of September 1994 to act, by himself or his substitute duly appointed, in accordance with the provisions of Order 75 of the Rules of the Supreme Court 1965 as applied to the Falkland Islands.

Dated this 6th day of May 1994.

A.S. JONES,  
*Acting Judge.*

No. 33

27th May 1994.

**THE FALKLAND ISLANDS**  
**EVERARDS BREWERY (FALKLAND ISLANDS)**  
**LIMITED**

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

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

No. 34

27th May 1994.

**THE FALKLAND ISLANDS**  
**PACKES BROTHERS AND COMPANY LTD**

TAKE NOTICE that in accordance with the provisions of S.353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the above-named Companies 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 to be taken.

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

No. 35

27th May 1994.

**THE FALKLAND ISLANDS**  
**PAULING (FI) LIMITED**

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

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

No. 36

27th May 1994.

**THE FALKLAND ISLANDS**  
**PENGUIN SHIPPING LIMITED**

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

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

No. 37

27th May 1994.

**THE FALKLAND ISLANDS**  
**MOUNT USBORNE LIMITED**

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

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

**THE FALKLAND ISLANDS  
HOLMESTED BLAKE AND COMPANY LIMITED**

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

Dated this 25th day of May 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

Cpl. C. P. DAMARELL, Q8194507.

to be a temporary Customs Officer until 11th May 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

Cpl. A. M. JACQUES, Q8196437.

to be a temporary Customs Officer until 10th September 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

Cpl. R. HOWES, K8175190.

to be a temporary Customs Officer until 15th June 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I hereby appoint —

Sgt. A. RIDDIFORD, J8111904.

to be a temporary Customs Officer until 8th August 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I hereby appoint —

Cpl. A. S. PULLAN, E8242428.

to be a temporary Customs Officer until 12th August 1994.

R. KING,  
*Collector of Customs.*

**Appointment of Temporary Customs Officer  
Customs Ordinance (Cap. 16)**

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I hereby appoint —

WO2 P. S. J. BRIGHT, B.E.M., 24505085.

to be a temporary Customs Officer until 12th October 1994.

R. KING,  
*Collector of Customs.*

**Application for Naturalisation**

Notice is hereby given that Mr. Oscar Hernan Velasquez Montana of North Arm, Falkland Islands is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted, should send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Ross Road, Stanley.

J. E. SMITH,  
*Immigration Officer.*



**THE  
FALKLAND ISLANDS GAZETTE  
(Extraordinary)**

**PUBLISHED BY AUTHORITY**

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The following is published in this Gazette —

**Register of Electors, Preliminary List 1994.**

15th May 1994

### REGISTER OF ELECTORS - PRELIMINARY LIST

The Registration Officer has prepared the preliminary list of all persons who, on the qualifying date (15 May 1994), appear to be entitled to be registered as electors for the purposes of the Electoral Ordinance 1988. In accordance with Section 12 of the Ordinance, the Registration Officer has caused the preliminary list to be published in this edition of the Gazette.

Any person who claims that the name of a person entitled to be registered as a voter in the Falkland Islands, has been omitted from the preliminary list, should notify the Registration Officer (Justice Department, Town Hall, Stanley) of such claim in writing within 28 days of publication. Additionally, any person who wishes to object to the inclusion of a person whose name appears in the preliminary list, should notify the Registration Officer within 28 days of publication. The Registration Officer shall, upon receipt of any such claim or objection, subsequently determine the same in accordance with the provisions of the Electoral Ordinance 1988.

The preliminary list has been prepared from last years Electoral Register. The following is a summary of the deletions from and additions and alterations to last years list :-

#### Deceased Electors - Camp

Alazia, Henry John  
Hirtle, Fenton

#### Deceased Electors - Stanley

Cletheroe, William Harold  
Collins, Peter Anthony  
Dearling, Leo Alexander  
Gooch, Cecilia Ines Millard  
Hardy, Douglas Morgan  
Hirtle, Wallace Carl Linden  
Robson, Louis Michael

#### Electors who have changed Constituency - Camp to Stanley

Berntsen, Diana Mary  
Clapp, Kevin Christopher  
Davis, Nicholas  
Felton, Faith Dilys  
Hewitt, Brian David  
Jaffray, Janet  
Jaffray, John  
Jaffray, Robin George  
Lang, Sandra Shirleen  
McGill, Gary  
Mcleod, Henry Donald Alexander  
Phillips, Gillian Carol  
Short, Robert Charles  
Smith, Robert William  
Whitney, Agnes Kathleen \*  
Whitney, Henry Leslie \*

Electors who have changed Constituency - Stanley to Camp

Bagley, Jacqueline Elizabeth  
 Butler, Doreen Susan  
 Butler, James Donald  
 Livermore, Darren  
 Lloyd, Melvyn John  
 Lloyd, Valerie Ann  
 Mcleod, Ian James  
 Ross, William Henry  
 Whitney, Tyrone

Electors who are no longer resident - Camp

Fox, Mary Elizabeth

Electors who are no longer resident - Stanley

Butler, Jonathan Jeffers  
 Carden, David Roger  
 Hazell, Trudi Eileen Felton  
 Metcalf, Rhoda Felton  
 Morrison, Herman  
 Peart, Robert Ernest  
 Pratlett, Geoffrey Philip  
 Thomas, Jillian Rose

Electors who have changed name by deed poll or by marriage  
 - Camp

Minnell, Michelle Rose

Electors who have changed name by deed poll or by marriage  
 - Stanley

Crowie, Ana Bonita  
 Davis, Ellen Rose  
 Johnson, Elaine Michele  
 McPhee, Denise  
 Miller, Jayne Elizabeth  
 Revy, Joanne  
 Riddell, Lisa-Marie  
 Smith, Marlaine Rose  
 Smith, Natalie Marianne  
 Stewart, Phyllis Marjorie  
 Warbrick, Andrea Mary Malvina Pitaluga  
 Watt, Sylvia Ann

Electors entitled to vote for the first time - Camp

Anderson, Rupert William\*  
 Cockwell, Benjamin William\*  
 Davis, Ian John\*

Electors entitled to vote for the first time - Stanley

Berntsen, Elaine Ellen\*  
 Binnie, Juliet Ann\*  
 Butler, Caroline May\*  
 Chater, Thomas Frederick\*  
 Clarke, Suzanna\*  
 Ford, Paul\*  
 Hansen, Terence Joseph\*  
 Harris, Karl Henry\*  
 Jaffray, Wayne Neil\*  
 Laffi, Lisa\*  
 MacDonald, Derek George\*  
 Shepherd, Colin David\*  
 Sinclair, Veronica Joyce\*  
 Smith, Ian Lars\*  
 Smith, Patricia Ann\*  
 Summers, Colin Owen\*  
 Summers, Lynn Jane\*

Electors and potential electors are advised that qualification for registration as an elector is governed by the provisions of Section 27 of the Constitution. This Section provides that, subject to certain exceptions, no person shall be qualified to be registered as an elector unless, on the qualifying date for registration as such an elector -

- (a) he is a Commonwealth citizen;
- (b) he is eighteen years of age or over; and
- (c) he has been resident in the Falkland Islands during the qualifying period.

The "qualifying period" is prescribed at Section 4 of the Electoral Ordinance 1988, where the expression is expressed to mean -

- (a) in relation to a person who was born in the Falkland Islands, that he was resident in the Falkland Islands for a period of at least 12 months immediately preceding the qualifying date; and
- (b) in relation to a person who was not born in the Falkland Islands, that he was resident in the Falkland Islands for a period of at least 5 years immediately preceding the qualifying date.

It should be noted that certain periods of absence from the Islands are permitted when calculating periods of residency. A full definition of the meaning of "resident" is contained at Section 5 of the Electoral Ordinance 1988, which is reproduced for the benefit of electors :

3. (1) For the purpose of qualification to be registered as an elector, a person who is a Commonwealth citizen is resident in the Falkland Islands if -

- (a) subject to subsection (9) below he is physically present within the Falkland Islands; or
  - (b) although not physically present within the Falkland Islands his absence therefrom is an absence which, under subsection (2) to (7) inclusive below, is a permitted absence.
- (2) In respect of a person who was born in the Falkland Islands his absence therefrom

is a permitted absence for the purposes of this section -

(a) subject to subsection (3) below, to the extent that it is or was occasioned by -

(i) the performance of his duties as a public officer in the employment of the Falkland Islands Government;

(ii) the performance of his duties as a member of the Legislative Council, as a member of the Corporation or in any office prescribed by regulations made under this Ordinance;

(b) subject to subsection (3) below, it is or was occasioned by his undergoing a course of education or training overseas;

(c) subject to subsection (3) below, it was occasioned by an other matter or thing not falling within paragraph (a) or (b) above, but to the extent only that such absence or the aggregate of such absences falling only within this paragraph (c) does not exceed six months in any period of twelve months, and only if he was physically present in the Falkland Islands for at least six months in that period of twelve months;

(d) subject to subsection (4) below, it was occasioned by his service as a member of the Falkland Islands Defence Force or as a member the regular armed forces of Her Majesty.

(3) A period of absence falling within paragraph (a) of subsection (2) above shall be, subject to subsection (9) below, a permitted absence in every case but periods of absence falling with paragraph (b) and (c) of that subsection shall be a permitted absence only if -

(a) the person concerned has been physically present in the Falkland Islands for a period of, or a period aggregating at least twelve months subsequent to his attaining eighteen years of age; or

(b) the person concerned has been physically present in the Falkland Islands for a period of, or periods aggregating, three years.

(4) A period of absence falling within paragraph (d) of subsection (2) above shall only be permitted absence if for a period of, or periods aggregating, at least three years in the five years preceding -

(a) the absence in question, or

(b) the person concerned becoming a member of the Falkland Islands Defence Force or of the regular armed forces of Her Majesty,

he was physically present in the Falkland Islands.

(5) In respect of any person who is a Commonwealth citizen, ("the first-named person"), his absence therefrom is a permitted absence for the purposes of this section if -

(a) at the time in question he was the spouse of or the dependent of another person ("the relevant person");

(b) his absence was occasioned by his accompanying the relevant person while the relevant person was absent from the Falkland Islands;

(c) the absence in question of the relevant person is in relation to the relevant person a

permitted absence under such of the other provisions of this section as are relevant to the circumstances of the relevant person; and

(d) the first-named person has been physically present in the Falkland Islands -

(i) for a period of or periods aggregating at least twelve months since he attained eighteen years of age; and

(ii) for a period of, or periods, aggregating at least five years.

(6) In respect of a person who was not born in the Falkland Islands but who is a Commonwealth citizen, his absence therefrom is, subject to subsection (7) below, a permitted absence for the purposes of this section if it falls within subsection (5) above or if -

(a) he has been physically present in the Falkland Islands for a period or periods aggregating at least twelve months since he attained the age of eighteen years; and

(b) he has been physically present in the Falkland Islands for a period of, or for periods aggregating, at least three years; and

(c) the absence in question is a permitted absence under subsection (7) below.

(7) For the purposes of paragraph (c) subsection (6) above the following periods of absence are specified as permitted absences -

(a) absences to the extent that they are occasioned by -

(i) the performance by the person of his duties as a public officer in the employment of the Falkland Islands Government;

(ii) the performance of his duties as a member of the Legislative Council, as a member of the Corporation or in any office prescribed by regulations made under this Ordinance; or

(b) if the person concerned belongs to the Falkland Islands, periods of absence occasioned by his service as a member of the Falkland Islands Defence Force or as a member of the regular armed forces of Her Majesty, and for a period of, or for periods aggregating, at least three years in the five years preceding the absence in question or his becoming a member of the force in question the person concerned was physically present in the Falkland Islands;

(c) periods of absence occasioned by a course of education or training of the person overseas;

(d) any other absence, but to the extent only that such absence or the aggregate of such absences does not exceed six months in any period of twelve months, and only if the person was physically present in the Falkland Islands for at least six months in that period of twelve months.

(8) A person who does not belong to the Falkland Islands shall not be regarded as being physically present in the Falkland Islands at any time during which he is a member of the regular armed forces of Her Majesty.

(9) Notwithstanding any previous provision of this section, no period of absence of a person shall be a permitted period of absence for the purposes of this section if that person has not been physically present in the Falkland Islands at any time during the five years immediately preceding the qualifying date.



1	Adams, John Harvey*	Ross Rd. East
2	Adams, Marjorie Rose	Ross Rd East.
3	Alazia, Albert Faulkner*	6 John St.
4	Alazia, Andrew	2 Fitzroy Rd.
5	Alazia, Anita Jayne	Government House.
6	Alazia, Freda	33 Ross Rd West.
7	Alazia, Freda Evelyn*	2 Fitzroy Rd.
8	Alazia, James Andrew	2 Fitzroy Rd.
9	Alazia, Keith*	4 Fitzroy Rd.
10	Alazia, Maggie Ann*	6 John St.
11	Alazia, Yvonne	4 Coseley Building Moody St.
12	Aldridge, Caroline Mary	2 H Jones Rd.
13	Aldridge, Kenneth John	2 H Jones Rd.
14	Allan, John*	3 Philomel Place
15	Almonacid, Gladys Mabel*	1 Villiers St.
16	Almonacid Orlando	1 Villiers St.
17	Anderson, Eddie*	22 Endurance Ave.
18	Anderson, Edward Bernard*	42 Davis St.
19	Anderson, Elizabeth Nellie*	42 Davis St.
20	Anderson, Gloria*	Jersey Est.
21	Anderson, Helen*	88 Davis St.
22	Anderson, Mildred Nessie*	8 St. Mary's Walk.
23	Anderson, Paul James	2 Church House Flats.
24	Anderson, Richard Louis	88 Davis St.
25	Anderson, Sophie Marina	YMCA, 21 Shackleton Drive.
26	Anderson, Stephen Robert	34 Ross Rd., East Flat
27	Anthony, Geraldine	1B Block A, 1 Jersey Rd.
28	Barkman, Margaret Mary	7 St Mary's Walk.
29	Barnes, Ernest*	70 Davis St.
30	Barnes, Molly Stella*	70 Davis St.
31	Barnes, Sigrid Geraldine Wells*	39 John St.
32	Barnes, Trevor Marshall	24 Eliza Cove Crescent.
33	Barton, Alison Mary	6 Villiers St.
34	Barton, Arthur John	6 Villiers St.
35	Bedford, Kita Muriel	2 Drury St.
36	Bell, Margaret Maud Elizabeth	12 Endurance Avenue.
37	Bell, Robin William Simpson*	12 Endurance Avenue.
38	Bennett, Harold*	14 Allardyce St.
39	Bennett, Lena Grace Gertrude*	14 Allardyce St.
40	Berntsen, Benjamin John	31 Ross Rd West.
41	Berntsen, Cecilia del Rosario	Whyteways James St.
42	Berntsen, Christian Olaf Alexander	7 Fitzroy Rd East.
43	Berntsen, Diana Mary	20 Eliza Cove Crescent.
44	Berntsen, Elaine Ellen*	Rincon Cottage, 10 Davis St.
45	Berntsen, Gina Michelle	7 Fitzroy Rd.
46	Berntsen, John Alexander	32 Callaghan Rd.
47	Berntsen, Kathleen Gladys*	10 Fitzroy Rd.
48	Berntsen, Lavina Maud*	Vale, Thatcher Drive.
49	Berntsen, Mary Clarissa Elizabeth*	St Martin's, Thatcher Drive.
50	Berntsen, Olaf Christian Alexander	7 Fitzroy Rd. East.
51	Berntsen, Patrick	James St.
52	Berntsen, Saphena Anya Jane*	1 Coseley Building, Moody St.
53	Berntsen, Valdamar Lars	Whyteways, James St.
54	Berntsen, William Blyth*	10 Fitzroy Rd.
55	Bertrand, Catherine Gladys*	11 Ross Rd. East.
56	Betts, Arlette	6 Discovery Close.
57	Betts, Cyril Severine*	Peter Brouard, Reservoir Rd.
58	Betts, Donald William	7 Jeremy Moore Ave.
59	Betts, Ellen Alma*	21 Fitzroy Rd.
60	Betts, George Winston Charles	35 Ross Rd. West.
61	Betts, Lucia Elizabeth	35 Ross Rd. West.
62	Betts, Owen*	35 Ross Rd. West.
63	Betts, Severine*	Flat 1, 1 Jeremy Moore Ave, East.

64	Betts, Shirley Rose	7 Jeremy Moore Ave.
65	Betts, Terence Severine	6 Discovery Close.
66	Biggs, Alastair Gordon	Trehayle, 50 John St.
67	Biggs, Althea Maria	3 Dairy Paddock Rd.
68	Biggs, Betty Josephine*	9 Moody St.
69	Biggs, Edith Joan*	Trehayle, 50 John St.
70	Biggs, Frances	16 Endurance Ave.
71	Biggs, Frederick James*	Fitzroy Rd. East.
72	Biggs, Irene Mary*	Harbour View, 4 Ross Rd East.
73	Biggs, Leslie Frederick	3 Dairy Paddock Rd.
74	Biggs, Madge Bridget Frances*	Harbour View, 4 Ross Rd East.
75	Biggs, Michael Elfed	21 Fitzroy Rd.
76	Biggs, Peter Julian Basil	16 Endurance Ave.
77	Billett, Leslie William*	5 Hebe St.
78	Binnie, Juliet Ann*	Flat 3, Church House.
79	Binnie, Susan*	3 Brandon Rd.
80	Birmingham, John	4 Drury St.
81	Birmingham, Susan Jane	4 Drury St.
82	Blackley, Candy Joy	4 Barrack St.
83	Blackley, Charles David*	4 Pioneer Row.
84	Blackley, Hilda	4 Pioneer Row.
85	Blackley, John David	4 Barrack St.
86	Blackley, Maurice	Callaghan Rd.
87	Blake, Paul Wickham	1 Ross Rd.
88	Blizard, Lawrence Gordon*	51 Fitzroy Rd.
89	Blizard, Malvina Mary*	51 Fitzroy Rd.
90	Blyth, Agnes Ruth*	2 Brandon Rd.
91	Blyth, Alfred John*	2 Brandon Rd.
92	Blyth, John*	5 St Mary's Walk.
93	Bonner, Donald William*	Chauffeurs Cottage.
94	Bonner, Hayley Trina	Ross Rd West.
95	Bonner, Linda Jane	4A Ross Rd West.
96	Bonner, Nicholas	4A Ross Rd West.
97	Bonner, Paul Roderick	5 John St.
98	Bonner, Timothy	Ross Rd West.
99	Bonner, Vera Ann	5 John St.
100	Bonner, Vera Joan*	Chauffeurs Cottage.
101	Bonner, Violet*	40 Ross Rd.
102	Booth, Jessie*	Racecourse Cottage.
103	Booth, Joseph Bories*	7 Philomel St.
104	Booth, Myriam Margaret Lucia	7 Philomel St.
105	Booth, Stuart Alfred*	Racecourse Cottage.
106	Bound, Graham Leslie	Barrack St.
107	Bound, Joan*	Barrack St.
108	Rowles, Norma Evangeline	1A Villiers St.
109	Bowles, William Edward*	1A Villiers St.
110	Bowles, William George Troyd*	1A Villiers St.
111	Bragger, Edward Laurence	14 Jeremy Moore Ave.
112	Bragger, Olga	14 Jeremy Moore Ave.
113	Browning, Edwina	Davis Street.
114	Browning, Gavin	Flat 1, 5 Jeremy Moore Ave. East.
115	Browning, Rex*	35 Davis St.
116	Browning, Richard William	Davis St.
117	Browning, Trevor Osneth	6A Pioneer Row.
118	Buckett, Ronald Peter	49 Fitzroy Rd.
119	Buckland, Charles Ronald	21 Callaghan Rd.
120	Buckland, Darlene Joanna	13 James St.
121	Bundes, Robert John Christian*	17 Fitzroy Rd.
122	Burnard, Linda May	3 Jeremy Moore Ave.
123	Burnard, Peter	3 Jeremy Moore Ave.
124	Burns, Mary Anne*	34 Davis St.
125	Bury, Ian Thomas	63 Davis St.
126	Butcher, Michael George	3A Dairy Paddock Rd.

127	Butcher, Trudi	3A Dairy Paddock Rd.
128	Butler, Caroline May*	1A Moody St.
129	Butler, Elsie Maud*	8 John St.
130	Butler, Ernest Joseph	1A Moody St.
131	Butler, Frederick Lowther Edward Olai*	8 John St.
132	Butler, George Joseph*	1A Moody St.
133	Butler, Joan May	1A Moody St.
134	Butler, Laurence Jonathan*	2 Davis St. East
135	Butler, Margaret Orlanda	15A James St.
136	Butler, Orlanda Betty	2 Davis St. East
137	Cameron, Jane Diana Mary Keith	40 Davis St.
138	Cant, Carol Rosine	37 Callaghan Rd. Jersey Est.
139	Cant, Martin Ronald	37 Callaghan Rd. Jersey Est.
140	Card, Denise	Flat 2, 30 Jersey Rd.
141	Carey, Anthony Michael*	19 Ross Rd. West.
142	Carey, Gladys*	19 Ross Rd. West.
143	Carey, Mary Ann Margaret*	18 Ross Rd. West.
144	Carey, Terence James*	18 Ross Rd. West.
145	Castle, David Peter	26 John St.
146	Castle, Isobel	26 John St.
147	Ceballos, Claudette*	28 Endurance Ave.
148	Ceballos, Eulogio Gabriel	28 Endurance Ave.
149	Chapman, Helen	6 Fitzroy Rd. East.
150	Chapman, Paul	6 Fitzroy Rd. East.
151	Chater, Annie	33 Fitzroy Rd.
152	Chater, Anthony Richard	33 Fitzroy Rd.
153	Chater, Thomas Frederick*	33 Fitzroy Rd.
154	Cheek, Barbara	10 Ross Rd.
155	Cheek, Diane	10 Ross Rd.
156	Cheek, Frederick John*	5 Fitzroy Rd. East.
157	Cheek, Gerald Winston	10 Ross Rd.
158	Cheek, Janet Linda*	25 Ross Rd. West.
159	Cheek, John Edward*	25 Ross Rd. West.
160	Cheek, Marie	10 Ross Rd.
161	Cheek, Miranda	25 Ross Rd. West.
162	Cheek, Rosalind Catriona*	25 Ross Rd. West.
163	Clapp, Kevin Christopher	YMCA, 12 Scoresby Close.
164	Clarke, Angeline Gloria*	1B, Block A, 6 Jersey Rd.
165	Clarke, Camilla Marie	8 Drury St.
166	Clarke, Christopher	8 Jeremy Moore Ave.
167	Clarke, David James	Ross Rd. Stanley
168	Clarke, Derek Simon*	2 Allardyce St.
169	Clarke, Doreen*	17 Ross Rd. West.
170	Clarke, Enid Elizabeth	4B Ross Rd. West.
171	Clarke, Eva Lynn*	17 Jeremy Moore Ave.
172	Clarke, Fiona Alison	Flat 1, 5 Jeremy Moore Ave. East.
173	Clarke, Gwynne Edwina	17 Jeremy Moore Ave.
174	Clarke, Hector*	27 Eliza Cove Crescent.
175	Clarke, Ian	17 Ross Rd. West.
176	Clarke, Isabel Joan*	1A Moody St.
177	Clarke, Jane Lucacia*	8 Pioneer Row.
178	Clarke, James Martin*	4B Ross Rd. West.
179	Clarke, Jonathan Terence*	17 Jeremy Moore Ave.
180	Clarke, Joyce Kathleen*	27 Eliza Cove Crescent.
181	Clarke, Julie	1 Discovery Close
182	Clarke, Kathleen Gay	60 Davis St.
183	Clarke, Marvin Thomas	7 Fitzroy Rd.
184	Clarke, Paul Ian*	YMCA, 21 Shackleton Drive.
185	Clarke, Ronald John*	17 Ross Rd. West.
186	Clarke, Rudy Thomas	8 Drury St.
187	Clarke, Suzanna*	69 Fitzroy Rd.
188	Clarke, Terence John	17 Jeremy Moore Ave.
189	Clarke, Trudi Ann	7 Fitzroy Rd.

190	Clarke, Violet Rose	31 Ross Rd. West.
191	Clausen, Denzil George Gustavus	Flat 7, 2 Eliza Place.
192	Clausen, Melanie Florence	1 Hebe St.
193	Claxton, Frank Brian*	Ross Rd. East.
194	Claxton, Margaret	Ross Rd. East.
195	Clayton, Brian	16 St Marys Walk.
196	Clayton, Susan	16 St Marys Walk.
197	Clement, Jane	Globe Hotel, Crozier Place.
198	Cletheroe, Kenneth Stanley*	45 Fitzroy Rd.
199	Clifton, Cathy Louise	4 Fieldhouse Close.
200	Clifton, Charles*	3 Ross Rd. West.
201	Clifton, Darwin Lewis	53 Davis St.
202	Clifton, Doreen	3 Ross Rd. West.
203	Clifton, Gavin John*	4 Fieldhouse Close.
204	Clifton, Kevin*	20 Davis St.
205	Clifton, Marie*	Flat 3, 6 Jersey Rd.
206	Clifton, Neil	20 Davis St.
207	Clifton, Stephen Peter	61 Fitzroy Rd.
208	Clifton, Terence Charles	3 Ross Rd. West.
209	Clifton, Teresa Ann	20 Davis St.
210	Clifton, Valerie Ann	61 Fitzroy Rd.
211	Clingham, Yvonne Helen	38 Ross Rd.
212	Cofre, Anya Evelyn	Ross Rd. West.
213	Cofre, Elvio Miguel	Ross Rd. West
214	Collier, Phyllis Candy	Flat 10, 2B Block A, 6 Jersey Rd.
215	Collins, Shiralee	Flat 10, 3B Block A, 6 Jersey Rd.
216	Coleman, Jeanette	10 Pioneer Row.
217	Connolly, Janice	9 Ross Rd. West.
218	Connolly, Kevin Barry	1 Kings St.
219	Coombe, Peter	12 Ross Rd. West.
220	Coombe, Robert	12 Ross Rd. West.
221	Coombe, Shirley Anne	12 Ross Rd. West.
222	Coulter, Paula*	Fieldhouse Close.
223	Courtney, Anthony Clive	Lady Hunt House, John St.
224	Courtney, Julie Doris	Lady Hunt House, John St.
225	Coutts, Carolynne Sarah	36 Ross Rd. West.
226	Coutts, Charles	Feltons Stream.
227	Coutts, Charles Lindsay*	33 Ross Rd.
228	Coutts, Diana Marion	13 Campbell Drive.
229	Coutts, John	36 Ross Rd. West.
230	Coutts, Olga*	33 Ross Rd.
231	Coutts, Peter	13 Campbell Drive.
232	Crowie, Ana Bonita	69 Fitzroy Rd.
233	Crowie, Nicola Jane	35 Callaghan Rd. Jersey Est.
234	Curtis, Alfred William Hamilton	1 Brandon Rd.
235	Curtis, Barbara Joan	1 Brandon Rd.
236	Curtis, James William Hamilton	1 Brandon Rd.
237	Davies, Andrew Liam*	24 Endurance Ave.
238	Davies, Anthony Warren	7 Callaghan Rd.
239	Davies, Colin George	15 Ross Rd. West.
240	Davies, Eileen Wynne	15 Ross Rd. West.
241	Davies, Jacqueline Nancy	7 Callaghan Rd.
242	Davies, Stephen Andrew*	7 Callaghan Rd.
243	Davies, William	24 Endurance Ave.
244	Davis, Ellen Rose	Davis St.
245	Davis, Lynsey Leander*	Flat 1, 1 Jeremy Moore Ave. East.
246	Davis, Maurice Nigel	Davis St.
247	Davis, Nicholas	15 James St.
248	Davis, Raymond Andrew	YMCA, 12 Scoresby Close.
249	Davis, Roy George Victor	Narrows View.
250	Davis, Sharon Sandra Evelyn	Narrows View.
251	Davis, William John*	St. Peter in the Wood, Thatcher Drive.
252	Davy, Patrick Alex Field	Flat 3, 3 Jeremy Moore Ave.

253	Decroliere, Carrie Madeline Helen	5 Discovery Close.
254	Dickson, Caroline Christine Bird*	108 Davis St.
255	Dodd, Alison	1 Pioneer Row.
256	Doherty, Ian	12 McKay Close.
257	Duncan, Doreen*	Tenacres.
258	Duncan, William*	Tenacres.
259	Earnshaw, Jacqueline Elizabeth	32 Ross Rd. West.
260	Ellis, Cyril*	Fieldhouse Close.
261	Ellis, Valerie	Fieldhouse Close.
262	Evans, Gladys Alberta*	8 Barrack St.
263	Ewing, Gordon	4 Jeremy Moore Ave.
264	Ewing, Irene	4 Jeremy Moore Ave.
265	Eynon, Carol	8 Villiers St.
266	Eynon, David John	8 Villiers St.
267	Eynon, Leeann Watson	2A Jeremy Moore Ave. East
268	Fairfield, James Steven	15 Jeremy Moore Ave.
269	Faria, Basil Harry	3A Brisbane Rd.
270	Faria, Mary Ann*	3A Brisbane Rd.
271	Felton, Faith Dilys	1B Capricorn Rd.
272	Felton, Violet Regina Margaret*	Callaghan Rd.
273	Ferguson, Rose	Flat 7, 1 Jeremy Moore Ave.
274	Fiddes, Douglas Graham	Kent Rd.
275	Fiddes, Gardner Walker	8 Endurance Ave.
276	Fiddes, Julia Bertrand	Kent Rd.
277	Fiddes, Mary McKinnon Livingstone*	4 Moody St.
278	Fiddes, Melody Christina	8 Endurance Moore Ave.
279	Fiddes, Robert*	4 Moody St.
280	Finlayson, Iris Dwenda Margaret*	7 John St.
281	Finlayson, Peter	6 Brandon Rd.
282	Finlayson, Phyllis*	6 Brandon Rd.
283	Fisher-Smith, Julie Anne*	Fieldhouse Close.
284	Fogerty, Richard Edwin John	Stone Cottage.
285	Ford, Arthur Henry*	6 Drury St.
286	Ford, Caroline	2B, Jeremy Moore Ave East.
287	Ford, Charles David*	15 Brandon Rd.
288	Ford, Cherry Rose	1 James St.
289	Ford, Christopher James	12 Davis St.
290	Ford, Colin Stewart	15 Kent Rd.
291	Ford, Colleen Mary	12 Davis St.
292	Ford, David	24 James St.
293	Ford, Frederick James	12 Davis St.
294	Ford, Gerard Allan	12 Davis St.
295	Ford, Hazel	2 Philomel Place.
296	Ford, James Edward*	6A Jeremy Moore Ave. East.
297	Ford, Leann Caroline	15 Kent Rd.
298	Ford, Leonard	15 Brandon Rd.
299	Ford, Marilyn Christina	24 James St.
300	Ford, Michael	1 James St.
301	Ford, Paul*	13 Endurance Ave.
302	Ford, Robert	1 Davis St.
303	Fullerton, Mary Ellen*	Government House
304	Gilbert, Judith Elizabeth	22 Jeremy Moore Ave.
305	Gilbert, Robert Ernest	22 Jeremy Moore Ave.
306	Gilding, Deborah	69 Fitzroy Rd.
307	Gilding, Peter Bernard	4 Philomel St.
308	Gooch, Dudley Frederick*	34 John St.
309	Goodwin, Colin Valentine	86 Davis St.
310	Goodwin, Derek Samuel*	7 Ross Rd.
311	Goodwin, Emily Rose*	7 Brisbane Rd.
312	Goodwin, Hazel Rose*	3 Police Cottages. 7 Ross Rd.
313	Goodwin, June Elizabeth	86 Davis St.
314	Goodwin, Kathleen Edith Marguerite*	6 St. Mary's Walk.
315	Goodwin, Margaret Ann	3 Harbour View.

316	Goodwin, Michelle Jane*	6 McKay Close
317	Goodwin, Robin Christopher	27 Callaghan Rd.
318	Goodwin, Simon James	Flat 4, Block C, 30 Jersey Rd.
319	Goodwin, Una	27 Callaghan Rd.
320	Goodwin, William Andrew Nutt*	3 Harbour View.
321	Goodwin, William John Maurice	7 Brisbane Rd.
322	Goss, Amara Theresa	7 Brandon Rd.
323	Goss, Annagret	16 Jeremy Moore Ave.
324	Goss, Dorothy Ellen	11 Ross Rd. West
325	Goss, Elizabeth Rose	15 Callaghan Rd.
326	Goss, Grace Elizabeth*	5 Ross Rd. East.
327	Goss, Morgan Edmund*	16 Jeremy Moore Ave.
328	Goss, Simon Peter Miller	6 Kent Rd.
329	Goss, William Henry (Jnr)	7 Brandon Rd.
330	Goss, William Henry (Snr)*	5 Ross Rd. East.
331	Gould, Arthur William	Moody St.
332	Grant, Lennard John*	3 Moody St.
333	Grant, Mildred*	3 Moody St.
334	Gray, Andrea Patricia	22 Ross Rd. West.
335	Greenland, Bonita Doreen*	3 Racecourse Rd.
336	Greenland, Kenneth David*	3 Racecourse Rd.
337	Grimmer, Keith	15 Pioneer Row.
338	Grimmer, Marilyn	15 Pioneer Row.
339	Hadden, Alexander Burnett*	27 Fitzroy Rd.
340	Hadden, Sheila Peggy*	27 Fitzroy Rd.
341	Halford, Rodney John	Tenacres.
342	Halford, Sharon*	Tenacres.
343	Hall, David Albert	56 Davis St.
344	Hall, Marilyn Joyce	56 Davis St.
345	Halliday, Evelyn Edna*	9 Brisbane Rd.
346	Halliday, Gerald	Flat 1, 6 Racecourse Rd.,
347	Halliday, John Arthur Leslie*	108 Davis St.
348	Halliday, Leslie John*	5 Villiers St.
349	Halliday, Margaret Mary*	5 Villiers St.
350	Halliday, Raynor	9 Brisbane Rd.
351	Hansen, Douglas John*	6 Fitzroy Rd.
352	Hansen, Keva Elizabeth	1 Dairy Paddock Rd.
353	Hansen, Terence Joseph*	1 Dairy Paddock Rd.
354	Harris, Christopher James	Flat 8, Block C, 30 Jersey Rd.
355	Harris, Heather	3 Ross Rd. East.
356	Harris, Jill Yolanda Miller	19 Fitzroy Rd.
357	Harris, Karl Henry*	19 Fitzroy Rd.
358	Harris, Leslie Sidney	19 Fitzroy Rd.
359	Harris, Michael Ronald	3 Ross Rd. East
360	Harris, Ralph Aaron	19 Fitzroy Rd.
361	Harvey, Muriel Elsie Elizabeth*	2 King St.
362	Harvey, Sheila*	2 Coseley Building, Moody St.
363	Harvey, William*	21 Fitzroy Rd.
364	Hawksworth, David	29 Fitzroy Rd.
365	Hawksworth, Jeanette*	29 Fitzroy Rd.
366	Hawksworth, Mary Catherine	5A Brisbane Rd.
367	Hawksworth, Pauline May	29 Fitzroy Rd.
368	Hawksworth, Terence	5A Brisbane Rd.
369	Hayward, Marjorie	34 Eliza Cove Crescent.
370	Hayward, Peter Dennis*	34 Eliza Cove Crescent.
371	Heathman, Malcolm Keith	Eliza Cove Rd.
372	Heathman, Mandy Gail	Eliza Cove Rd.
373	Heathman, Violet*	19 Davis St.
374	Henry, Alan Richard	2B Capricorn Rd.
375	Henry, Patricia Denise	2B Capricorn Rd.
376	Hewitt, Alison Denise	23 Shackleton Drive.
377	Hewitt, Brian David	14 Jeremy Moore Ave.
378	Hewitt, Frances Agnes	32 Callaghan Rd.

379	Hewitt, Gary George	3 Hebe Place.
380	Hewitt, Kevin John	14 Jeremy Moore Ave.
381	Hewitt, Margaret Ann	3 Hebe Place.
382	Hewitt, Rachel Catherine Orissa*	4 St. Mary's Walk.
383	Hewitt, Robert John David*	Flat 4 6 Racecourse Rd.
384	Hills, Heather Margaret*	5 Davis St.
385	Hills, Richard William*	5 Davis St.
386	Hirtle, Christine	1A Jersey Est.
387	Hirtle, Leonard Lloyd	20 Jeremy Moore Ave.
388	Hirtle, Mary Ann*	12 Drury St.
389	Hirtle, Michelle*	20 Jeremy Moore Ave.
390	Hirtle, Rose Ann Shirley*	4 Villiers St.
391	Hirtle, Sandra May Winifred	Eliza Cove Rd.
392	Hirtle, Shirley	20 Jeremy Moore Ave.
393	Hirtle, Zane Eric	Eliza Cove Rd.
394	Hobman, Anilda Marilu	34 Ross Rd. West Flat
395	Hobman, Luis Alfonso*	34 Ross Rd. West Flat
396	Howatt, Derek Frank*	4 Racecourse Rd.
397	Howe, Alison Delia	36 Davis St.
398	Howe, Paul Anthony	36 Davis St.
399	Howells, Anne Stephanie	Davis St.
400	Howells, Roger	Davis St.
401	Huanel, Jose Raul	Flat 1, 3 Jeremy Moore Ave.
402	Igao, Pauline Lynx	15 Scoresby Close.
403	Jacobsen, Alistair	1A Philomel St.
404	Jacobsen, Catherine Joan	1A Philomel St.
405	Jaffray, Angus	Cemetery Cottage.
406	Jaffray, Christopher	Cemetery Cottage.
407	Jaffray, Eileen	5 Hebe St.
408	Jaffray, Estelle Anita	Cemetery Cottage.
409	Jaffray, Frank Alexander	8 Discovery Close.
410	Jaffray, Gerard Alan*	5 Hebe St.
411	Jaffray, Helen Rose	84 Davis St.
412	Jaffray, Ian	5 Hebe St.
413	Jaffray, Ingrid Joyce	Flat 3, 1 Jeremy Moore Ave.
414	Jaffray, Jacqueline Ann	84 Davis St.
415	Jaffray, Janet	14 Pioneer Row.
416	Jaffray, Janice Vanessa	3c Jersey Estate.
417	Jaffray, John	14 Pioneer Row
418	Jaffray, June Elizabeth	Flat 1, Church House
419	Jaffray, Kenneth Ian	2 Dean St.
420	Jaffray, Lisa Jane*	Flat 3, 1 Jeremy Moore Ave.
421	Jaffray, Robin George	6A Pioneer Row.
422	Jaffray, Stephen James	13 James St.
423	Jaffray, Terence Roy	Flat 3, 1 Jeremy Moore Ave.
424	Jaffray, Terri-Ann	Flat 9, 6 Jersey Rd.
425	Jaffray, Tony	84 Davis St.
426	Jaffray, Wayne Neil*	5 Hebe St.
427	Jennings, Neil	Flat 4, 30 Jersey Rd.
428	Jennings, Stephen	5 Fitzroy Rd.
429	Johnson, Elaine Michele	8 Discovery Close.
430	Johnson, Jacqueline	5 Kent Rd.
431	Johnson, Michael Neil	5 Kent Rd.
432	Johnson, Stanley Howard*	St Andrews, Thatcher Drive
433	Johnson, Vanda Joan	17 Callaghan Rd.
434	Jones, Alan Smith	26 Ross Rd. West.
435	Jones, Jennifer	26 Ross Rd. West.
436	Jones, John Hugh	1 Brandon Rd.
437	Jones, Kevin Richard	Eliza Close Crescent
438	Jones, Michael David	6 Allardyce St.
439	Jones, Michelle	1 Brandon Rd.
440	Jones, Sheila Janice	6 Allardyce St.
441	Jones, Yvonne Malvina	3 Discovery Close.

442	Jordan, Dilys Margaret Ann	14A Drury St.
443	Keane, Alva Rose Marie	18 Davis St.
444	Keenleyside, Charles Desmond (Snr)*	3 Pioneer Row.
445	Keenleyside, Charles Desmond (Jnr)*	3 John St.
446	Keenleyside, Dorothy Maud*	3 Pioneer Row.
447	Keenleyside, Manfred Michael Ian	Snake Hill.
448	Keenleyside, Nanette Barbara	Snake Hill.
449	Keenleyside, Susan Noreen	3 John St.
450	Kenny, Erling	20 James St.
451	King, Anna Constance Eve	38 Davis St.
452	King, Desmond George Buckley*	38 Davis St.
453	King, Gladys Evelyn*	39 Fitzroy Rd.
454	King, Glynis	2B Jeremy Moore Ave. East.
455	King, Peter Thomas*	10 Jeremy Moore Ave.
456	King, Robert John*	1D Jersey Est.
457	King, Rosemarie	10 Jeremy Moore Ave.
458	King, Vernon Thomas*	39 Fitzroy Rd.
459	Kluzniak, Beulah*	26 Ross Rd. East.
460	Kluzniak, Bogaslaw Sylvester*	26 Ross Rd. East.
461	Kultschar, John William	4 Davis St. East.
462	Kultschar, Yvonne Rosina	4 Davis St. East.
463	Laffi, Atilio Segundo	3 Brisbane Rd.
464	Laffi, Kathleen Mary	3 Brisbane Rd.
465	Laffi, Lisa*	3 Brisbane Rd.
466	Lang, David Geoffrey*	45 Callaghan Rd. Jersey Est.
467	Lang, James Patrick	Flat 2, 3 Jeremy Moore Ave.
468	Lang, Sandra Shirleen	Moody St.
469	Lang, Theresa Margaret	45 Callaghan Rd. Jersey Est.
470	Lang, William Frank*	3 James St.
471	Larsen, Ellen	74 Davis St.
472	Lee, Alfred Leslie*	11 Drury St.
473	Lee, Derek William	Davis St.
474	Lee, Gladys*	11 Drury St.
475	Lee, Leslie James	10 Allardyce St.
476	Lee, Robin Myles	3 Davis St. East.
477	Lee, Trudi Dale	10 Allardyce St.
478	Lewis, James*	2 St. Mary's Walk.
479	Lewis, Jean*	2 St. Mary's Walk.
480	Livermore, Anton	33 Jersey Est. Callaghan Rd.
481	Livermore, Marie Anne	33 Jersey Est. Callaghan Rd.
482	Loftus, Anthony	Kent Rd.
483	Loftus, Colleen	John Street
484	Lowe, Adrian Stewart	Fieldhouse Close.
485	Luxton, Ernest Falkland*	38 John St.
486	Luxton, Jennifer Mary	4 Hebe Place.
487	Luxton, Michael	1A Pioneer Row.
488	Luxton, Nicola	1A Pioneer Row.
489	Luxton, Sybil Grace*	38 John St.
490	Luxton, Winifred Ellen*	15 Fitzroy Rd.
491	Lyse, Ethel Malvina*	65 Fitzroy Rd.
492	Lyse, George Walter*	Moody St.
493	Lyse, Linda Margaret	65 Fitzroy Rd.
494	Lyse, Reginald Sturdee*	65 Fitzroy Rd.
495	Lyse, Sydney Russell*	KEMH.
496	Macaskill, Angus Lindsey	8 Jeremy Moore Ave.
497	Macaskill, Jeanette May	8 Jeremy Moore Ave.
498	Macaskill, John	34 Ross Rd. West.
499	Malcolm, George*	7 Allardyce St.
500	Malcolm, Velma*	7 Allardyce St.
501	May, Brian Roy	21 Jeremy Moore Ave.
502	May Bruce Raymond	Wardens House, KEMH.
503	May Connie	Wardens House, KEMH.
504	May, Heather*	1 Glasgow Rd.



505	May, Jonathan Roy	21 Jeremy Moore Ave.
506	May, Monica	21 Jeremy Moore Ave.
507	May, William Albert*	1 Glasgow Rd.,
508	Middleton, Brian	22 Eliza Cove Crescent.
509	Middleton, Caroline Ann	7 James St.
510	Middleton, Dennis Michael	Dolphin Cottage.
511	Middleton, Ellen*	50 Davis St.
512	Middleton, Graham Cyril	50 Davis St.
513	Middleton, Joan Eliza	8 James St.
514	Middleton, Leonard	Fitzroy Rd.
515	Middleton, Phillip John	5 St Marys Walk.
516	Middleton, Sharon Elizabeth	Dolphin Cottage.
517	Middleton, Shirley	Fitzroy Rd.
518	Middleton, Stephanie Ann	22 Eliza Cove Crescent.
519	Miller, Andrew Nigel	7 Dean St.
520	Miller, Betty Lois*	Market Gdn, Stly Airport Rd.
521	Miller, Carol	Kent Rd.
522	Miller, Florence Roberta*	5 Moody St.
523	Miller, Gail Marie	8A Jeremy Moore Ave.
524	Miller, Jayne Elizabeth	7 Dean St.
525	Miller, Simon Roy	Kent Rd.
526	Miller, Timothy John Durose	Market Gdn, Stly Airport Rd.
527	Minto, Alistair Daen	Flat 5, 6 Racecourse Rd.
528	Minto, Dilys Rose	18 Endurance Ave.
529	Minto, Graham Stewart	12 Brisbane Rd.
530	Minto, Patrick Andrew	Flat 2, 6 Jersey Rd.
531	Minto, Timothy Ian	18 Endurance Ave.
532	Miranda, Augusto*	31 Davis St.
533	Miranda, Carmen	3 Drury St.
534	Miranda, Ramon	3 Drury St.
535	Miranda, Winifred Dorothy*	3 Drury St.
536	Mitchell, Leon John	Flat 3, 6 Jersey Rd.
537	Moffat, Angela	Davis St. East.
538	Moffat, James	Davis St. East.
539	Morris, Alana Marie	4 Callaghan Rd.
540	Morris, David*	4 Callaghan Rd.
541	Morris, Trevor Alan	59 Fitzroy Rd.
542	Morrison, Donald Ewen*	St Sampsons Thatcher Drive
543	Morrison, Doreen	82 Davis St.
544	Morrison, Eleanor Olive*	Brisbane Rd.
545	Morrison, Fayen	54 John St.
546	Morrison, Graham Stewart	46 Davis St.
547	Morrison, Hyacinth Emily*	St Peter Port, Thatcher Drive.
548	Morrison, Joan Margaret	Flat 6, 1 Jeremy Moore Ave.
549	Morrison, Lewis Ronald	82 Davis St.
550	Morrison, Muriel Eliza Ivy*	40 Eliza Cove Crescent.
551	Morrison, Nanette Rose	46 Davis St.
552	Morrison, Nigel Peter	7 James St.
553	Morrison, Patrick	1 Brandon Rd.
554	Morrison, Paul Roderick	1 Brandon Rd.
555	Morrison, Ronald Terence*	5 Racecourse Rd.
556	Morrison, Stewart	46 Davis St.
557	Morrison, Trevor	6A Jeremey Moore Ave.
558	Morrison, Valerie Ann	6A Jeremy Moore Ave.
559	Morrison, Violet Sarah*	5 Racecourse Rd.
560	Morrison, William Roderick Halliday	54 John St.
561	Murphy, Ann Susan	2 King St.
562	Murphy, Bessie*	68 Davis St.
563	Murphy, Michael James*	68 Davis St.
564	MacDonald, Colin George	26 Endurance Ave.
565	MacDonald, Derek George*	26 Endurance Ave.
566	MacDonald, Irene	26 Endurance Ave.
567	MacDonald, John Alexander Horne	Flat 3, Jeremy Moore Ave.

568	McBeth, Phyllis Elizabeth Grace	17 Brandon Rd.
569	McCallum, Bettina Kay	14 Drury St.
570	McCallum, Christopher John	8A Jeremy Moore Ave.
571	McCallum, Ellen*	14 Brandon Rd.
572	McCallum, James*	14 Brandon Rd.
573	McCallum, Timothy Andrew	14A Drury St.
574	McCormick, Dale Ronald	72 Davis St.
575	McCormick, Pauline Margaret Ruth	Warrah Guest House, John St.
576	McCormick, Richard Paul*	Warrah Guest House, John St.
577	McEachern, Gloria Jane	2 H Jones Rd.
578	McGill, Coral Elizabeth	34 Ross Rd, East Flat.
579	McGill, Darrel Ian	Barrack St.
580	McGill, Diane Beverley	2 James St.
581	McGill, Doris Mary*	32 Davis St.
582	McGill, Gary	20 Eliza Cove Crescent.
583	McGill, Glenda	Barrack St.
584	McGill, Ian Peter	Barrack St.
585	McGill, Jane	10 Discovery Close.
586	McGill, Len Stanford*	2 James St.
587	McGill, Lorraine Iris	10 Ross Rd. East.
588	McGill, Roy	10 Ross Rd. East.
589	McKay, Clara Mary*	20 Ross Rd. West.
590	McKay, Heather Valerie	Eliza Cove Crescent.
591	McKay, James John*	7 Villiers St.
592	McKay, Jane Elizabeth*	7 Villiers St.
593	McKay, Jeannie Paulina	64 Davis St.
594	McKay, Josephine Ann	25 Callaghan Rd.
595	McKay, Kenneth Andrew	25 Callaghan Rd.
596	McKay, Kevin Derek Charles*	12 Scoresby Close
597	McKay, Michael John	64 Davis St.
598	McKay, Neil	62 Davis St.
599	McKay, Paul Anthony	Flat 5, 6 Jersey Rd.
600	McKay, Peter John	21 Ross Rd. West
601	McKay, Rex	Eliza Cove Crescent
602	McKay, Shelley Jane	7 Villiers St.
603	McKay, Stephen John*	Casteal, Thatcher Drive.
604	McKay, William Robert*	20 Ross Rd. West.
605	McKenzie, Alice Maude	Moody Brook Homestead.
606	McKenzie, Charles Alexander Albert John	Moody Brook Homestead.
607	McLaren, Tony Eugene Terence	12 Allardyce St.
608	McLeod, David	49 Callaghan Road.
609	McLeod, Dawn	90 Davis St.
610	McLeod, Donald Henry*	1B Jersey Est.
611	McLeod, Ellen May*	St Sampson's, Thatcher Drive.
612	McLeod, Henry Donald Alexander	21 Shackleton Drive.
613	McLeod, Ian	9 Fitzroy Rd.
614	McLeod, Janet Wensley	75 Davis St.
615	McLeod, Janice	2 Ross Rd. West.
616	McLeod, John (1)	1 Campbell Drive.
617	McLeod, John (2)	Flat 1, Jeremy Moore Ave.
618	McLeod, Kenneth Benjamin John*	90 Davis St.
619	McLeod, Madeline Jean	1 Campbell Drive.
620	McLeod, Mally	9 Fitzroy Rd.
621	McLeod, Margaret Anne*	Fitzroy Rd. East.
622	McLeod, Michael William	15A James St.
623	McLeod, Robert	75 Davis St.
624	McLeod, Robert John	2 Ross Rd. West.
625	McPhee, Denise	Fieldhouse Close.
626	McPhee, Grace Darling*	KEMH.
627	McPhee, Iris Blanche*	14 Davis St.
628	McPhee, Justin Owen	Fieldhouse Close.
629	McPhee, Marjorie May*	14 John St.
630	McPhee, Owen Horace*	14 John St.

631	McPhee, Patrick*	14 Davis St.
632	McPhee, Sara*	8 Dairy Paddock Rd.
633	McPhee, Sheila Margaret	8 Dairy Paddock Rd.
634	McPhee, Terence Owen	8 Dairy Paddock Rd.
635	McRae, Richard Winston	Flat 2, 6 Racecourse Rd.
636	Neal, Richard John	1 Dean St.
637	Neilson, Barry Marwood	23 Ross Rd.
638	Neilson, Margaret	23 Ross Rd.
639	Newell, Joseph Orr	3 Villiers St.
640	Newell, Paula Michelle*	3 Villiers St.
641	Newell, Trudi Malvina	3 Villiers St.
642	Newman, Andrew Raymond	Flat 1, Church House,
643	Newman, Clive Alexander	5 Brandon Rd.
644	Newman, Dorothy Elizabeth*	Fitzroy Rd.
645	Newman, Dwenda Rose	5 Brandon Rd.
646	Newman, Joyce Noreen	80 Davis St.
647	Newman, Marlene	11 Jeremy Moore Ave.
648	Newman, Raymond Winston	11 Jeremy Moore Ave.
649	Newman, Terence*	11 Jeremy Moore Ave.
650	Nightingale, Susan Jane	Narrows View,
651	Nutter, Arthur Albert	9 Brandon Rd.
652	Nutter, Josephine Lesley	9 Brandon Rd.
653	O'Shea, Desmond	9 Campbell Drive.
654	Parrin, Norman George*	108 Davis St.
655	Pauloni, Hilary Maud*	63 Fitzroy Rd.
656	Pauloni, Romolo Vittorio*	63 Fitzroy Rd.
657	Peake, Arthur	19 James St.
658	Peake, Clair Linda	19 James St.
659	Peck, Burned Brian	22 James St.
660	Peck, Carol Margaret	2 Discovery Close.
661	Peck, David Patrick*	78 Davis St.
662	Peck, Eleanor Margaret	23 Shackleton Drive.
663	Peck, Evelyn Elizabeth	22 James St.
664	Peck, Gordon Pedro James *	17 Brandon Rd.
665	Peck, James	2 Discovery Close.
666	Peck, Kim Brian	15 Campbell Drive.
667	Peck, Mary*	4 Fitzroy Rd. East.
668	Peck, Maureen Heather	78 Davis St.
669	Peck, Patrick William*	78 Davis St.
670	Peck, Shirley	2 Barrack St.
671	Peck, Terence John	23 Shackleton Drive.
672	PED,	Airport Rd.,
673	Perkins Vivienne Esther Mary*	33 John St.
674	Perry, Augustave Walter*	9 Villiers St.
675	Perry, Beatrice Annie Jane*	25 Ross Rd. East.
676	Perry, Hilda Blanche*	2, Police Cottage, 8 Ross Rd.
677	Perry, Robert Juan Carlos	25 Ross Rd. East.
678	Perry, Thomas George*	2, Police Cottage, 8 Ross Rd.
679	Perry, Thora Virginia*	17 Fitzroy Rd.
680	Pettersson, Derek Richard	21 Eliza Cove Crescent.
681	Pettersson, Eileen Heather	30 Davis St.
682	Pettersson, Tony	30 Davis St.
683	Pettersson, Trudi Ann	21 Eliza Cove Crescent.
684	Phillips, Albert James	16 Brandon Rd.
685	Phillips, David Dawson	35 Fitzroy Rd.
686	Phillips, Gillian Carol*	Flat 2, 5 Jeremy Moore Ave East.
687	Phillips, Lynda	16 Brandon Rd.
688	Phillips, Paul David	69 Fitzroy Rd.
689	Platt, Veronica Shirley	54 Davis St.
690	Plumb, Elaine Margaret	2 Brisbane Rd.
691	Plumb, Jason Alan	2A Brisbane Rd.
692	Plumb, Norman Phillip*	2 Brisbane Rd.
693	Pole-Evans, Amy Rose	4 Harbour View.

694	Pole-Evans, John	4 Harbour View.
695	Pole-Evans, Michael Anthony	4 Harbour View.
696	Pollard, Elizabeth Eve*	23 Ross Rd. East.
697	Pollard, John	23 Ross Rd. East.
698	Poole, Evelyn May*	31 Fitzroy Rd.
699	Poole, Nancy Margaret	52 John St.
700	Poole, Raymond John	52 John St.
701	Poole, William John*	31 Fitzroy Rd.
702	Porter, Brian Charles	29 Ross Rd. West.
703	Porter, Charles*	11 Fitzroy Rd.
704	Porter, Jean Lavinia*	11 Fitzroy Rd.
705	Porter, Tracy	5 Jeremy Moore Ave.
706	Pratlett, Patricia Carol Ann	2 Philomel Place.
707	Purvis, Alan	3 Narrows View.
708	Purvis, Marian Louise*	3 Narrows View.
709	Reddick, Keith John	By Pass Rd.
710	Reeves, Cheryl Rose	8 St Marys Walk.
711	Reeves, Michael	8 St Marys Walk.
712	Reid, Ann	Flat 1, 30 Jersey Rd.
713	Reid, Colleen Rose	9 Fitzroy Rd. East.
714	Reid, Emily Margaret	2B Jeremy Moore Ave.
715	Reid, Reynold Gus	9 Fitzroy Rd. East.
716	Reive, Ernest*	4 Allardyce St.
717	Reive, Roma Endora Mary*	4 Allardyce St.
718	Rendell, Michael	8 Ross Rd. West.
719	Rendell, Phyllis Mary*	8 Ross Rd. West
720	Revy, Joanne	7 Beaver Rd.
721	Riddell, Lisa-Marie	9 Discovery Close.
722	Roberts, Diana Christine	7 Kent Rd.
723	Roberts, Laura May*	7 Kent Rd.
724	Roberts, Peter James	57 Fitzroy Rd.
725	Roberts, William Henry*	7 Kent Rd.
726	Robertson, Janet	Flat 5, 6 Jersey Rd.
727	Robertson, Paul Jonathan*	37 Ross Rd.
728	Robertson, Sally Jean	Flat 1, Block C, Jersey Rd.
729	Robson, Alison Emily	15 Villiers St.
730	Robson, Gerard Michael	1 Philomel Place.
731	Robson, Gladys Mary*	5 Philomel St.
732	Robson, Miranda Gay	6 Brisbane Rd.
733	Robson, Phyllis Ann	1 Philomel Place.
734	Robson, Raymond Nigel*	6 Brisbane Rd.
735	Robson, William Charles*	1 Philomel Place.
736	Rogers, Ralph	14 Endurance Ave.
737	Rogers, Roger Neil	14 Endurance Ave.
738	Ross, Colin*	40 Eliza Cove Crescent.
739	Ross, Glenn Stephen	Stanley.
740	Ross, Janet	Stanley.
741	Ross, Lachlan Neil	7 Discovery Close.
742	Ross, Marie	21 John St.
743	Ross, Odette Ellen May	26 Jersey Est.
744	Ross, Roy	21 John St.
745	Ross, Sheena Margaret	16 Jeremy Moore Ave.
746	Ross, Susan Vera	49 Fitzroy Rd.
747	Rowland, Charlene Rose	Sir Rex Hunt House, John St.
748	Rowland, John Christopher	Sir Rex Hunt House, John St.
749	Rowlands, Catherine Annie*	3 Hebe St.
750	Rowlands, Daisy Malvina*	41 Ross Rd.
751	Rowlands, Harold Theodore*	8 Ross Rd. East.
752	Rowlands, John Richard*	41 Ross Rd.
753	Rowlands, Neil	Narrows View.
754	Rowlands, Robert John	106 Davis St.
755	Rozee, Betty Ellen	16 Davis St.
756	Rozee, Bryn Thomas*	16 Davis St.

757	Rozee, Derek Robert Thomas*	16 Davis St.
758	Sackett, Albert John	25 Ross Rd. East.
759	Sackett, Michael John Carlos	Flat 3, 5 Jeremy Moore Ave.
760	Sackett, Pauline*	25 Ross Rd. East.
761	Sarney, Harry*	Dairy Paddock Rd.
762	Sawle, Judith	Seaview Cottage Ross Rd.
763	Sawle, Richard	Seaview Cottage Ross Rd.
764	Shedden, James Alexander*	St Saviour, Thatcher Drive.
765	Shepherd, Colin David*	13 Endurance Ave.
766	Shepherd, Ramsay	13 Ross Rd. West.
767	Shorrock Joyce	5 McKay Close.
768	Shorrock, Nigel Arthur	5 McKay Close.
769	Short, Andrez Peter	9 Pioneer Row.
770	Short, Brenda	Barrack St.
771	Short, Celia Soledad	1 Racecourse Rd.
772	Short, Charles William	14 Pioneer Row.
773	Short, Christina Ethel*	12 Brandon Rd.
774	Short, Donald Robert Gordon	Eliza Cove Rd.
775	Short, Emily Christina	1 Fitzroy Rd. East.
776	Short, Gavin Phillip	6 Dairy Paddock Rd.
777	Short, Joseph Leslie*	12 Brandon Rd.
778	Short, Lisa Helen	Fieldhouse Close.
779	Short, Montana Tyrone	4 Dairy Paddock Rd.
780	Short, Peter Robert	1 Fitzroy Rd. East.
781	Short, Richard Edward	58 Davis St.
782	Short, Riley Ethroe	Barrack St.
783	Short, Robert Charles	12 Brandon Rd.
784	Short, Rose Stella	KEMH
785	Short, Vilma Alicia	4 Dairy Paddock Rd.
786	Simpson, Bertha Veronica	6 Police Cottages, 4 Ross Rd.
787	Simpson, James Garry	7 Racecourse Rd.
788	Simpson, John Frederick	6 Police Cottages, 4 Ross Rd.
789	Simpson, Mirabelle Hermione	7 Racecourse Rd.
790	Sinclair, Veronica Joyce *	21 Ross Rd. West.
791	Skene, Greta Winnora Miller	22 Ross Rd. East.
792	Smith, Alexander Gordon	16 Jersey Est.
793	Smith, Anthony David	11 Brandon Rd.
794	Smith, Bruce Dennis	4 Police Cottage, 6 Ross Rd.
795	Smith, Colin David	6 James St.
796	Smith, Derek	36 Eliza Cove Crescent.
797	Smith, Ellen Mary	12 Brandon Rd.
798	Smith, Eric	3 Allardyce St.
799	Smith, Gerard Alexander	8 Barrack St.
800	Smith, Gwenifer May*	8 Barrack St.
801	Smith, Ian Lars*	2 Ross Rd. West.
802	Smith, Ileen Rose	Ross Rd. West.
803	Smith, Iola Winifred*	3 Allardyce St.
804	Smith, James Stanley*	17 James St.
805	Smith, James Terence*	3 Fitzroy Rd.
806	Smith, Jean Waddell	16 Jersey Est.
807	Smith, Jennifer Ethel*	Flat 8, 6 Jersey Rd.
808	Smith, Joan Lucy Ann	6A Pioneer Row.
809	Smith, John	Ross Rd. West.
810	Smith, Julia Trinidad	36 Eliza Cove Crescent.
811	Smith, Marlaine Rose	13 Callaghan Rd.
812	Smith, Martyn James	Ross Rd. West.
813	Smith, Natalie Marianne	6 James St.
814	Smith, Nora Kathleen	4 Police Cottage, 6 Ross Rd.
815	Smith, Osmund Raymond*	Brisbane Rd.
816	Smith, Owen Archibald*	3 Fitzroy Rd.
817	Smith, Patricia Anne*	Fitzroy Rd.
818	Smith, Paulette Rose	KEMH
819	Smith, Rhona	8 Fitzroy Rd.

820	Smith, Robert William	13 Callaghan Rd.
821	Smith, Russell James	Fieldhouse Close.
822	Smith, Shula Louise*	Flat 4, 5 Jeremy Moore Av.
823	Smith, Sidney Frederick	2A Capricorn Rd.
824	Smith, Terence George	Flat 3, Racecourse Rd.
825	Sollis, Sarah Emma Maude*	20 Drury St.
826	Spall, Christopher Richard	Callaghan Rd.
827	Spink, Roger Kenneth	4 Hebe St.
828	Spinks, Alexander	Flat 4, 1 Moody St.
829	Spinks, Malvina Ellen*	Flat 6, 7 Jeremy Moore Ave.
830	Spruce, Helena Joan*	31 Ross Rd.
831	Spruce, Terence George*	31 Ross Rd.
832	Steen, Allan Graham	YMCA, 21 Shackleton Drive.
833	Steen, Barbara Ingrid	Ross Rd. West.
834	Steen, Emma Jane*	36 Ross Rd.
835	Steen, Gail	7 St Mary's Walk.
836	Steen, Karen Lucetta*	7 St Mary's Walk.
837	Steen, Vernon Robert	7 St Mary's Walk.
838	Stephenson, James	Moody Valley.
839	Stephenson, Joan Margaret	Moody Valley.
840	Stephenson, Katrina	4 Davis St.
841	Stephenson, Zachary	4 Davis St.
842	Stevens, Teresa Rose	9 Drury St.
843	Stewart, Aarron Stephen	6 Pioneer Row.
844	Stewart, Celia Joyce	12 St Mary's Walk.
845	Stewart, David William*	Davis St.
846	Stewart, Duane William*	Flat 3, 30 Jersey Rd.
847	Stewart, Hulda Fraser	24 Ross Rd. West.
848	Stewart, John*	24 Ross Rd. West.
849	Stewart, Kenneth Barry	3 Discovery Close.
850	Stewart, Robert	12 St Mary's Walk.
851	Stewart, Robert William	4 Discovery Close.
852	Stewart, Sheila Olga	9 McKay Close.
853	Stewart, Sylvia Rose*	7 Ross Rd. West.
854	Strange, Ian John	The Dolphins, Snake St.
855	Strange, Maria Marta	The Dolphins, Snake St.
856	Strange, Shona Marguerite	6B Ross Rd. West.
857	Summers, Brian	1 Ross Rd. East.
858	Summers, Colin Owen*	5 Brandon Rd.
859	Summers, Dennis David	37 Davis St.
860	Summers, Edith Catherine*	5 Dean St.
861	Summers, Irvin Gerard	5 Dean St.
862	Summers, Judith Orissa*	1 Ross Rd. East.
863	Summers, Lynn Jane*	2 H Jones Rd.
864	Summers, Melvyn Mark*	2 H Jones Rd.
865	Summers, Michael Kenneth	Brisbane Rd.
866	Summers, Michael Victor	11 Pioneer Row.
867	Summers, Nigel Clive*	32 Fitzroy Rd.
868	Summers, Owen William	5 Brandon Rd.
869	Summers, Pamela Rosemary Cheek	32 Fitzroy Rd.
870	Summers, Rowena Elsie	5 Allardyce St.
871	Summers, Roy*	8 Racecourse Rd.
872	Summers, Sandra Marie*	Sir Rex Hunt House, John St.
873	Summers, Sheila	Sir Rex Hunt House, John St.
874	Summers, Sybella Catherine Ann	1 Ross Rd. West.
875	Summers, Sylvia Jean	8 Racecourse Rd.
876	Summers, Terence	1 Ross Rd. West.
877	Summers, Tony	8 Racecourse Rd.
878	Summers, Veronica	5 Brandon Rd.
879	Summers, William Edward*	Stanley.
880	Summers, Yona	37 Davis St.
881	Sutherland, Elizabeth Margaret	13/14 Eliza Cove Crescent.
882	Sutherland, James David	5 Eliza Cove Rd.

883	Sutherland, John Gall	3B Jersey Est.
884	Sutherland, William John Munro	13/14 Eliza Cove Crescent.
885	Teale, Jeannette	8 Brisbane Rd.
886	Teggart, Carol Wendy*	9 Callaghan Rd.
887	Teggart, John Patrick	9 Callaghan Rd.
888	Tellez, Jeanette Valerie	2 Hodson Villa West.
889	Tellez, Jose Hector	2 Hodson Villa West.
890	Thain, John	8 Davis St.
891	Thain, Julia	2A Capricorn Rd.
892	Thain, Stephanie Ann	8 Davis St.
893	Thom, David Anderson*	47 Fitzroy Rd.
894	Thom, Dorothy Irene	47 Fitzroy Rd.
895	Thom, Norma Ann	92 Davis St.
896	Thompson, George Henry*	St Saviour, Thatcher Drive
897	Thompson, William John*	Flat 2, 1 Moody St.
898	Toase, Cora Agnes*	7 Ross Rd. East.
899	Towersey, Diane Katherine	37 Ross Rd.
900	Triggs, Diane	Fieldhouse Close.
901	Triggs, Michael David	Fieldhouse Close.
902	Tuckwood, John Rodney	1 Drury St.
903	Tuckwood, Phyllis Marjorie	1 Drury St.
904	Turner, Alva Ynonne*	36 John St.
905	Turner, Arthur Leonard Pitaluga	Rincon Cottage.
906	Turner, Melvyn George	36 John St.
907	Tyrrell, Gary Bernard	Campbell Drive.
908	Valler, Danuta Cecelia Krystyna	23 Jeremy Moore Ave.
909	Valler, Robert Hugh	23 Jeremy Moore Ave.
910	Vidal, Eileen Nora*	12 Jeremy Moore Ave.
911	Vidal, Leona Lucila	12 Jeremy Moore Ave.
912	Vincent, Janette Mary	10 Endurance Ave.
913	Vincent, Stephen Lawrence	10 Endurance Ave.
914	Wade, June Rose Elizabeth	41 Fitzroy Rd.
915	Wallace, Fraser Barrett	10 John St.
916	Wallace, Maria Lilian	38 Ross Rd. West.
917	Wallace, Michael Ian	23 Callaghan Rd.
918	Wallace, Stuart Barrett*	38 Ross Rd. West.
919	Wallace, Una	23 Callaghan Rd.
920	Warbrick, Andrea Mary Malvina Pitaluga	72 Davis St.
921	Watson, Boyd Edward Harold*	Flat 4, 6 Jersey Rd.
922	Watson, Hannah Maude*	7 Moody St.
923	Watson, Paul	20 Endurance Ave.
924	Watt, Sylvia Ann	2B Block C, 30 Jersey Rd.
925	Watts, Lucinda Vikki	13 Brisbane Rd.
926	Watts, Patrick James	13 Brisbane Rd.
927	White, Allan Paul George	10 Discovery Close.
928	White, Kathleen Elizabeth*	2 Brandon Rd. West.
929	Whitney, Agnes Kathleen*	3 St. Mary's Walk.
930	Whitney, Frederick William	1 Police Cottage, 9 Ross Rd.
931	Whitney, Henry Leslie*	3 St. Mary's Walk.
932	Whitney, Jason	Flat 4, 7 Jeremy Moore Av.
933	Whitney, Kurt Ian	2 Pioneer Row.
934	Whitney, Robert Michael	Stanley.
935	Whitney, Susan Joan	1 Police Cottage, 9 Ross Rd.
936	Wilkinson, Robert John	1C Capricorn Rd.
937	Williams, Charlotte Agnes*	4 Brandon Rd. West.
938	Williams, Gene*	23 Ross Rd. West.
939	Williams, Marlene Rose	23 Ross Rd. West.
940	Wylie, Julian Richard	1 McKay Close.
941	Wylie, Wendy Jennifer	2A Capricorn Rd.
942	Zuvic-Bulic, Kuzma Mario	16 Ross Road West.
943	Zuvic-Bulic, Sharon Marie	16 Ross Rd. West

\* NOT LIABLE TO SERVE AS A JUROR



1001	Adams, Carol Margaret	Chartres, West Falkland
1002	Alazia, George Robert*	Hope Cottage, East Falkland
1003	Alazia, Hazel	Mullet Creek Farm, East Falkland
1004	Alazia, Mandy Gwyneth	Port Edgar Farm, West Falkland
1005	Alazia, Michael Robert	Port Edgar Farm, West Falkland
1006	Alazia, Stuart John	Port Howard, West Falkland
1007	Alazia, Thora Lilian*	North Arm, East Falkland
1008	Aldridge, Brian George	Goose Green, East Falkland
1009	Aldridge, Olive Elizabeth*	Hill Cove, West Falkland
1010	Aldridge, Terence William	Hill Cove, West Falkland
1011	Anderson, Andrew Ronald	North Arm, East Falkland
1012	Anderson, Georgina Carol*	Port San Carlos, East Falkland
1013	Anderson, Jamie Falkland*	Port Howard, West Falkland
1014	Anderson, Jenny	Port San Carlos East Falkland
1015	Anderson, Margaret Kathleen	Fox Bay Village, West Falkland
1016	Anderson, Marina Rose	Johnson's Harbour, East Falkland
1017	Anderson, Reginald Stanford	Fox Bay Village, West Falkland
1018	Anderson, Ronald	Johnson's Harbour, East Falkland
1019	Anderson, Rupert William*	North Arm, East Falkland
1020	Anderson, Tony James	Port San Carlos, East Falkland
1021	Anderson, William John Stanley	San Carlos, East Falkland
1022	Ashworth, Glennis	Beckside Farm, East Falkland
1023	Ashworth, Malcolm	Beckside Farm, East Falkland
1024	Bagley, Jacqueline Elizabeth	Riverview Farm East Falkland
1025	Barnes, Deirdre	Dunbar Farm, West Falkland
1026	Barnes, Marshall	Dunbar Farm, West Falkland
1027	Barnes, Paul	Hope Harbour Farm, West Falkland
1028	Bayley, Patricia Ann Cecile	Turners, MPA.
1029	Bayley, Richard	Turners, MPA.
1030	Beattie, Ian Robert Ewen*	North Arm, East Falkland
1031	Benjamin, Fred Basil	Turners, MPA.
1032	Benjamin, Raymond John	Turners, MPA.
1033	Benjamin, Walter George	Turners, MPA.
1034	Berntsen, Arena Janice	Pebble Island, West Falkland
1035	Berntsen, Iain Kenneth	Port Howard, West Falkland
1036	Berntsen, Kenneth Frederick	Port Howard, West Falkland
1037	Berntsen, Leon	Albermarle Station, West Falkland
1038	Berntsen, Pamela Margaret	Albermarle Station, West Falkland
1039	Betts, Arthur John*	Pebble Island, West Falkland
1040	Betts, Bernard Keith	Boundary Farm, West Falkland
1041	Betts, Diane Joan	Boundary Farm, West Falkland
1042	Betts, Irene Marion	Boundary Farm, West Falkland
1043	Binnie, Horace James*	Fox Bay Village, West Falkland
1044	Binnie, Linda Rose	Fitzroy Farm, East Falkland
1045	Binnie, Ronald Eric	Fitzroy Farm, East Falkland
1046	Binnie, Rose Ellen*	Fox Bay Village, West Falkland
1047	Bitcheno, Una May	Goose Green, East Falkland
1048	Blake, Alexander Charles	The Peaks Farm, West Falkland
1049	Blake, Anthony Thomas	Little Chartres Farm, West Falkland
1050	Blake, Lionel Geoffrey*	The Peaks Farm, West Falkland
1051	Blake, Lyndsay Rae	Little Chartres Farm, West Falkland
1052	Blake, Sally Gwynfa	The Peaks Farm, West Falkland
1053	Blake, Thomas Patrick	Little Chartres Farm, West Falkland
1054	Bober, John	Turners, MPA.
1055	Bonner, Avril Margaret Rose	North Arm, East Falkland
1056	Bonner, Keith James	North Arm, East Falkland
1057	Bonner, Simon	Pickthorne Farm, West Falkland
1058	Bonner, Susan Anne	Pickthorne Farm, West Falkland
1059	Buckett, Roy Peter	Leicester Fall Farm, West Falkland
1060	Butler, Doreen Susan	North Arm, East Falkland
1061	Butler, James Donald	North Arm, East Falkland
1062	Cartmell, Andrew Nutt*	Goose Green, East Falkland
1063	Chandler, Ann Beatrice	Port Howard, West Falkland



1064	Chandler, Edward	Port Howard, West Falkland
1065	Chandler, Lee*	Port Howard, West Falkland
1066	Clark, Fredrick Thomas	Hawkbit, M.P.A. Road, East Falkland
1067	Clarke, Jeanette	Kings Ridge Farm, East Falkland
1068	Clarke, Michael Jan	Kings Ridge Farm, East Falkland
1069	Clarke, Shane Adrian	Kings Ridge Farm, East Falkland
1070	Clausen, Denzil	Salvador, East Falkland
1071	Clausen, Henry Edward	Port Louis, East Falkland
1072	Clifton, Leonard	North Arm, East Falkland
1073	Clifton, Thora Janeene	North Arm, East Falkland
1074	Cockwell, Adam*	Fox Bay Village, West Falkland
1075	Cockwell, Benjamin William*	Fox Bay Village, West Falkland
1076	Cockwell, Grizelda Susan	Fox Bay Village, West Falkland
1077	Cockwell, John Richard*	Fox Bay Village, West Falkland
1078	Collins, Bernard	Turners, MPA .
1079	Cook, Brian William	Turners, MPA
1080	Coutts, Frederick George	Fitzroy, East Falkland
1081	Dale, Helen	KIS, MPA.
1082	Davis, Aase	Evelyn Station, East Falkland
1083	Davis, Ian John*	Evelyn Station, East Falkland
1084	Davis, Mandy John	Goose Green, East Falkland
1085	Davis, Reginald John*	Evelyn Station, East Falkland
1086	Davis, William James	Goose Green, East Falkland
1087	Dickson, Charles George*	Brookfield Farm, East Falkland
1088	Dickson, Doreen	Wreck Point, East Falkland
1089	Dickson, Gerald William	Wreck Point, East Falkland
1090	Dickson, Iris	San Carlos, East Falkland
1091	Dickson, Ronald Edward	San Carlos, East Falkland
1092	Dickson, Steven Charles*	San Carlos, East Falkland
1093	Dobbys, Timothy John*	Riverside Farm, East Falkland
1094	Donnelly, Daniel	Crooked Inlet Farm, West Falkland
1095	Donnelly, Joyce Elizabeth	Crooked Inlet Farm, West Falkland
1096	Duncan, Peter Ree Howard*	Hill Cove, West Falkland
1097	Dunford, David Philip	Saddle Farm, West Falkland
1098	Edwards, Emma Jane	Lake Sullivan Farm, West Falkland
1099	Edwards, Norma*	Lake Sullivan Farm, West Falkland
1100	Edwards, Roger Anthony	Lake Sullivan Farm, West Falkland
1101	Ellis, Lucy	Port Stephens, West Falkland
1102	Evans, Donna	North Arm, East Falkland
1103	Evans, Michael David	North Arm, East Falkland
1104	Evans, Michele Paula	Fitzroy Farm, East Falkland
1105	Evans, Olwyn Carol	Saunders Island, West Falkland
1106	Evans, Raymond	Pebble Island, West Falkland
1107	Evans, Richard Gregory	Fitzroy Farm, East Falkland
1108	Evans, Russel*	Pebble Island, West Falkland
1109	Fairley, John*	Port Stephens, West Falkland
1110	Felton, Anthony Terence*	North Arm, East Falkland
1111	Felton, Sonia Ellen	Goose Green, East Falkland
1112	Felton, Walter Arthur*	Teal Inlet, East Falkland
1113	Ferguson, Finlay James	Bleaker Island, East Falkland
1114	Ferguson, John William	Weddell Island, West Falkland
1115	Ferguson, Robert John*	Weddell Island, West Falkland
1116	Ferguson, Thelma*	Weddell Island, West Falkland
1117	Findlay, Andrew John	North Arm, East Falkland
1118	Findlay, Gerald	San Carlos, East Falkland
1119	Finlayson, Barry Donald*	North Arm, East Falkland
1120	Finlayson, Iris Heather*	North Arm, East Falkland
1121	Finlayson, Neil Roderick	North Arm, East Falkland
1122	Ford, Neil Fraser	Mossvale Farm, West Falkland

1123	Ford, Penelope Rose	Mossvale Farm, West Falkland
1124	Forster, Gwyneth May	Bold Cove Farm, West Falkland
1125	Forster, James	Bold Cove Farm, West Falkland
1126	Giles, Gilbert	Chartres, West Falkland
1127	Giles, Theresa Kathleen	Chartres, West Falkland
1128	Gleadell, Ian Keith	East Bay Farm, West Falkland
1129	Gleadell, Marklin John	East Bay Farm, West Falkland
1130	Goodwin, Mandy Hazel	Green Field Farm, East Falkland
1131	Goodwin, Margo Jane	Elephant Beach, East Falkland
1132	Goodwin, Neil Alexander William	Elephant Beach, East Falkland
1133	Goodwin, Robin	Green Field Farm, East Falkland
1134	Goss, Eric Miller*	North Arm, East Falkland
1135	Goss, Ian Ernest Earle	Port Howard, West Falkland
1136	Goss, Margaret Rose	Horseshoe Bay Farm, East Falkland
1137	Goss, Peter	Horseshoe Bay Farm, East Falkland
1138	Goss, Roderick Jacob*	East Falkland
1139	Goss, Shirley Ann	North Arm, East Falkland
1140	Gray, David Edward	Sea Lion Island, East Falkland
1141	Gray, Patricia May	Sea Lion Island, East Falkland
1142	Halliday, Cathy Ann	Fox Bay Village, West Falkland
1143	Halliday, Jeffrey James*	Port Howard, West Falkland
1144	Halliday, Joyce Isabella Patience	Fox Bay Village, West Falkland
1145	Halliday, Kenneth William	Fox Bay Village, West Falkland
1146	Hansen, Ian	Main Point, West Falkland
1147	Hansen, Lionel Raymond*	Hill Cove, West Falkland
1148	Hansen, Rose Idina*	Hill Cove, West Falkland
1149	Hansen, Susan Ann	Main Point, West Falkland
1150	Hardcastle, Brook*	Darwin Harbour, East Falkland
1151	Hardcastle, Eileen Beryl*	Darwin Harbour, East Falkland
1152	Harvey, Jen	Hill Cove, West Falkland
1153	Harvey, Valerie Ann	Hill Cove, West Falkland
1154	Heathman, Ailsa	Estancia Farm, East Falkland
1155	Heathman, Ewart Tony	Estancia Farm, East Falkland
1156	Henry, Dulcie Rose	KIS, MPA.
1157	Hirtle, Anthony	Pebble Island, West Falkland
1158	Hirtle, Doris Linda	Golding Island, West Falkland
1159	Hirtle, Gerard Fenton	Golding Island, West Falkland
1160	Hirtle, Odette Susan	Port Howard, West Falkland
1161	Hirtle, Susan Mary	Pebble Island, West Falkland
1162	Hobman, David Gonsalo	Chartres, West Falkland
1163	Hobman, Juan Jose Eleuterio	Sheffield Farm, West Falkland
1164	Hobman, Petula Chartres,	Sheffield Farm, West Falkland
1165	Hutton, Elizabeth Isabella*	North Arm, East Falkland
1166	Hutton, Philip*	North Arm, East Falkland
1167	Jaffray, Alexander	Lively Island, East Falkland
1168	Jaffray, Brian	Walker Creek, East Falkland
1169	Jaffray, Dereck Charles	Walker Creek, East Falkland
1170	Jaffray, Elliott Jessie	Lively Island, East Falkland
1171	Jaffray, John Summers	Goose Green, East Falkland
1172	Jaffray, John Willie	Walker Creek, East Falkland
1173	Jaffray, Phyllis	Walker Creek, East Falkland
1174	Johnson, Lily Ann*	Goose Green, East Falkland
1175	Jonson, Carl	Bombilla Farm, East Falkland
1176	Keeley, John Gabriel	Turners, MPA .
1177	Kidd, John Nathan	Darwin Lodge, East Falkland
1178	Kidd, Lillian Rose Orissa	Darwin Lodge, East Falkland
1179	Kiddle, Robert Karl	Goose Green, East Falkland
1180	Kilmartin, Dinah May	Bluff Cove, East Falkland
1181	Kilmartin, Kevin Seaton*	Bluff Cove, East Falkland

1182	King, Edward Robert	Mount Pleasant, East Falkland
1183	Knight, Nigel Arthur	Coast Ridge Farm, West Falkland
1184	Knight, Shirley Louvaine Patricia	Coast Ridge Farm, West Falkland
1185	Lakin, Bernard	Turners, MPA .
1186	Lang, Patrick Andrew*	North Arm, East Falkland
1187	Lang, Velma Emily	North Arm, West Falkland
1188	Larsen, Josephine Mary	Speedwell Island, East Falkland
1189	Larsen, Ronald Ivan	Speedwell Island, East Falkland
1190	Larsen, Yvonne	Speedwell Island, East Falkland
1191	Lawton, Brian	Turners, MPA .
1192	Lee, Carole	Port Howard, West Falkland
1193	Lee, Christopher*	Pebble Island, West Falkland
1194	Lee, Elizabeth	Goose Green, East Falkland
1195	Lee, John Alfred	Goose Green, East Falkland
1196	Lee, Myles	Port Howard, West Falkland
1197	Lee, Owen Henry	Goose Green, East Falkland
1198	Lee, Rodney William*	Port Howard, West Falkland
1199	Leo, Brenda May	NAAFI, MPA.
1200	Limond, Alexander Buchanan	KIS, MPA.
1201	Livermore, Darren	Fitzroy, East Falkland
1202	Lloyd, Melvyn John	Swan Inlet, East Falkland
1203	Lloyd, John Moelwyn*	West Falkland
1204	Lloyd, Valerie Ann	Swan Inlet, East Falkland
1205	Luxton, Patricia Maureen	Chartres, West Falkland
1206	Luxton, Stephen Charles	Chartres, West Falkland
1207	Luxton, William Robert*	Chartres, West Falkland
1208	Maddocks, Robert Charles	Saunders Island, West Falkland
1209	Marsh, Alastair Roy	Shallow Harbour Farm, West Falkland
1210	Marsh, Anna Deirdre	Fox Bay Village, West Falkland
1211	Marsh, Arlette Sharon	Rincon Ridge Farm, West Falkland
1212	Marsh, Frank*	West Falkland
1213	Marsh, Gavin Nicholas	Fox Bay Village, West Falkland
1214	Marsh, June Helen*	West Falkland
1215	Marsh, Leon Peter	Rincon Ridge Farm, West Falkland
1216	Marsh, Marlane Rose	Shallow Harbour Farm, West Falkland
1217	Marsh, Patricia Anne	Lakelands Farm, West Falkland
1218	Marsh, Robin Frank	Lakelands Farm, West Falkland
1219	May, Christopher Raymond	New House Farm, East Falkland
1220	May, Linsey Olga	New House Farm, East Falkland
1221	Miller, Betty	Walker Creek, East Falkland
1222	Miller, James Albert	Fox Bay Village, West Falkland
1223	Miller, Phillip Charles	Cape Dolphin, East Falkland
1224	Minnell, Adrian James	Moss Side Farm, East Falkland
1225	Minnell, Benjamin James	Moss Side Farm, East Falkland
1226	Minnell, Donna Marie	Chartres, West Falkland
1227	Minnell, Hazel Eileen*	Moss Side Farm, East Falkland
1228	Minnell, Michael Robert	Blue Beach, East Falkland
1229	Minnell, Michelle Rose	Blue Beach, East Falkland
1230	Molkenbuhr, Lee Charles*	Murrel Farm, East Falkland
1231	Morrison, Edgar Ewen	Goose Green, East Falkland
1232	Morrison, Eric George	Goose Green, East Falkland
1233	Morrison, Gerald	Goose Green, East Falkland
1234	Morrison, Jacqueline Denise Anita	Port Howard, West Falkland
1235	Morrison, John	Port Howard, West Falkland
1236	Morrison, Kathleen Iris	Goose Green, East Falkland
1237	Morrison, Kenneth	Port Howard, West Falkland
1238	Morrison, Lena	Port Howard, West Falkland
1239	Morrison, Leslie Theodore Norman	Port Howard, West Falkland
1240	Morrison, Michael John	Port Louis, East Falkland

1241	Morrison, Susan Margaret	Port Louis, East Falkland
1242	Moxham, Ronald Walter*	M.P.A. East Falkland
1243	MacBeth, Raymond John	Narrows Farm, West Falkland
1244	MacKay, James	Turners, MPA .
1245	McBain, Arthur	Sea Lion Island, East Falkland
1246	McBain, Rhoda Margaret	Sea Lion Island, East Falkland
1247	McDougall, James Gilfillan Stewart	Turners, MP
1248	McGhie, James	Pebble Island, West Falkland
1249	McGhie, Roy	Port North Sheep Farm, West Falkland
1250	McGill, Robin Perry	Carcass Island, West Falkland
1251	McKay, Christine	Teal River Farm, West Falkland
1252	McKay, Ellen Rose	Port Harriet, East Falkland
1253	McKay, Frazer Roderick	Teal River Farm, West Falkland
1254	McKay, Isabella Alice	Westley Farm, West Falkland
1255	McKay, Margaret	KIS, MPA.
1256	McKay, Richard*	Westley Farm, West Falkland
1257	McKay, Roderick John*	Port Harriet, East Falkland
1258	McLeod, Albert John	Goose Green, East Falkland
1259	McLeod, Ian James*	Goose Green, East Falkland
1260	McLeod, Isabella Diana Frances	Port Louis, East Falkland
1261	McLeod, Sarah Rose	Goose Green, East Falkland
1262	McMullen, June	Goose Green, East Falkland
1263	McMullen, Tony	Goose Green, East Falkland
1264	McPhee, June Iris*	Brookfield Farm, East Falkland
1265	McPhee, Kenneth John*	Brookfield Farm, East Falkland
1266	McPhee, Trudi Lynette	Brookfield Farm, East Falkland
1267	McRae, David Michael	South Harbour Farm, West Falkland
1268	McRae, Gloria Linda	South Harbour Farm, West Falkland
1269	McRae, Mandy*	South Harbour Farm, West Falkland
1270	McRae, Robert George Hector*	Estancia, East Falkland
1271	Napier, Lily	West Point Island, West Falkland
1272	Napier, Roderick Bertrand*	West Point Island, West Falkland
1273	Newman, Sheena Melanie	Cape Dolphin, East Falkland
1274	Nightingale, Charlene	West Lagoons Farm, West Falkland
1275	Nightingale, Peter Richard	West Lagoons Farm, West Falkland
1276	Oxley, Brian	M.P.A. East Falkland
1277	Parkinson Allen	Turners, MPA .
1278	Peck, Christine	Leicester Falls Farm, West Falkland
1279	Peck, Davina Margaret	Shallow Bay Farm, West Falkland
1280	Peck, Paul	Shallow Bay Farm, West Falkland
1281	Phillips, Carol Joan	Hope Cottage Farm, East Falkland
1282	Phillips, Terence	Hope Cottage Farm, East Falkland
1283	Pitaluga, Jene Ellen*	Salvador, East Falkland
1284	Pitaluga, Nicholas Alexander Robinson	Salvador, East Falkland
1285	Pitaluga, Robin Andreas McIntosh*	Salvador, East Falkland
1286	Pole-Evans, Anthony Reginald*	Saunders Island, West Falkland
1287	Pole-Evans, David Llewellyn	Saunders Island, West Falkland
1288	Pole-Evans, Lisa*	Port Howard, West Falkland
1289	Pole-Evans, Shirley Helen	Manybranch Farm, West Falkland
1290	Pole-Evans, Suzan	Saunders Island, West Falkland
1291	Pole-Evans, William Reginald	Manybranch Farm, West Falkland
1292	Poncet, Sally Elizabeth	Beaver Island, West Falkland
1293	Poole, Ella Josephine	Port San Carlos, East Falkland
1294	Poole, Steven Charles	Port San Carlos, East Falkland
1295	Porter, George*	Shallow Harbour, West Falkland
1296	Porter, Joan	Shallow Harbour, West Falkland
1297	Porter, William Kenneth	Fox Bay Village, West Falkland
1298	Reeves, Ronald James	Port Howard, West Falkland

1299	Robertson, Ann	Port Stephens, West Falkland
1300	Robertson, Peter Charles*	Port Stephens, West Falkland
1301	Ross, William Henry	Goose Green, East Falkland
1302	Rozee, Ronald David	Spring Point Farm, West Falkland
1303	Saunders, Felicity Joan Carlie	Hawkbit, M.P.A. Rd. East Falkland
1304	Short, Anne	KIS, MPA.
1305	Short, Derek Patrick	Blue Beach, East Falkland
1306	Short, Isobel Rose	Blue Beach, East Falkland
1307	Short, Lindsay Marie	Fitzroy, East Falkland
1308	Short, Patrick Warburton	Blue Beach, East Falkland
1309	Short, Robert George	Fitzroy, East Falkland
1310	Sinclair, Serena Samantha*	Walker Creek, East Falkland
1311	Sinclair, Simon Keith	Goose Green, East Falkland
1312	Smith, Andrew John	San Carlos, East Falkland
1313	Smith, Francis David*	Port Howard, West Falkland
1314	Smith, George Patterson	Johnson's Harbour, East Falkland
1315	Smith, Heather	Harp's Farm, West Falkland
1316	Smith, Jacqueline	Stoney Ridge Farm, West Falkland
1317	Smith, Jenny Lorraine	Johnson's Harbour, East Falkland
1318	Smith, Michael Edmund*	Johnson's Harbour, East Falkland
1319	Smith, Peter	Turners, MPA .
1320	Smith, Robin Charles	Harp's Farm, West Falkland
1321	Smith, Roy Alan	Stoney Ridge Farm, West Falkland
1322	Smolarczyk, Sylvester Emanuel	Turners, MPA .
1323	Stevens, Richard James*	Port Sussex Farm, East Falkland
1324	Stevens, Toni Donna	Port Sussex Farm, East Falkland
1325	Thorsen, David Moller	Teal Inlet, East Falkland
1326	Thorsen, Gloria Penelope	Teal Inlet, East Falkland
1327	Turner, Diana Jane*	Rincon Grande, East Falkland
1328	Turner, Ronald	Rincon Grande, East Falkland
1329	Velasquez, Arleen	North Arm, East Falkland
1330	Watson, Glenda Joyce	Long Is. Farm, East Falkland
1331	Watson, Neil	Long Is. Farm, East Falkland
1332	Whitney, Daneila Grace	Mount Kent Farm, East Falkland
1333	Whitney, Dennis	Fitzroy, East Falkland
1334	Whitney, Keith	Home Farm, East Falkland
1335	Whitney, Lana Rose	Fitzroy, East Falkland
1336	Whitney, Leona Ann	Home Farm, East Falkland
1337	Whitney, Patrick George	Mount Kent Farm, East Falkland
1338	Whitney, Tyrone	Home Farm, East Falkland
1339	Wilkinson, David Clive Walter	Dunnose Head Farm, West Falkland
1340	Wilkinson, Rosemary	Dunnose Head Farm, West Falkland
1341	Yon, Gillian Rose	KIS, MPA.
1342	Youde, Maxin Arthur	Turners, MPA .
1343	Young, Julie*	M.P.A. East Falkland
1344	Young, Nigel Anthony	Turners, MPA .

\*NOT LIABLE TO SERVE AS A JUROR





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CIII

30th JUNE 1994

No. 7

**Appointment**

Mrs. Pamela Jane Freer, Nursing Sister/Midwife,  
Medical Department, 27.5.94.

**Transfer**

Miss Sara McPhee, from Assistant Customs/Immigration  
Officer, Customs/Immigration Department, to Clerk, Public  
Service, 20.6.94.

**NOTICES**

No. 39

29th June 1994.

**Cost of Living**

The Findings of the Cost of Living Committee of the  
quarter ended 31st March 1994 are published for general  
information.

- Calculation of the Index of Retail prices for the quarter  
ended 31st March 1994 shows an increase of 0.118%.  
This increase is insufficient to effect hourly rates of  
pay as defined by the FIG/GEU wages agreement and  
no adjustment to rates is therefore required.

INT/2/2.

F. WALLACE,

*For Government Secretary.*

No. 40

29th June 1994.

**THE FALKLAND ISLANDS  
MOLEHILL LIMITED**

TAKE NOTICE that in accordance with the provisions of  
S.353 of the Companies Act 1948 in its application to the  
Falkland Islands and the requirements of the said section  
having been complied with the above-named Company

will be removed from the Register of Companies upon the  
expiry of three months from the publication of this notice  
in the Gazette unless good cause do be shown as to why  
such action should not to be taken.

Dated this 31st day of May 1994.

V. BONNER,

*Ag. Registrar of Companies.*

No. 41

30th June 1994.

**THE FALKLAND ISLANDS CONSTITUTION  
ORDER 1985**
**Schedule 1 (Section 80(1))**
**Extension of powers of Andrew Shirley Jones as  
Acting Judge**

WHEREAS it appears to me, after consulting the Chief  
Justice, Sir Dermot Renn Davis, Officer of the Most  
Excellent Order of the British Empire, that the state of  
business in the Supreme Court during such time or times  
as the Chief Justice is absent from the Falkland Islands  
so requires;

NOW I, Ronald Sampson, Acting Governor of the  
Falkland Islands, IN EXERCISE of my powers under  
section 80(1) of Schedule 1 to the Falkland Islands  
Constitution Order 1985 DO DECLARE that the powers  
contained in the appointment of Andrew Shirley Jones  
dated 25th February 1994 as acting judge of the Supreme  
Court are hereby amended so as to confer upon him  
jurisdiction to sit as an acting judge of the Supreme  
Court for the purpose of hearing and determining such  
matters relating to contempt of court as may from time to  
time be approved by the Chief Justice.

GIVEN under my hand and the Public Seal this 28th day  
of June 1994.

R. SAMPSON,

*Acting Governor.*

**Application for Naturalisation**

Notice is hereby given that Mr. Oscar Hernan Velasquez Montana of North Arm, Falkland Islands is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted, should send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Ross Road, Stanley.

J. E. SMITH,  
*Immigration Officer.*

**NOTICE OF COMMENCEMENT****The Matrimonial Proceedings (Domestic Violence) Ordinance 1994**

IN EXERCISE of my powers under section 1 of the Matrimonial Proceedings (Domestic Violence) Ordinance 1994, I HEREBY APPOINT 1st July 1994 as the date upon which the Matrimonial Proceedings (Domestic Violence) Ordinance 1994 shall come into force.

Dated 28th June 1994

R. SAMPSON,  
*Acting Governor.*





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*Vol. CII*


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*29th July 1994*


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*No. 8*


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## Appointment

Andrew Alazia, Tradesman Mechanic, Public Works Department, 1.7.94

Mrs. Althea Maria Biggs, School Secretary, Education Department, 1.7.94

Miss Janette Alison Broad, Pharmacy Technician, Medical Department, 1.7.94

Miss Jane Diana Mary Kieth Cameron, Archivist, Secretariat Department, 1.7.94.

Elvio Miguel Cofre, Observer, Falkland Islands Government Air Service, 1.7.94.

Mrs. Shiralee Collins, Woman Police Constable, Royal Falkland Islands Police. 1.7.94.

Miss Sarah Jane Gilding, Attendant, Leisure Centre, Education Department, 1.7.94.

Ms. Elaine Michele Johnson, Librarian, Education Department, 1.7.94.

Gordon Carmie Lennie, Laboratory Technician, Department of Agriculture, 1.7.94.

David Anthony Roberts, Police Constable, Royal Falkland Islands Police. 1.7.94.

Miss Tracey Clare Saunders, Observer, Falkland Islands Government Air Service, 1.7.94.

Glen Williams, Steward/Chauffeur, Government House, 1.7.94.

John Jaffray, Agricultural Assistant, Department of Agriculture, 1.7.94.

## Confirmation of Appointments

Miss Patricia Card, Clerk, Legislature Department 1.7.94

Peter Coutts, Senior Carpenter, Public Works Department, 1.7.94.

Miss Lecann Watson Eynon, Senior Clerk, Establishments Department, 1.7.94.

Ramon Miranda, Head Gardener, Government House, 1.7.94.

## Promotion

John Addinall, from Fisheries Protection Officer, Fisheries Department, to Senior Fisheries Protection Officer, Fisheries Department, 1.7.94.

## Transfer

Miss Dorothy Ruth Wilkinson, from Auxiliary Nurse, Medical Department, to Casualty Nurse, Medical Department, 1.7.94

## Resignation

Miss Emily Margaret Reid, Sports Attendant, Education, Department 8.7.94

Jason Whitney, Agricultural Assistant, Department of Agriculture, 15.7.94.

No. 43

18th July 1994

THE FALKLAND ISLANDS

MAGELLAN FISHERIES (FALKLAND ISLANDS) LIMITED

TAKE NOTICE that in accordance with the provisions of S.353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having 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 to be taken.

Dated this 18th day of July 1994.

V. Bonner,  
*Ag. Register of Companies.*

No. 44

18th July 1994

THE FALKLAND ISLANDS

SCOTVIK FISHERIES (FALKLANDS) LIMITED

TAKE NOTICE that in accordance with the provisions of S.353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having 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 to be taken.

Dated this 18th day of July 1994.

V. Bonner,  
*Ag. Register of Companies.*

No. 45

18th July 1994

THE FALKLAND ISLANDS

SOUTHERN HARVEST LIMITED

TAKE NOTICE that in accordance with the provisions of S.353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having 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 to be taken.

Dated this 18th day of July 1994.

V. Bonner,  
*Ag. Register of Companies.*

No. 46

27th July 1994

The Companies and Private Partnership Ordinance  
(Cap. 13)

Companies Act 1948

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the name of JOHN HAMILTON (ESTATES) LIMITED is struck off the register and the company is dissolved subject to the proviso to sub-section (5) of section 353 aforesaid.

Dated this 27th day of July 1994.

V. Bonner,  
*Ag. Registrar of Companies*

Application for Restaurant Licence

In accordance with section 7(1) of the Licencing Ordinance

Mr. T. S. Betts and Mrs. A. Betts

have applied for a Restaurant Licence in respect of the premises known as "The Atlantic House Cafe"

2. Any objections to the granting of a licence must be made to the Treasury within 21 days from the appearance of this notice in the Gazette and the Penguin News.

Treasury,  
Stanley.  
29th June 1994.

D. F. Howatt,  
*Financial Secretary.*



# THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

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*Vol. C111*

*10th August 1994*

*No. 910*

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## Notices

No: 51

28 June 1994

### SUPREME COURT OF THE FALKLAND ISLANDS

Before Andrew S. Jones  
sitting as Acting Supreme Court Judge  
Tuesday the 28th day of June 1994

IN THE MATTER OF SEAMOUNT LIMITED  
AND IN THE MATTER OF THE COMPANIES ACT 1948

NOTICE to Official Receiver of winding-up order

To the Official Receiver of the Court,  
Financial Secretary  
Treasury, Secretariat, Stanley

Order pronounced this day by Andrew S. Jones, Acting Supreme Court Judge for winding up the under-mentioned Company under the Companies Act 1948.

Name of Company	Registered Office of Company	Petitioners Solicitors	Date of presentation of Petition
Seamount Limited	Old Transmitting Station, Stanley	Ledingham Chalmers	31st day of March 1994

Dated this 28th day of June 1994

V. Bonner,  
Ag. Registrar of Companies

**IN THE MATTER OF SEAMOUNT LIMITED  
AND IN THE MATTER OF THE COMPANIES ACT 1948  
IN ITS APPLICATION TO THE FALKLAND ISLANDS**

No: 52

8 August 1994

**NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR**

Notice is hereby given that the Official Receiver was, on 28 June 1994 by Order of the Supreme Court, constituted Provisional Liquidator of the affairs of Seamount Limited.

No: 53

8 August 1994

**NOTICE TO CREDITORS OF FIRST MEETING**

Notice is hereby given that the first meeting of creditors of Seamount Limited will take place in the Office of the Financial Secretary, The Treasury, Thatcher Drive, Stanley, Falkland Islands at 10 am on Friday, 16 September 1994. Creditors are advised that they must lodge their proofs with the Official Receiver to reach him no later than 2 September 1994 in order to be entitled to vote at the first meeting.

No: 54

8 August 1994

**NOTICE TO CONTRIBUTORIES OF FIRST MEETING**

Notice is hereby given that the first meeting of the contributories of Seamount Limited will take place in the Office of the Financial Secretary, The Treasury, Thatcher Drive, Stanley, Falkland Islands at 10.30 am on Friday, 16 September 1994.

Dated this 8th day of August 1994

The Treasury  
Thatcher Drive  
Stanley  
FALKLAND ISLANDS

Derek Howatt  
OFFICIAL RECEIVER



# THE FALKLAND ISLANDS GAZETTE Extraordinary

PUBLISHED BY AUTHORITY

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*Vol. C111*

*12th August 1994*

*No. 10*

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The following is published in this Gazette—

**The Register of Electors 1994.**

## Register of Electors, Stanley Constituency

1	Adams, John Harvey	Ross Rd. East.
2	Adams, Marjorie Rose	Ross Rd East.
3	Alazia, Albert Faulkner*	6 John St.
4	Alazia, Andrew	2 Fitzroy Rd.
5	Alazia, Anita Jayne	Government House.
6	Alazia, Freda	33 Ross Rd West.
7	Alazia, Freda Evelyn*	2 Fitzroy Rd.
8	Alazia, James Andrew	2 Fitzroy Rd.
9	Alazia, Keith*	4 Fitzroy Rd.
10	Alazia, Maggie Ann*	6 John St.
11	Alazia, Yvonne	4 Coseley Building Moody St.
12	Aldridge, Caroline Mary	2 H Jones Rd.
13	Aldridge, Kenneth John	2 H Jones Rd.
14	Allan, John*	3 Philomel Place.
15	Almonacid, Gladys Mabel*	1 Villiers St.
16	Almonacid Orlando	1 Villiers St.
17	Anderson, Eddie	22 Endurance Ave.
18	Anderson, Edward Bernard*	42 Davis St.
19	Anderson, Elizabeth Nellie*	42 Davis St.
20	Anderson, Gloria*	Jersey Est.
21	Anderson, Helen*	88 Davis St.
22	Anderson, Mildred Nessie*	8 St. Mary's Walk.
23	Anderson, Paul James	2 Church House Flats.
24	Anderson, Richard Louis	88 Davis St.
25	Anderson, Sophie Marina	YMCA, 21 Shackleton Drive.
26	Anderson, Stephen Robert	34 Ross Rd., East Flat.
27	Anthony, Geraldine	1B Block A, 1 Jersey Rd.
28	Barkman, Margaret Mary	7 St Mary's Walk.
29	Barnes, Ernest*	70 Davis St.
30	Barnes, Molly Stella*	70 Davis St.
31	Barnes, Sigrid Geraldine Wells*	39 John St.
32	Barnes, Trevor Marshall	24 Eliza Cove Crescent.
33	Barton, Alison Mary	6 Villiers St.
34	Barton, Arthur John	6 Villiers St.
35	Bedford, Kita Muriel	2 Drury St.
36	Bell, Margaret Maud Elizabeth	12 Endurance Avenue.
37	Bell, Robin William Simpson*	12 Endurance Avenue.
38	Bennett, Harold*	14 Allardyce St.
39	Bennett, Lena Grace Gertrude*	14 Allardyce St.
40	Berntsen, Benjamin John	31 Ross Rd West.
41	Berntsen, Cecilia del Rosario	Whyteways James St.
42	Berntsen, Christian Olaf Alexander	7 Fitzroy Rd East.
43	Berntsen, Diana Mary	20 Eliza Cove Crescent.
44	Berntsen, Elaine Ellen*	Rincon Cottage, 10 Davis St.
45	Berntsen, Gina Michelle	7 Fitzroy Rd.
46	Berntsen, John Alexander	32 Callaghan Rd.
47	Berntsen, Kathleen Gladys*	10 Fitzroy Rd.
48	Berntsen, Lavina Maud*	Vale, Thatcher Drive.
49	Berntsen, Mary Clarissa Elizabeth*	St Martin's, Thatcher Drive.
50	Berntsen, Olaf Christian Alexander	7 Fitzroy Rd. East.
51	Berntsen, Patrick	James St.
52	Berntsen, Saphena Anya Jane*	1 Coseley Building, Moody St.
53	Berntsen, Valdamar Lars	Whyteways, James St.
54	Berntsen, William Blyth*	10 Fitzroy Rd.
55	Bertrand, Catherine Gladys*	11 Ross Rd. East.

56	Betts, Arlette	6 Discovery Close.
57	Betts, Cyril Severine*	Peter Brouard, Reservoir Rd.
58	Betts, Donald William	7 Jeremy Moore Ave.
59	Betts, Ellen Alma*	21 Fitzroy Rd.
60	Betts, George Winston Charles	35 Ross Rd. West.
61	Betts, Lucia Elizabeth	35 Ross Rd. West.
62	Betts, Owen*	35 Ross Rd. West.
63	Betts, Severine*	Flat 1, 1 Jeremy Moore Ave, East.
64	Betts, Shirley Rose	7 Jeremy Moore Ave.
65	Betts, Terence Severine	6 Discovery Close.
66	Biggs, Alastair Gordon	Trehayle, 50 John St.
67	Biggs, Althea Maria	3 Dairy Paddock Rd.
68	Biggs, Betty Josephine*	9 Moody St.
69	Biggs, Edith Joan*	Trehayle, 50 John St.
70	Biggs, Frances	16 Endurance Ave.
71	Biggs, Frederick James*	Fitzroy Rd. East.
72	Biggs, Irene Mary*	Harbour View, 4 Ross Rd East.
73	Biggs, Leslie Frederick	3 Dairy Paddock Rd.
74	Biggs, Madge Bridget Frances*	Harbour View, 4 Ross Rd East.
75	Biggs, Michael Elfed	21 Fitzroy Rd.
76	Biggs, Peter Julian Basil	16 Endurance Ave.
77	Billett, Leslie William*	5 Hebe St.
78	Binnie, Juliet Ann*	Flat 3, Church House.
79	Binnie, Susan*	3 Brandon Rd.
80	Birmingham, John	4 Drury St.
81	Birmingham, Susan Jane	4 Drury St.
82	Blackley, Candy Joy	4 Barrack St.
83	Blackley, Charles David*	4 Pioneer Row.
84	Blackley, Hilda	4 Pioneer Row.
85	Blackley, John David	4 Barrack St.
86	Blackley, Maurice	Callaghan Rd.
87	Blake, Paul Wickham	1 Ross Rd.
88	Blizard, Lawrence Gordon*	51 Fitzroy Rd.
89	Blizard, Malvina Mary*	51 Fitzroy Rd.
90	Blyth, Agnes Ruth*	2 Brandon Rd.
91	Blyth, Alfred John*	2 Brandon Rd.
92	Blyth, John*	5 St Mary's Walk.
93	Bonner, Donald William*	Chauffeurs Cottage.
94	Bonner, Hayley Trina	Ross Rd West.
95	Bonner, Linda Jane	4A Ross Rd West.
96	Bonner, Nicholas	4A Ross Rd West.
97	Bonner, Paul Roderick	5 John St.
98	Bonner, Timothy	Ross Rd West.
99	Bonner, Vera Ann	5 John St.
100	Bonner, Vera Joan*	Chauffeurs Cottage.
101	Bonner, Violet*	40 Ross Rd.
102	Booth, Jessie*	Racecourse Cottage.
103	Booth, Joseph Bories*	7 Philomel St.
104	Booth, Myriam Margaret Lucia	7 Philomel St.
105	Booth, Stuart Alfred*	Racecourse Cottage.
106	Bound, Graham Leslie	Barrack St.
107	Bound, Joan*	Barrack St.
108	Bowles, Norma Evangeline	1A Villiers St.
109	Bowles, William Edward*	1A Villiers St.
110	Bowles, William George Troyd*	1A Villiers St.

111	Bragger, Edward Laurence	14 Jeremy Moore Ave.
112	Bragger, Olga	14 Jeremy Moore Ave.
113	Browning, Edwina	Davis Street.
114	Browning, Gavin	Flat 1, 5 Jeremy Moore Ave. East.
115	Browning, Rex*	35 Davis St.
116	Browning, Richard William	Davis St.
117	Browning, Trevor Osneht	6A Pioneer Row.
118	Buckett, Ronald Peter	49 Fitzroy Rd.
119	Buckland, Charles Ronald	21 Callaghan Rd.
120	Buckland, Darlene Joanna	13 James St.
121	Bundes, Robert John Christian*	17 Fitzroy Rd.
122	Burnard, Linda May	3 Jeremy Moore Ave.
123	Burnard, Peter	3 Jeremy Moore Ave.
124	Burns, Mary Anne*	34 Davis St.
125	Bury, Ian Thomas	63 Davis St.
126	Butcher, Michael George	3A Dairy Paddock Rd.
127	Butcher, Trudi	3A Dairy Paddock Rd.
128	Butler, Caroline Mary*	1A Moody St.
129	Butler, Elsie Maud*	8 John St.
130	Butler, Frederick Lowther Edward Olai*	8 John St.
131	Butler, George Joseph*	1A Moody St.
132	Butler, Joan May	1A Moody St.
133	Butler, Laurence Jonathan*	2 Davis St. East.
134	Butler, Margaret Orlanda	15A James St.
135	Butler, Orlanda Betty	2 Davis St. East.
136	Cameron, Jane Diana Mary Keith	40 Davis St.
137	Cant, Carol Rosine	37 Callaghan Rd. Jersey Est.
138	Cant, Martin Ronald	37 Callaghan Rd. Jersey Est.
139	Card, Denise	Flat 2, 30 Jersey Rd.
140	Carey, Anthony Michael*	19 Ross Rd. West.
141	Carey, Gladys*	19 Ross Rd. West.
142	Carey, Mary Ann Margaret*	18 Ross Rd. West.
143	Carey, Terence James*	18 Ross Rd. West.
144	Castle, David Peter	26 John St.
145	Castle, Isobel	26 John St.
146	Ceballos, Claudette*	28 Endurance Ave.
147	Ceballos, Eulogio Gabriel	28 Endurance Ave.
148	Chapman, Helen	6 Fitzroy Rd. East.
149	Chapman, Paul	6 Fitzroy Rd. East.
150	Chater, Annie	33 Fitzroy Rd.
151	Chater, Anthony Richard	33 Fitzroy Rd.
152	Chater, Thomas Frederick*	33 Fitzroy Rd.
153	Cheek, Barbara	10 Ross Rd.
154	Cheek, Diane	10 Ross Rd.
155	Cheek, Frederick John*	5 Fitzroy Rd. East.
156	Cheek, Gerald Winston	10 Ross Rd.
157	Cheek, Janet Linda*	25 Ross Rd. West.
158	Cheek, John Edward*	25 Ross Rd. West.
159	Cheek, Marie	10 Ross Rd.
160	Cheek, Miranda	25 Ross Rd. West.
161	Cheek, Rosalind Catriona*	25 Ross Rd. West.
162	Clapp, Kevin Christopher	YMCA, 12 Scoresby Close.
163	Clarke, Angelina Gloria*	1B, Block A, 6 Jersey Rd.
164	Clarke, Camilla Marie	8 Drury St.
165	Clarke, Christopher	8 Jeremy Moore Ave.



166	Clarke, David James	Ross Rd. Stanley.
167	Clarke, Derek Simon	2 Allardyce St.
168	Clarke, Doreen*	17 Ross Rd. West.
169	Clarke, Enid Elizabeth	4B Ross Rd. West.
170	Clarke, Eva Lynn*	17 Jeremy Moore Ave.
171	Clarke, Fiona Alison	Flat 1, 5 Jeremy Moore Ave. East.
172	Clarke, Gwynne Edwina	17 Jeremy Moore Ave.
173	Clarke, Hector*	27 Eliza Cove Crescent.
174	Clarke, Ian	17 Ross Rd. West.
175	Clarke, Isabel Joan*	1A Moody St.
176	Clarke, Jane Lucacia*	8 Pioneer Row.
177	Clarke, James Martin*	4B Ross Rd. West.
178	Clarke, Jonathan Terence*	17 Jeremy Moore Ave.
179	Clarke, Joyce Kathleen*	27 Eliza Cove Crescent.
180	Clarke, Julie	1 Discovery Close.
181	Clarke, Kathleen Gay	60 Davis St.
182	Clarke, Marvin Thomas	7 Fitzroy Rd.
183	Clarke, Paul Ian*	YMCA, 21 Shackleton Drive.
184	Clarke, Ronald John*	17 Ross Rd. West.
185	Clarke, Rudy Thomas	8 Drury St.
186	Clarke, Suzanna*	69 Fitzroy Rd.
187	Clarke, Terence John	17 Jeremy Moore Ave.
188	Clarke, Trudi Ann	7 Fitzroy Rd.
189	Clarke, Violet Rose	31 Ross Rd. West.
190	Clausen, Denzil George Gustavius	Flat 7, 2 Eliza Place.
191	Clausen, Melanie Florence	1 Hebe St.
192	Claxton, Frank Brian*	Ross Rd. East.
193	Claxton, Margaret	Ross Rd. East.
194	Clayton, Brian	16 St Marys Walk.
195	Clayton, Susan	16 St Marys Walk.
196	Clement, Jane	Globe Hotel, Crozier Place.
197	Cletheroe, Kenneth Stanley*	45 Fitzroy Rd.
198	Clifton, Cathy Louise	4 Fieldhouse Close.
199	Clifton, Charles*	3 Ross Rd. West.
200	Clifton, Darwin Lewis	53 Davis St.
201	Clifton, Doreen	3 Ross Rd. West.
202	Clifton, Gavin John*	4 Fieldhouse Close.
203	Clifton, Kevin*	20 Davis St.
204	Clifton, Marie*	Flat 3, 6 Jersey Rd.
205	Clifton, Neil	20 Davis St.
206	Clifton, Stephen Peter	61 Fitzroy Rd.
207	Clifton, Terence Charles	3 Ross Rd. West.
208	Clifton, Teresa Ann	20 Davis St.
209	Clifton, Valerie Ann	61 Fitzroy Rd.
210	Clingham, Yvonne Helen	38 Ross Rd.
211	Cofre, Anya Evelyn	Ross Rd. West.
212	Cofre, Elvio Miguel	Ross Rd. West
213	Collier, Phyllis Candy	Flat 10, 2B Block A, 6 Jersey Rd.
214	Collins, Shiralee*	Flat 10, 3B Block A, 6 Jersey Rd.
215	Coleman, Jeanette	10 Pioneer Row.
216	Connolly, Janice	9 Ross Rd. West.
217	Connolly, Kevin Barry	1 Kings St.
218	Coombe, Peter	12 Ross Rd. West.
219	Coombe, Robert	12 Ross Rd. West.
220	Coombe, Shirley Anne	12 Ross Rd. West.

221	Coulter, Paula*	Fieldhouse Close.
222	Courtney, Anthony Clive	Lady Hunt House, John St.
223	Courtney, Julie Doris	Lady Hunt House, John St.
224	Coutts, Carolynne Sarah	36 Ross Rd. West.
225	Coutts, Charles	Feltons Stream.
226	Coutts, Charles Lindsay*	33 Ross Rd.
227	Coutts, Diana Marion	13 Campbell Drive.
228	Coutts, John	36 Ross Rd. West.
229	Coutts, Olga*	33 Ross Rd.
230	Coutts, Peter	13 Campbell Drive.
231	Crowie, Ana Bonita	69 Fitzroy Rd.
232	Crowie, Nicola Jane	35 Callaghan Rd. Jersey Est.
233	Curtis, Alfred William Hamilton	1 Brandon Rd.
234	Curtis, Barbara Joan	1 Brandon Rd.
235	Curtis, James William Hamilton	1 Brandon Rd.
236	Davies, Andrew Liam*	24 Endurance Ave.
237	Davies, Anthony Warren	7 Callaghan Rd.
238	Davies, Colin George	15 Ross Rd. West.
239	Davies, Eileen Wynne	15 Ross Rd. West.
240	Davies, Jacqueline Nancy	7 Callaghan Rd.
241	Davies, Stephen Andrew*	7 Callaghan Rd.
242	Davies, William	24 Endurance Ave.
243	Davis, Ellen Rose	Davis St.
244	Davis, Lynsey Leander*	Flat 1, 1 Jeremy Moore Ave. East.
245	Davis, Maurice Nigel	Davis St.
246	Davis, Nicholas	15 James St.
247	Davis, Raymond Andrew	YMCA, 12 Scoresby Close.
248	Davis, Roy George Victor	Narrows View.
249	Davis, Sharon Sandra Evelyn	Narrows View.
250	Davis, William John*	St. Peter in the Wood, Thatcher Drive.
251	Davy, Patrick Alex Field	Flat 3, 3 Jeremy Moore Ave.
252	Decroliere, Carrie Madeline Helen	5 Discovery Close.
253	Dickson, Caroline Christine Bird*	108 Davis St.
254	Dodd, Alison	1 Pioneer Row.
255	Doherty, Ian	12 McKay Close.
256	Duncan, Doreen*	Tenacres.
257	Duncan, William*	Tenacres.
258	Earnshaw, Jacqueline Elizabeth	32 Ross Rd. West.
259	Eccles, Bernard Leslie	18 Jeremy Moore Avenue.
260	Ellis, Cyril*	Fieldhouse Close.
261	Ellis, Valerie	Fieldhouse Close.
262	Evans, Gladys Alberta*	8 Barrack St.
263	Ewing, Gordon	4 Jeremy Moore Ave.
264	Ewing, Irene	4 Jeremy Moore Ave.
265	Eynon, Carol	8 Villiers St.
266	Eynon, David John	8 Villiers St.
267	Eynon, Leeann Watson	2A Jeremy Moore Ave. East.
268	Fairfield, James Steven	15 Jeremy Moore Ave.
269	Faria, Basil Harry	3A Brisbane Rd.
270	Faria, Mary Ann*	3A Brisbane Rd.
271	Felton, Faith Dilys	1B Capricorn Rd.
272	Felton, Violet Regina Margaret*	Callaghan Rd.
273	Ferguson, Rose	Flat 7, 1 Jeremy Moore Ave.
274	Fiddes, Douglas Graham	Kent Rd.
275	Fiddes, Gardner Walker	8 Endurance Ave.

276	Fiddes, Julia Bertrand	Kent Rd.
277	Fiddes, Mary McKinnon Livingstone*	4 Moody St.
278	Fiddes, Melody Christina	8 Endurance Moore Ave.
279	Fiddes, Robert*	4 Moody St.
280	Finlayson, Iris Dwenda Margaret*	7 John St.
281	Finlayson, Peter	6 Brandon Rd.
282	Finlayson, Phyllis*	6 Brandon Rd.
283	Fisher-Smith, Julie Anne	Fieldhouse Close.
284	Fogerty, Richard Edwin John	Stone Cottage.
285	Ford, Arthur Henry*	6 Drury St.
286	Ford, Caroline	2B, Jeremy Moore Ave East.
287	Ford, Charles David*	15 Brandon Rd.
288	Ford, Cherry Rose	1 James St.
289	Ford, Christopher James	12 Davis St.
290	Ford, Colin Stewart	15 Kent Rd.
291	Ford, Colleen Mary	12 Davis St.
292	Ford, David	24 James St.
293	Ford, Frederick James	12 Davis St.
294	Ford, Gerard Allan	12 Davis St.
295	Ford, Hazel	2 Philomel Place.
296	Ford, James Edward*	6A Jeremy Moore Ave. East.
297	Ford, Leann Caroline	15 Kent Rd.
298	Ford, Leonard	15 Brandon Rd.
299	Ford, Marilyn Christina	24 James St.
300	Ford, Michael	1 James St.
301	Ford, Paul*	13 Endurance Ave.
302	Ford, Robert	1 Davis St.
303	Fullerton, Mary Ellen*	Government House.
304	Gilbert, Judith Elizabeth	22 Jeremy Moore Ave.
305	Gilbert, Robert Ernest	22 Jeremy Moore Ave.
306	Gilding, Deborah	69 Fitzroy Rd.
307	Gilding, Peter Bernard	4 Philomel St.
308	Gooch, Dudley Frederick*	34 John St.
309	Goodwin, Colin Valentine	86 Davis St.
310	Goodwin, Derek Samuel*	7 Ross Rd.
311	Goodwin, Emily Rose*	7 Brisbane Rd.
312	Goodwin, Hazel Rose*	3 Police Cottages. 7 Ross Rd.
313	Goodwin, June Elizabeth	86 Davis St.
314	Goodwin, Kathleen Edith Marguerite*	6 St. Mary's Walk.
315	Goodwin, Margaret Ann	3 Harbour View.
316	Goodwin, Michelle Jane*	6 McKay Close.
317	Goodwin, Robin Christopher	27 Callaghan Rd.
318	Goodwin, Simon James	Flat 4, Block C, 30 Jersey Rd.
319	Goodwin, Una	27 Callaghan Rd.
320	Goodwin, William Andrew Nutt*	3 Harbour View.
321	Goodwin, William John Maurice	7 Brisbane Rd.
322	Goss, Amara Theresa	7 Brandon Rd.
323	Goss, Annagret	16 Jeremy Moore Ave.
324	Goss, Dorothy Ellen	11 Ross Rd. West.
325	Goss, Elizabeth Rose	15 Callaghan Rd.
326	Goss, Grace Elizabeth*	5 Ross Rd. East.
327	Goss, Morgan Edmund	16 Jeremy Moore Ave.
328	Goss, Simon Peter Miller	6 Kent Rd.
329	Goss, William Henry (Jnr)	7 Brandon Rd.
330	Goss, William Henry (Snr)*	5 Ross Rd. East.

331	Gould, Arthur William	Moody St.
332	Grant, Lennard John*	3 Moody St.
333	Grant, Mildred*	3 Moody St.
334	Gray, Andrea Patricia	22 Ross Rd. West.
335	Greenland, Bonita Doreen*	3 Racecourse Rd.
336	Greenland, Kenneth David*	3 Racecourse Rd.
337	Grimmer, Keith	15 Pioneer Row.
338	Grimmer, Marilyn	15 Pioneer Row.
339	Hadden, Alexander Burnett*	27 Fitzroy Rd.
340	Hadden, Sheila Peggy*	27 Fitzroy Rd.
341	Halford, Rodney John	Tenacres.
342	Halford, Sharon*	Tenacres.
343	Hall, David Albert	56 Davis St.
344	Hall, Marilyn Joyce	56 Davis St.
345	Halliday, Evelyn Edna*	9 Brisbane Rd.
346	Halliday, Gerald	Flat 1, 6 Racecourse Rd.
347	Halliday, John Arthur Leslie*	108 Davis St.
348	Halliday, Leslie John*	5 Villiers St.
349	Halliday, Margaret Mary*	5 Villiers St.
350	Halliday, Raynor	9 Brisbane Rd.
351	Hansen, Douglas John*	6 Fitzroy Rd.
352	Hansen, Keva Elizabeth	1 Dairy Paddock Rd.
353	Hansen, Terence Joseph*	1 Dairy Paddock Rd.
354	Harris, Christopher James	Flat8, Block C, 30 Jersey Rd.
355	Harris, Heather	3 Ross Rd. East.
356	Harris, Jill Yolanda Miller	19 Fitzroy Rd.
357	Harris, Karl Henry*	19 Fitzroy Rd.
358	Harris, Leslie Sidney	19 Fitzroy Rd.
359	Harris, Michael Ronald	3 Ross Rd. East.
360	Harris, Ralph Aaron	19 Fitzroy Rd.
361	Harvey, Muriel Elsie Elizabeth*	2 King St.
362	Harvey, Sheila*	2 Coseley Building, Moody St.
363	Harvey, William*	21 Fitzroy Rd.
364	Hawksworth, David	29 Fitzroy Rd.
365	Hawksworth, Jeanette*	29 Fitzroy Rd.
366	Hawksworth, Mary Catherine	5A Brisbane Rd.
367	Hawksworth, Pauline May	29 Fitzroy Rd.
368	Hawksworth, Terence	5A Brisbane Rd.
369	Hayward, Marjorie	34 Eliza Cove Crescent.
370	Hayward, Peter Dennis*	34 Eliza Cove Crescent.
371	Heathman, Malcolm Keith	Eliza Cove Rd.
372	Heathman, Mandy Gail	Eliza Cove Rd.
373	Heathman, Violet*	19 Davis St.
374	Henry, Alan Richard	2B Capricorn Rd.
375	Henry, Patricia Denise	2B Capricorn Rd.
376	Hewitt, Alison Denise	23 Shackleton Drive.
377	Hewitt, Brian David	14 Jeremy Moore Ave.
378	Hewitt, Frances Agnes	32 Callaghan Rd.
379	Hewitt, Gary George	3 Hebe Place.
380	Hewitt, Kevin John	14 Jeremy Moore Ave.
381	Hewitt, Margaret Ann	3 Hebe Place.
382	Hewitt, Rachel Catherine Orissa*	4 St. Mary's Walk.
383	Hewitt, Robert John David*	Flat 4 6 Racecourse Rd.
384	Hills, Heather Margaret*	5 Davis St.
385	Hills, Richard William*	5 Davis St.

386	Hirtle, Christine	1A Jersey Est.
387	Hirtle, Leonard Lloyd	20 Jeremy Moore Ave.
388	Hirtle, Mary Ann*	12 Drury St.
389	Hirtle, Michelle*	20 Jeremy Moore Ave.
390	Hirtle, Rose Ann Shirley*	4 Villiers St.
391	Hirtle, Sandra May Winifred	Eliza Cove Rd.
392	Hirtle, Shirley	20 Jeremy Moore Ave.
393	Hirtle, Zane Eric	Eliza Cove Rd.
394	Hobman, Anilda Marilu	34 Ross Rd. West Flat.
395	Hobman, Luis Alfonso*	34 Ross Rd. West Flat.
396	Howatt, Derek Frank*	4 Racecourse Rd.
397	Howe, Alison Delia	36 Davis St.
398	Howe, Paul Anthony	36 Davis St.
399	Howells, Anne Stephanie	Davis St.
400	Howells, Roger	Davis St.
401	Huanel, Jose Raul	Flat 1, 3 Jeremy Moore Ave.
402	Igao, Pauline Lynx	15 Scoresby Close.
403	Jacobsen, Alistair	1A Philomel St.
404	Jacobsen, Catherine Joan	1A Philomel St.
405	Jaffray, Angus	Cemetery Cottage.
406	Jaffray, Christopher	Cemetery Cottage.
407	Jaffray, Eileen	5 Hebe St.
408	Jaffray, Estelle Anita	Cemetery Cottage.
409	Jaffray, Frank Alexander	8 Discovery Close.
410	Jaffray, Gerard Alan*	5 Hebe St.
411	Jaffray, Helen Rose	84 Davis St.
412	Jaffray, Ian	5 Hebe St.
413	Jaffray, Ingrid Joyce	Flat 3, 1 Jeremy Moore Ave.
414	Jaffray, Jacqueline Ann	84 Davis St.
415	Jaffray, Janet	14 Pioneer Row.
416	Jaffray, Janice Vanessa	3c Jersey Estate.
417	Jaffray, John	14 Pioneer Row.
418	Jaffray, June Elizabeth	Flat 1, Church House.
419	Jaffray, Kenneth Ian	2 Dean St.
420	Jaffray, Lisa Jane*	Flat 3, 1 Jeremy Moore Ave.
421	Jaffray, Robin George	6A Pioneer Row.
422	Jaffray, Stephen James	13 James St.
423	Jaffray, Terence Roy	Flat 3, 1 Jeremy Moore Ave.
424	Jaffray, Terri-Ann	Flat 9, 6 Jersey Rd.
425	Jaffray, Tony	84 Davis St.
426	Jaffray, Wayne Neil*	5 Hebe St.
427	Jennings, Neil	Flat 4, 30 Jersey Rd.
428	Jennings, Stephen	5 Fitzroy Rd.
429	Johnson, Elaine Michele	8 Discovery Close.
430	Johnson, Jacqueline	5 Kent Rd.
431	Johnson, Michael Neil	5 Kent Rd.
432	Johnson, Stanley Howard*	St Andrews, Thatcher Drive.
433	Johnson, Vanda Joan	17 Callaghan Rd.
434	Jones, Alan Smith	26 Ross Rd. West.
435	Jones, Jennifer	26 Ross Rd. West.
436	Jones, John Hugh	1 Brandon Rd.
437	Jones, Kevin Richard	Eliza Close Crescent.
438	Jones, Michael David	6 Allardyce St.
439	Jones, Michelle	1 Brandon Rd.
440	Jones, Sheila Janice	6 Allardyce St.

441	Jones, Yvonne Malvina	3 Discovery Close.
442	Jordan, Dilys Margaret Ann	14A Drury St.
443	Keane, Alva Rose Marie	18 Davis St.
444	Keenleyside, Charles Desmond (Snr)*	3 Pioneer Row.
445	Keenleyside, Charles Desmond (Jnr)*	3 John St.
446	Keenleyside, Dorothy Maud*	3 Pioneer Row.
447	Keenleyside, Manfred Michael Ian	Snake Hill.
448	Keenleyside, Nanette Barbara	Snake Hill.
449	Keenleyside, Susan Noreen	3 John St.
450	Kenny, Erling	20 James St.
451	King, Anna Constance Eve	38 Davis St.
452	King, Desmond George Buckley*	38 Davis St.
453	King, Gladys Evelyn*	39 Fitzroy Rd.
454	King, Glynis	2B Jeremy Moore Ave. East.
455	King, Peter Thomas*	10 Jeremy Moore Ave.
456	King, Robert John	1D Jersey Est.
457	King, Rosemarie	10 Jeremy Moore Ave.
458	King, Vernon Thomas*	39 Fitzroy Rd.
459	Kluzniak, Beulah*	26 Ross Rd. East.
460	Kluzniak, Bogaslaw Sylvester*	26 Ross Rd. East.
461	Kultschar, John William	4 Davis St. East.
462	Kultschar, Yvonne Rosina	4 Davis St. East.
463	Laffi, Atilio Segundo	3 Brisbane Rd.
464	Laffi, Kathleen Mary	3 Brisbane Rd.
465	Laffi, Lisa*	3 Brisbane Rd.
466	Lang, David Geoffrey*	45 Callaghan Rd. Jersey Est.
467	Lang, James Patrick	Flat 2, 3 Jeremy Moore Ave.
468	Lang, Sandra Shirleen	Moody St.
469	Lang, Theresa Margaret	45 Callaghan Rd. Jersey Est.
470	Lang, William Frank*	3 James St.
471	Larsen, Ellen	74 Davis St.
472	Lee, Alfred Leslie*	11 Drury St.
473	Lee, Derek William	Davis St.
474	Lee, Gladys*	11 Drury St.
475	Lee, Leslie James	10 Allardyce St.
476	Lee, Robin Myles	3 Davis St. East.
477	Lee, Trudi Dale	10 Allardyce St.
478	Lewis, James*	2 St. Mary's Walk.
479	Lewis, Jean*	2 St. Mary's Walk.
480	Livermore, Anton	33 Jersey Est. Callaghan Rd.
481	Livermore, Marie Anne	33 Jersey Est. Callaghan Rd.
482	Loftus, Anthony	Kent Rd.
483	Loftus, Colleen	John Street.
484	Lowe, Adrian Stewart	Fieldhouse Close.
485	Luxton, Ernest Falkland*	38 John St.
486	Luxton, Jennifer Mary	4 Hebe Place.
487	Luxton, Michael	1A Pioneer Row.
488	Luxton, Nicola	1A Pioneer Row.
489	Luxton, Sybil Grace*	38 John St.
490	Luxton, Winifred Ellen*	15 Fitzroy Rd.
491	Lyse, Ethel Malvina*	65 Fitzroy Rd.
492	Lyse, George Walter*	Moody St.
493	Lyse, Linda Margaret	65 Fitzroy Rd.
494	Lyse, Reginald Sturdee*	65 Fitzroy Rd.
495	Lyse, Sydney Russell*	KEMH.

496	Macaskill, Angus Lindsey	8 Jeremy Moore Ave.
497	Macaskill, Jeanette May	8 Jeremy Moore Ave.
498	Macaskill, John	34 Ross Rd. West.
499	Malcolm, George*	7 Allardyce St.
500	Malcolm, Velma*	7 Allardyce St.
501	May, Brian Roy	21 Jeremy Moore Ave.
502	May Bruce Raymond	Wardens House, KEMH.
503	May Connie	Wardens House, KEMH.
504	May, Heather*	1 Glasgow Rd.
505	May, Jonathan Roy	21 Jeremy Moore Ave.
506	May, Monica	21 Jeremy Moore Ave.
507	May, William Albert*	1 Glasgow Rd.
508	Middleton, Brian	22 Eliza Cove Crescent.
509	Middleton, Caroline Ann	7 James St.
510	Middleton, Dennis Michael	Dolphin Cottage.
511	Middleton, Ellen*	50 Davis St.
512	Middleton, Graham Cyril	50 Davis St.
513	Middleton, Joan Eliza	8 James St.
514	Middleton, Leonard	Fitzroy Rd.
515	Middleton, Phillip John	5 St Marys Walk.
516	Middleton, Sharon Elizabeth	Dolphin Cottage.
517	Middleton, Shirley	Fitzroy Rd.
518	Middleton, Stephanie Ann	22 Eliza Cove Crescent.
519	Miller, Andrew Nigel	7 Dean St.
520	Miller, Betty Lois*	Market Gdn, Stly Airport Rd.
521	Miller, Carol	Kent Rd.
522	Miller, Florence Roberta*	5 Moody St.
523	Miller, Gail Marie	8A Jeremy Moore Ave.
524	Miller, Jayne Elizabeth	7 Dean St.
525	Miller, Simon Roy	Kent Rd.
526	Miller, Timothy John Durose	Market Gdn, Stly Airport Rd.
527	Minto, Alistair Daen	Flat 5, 6 Racecourse Rd.
528	Minto, Dilys Rose	18 Endurance Ave.
529	Minto, Graham Stewart	12 Brisbane Rd.
530	Minto, Patrick Andrew	Flat 2, 6 Jersey Rd.
531	Minto, Timothy Ian	18 Endurance Ave.
532	Miranda, Augusto*	31 Davis St.
533	Miranda, Carmen	3 Drury St.
534	Miranda, Ramon	3 Drury St.
535	Miranda, Winifred Dorothy*	3 Drury St.
536	Mitchell, Leon John	Flat 3, 6 Jersey Rd.
537	Moffat, Angela	Davis St. East.
538	Moffat, James	Davis St. East.
539	Morris, Alana Marie	4 Callaghan Rd.
540	Morris, David*	4 Callaghan Rd.
541	Morris, Trevor Alan	59 Fitzroy Rd.
542	Morrison, Donald Ewen*	St Sampsons Thatcher Drive.
543	Morrison, Doreen	82 Davis St.
544	Morrison, Eleanor Olive*	Brisbane Rd.
545	Morrison, Fayen	54 John St.
546	Morrison, Graham Stewart	46 Davis St.
547	Morrison, Hyacinth Emily*	St Peter Port, Thatcher Drive.
548	Morrison, Joan Margaret	Flat 6, 1 Jeremy Moore Ave.
549	Morrison, Lewis Ronald	82 Davis St.
550	Morrison, Muriel Eliza Ivy*	40 Eliza Cove Crescent.

551	Morrison, Nanette Rose	46 Davis St.
552	Morrison, Nigel Peter	7 James St.
553	Morrison, Patrick	1 Brandon Rd.
554	Morrison, Paul Roderick	1 Brandon Rd.
555	Morrison, Ronald Terence*	5 Racecourse Rd.
556	Morrison, Stewart	46 Davis St.
557	Morrison, Trevor	6A Jeremy Moore Ave.
558	Morrison, Valerie Ann	6A Jeremy Moore Ave.
559	Morrison, Violet Sarah*	5 Racecourse Rd.
560	Morrison, William Roderick Halliday	54 John St.
561	Murphy, Ann Susan	2 King St.
562	Murphy, Bessie*	68 Davis St.
563	Murphy, Michael James*	68 Davis St.
564	MacDonald, Colin George	26 Endurance Ave.
565	MacDonald, Derek George*	26 Endurance Ave.
566	MacDonald, Irene	26 Endurance Ave.
567	MacDonald, John Alexander Horne	Flat 3, Jeremy Moore Ave.
568	McBeth, Phyllis Elizabeth Grace	17 Brandon Rd.
569	McCallum, Bettina Kay	14 Drury St.
570	McCallum, Christopher John	8A Jeremy Moore Ave.
571	McCallum, Ellen*	14 Brandon Rd.
572	McCallum, James*	14 Brandon Rd.
573	McCallum, Timothy Andrew	14A Drury St.
574	McCormick, Dale Ronald	72 Davis St.
575	McCormick, Pauline Margaret Ruth	Warrah Guest House, John St.
576	McCormick, Richard Paul*	Warrah Guest House, John St.
577	McEachern, Gloria Jane	2 H Jones Rd.
578	McGill, Coral Elizabeth	34 Ross Rd, East Flat.
579	McGill, Darrel Ian	Barrack St.
580	McGill, Diane Beverley	2 James St.
581	McGill, Doris Mary*	32 Davis St.
582	McGill, Gary	20 Eliza Cove Crescent.
583	McGill, Glenda	Barrack St.
584	McGill, Ian Peter	Barrack St.
585	McGill, Jane	10 Discovery Close.
586	McGill, Len Stanford*	2 James St.
587	McGill, Lorraine Iris	10 Ross Rd. East.
588	McGill, Roy	10 Ross Rd. East.
589	McKay, Clara Mary*	20 Ross Rd. West.
590	McKay, Heather Valerie	Eliza Cove Crescent.
591	McKay, James John*	7 Villiers St.
592	McKay, Jane Elizabeth*	7 Villiers St.
593	McKay, Jeannie Paulina	64 Davis St.
594	McKay, Josephine Ann	25 Callaghan Rd.
595	McKay, Kenneth Andrew	25 Callaghan Rd.
596	McKay, Kevin Derek Charles*	12 Scoresby Close.
597	McKay, Michael John	64 Davis St.
598	McKay, Neil	62 Davis St.
599	McKay, Paul Anthony	Flat 5, 6 Jersey Rd.
600	McKay, Peter John	21 Ross Rd. West.
601	McKay, Rex	Eliza Cove Crescent.
602	McKay, Shelley Jane	7 Villiers St.
603	McKay, Stephen John*	Casteal, Thatcher Drive.
604	McKay, William Robert*	20 Ross Rd. West.
605	McKenzie, Alice Maude	Moody Brook Homestead.



606	McKenzie, Charles Alexander Albert John	Moody Brook Homestead.
607	McLaren, Tony Eugene Terence	12 Allardyce St.
608	McLeod, David	49 Callaghan Road.
609	McLeod, Dawn	90 Davis St.
610	McLeod, Donald Henry*	1B Jersey Est.
611	McLeod, Ellen May*	St Sampson's, Thatcher Drive.
612	McLeod, Henry Donald Alexander	21 Shackleton Drive.
613	McLeod, Ian	9 Fitzroy Rd.
614	McLeod, Janet Wensley	75 Davis St.
615	McLeod, Janice	2 Ross Rd. West.
616	McLeod, John (1)	1 Campbell Drive.
617	McLeod, John (2)	Flat 1, Jeremy Moore Ave.
618	McLeod, Kenneth Benjamin John	90 Davis St.
619	McLeod, Madeline Jean	1 Campbell Drive.
620	McLeod, Mally	9 Fitzroy Rd.
621	McLeod, Margaret Anne*	Fitzroy Rd. East.
622	McLeod, Michael William	15A James St.
623	McLeod, Robert	75 Davis St.
624	McLeod, Robert John	2 Ross Rd. West.
625	McPhee, Denise	Fieldhouse Close.
626	McPhee, Grace Darling*	KEMH.
627	McPhee, Iris Blanche*	14 Davis St.
628	McPhee, Justin Owen	Fieldhouse Close.
629	McPhee, Marjorie May*	14 John St.
630	McPhee, Owen Horace*	14 John St.
631	McPhee, Patrick*	14 Davis St.
632	McPhee, Sara*	8 Dairy Paddock Rd.
633	McPhee, Sheila Margaret	8 Dairy Paddock Rd.
634	McPhee, Terence Owen	8 Dairy Paddock Rd.
635	McRae, Richard Winston	Flat 2, 6 Racecourse Rd.
636	Neal, Richard John	1 Dean St.
637	Neilson, Barry Marwood	23 Ross Rd.
638	Neilson, Margaret	23 Ross Rd.
639	Newell, Joseph Orr	3 Villiers St.
640	Newell, Paula Michelle*	3 Villiers St.
641	Newell, Trudi Malvina	3 Villiers St.
642	Newman, Andrew Raymond	Flat 1, Church House.
643	Newman, Clive Alexander	5 Brandon Rd.
644	Newman, Dorothy Elizabeth*	Fitzroy Rd.
645	Newman, Dwenda Rose	5 Brandon Rd.
646	Newman, Joyce Noreen	80 Davis St.
647	Newman, Marlene	11 Jeremy Moore Ave.
648	Newman, Raymond Winston	11 Jeremy Moore Ave.
649	Newman, Terence*	11 Jeremy Moore Ave.
650	Nightingale, Susan Jane	Narrows View,
651	Nutter, Arthur Albert	9 Brandon Rd.
652	Nutter, Josephine Lesley	9 Brandon Rd.
653	O'Shea, Desmond	9 Campbell Drive.
654	Parrin, Norman George*	108 Davis St.
655	Pauloni, Hilary Maud*	63 Fitzroy Rd.
656	Pauloni, Romolo Vittorio*	63 Fitzroy Rd.
657	Peake, Arthur	19 James St.
658	Peake, Clair Linda	19 James St.
659	Peck, Burned Brian	22 James St.
660	Peck, Carol Margaret	2 Discovery Close.

661	Peck, David Patrick*	78 Davis St.
662	Peck, Eleanor Margaret	23 Shackleton Drive.
663	Peck, Evelyn Elizabeth	22 James St.
664	Peck, Gordon Pedro James *	17 Brandon Rd.
665	Peck, James	2 Discovery Close.
666	Peck, Kim Brian	15 Campbell Drive.
667	Peck, Mary*	4 Fitzroy Rd. East.
668	Peck, Maureen Heather	78 Davis St.
669	Peck, Patrick William*	78 Davis St.
670	Peck, Shirley	2 Barrack St.
671	Peck, Terence John	23 Shackleton Drive.
672	PED,	Airport Rd.
673	Perkins Vivienne Esther Mary*	33 John St.
674	Perry, Augustave Walter*	9 Villiers St.
675	Perry, Beatrice Annie Jane*	25 Ross Rd. East.
676	Perry, Hilda Blanche*	2, Police Cottage, 8 Ross Rd.
677	Perry, Robert Juan Carlos	25 Ross Rd. East.
678	Perry, Thomas George*	2, Police Cottage, 8 Ross Rd.
679	Perry, Thora Virginia*	17 Fitzroy Rd.
680	Pettersson, Derek Richard	21 Eliza Cove Crescent.
681	Pettersson, Eileen Heather	30 Davis St.
682	Pettersson, Tony	30 Davis St.
683	Pettersson, Trudi Ann	21 Eliza Cove Crescent.
684	Phillips, Albert James	16 Brandon Rd.
685	Phillips, David Dawson	35 Fitzroy Rd.
686	Phillips, Gillian Carol*	Flat 2, 5 Jeremy Moore Ave East.
687	Phillips, Lynda	16 Brandon Rd.
688	Phillips, Paul David	69 Fitzroy Rd.
689	Platt, Veronica Shirley	54 Davis St.
690	Plumb, Elaine Margaret	2 Brisbane Rd.
691	Plumb, Jason Alan	2A Brisbane Rd.
692	Plumb, Norman Phillip*	2 Brisbane Rd.
693	Pole-Evans, Amy Rose	4 Harbour View.
694	Pole-Evans, John	4 Harbour View.
695	Pole-Evans, Michael Anthony	4 Harbour View.
696	Pollard, Elizabeth Eve*	23 Ross Rd. East.
697	Pollard, John	23 Ross Rd. East.
698	Poole, Evelyn May*	31 Fitzroy Rd.
699	Poole, Nancy Margaret	52 John St.
700	Poole, Raymond John	52 John St.
701	Poole, William John*	31 Fitzroy Rd.
702	Porter, Brian Charles	29 Ross Rd. West.
703	Porter, Charles*	11 Fitzroy Rd.
704	Porter, Jean Lavinia*	11 Fitzroy Rd.
705	Porter, Tracy	5 Jeremy Moore Ave.
706	Pratlett, Patricia Carol Ann	2 Philomel Place.
707	Purvis, Alan	3 Narrows View.
708	Purvis, Marian Louise*	3 Narrows View.
709	Reddick, Keith John	By Pass Rd.
710	Reeves, Cheryl Rose	8 St Marys Walk.
711	Reeves, Michael	8 St Marys Walk.
712	Reid, Ann	Flat 1, 30 Jersey Rd.
713	Reid, Colleen Rose	9 Fitzroy Rd. East.
714	Reid, Emily Margaret	2B Jeremy Moore Ave.
715	Reid, Reynold Gus	9 Fitzroy Rd. East.

716	Reive, Ernest*	4 Allardyce St.
717	Reive, Roma Endora Mary*	4 Allardyce St.
718	Rendell, Michael	8 Ross Rd. West.
719	Rendell, Phyllis Mary*	8 Ross Rd. West.
720	Revy, Joanne	7 Beaver Rd.
721	Riddell, Lisa-Marie	9 Discovery Close.
722	Roberts, Diana Christine	7 Kent Rd.
723	Roberts, Laura May*	7 Kent Rd.
724	Roberts, Peter James	57 Fitzroy Rd.
725	Roberts, William Henry*	7 Kent Rd.
726	Robertson, Janet	Flat 5, 6 Jersey Rd.
727	Robertson, Paul Jonathan	37 Ross Rd.
728	Robertson, Sally Jean	Flat 1, Block C, Jersey Rd.
729	Robson, Alison Emily	15 Villiers St.
730	Robson, Gerard Michael	1 Philomel Place.
731	Robson, Gladys Mary*	5 Philomel St.
732	Robson, Miranda Gay	6 Brisbane Rd.
733	Robson, Phyllis Ann	1 Philomel Place.
734	Robson, Raymond Nigel*	6 Brisbane Rd.
735	Robson, William Charles*	1 Philomel Place.
736	Rogers, Ralph	14 Endurance Ave.
737	Rogers, Roger Neil	14 Endurance Ave.
738	Ross, Colin*	40 Eliza Cove Crescent.
739	Ross, Glenn Stephen	Stanley.
740	Ross, Janet	Stanley.
741	Ross, Lachlan Neil	7 Discovery Close.
742	Ross, Marie	21 John St.
743	Ross, Odette Ellen May	26 Jersey Est.
744	Ross, Roy	21 John St.
745	Ross, Sheena Margaret	16 Jeremy Moore Ave.
746	Ross, Susan Vera	49 Fitzroy Rd.
747	Rowland, Charlene Rose	Sir Rex Hunt House, John St.
748	Rowland, John Christopher	Sir Rex Hunt House, John St.
749	Rowlands, Catherine Annie*	3 Hebe St.
750	Rowlands, Daisy Malvina*	41 Ross Rd.
751	Rowlands, Harold Theodore*	8 Ross Rd. East.
752	Rowlands, John Richard*	41 Ross Rd.
753	Rowlands, Neil	Narrows View.
754	Rowlands, Robert John	106 Davis St.
755	Rozee, Betty Ellen	16 Davis St.
756	Rozee, Bryn Thomas*	16 Davis St.
757	Rozee, Derek Robert Thomas*	16 Davis St.
758	Sackett, Albert John	25 Ross Rd. East.
759	Sackett, Michael John Carlos	Flat 3, 5 Jeremy Moore Ave.
760	Sackett, Pauline*	25 Ross Rd. East.
761	Samey, Harry*	Dairy Paddock Rd.
762	Saunders, Tracey Clare	2 Allardyce Street.
763	Sawle, Judith	Seaview Cottage Ross Rd.
764	Sawle, Richard	Seaview Cottage Ross Rd.
765	Shedden, James Alexander*	St Saviour, Thatcher Drive.
766	Shepherd, Colin David*	13 Endurance Ave.
767	Shepherd, Ramsay	13 Ross Rd. West.
768	Shorrock Joyce	5 McKay Close.
769	Shorrock, Nigel Arthur	5 McKay Close.
770	Short, Andrez Peter	9 Pioneer Row.

771	Short, Brenda	Barrack St.
772	Short, Celia Soledad	1 Racecourse Rd.
773	Short, Charles William	14 Pioneer Row.
774	Short, Christina Ethel*	12 Brandon Rd.
775	Short, Donald Robert Gordon	Eliza Cove Rd.
776	Short, Emily Christina	1 Fitzroy Rd. East.
777	Short, Gavin Phillip	6 Dairy Paddock Rd.
778	Short, Joseph Leslie*	12 Brandon Rd.
779	Short, Lisa Helen	Fieldhouse Close.
780	Short, Montana Tyrone	4 Dairy Paddock Rd.
781	Short, Peter Robert	1 Fitzroy Rd. East.
782	Short, Richard Edward	58 Davis St.
783	Short, Riley Ethroe	Barrack St.
784	Short, Robert Charles	12 Brandon Rd.
785	Short, Rose Stella	KEMH.
786	Short, Vilma Alicia	4 Dairy Paddock Rd.
787	Simpson, Bertha Veronica	6 Police Cottages, 4 Ross Rd.
788	Simpson, James Garry	7 Racecourse Rd.
789	Simpson, John Frederick	6 Police Cottages, 4 Ross Rd.
790	Simpson, Mirabelle Hermione	7 Racecourse Rd.
791	Sinclair, Veronica Joyce *	21 Ross Rd. West.
792	Skene, Greta Winnora Miller	22 Ross Rd. East.
793	Smith, Alexander Gordon	16 Jersey Est.
794	Smith, Anthony David	11 Brandon Rd.
795	Smith, Bruce Dennis	4 Police Cottage, 6 Ross Rd.
796	Smith, Colin David	6 James St.
797	Smith, Derek	36 Eliza Cove Crescent.
798	Smith, Ellen Mary	12 Brandon Rd.
799	Smith, Eric	3 Allardyce St.
800	Smith, Gerard Alexander	8 Barrack St.
801	Smith, Gwenifer May*	8 Barrack St.
802	Smith, Ian Lars*	2 Ross Rd. West.
803	Smith, Ileen Rose	Ross Rd. West.
804	Smith, Iola Winifred*	3 Allardyce St.
805	Smith, James Stanley*	17 James St.
806	Smith, James Terence*	3 Fitzroy Rd.
807	Smith, Jean Waddell	16 Jersey Est.
808	Smith, Jennifer Ethel	Flat 8, 6 Jersey Rd.
809	Smith, Jeremy	20 Scoresby Close.
810	Smith, Joan Lucy Ann	6A Pioneer Row.
811	Smith, John	Ross Rd. West.
812	Smith, Julia Trinidad	36 Eliza Cove Crescent.
813	Smith, Marlaine Rose	13 Callaghan Rd.
814	Smith, Martyn James	Ross Rd. West.
815	Smith, Natalie Marianne	6 James St.
816	Smith, Nora Kathleen	4 Police Cottage, 6 Ross Rd.
817	Smith, Osmund Raymond*	Brisbane Rd.
818	Smith, Owen Archibald*	3 Fitzroy Rd.
819	Smith, Patricia Anne*	Fitzroy Rd.
820	Smith, Paulette Rose	KEMH.
821	Smith, Rhona	8 Fitzroy Rd.
822	Smith, Robert William	13 Callaghan Rd.
823	Smith, Russell James	Fieldhouse Close.
824	Smith, Shula Louise*	Flat 4, 5 Jeremy Moore Av.
825	Smith, Sidney Frederick	2A Capricorn Rd.

826	Smith, Terence George	Flat 3, Racecourse Rd.
827	Sollis, Sarah Emma Maude*	20 Drury St.
828	Spall, Christopher Richard	Callaghan Rd.
829	Spink, Roger Kenneth	4 Hebe St.
830	Spinks, Alexander	Flat 4, 1 Moody St.
831	Spinks, Malvina Ellen*	Flat 6, 7 Jeremy Moore Ave.
832	Spruce, Helena Joan*	31 Ross Rd.
833	Spruce, Terence George*	31 Ross Rd.
834	Steen, Allan Graham	YMCA, 21 Shackleton Drive.
835	Steen, Barbara Ingrid	Ross Rd. West.
836	Steen, Emma Jane*	36 Ross Rd.
837	Steen, Gail	7 St Mary's Walk.
838	Steen, Karen Lucetta*	7 St Mary's Walk.
839	Steen, Vernon Robert	7 St Mary's Walk.
840	Stephenson, James	Moody Valley.
841	Stephenson, Joan Margaret	Moody Valley.
842	Stephenson, Katrina	4 Davis St.
843	Stephenson, Zachary	4 Davis St.
844	Stevens, Teresa Rose	9 Drury St.
845	Stewart, Aarron Stephen	6 Pioneer Row.
846	Stewart, Celia Joyce	12 St Mary's Walk.
847	Stewart, David William*	Davis St.
848	Stewart, Duane William*	Flat 3, 30 Jersey Rd.
849	Stewart, Hulda Fraser	24 Ross Rd. West.
850	Stewart, John*	24 Ross Rd. West.
851	Stewart, Kenneth Barry	3 Discovery Close.
852	Stewart, Robert	12 St Mary's Walk.
853	Stewart, Robert William	4 Discovery Close.
854	Stewart, Sheila Olga	9 McKay Close.
855	Stewart, Sylvia Rose*	7 Ross Rd. West.
856	Strange, Ian John	The Dolphins, Snake St.
857	Strange, Maria Marta	The Dolphins, Snake St.
858	Strange, Shona Marguerite	6B Ross Rd. West.
859	Summers, Brian	1 Ross Rd. East.
860	Summers, Colin Owen*	5 Brandon Rd.
861	Summers, Dennis David	37 Davis St.
862	Summers, Edith Catherine*	5 Dean St.
863	Summers, Irvin Gerard	5 Dean St.
864	Summers, Judith Orissa*	1 Ross Rd. East.
865	Summers, Lynn Jane*	2 H Jones Rd.
866	Summers, Melvyn Mark*	2 H Jones Rd.
867	Summers, Michael Kenneth	Brisbane Rd.
868	Summers, Michael Victor	11 Pioneer Row.
869	Summers, Nigel Clive*	32 Fitzroy Rd.
870	Summers, Owen William	5 Brandon Rd.
871	Summers, Pamela Rosemary Cheek	32 Fitzroy Rd.
872	Summers, Rowena Elsie	5 Allardyce St.
873	Summers, Roy*	8 Racecourse Rd.
874	Summers, Sandra Marie*	Sir Rex Hunt House, John St.
875	Summers, Sheila	Sir Rex Hunt House, John St.
876	Summers, Sybella Catherine Ann	1 Ross Rd. West.
877	Summers, Sylvia Jean	8 Racecourse Rd.
878	Summers, Terence	1 Ross Rd. West.
879	Summers, Tony	8 Racecourse Rd.
880	Summers, Veronica	5 Brandon Rd.

881	Summers, William Edward*	Stanley.
882	Summers, Yona	37 Davis St.
883	Sutherland, Elizabeth Margaret	13/14 Eliza Cove Crescent.
884	Sutherland, James David	5 Eliza Cove Rd.
885	Sutherland, John Gall	3B Jersey Est.
886	Sutherland, William John Munro	13/14 Eliza Cove Crescent.
887	Teale, Jeannette	8 Brisbane Rd.
888	Teggart, Carol Wendy*	9 Callaghan Rd.
889	Teggart, John Patrick	9 Callaghan Rd.
890	Tellez, Jeanette Valerie	2 Hodson Villa West.
891	Tellez, Jose Hector	2 Hodson Villa West.
892	Thain, John	8 Davis St.
893	Thain, Julia	2A Capricorn Rd.
894	Thain, Stephanie Ann	8 Davis St.
895	Thom, David Anderson*	47 Fitzroy Rd.
896	Thom, Dorothy Irene	47 Fitzroy Rd.
897	Thom, Norma Ann	92 Davis St.
898	Thompson, George Henry*	St Saviour, Thatcher Drive
899	Thompson, William John*	Flat 2, 1 Moody St.
900	Titterington, Lesley Ann	55 Fitzroy Rd.
901	Titterington, Robert Mark*	55 Fitzroy Rd.
902	Toase, Cora Agnes*	7 Ross Rd. East.
903	Towersey, Diane Katherine	37 Ross Rd.
904	Triggs, Diane	Fieldhouse Close.
905	Triggs, Michael David	Fieldhouse Close.
906	Tuckwood, John Rodney	1 Drury St.
907	Tuckwood, Phyllis Marjorie	1 Drury St.
908	Turner, Arthur Leonard Pitaluga	Rincon Cottage.
909	Turner, Melvyn George	36 John St.
910	Tyrrell, Gary Bernard	Campbell Drive.
911	Valler, Danuta Cecelia Krystyna	23 Jeremy Moore Ave.
912	Valler, Robert Hugh	23 Jeremy Moore Ave.
913	Vidal, Eileen Nora*	12 Jeremy Moore Ave.
914	Vidal, Leona Lucila	12 Jeremy Moore Ave.
915	Vincent, Janette Mary	10 Endurance Ave.
916	Vincent, Stephen Lawrence	10 Endurance Ave.
917	Wade, June Rose Elizabeth	41 Fitzroy Rd.
918	Wallace, Fraser Barrett	10 John St.
919	Wallace, Maria Lilian	38 Ross Rd. West.
920	Wallace, Michael Ian	23 Callaghan Rd.
921	Wallace, Stuart Barrett*	38 Ross Rd. West.
922	Wallace, Una	23 Callaghan Rd.
923	Warbrick, Andrea Mary Malvina Pitaluga	72 Davis St.
924	Watson, Boyd Edward Harold	Flat 4, 6 Jersey Rd.
925	Watson, Hannah Maude*	7 Moody St.
926	Watson, Paul	20 Endurance Ave.
927	Watt, Sylvia Ann	2B Block C, 30 Jersey Rd.
928	Watts, Lucinda Vikki	13 Brisbane Rd.
929	Watts, Patrick James	13 Brisbane Rd.
930	White, Allan Paul George	10 Discovery Close.
931	White, Kathleen Elizabeth*	2 Brandon Rd. West.
932	Whitney, Agnes Kathleen*	3 St. Mary's Walk.
933	Whitney, Frederick William	1 Police Cottage, 9 Ross Rd.
934	Whitney, Henry Leslie*	3 St. Mary's Walk.
935	Whitney, Jason	Flat 4, 7 Jeremy Moore Av.

936	Whitney, Kurt Ian	2 Pioneer Row.
937	Whitney, Robert Michael	Stanley.
938	Whitney, Susan Joan	1 Police Cottage, 9 Ross Rd.
939	Wilkinson, Robert John	1C Capricorn Rd.
940	Williams, Charlotte Agnes*	4 Brandon Rd. West.
941	Williams, Gene*	23 Ross Rd. West.
942	Williams, Marlene Rose	23 Ross Rd. West.
943	Wylie, Julian Richard	1 McKay Close.
944	Wylie, Wendy Jennifer	2A Capricorn Rd.
945	Zuvic-Bulic, Kuzma Mario	16 Ross Road West.
946	Zuvic-Bulic, Sharon Marie	16 Ross Rd. West.

\* NOT LIABLE TO SERVE AS A JUROR

## Register of Electors, Camp Constituency

1001	Adams, Carol Margaret	Chartres, West Falkland
1002	Alazia, George Robert*	Hope Cottage, East Falkland
1003	Alazia, Hazel	Mullet Creek Farm, East Falkland
1004	Alazia, Mandy Gwyneth	Port Edgar Farm, West Falkland
1005	Alazia, Michael Robert	Port Edgar Farm, West Falkland
1006	Alazia, Stuart John	Port Howard, West Falkland
1007	Alazia, Thora Lilian*	North Arm, East Falkland
1008	Aldridge, Brian George	Goose Green, East Falkland
1009	Aldridge, Olive Elizabeth*	Hill Cove, West Falkland
1010	Aldridge, Terence William	Hill Cove, West Falkland
1011	Anderson, Andrew Ronald	North Arm, East Falkland
1012	Anderson, Georgina Carol*	Port San Carlos, East Falkland
1013	Anderson, Jamie Falkland*	Port Howard, West Falkland
1014	Anderson, Jenny	Port San Carlos East Falkland
1015	Anderson, Margaret Kathleen	Fox Bay Village, West Falkland
1016	Anderson, Marina Rose	Johnson's Harbour, East Falkland
1017	Anderson, Reginald Stanford	Fox Bay Village, West Falkland
1018	Anderson, Ronald	Johnson's Harbour, East Falkland
1019	Anderson, Rupert William*	North Arm, East Falkland
1020	Anderson, Tony James	Port San Carlos, East Falkland
1021	Anderson, William John Stanley	San Carlos, East Falkland
1022	Ashworth, Glennis	Beckside Farm, East Falkland
1023	Ashworth, Malcolm	Beckside Farm, East Falkland
1024	Bagley, Jacqueline Elizabeth	Riverview Farm East Falkland
1025	Barnes, Deirdre	Dunbar Farm, West Falkland
1026	Barnes, Marshall	Dunbar Farm, West Falkland
1027	Barnes, Paul	Hope Harbour Farm, West Falkland
1028	Bayley, Patricia Ann Cecile	Turners, MPA. East Falkland
1029	Bayley, Richard	Turners, MPA. East Falkland
1030	Beattie, Ian Robert Ewen*	North Arm, East Falkland
1031	Benjamin, Fred Basil	Turners, MPA. East Falkland
1032	Benjamin, Raymond John	Turners, MPA. East Falkland
1033	Benjamin, Walter George	Turners, MPA. East Falkland
1034	Berntsen, Arena Janice	Pebble Island, West Falkland
1035	Berntsen, Iain Kenneth	Port Howard, West Falkland
1036	Berntsen, Kenneth Frederick	Port Howard, West Falkland
1037	Berntsen, Leon	Albermarle Station, West Falkland
1038	Berntsen, Pamela Margaret	Albermarle Station, West Falkland
1039	Betts, Arthur John*	Pebble Island, West Falkland
1040	Betts, Bernard Keith	Boundary Farm, West Falkland
1041	Betts, Diane Joan	Boundary Farm, West Falkland
1042	Betts, Irene Marion	Boundary Farm, West Falkland
1043	Binnie, Horace James*	Fox Bay Village, West Falkland
1044	Binnie, Linda Rose	Fitzroy Farm, East Falkland
1045	Binnie, Ronald Eric	Fitzroy Farm, East Falkland



1046	Binnie, Rose Ellen*	Fox Bay Village, West Falkland
1047	Bitcheno, Una May	Goose Green, East Falkland
1048	Blake, Alexander Charles	The Peaks Farm, West Falkland
1049	Blake, Anthony Thomas	Little Chartres Farm, West Falkland
1050	Blake, Lionel Geoffrey*	The Peaks Farm, West Falkland
1051	Blake, Lyndsay Rae	Little Chartres Farm, West Falkland
1052	Blake, Sally Gwynfa	The Peaks Farm, West Falkland
1053	Blake, Thomas Patrick	Little Chartres Farm, West Falkland
1054	Bober, John	Turners, MPA. East Falkland
1055	Bonner, Avril Margaret Rose	North Arm, East Falkland
1056	Bonner, Keith James	North Arm, East Falkland
1057	Bonner, Simon	Pickthorne Farm, West Falkland
1058	Bonner, Susan Anne	Pickthorne Farm, West Falkland
1059	Buckett, Roy Peter	Leicester Fall Farm, West Falkland
1060	Butler, Doreen Susan	North Arm, East Falkland
1061	Butler, James Donald	North Arm, East Falkland
1062	Cartmell, Andrew Nutt*	Goose Green, East Falkland
1063	Chandler, Ann Beatrice	Port Howard, West Falkland
1064	Chandler, Edward	Port Howard, West Falkland
1065	Chandler, Lee*	Port Howard, West Falkland
1066	Clark, Fredrick Thomas	Hawkbit, MPA. Road, East Falkland
1067	Clarke, Jeanette	Kings Ridge Farm, East Falkland
1068	Clarke, Michael Jan	Kings Ridge Farm, East Falkland
1069	Clarke, Shane Adrian	Kings Ridge Farm, East Falkland
1070	Clausen, Denzil	Salvador, East Falkland
1071	Clausen, Henry Edward	Port Louis, East Falkland
1072	Clifton, Leonard	North Arm, East Falkland
1073	Clifton, Thora Janeene	North Arm, East Falkland
1074	Cockwell, Adam*	Fox Bay Village, West Falkland
1075	Cockwell, Benjamin William*	Fox Bay Village, West Falkland
1076	Cockwell, Grizelda Susan	Fox Bay Village, West Falkland
1077	Cockwell, John Richard*	Fox Bay Village, West Falkland
1078	Collins, Bernard	Turners, MPA. East Falkland
1079	Cook, Brian William	Turners, MPA. East Falkland
1080	Coutts, Frederick George	Fitzroy, East Falkland
1081	Dale, Helen	KIS, MPA. East Falkland
1082	Davis, Aase	Evelyn Station, East Falkland
1083	Davis, Ian John*	Evelyn Station, East Falkland
1084	Davis, Mandy John	Goose Green, East Falkland
1085	Davis, Reginald John*	Evelyn Station, East Falkland
1086	Davis, William James	Goose Green, East Falkland
1087	Dickson, Charles George*	Brookfield Farm, East Falkland
1088	Dickson, Doreen	Wreck Point, East Falkland
1089	Dickson, Gerald William	Wreck Point, East Falkland
1090	Dickson, Iris	San Carlos, East Falkland
1091	Dickson, Ronald Edward	San Carlos, East Falkland
1092	Dickson, Steven Charles*	San Carlos, East Falkland
1093	Dobbys, Timothy John*	Riverside Farm, East Falkland
1094	Donnelly, Daniel	Crooked Inlet Farm, West Falkland
1095	Donnelly, Joyce Elizabeth	Crooked Inlet Farm, West Falkland
1096	Duncan, Peter Ree Howard*	Hill Cove, West Falkland
1097	Dunford, David Philip	Saddle Farm, West Falkland
1098	Edwards, Emma Jane	Lake Sullivan Farm, West Falkland
1099	Edwards, Norma*	Lake Sullivan Farm, West Falkland
1100	Edwards, Roger Anthony	Lake Sullivan Farm, West Falkland

1101	Ellis, Lucy	Port Stephens, West Falkland
1102	Evans, Donna	North Arm, East Falkland
1103	Evans, Michael David	North Arm, East Falkland
1104	Evans, Michele Paula	Fitzroy Farm, East Falkland
1105	Evans, Olwyn Carol	Saunders Island, West Falkland
1106	Evans, Raymond	Pebble Island, West Falkland
1107	Evans, Richard Gregory	Fitzroy Farm, East Falkland
1108	Evans, Russel*	Pebble Island, West Falkland
1109	Fairley, John*	Port Stephens, West Falkland
1110	Felton, Anthony Terence*	North Arm, East Falkland
1111	Felton, Sonia Ellen	Goose Green, East Falkland
1112	Felton, Walter Arthur*	Teal Inlet, East Falkland
1113	Ferguson, Finlay James	Bleaker Island, East Falkland
1114	Ferguson, John William	Weddell Island, West Falkland
1115	Ferguson, Robert John*	Weddell Island, West Falkland
1116	Ferguson, Stephanie Janet	Weddell Island, West Falkland
1117	Ferguson, Thelma*	Weddell Island, West Falkland
1118	Findlay, Andrew John	North Arm, East Falkland
1119	Findlay, Gerald	San Carlos, East Falkland
1120	Finlayson, Barry Donald*	North Arm, East Falkland
1121	Finlayson, Iris Heather*	North Arm, East Falkland
1122	Finlayson, Neil Roderick	North Arm, East Falkland
1123	Ford, Neil Fraser	Mossvale Farm, West Falkland
1124	Ford, Penelope Rose	Mossvale Farm, West Falkland
1125	Forster, Gwyneth May	Bold Cove Farm, West Falkland
1126	Forster, James	Bold Cove Farm, West Falkland
1127	Giles, Gilbert	Chartres, West Falkland
1128	Giles, Theresa Kathleen	Chartres, West Falkland
1129	Gleadell, Ian Keith	East Bay Farm, West Falkland
1130	Gleadell, Marklin John	East Bay Farm, West Falkland
1131	Goodwin, Mandy Hazel	Green Field Farm, East Falkland
1132	Goodwin, Margo Jane	Elephant Beach, East Falkland
1133	Goodwin, Neil Alexander William	Elephant Beach, East Falkland
1134	Goodwin, Robin	Green Field Farm, East Falkland
1135	Goss, Eric Miller*	North Arm, East Falkland
1136	Goss, Ian Ernest Earle	Port Howard, West Falkland
1137	Goss, Margaret Rose	Horseshoe Bay Farm, East Falkland
1138	Goss, Peter	Horseshoe Bay Farm, East Falkland
1139	Goss, Roderick Jacob*	East Falkland
1140	Goss, Shirley Ann	North Arm, East Falkland
1141	Gray, David Edward	Sea Lion Island, East Falkland
1142	Gray, Patricia May	Sea Lion Island, East Falkland
1143	Halliday, Cathy Ann	Fox Bay Village, West Falkland
1144	Halliday, Jeffrey James*	Port Howard, West Falkland
1145	Halliday, Joyce Isabella Patience	Fox Bay Village, West Falkland
1146	Halliday, Kenneth William	Fox Bay Village, West Falkland
1147	Hansen, Ian	Main Point, West Falkland
1148	Hansen, Lionel Raymond*	Hill Cove, West Falkland
1149	Hansen, Rose Idina*	Hill Cove, West Falkland
1150	Hansen, Susan Ann	Main Point, West Falkland
1151	Hardcastle, Brook*	Darwin Harbour, East Falkland
1152	Hardcastle, Eileen Beryl*	Darwin Harbour, East Falkland
1153	Harvey, Jen	Hill Cove, West Falkland
1154	Harvey, Valerie Ann	Hill Cove, West Falkland
1155	Heathman, Ailsa	Estancia Farm, East Falkland

1156	Heathman, Ewart Tony	Estancia Farm, East Falkland
1157	Henry, Dulcie Rose	KIS, MPA. East Falkland
1158	Hirtle, Anthony	Pebble Island, West Falkland
1159	Hirtle, Doris Linda	Golding Island, West Falkland
1160	Hirtle, Gerard Fenton	Golding Island, West Falkland
1161	Hirtle, Odette Susan	Port Howard, West Falkland
1162	Hirtle, Susan Mary	Pebble Island, West Falkland
1163	Hobman, David Gonsalo	Chartres, West Falkland
1164	Hobman, Juan Jose Eleuterio	Sheffield Farm, West Falkland
1165	Hobman, Petula	Sheffield Farm, West Falkland
1166	Hutton, Elizabeth Isabella*	North Arm, East Falkland
1167	Hutton, Philip*	North Arm, East Falkland
1168	Jaffray, Alexander	Lively Island, East Falkland
1169	Jaffray, Brian	Walker Creek, East Falkland
1170	Jaffray, Dereck Charles	Walker Creek, East Falkland
1171	Jaffray, Elliott Jessie	Lively Island, East Falkland
1172	Jaffray, John Summers	Goose Green, East Falkland
1173	Jaffray, John Willie	Walker Creek, East Falkland
1174	Jaffray, Phyllis	Walker Creek, East Falkland
1175	Johnson, Lily Ann*	Goose Green, East Falkland
1176	Jonson, Carl	Bombilla Farm, East Falkland
1177	Keeley, John Gabriel	Turners, MPA. East Falkland
1178	Kidd, John Nathan	Darwin Lodge, East Falkland
1179	Kidd, Lillian Rose Orissa	Darwin Lodge, East Falkland
1180	Kiddle, Robert Karl	Goose Green, East Falkland
1181	Kilmartin, Dinah May	Bluff Cove, East Falkland
1182	Kilmartin, Kevin Seaton*	Bluff Cove, East Falkland
1183	King, Edward Robert	Mount Pleasant, East Falkland
1184	Knight, Nigel Arthur	Coast Ridge Farm, West Falkland
1185	Knight, Shirley Louvaine Patricia	Coast Ridge Farm, West Falkland
1186	Lakin, Bernard	Turners, MPA. East Falkland
1187	Lang, Patrick Andrew*	North Arm, East Falkland
1188	Lang, Velma Emily	North Arm, West Falkland
1189	Larsen, Josephine Mary	Speedwell Island, East Falkland
1190	Larsen, Ronald Ivan	Speedwell Island, East Falkland
1191	Larsen, Yvonne	Speedwell Island, East Falkland
1192	Lawton, Brian	Turners, MPA. East Falkland
1193	Lee, Carole	Port Howard, West Falkland
1194	Lee, Christopher*	Pebble Island, West Falkland
1195	Lee, Elizabeth	Goose Green, East Falkland
1196	Lee, John Alfred	Goose Green, East Falkland
1197	Lee, Myles	Port Howard, West Falkland
1198	Lee, Owen Henry	Goose Green, East Falkland
1199	Lee, Rodney William	Port Howard, West Falkland
1200	Leo, Brenda May	NAAFI, MPA. East Falkland
1201	Limond, Alexander Buchanan	KIS, MPA. East Falkland
1202	Livermore, Darren	Fitzroy, East Falkland
1203	Lloyd, Melvyn John	Swan Inlet, East Falkland
1204	Lloyd, John Moelwyn*	West Falkland
1205	Lloyd, Valerie Ann	Swan Inlet, East Falkland
1206	Luxton, Patricia Maureen	Chartres, West Falkland
1207	Luxton, Stephen Charles	Chartres, West Falkland
1208	Luxton, William Robert*	Chartres, West Falkland
1209	Maddocks, Robert Charles	Saunders Island, West Falkland
1210	Marsh, Alastair Roy	Shallow Harbour Farm, West Falkland

1211	Marsh, Anna Deirdre	Fox Bay Village, West Falkland
1212	Marsh, Arlette Sharon	Rincon Ridge Farm, West Falkland
1213	Marsh, Frank*	West Falkland
1214	Marsh, Gavin Nicholas	Fox Bay Village, West Falkland
1215	Marsh, June Helen*	West Falkland
1216	Marsh, Leon Peter	Rincon Ridge Farm, West Falkland
1217	Marsh, Marlane Rose	Shallow Harbour Farm, West Falkland
1218	Marsh, Patricia Anne	Lakelands Farm, West Falkland
1219	Marsh, Robin Frank	Lakelands Farm, West Falkland
1220	May, Christopher Raymond	New House Farm, East Falkland
1221	May, Linsey Olga	New House Farm, East Falkland
1222	Miller, Betty	Walker Creek, East Falkland
1223	Miller, James Albert	Fox Bay Village, West Falkland
1224	Miller, Phillip Charles	Cape Dolphin, East Falkland
1225	Minnell, Adrian James	Moss Side Farm, East Falkland
1226	Minnell, Benjamin James	Moss Side Farm, East Falkland
1227	Minnell, Donna Marie	Chartres, West Falkland
1228	Minnell, Hazel Eileen*	Moss Side Farm, East Falkland
1229	Minnell, Michael Robert	Blue Beach, East Falkland
1230	Minnell, Michelle Rose	Blue Beach, East Falkland
1231	Molkenbuhr, Lee Charles*	Murrel Farm, East Falkland
1232	Morrison, Edgar Ewen	Goose Green, East Falkland
1233	Morrison, Eric George	Goose Green, East Falkland
1234	Morrison, Gerald	Goose Green, East Falkland
1235	Morrison, Jacqueline Denise Anita	Port Howard, West Falkland
1236	Morrison, John	Port Howard, West Falkland
1237	Morrison, Kathleen Iris	Goose Green, East Falkland
1238	Morrison, Kenneth	Port Howard, West Falkland
1239	Morrison, Lena	Port Howard, West Falkland
1240	Morrison, Leslie Theodore Norman	Port Howard, West Falkland
1241	Morrison, Michael John	Port Louis, East Falkland
1242	Morrison, Susan Margaret	Port Louis, East Falkland
1243	Moxham, Ronald Walter	M.P.A. East Falkland
1244	MacBeth, Raymond John	Narrows Farm, West Falkland
1245	MacKay, James	Turners, MPA. East Falkland
1246	McBain, Arthur	Sea Lion Island, East Falkland
1247	McBain, Rhoda Margaret	Sea Lion Island, East Falkland
1248	McDougall, James Gilfillan Stewart	Turners, M.P.A. East Falkland
1249	McGhie, James	Pebble Island, West Falkland
1250	McGhie, Roy	Port North Sheep Farm, West Falkland
1251	McGill, Robin Perry	Carcass Island, West Falkland
1252	McKay, Christine	Teal River Farm, West Falkland
1253	McKay, Ellen Rose	Port Harriet, East Falkland
1254	McKay, Frazer Roderick	Teal River Farm, West Falkland
1255	McKay, Isabella Alice	Westley Farm, West Falkland
1256	McKay, Margaret	KIS, MPA. East Falkland
1257	McKay, Richard*	Westley Farm, West Falkland
1258	McKay, Roderick John*	Port Harriet, East Falkland
1259	McLeod, Albert John	Goose Green, East Falkland
1260	McLeod, Ian James*	Goose Green, East Falkland
1261	McLeod, Isabella Diana Frances	Port Louis, East Falkland
1262	McLeod, Sarah Rose	Goose Green, East Falkland
1263	McMullen, June	Goose Green, East Falkland
1264	McMullen, Tony	Goose Green, East Falkland
1265	McPhee, June Iris*	Brookfield Farm, East Falkland

1266	McPhee, Kenneth John*	Brookfield Farm, East Falkland
1267	McPhee, Trudi Lynette	Brookfield Farm, East Falkland
1268	McRae, David Michael	South Harbour Farm, West Falkland
1269	McRae, Gloria Linda	South Harbour Farm, West Falkland
1270	McRae, Mandy*	South Harbour Farm, West Falkland
1271	McRae, Robert George Hector*	Estancia, East Falkland
1272	Napier, Lily	West Point Island, West Falkland
1273	Napier, Roderick Bertrand*	West Point Island, West Falkland
1274	Newman, Sheena Melanie	Cape Dolphin, East Falkland
1275	Nightingale, Charlene	West Lagoons Farm, West Falkland
1276	Nightingale, Peter Richard	West Lagoons Farm, West Falkland
1277	Oxley, Brian	M.P.A. East Falkland
1278	Parkinson Allen	Turners, MPA. East Falkland
1279	Peck, Christine	Leicester Falls Farm, West Falkland
1280	Peck, Davina Margaret	Shallow Bay Farm, West Falkland
1281	Peck, Paul	Shallow Bay Farm, West Falkland
1282	Phillips, Carol Joan	Hope Cottage Farm, East Falkland
1283	Phillips, Terence	Hope Cottage Farm, East Falkland
1284	Pitaluga, Jene Ellen*	Salvador, East Falkland
1285	Pitaluga, Nicholas Alexander Robinson	Salvador, East Falkland
1286	Pitaluga, Robin Andreas McIntosh*	Salvador, East Falkland
1287	Pole-Evans, Anthony Reginald*	Saunders Island, West Falkland
1288	Pole-Evans, David Llewellyn	Saunders Island, West Falkland
1289	Pole-Evans, Lisa*	Port Howard, West Falkland
1290	Pole-Evans, Shirley Helen	Manybranch Farm, West Falkland
1291	Pole-Evans, Suzan	Saunders Island, West Falkland
1292	Pole-Evans, William Reginald	Manybranch Farm, West Falkland
1293	Poncet, Sally Elizabeth	Beaver Island, West Falkland
1294	Poole, Ella Josephine	Port San Carlos, East Falkland
1295	Poole, Steven Charles	Port San Carlos, East Falkland
1296	Porter, George*	Shallow Harbour, West Falkland
1297	Porter, Joan	Shallow Harbour, West Falkland
1298	Porter, William Kenneth	Fox Bay Village, West Falkland
1299	Reeves, Ronald James	Port Howard, West Falkland
1300	Robertson, Ann	Port Stephens, West Falkland
1301	Robertson, Peter Charles*	Port Stephens, West Falkland
1302	Ross, William Henry	Goose Green, East Falkland
1303	Rozee, Ronald David	Spring Point Farm, West Falkland
1304	Saunders, Felicity Joan Carlie	Hawkbit, M.P.A. Rd. East Falkland
1305	Short, Anne	KIS, MPA. East Falkland
1306	Short, Derek Patrick	Blue Beach, East Falkland
1307	Short, Isobel Rose	Blue Beach, East Falkland
1308	Short, Lindsay Marie	Fitzroy, East Falkland
1309	Short, Patrick Warburton	Blue Beach, East Falkland
1310	Short, Robert George	Fitzroy, East Falkland
1311	Sinclair, Serena Samantha*	Walker Creek, East Falkland
1312	Sinclair, Simon Keith	Goose Green, East Falkland
1313	Smith, Andrew John	San Carlos, East Falkland
1314	Smith, Francis David*	Port Howard, West Falkland
1315	Smith, George Patterson	Johnson's Harbour, East Falkland
1316	Smith, Heather	Harp's Farm, West Falkland
1317	Smith, Jacqueline	Stoney Ridge Farm, West Falkland
1318	Smith, Jenny Lorraine	Johnson's Harbour, East Falkland
1319	Smith, Michael Edmund*	Johnson's Harbour, East Falkland
1320	Smith, Peter	Turners, MPA. East Falkland

1321	Smith, Robin Charles	Harp's Farm, West Falkland
1322	Smith, Roy Alan	Stoney Ridge Farm, West Falkland
1323	Smolarczyk, Sylvester Emanuel	Turners, MPA. East Falkland
1324	Stevens, Richard James*	Port Sussex Farm, East Falkland
1325	Stevens, Toni Donna	Port Sussex Farm, East Falkland
1326	Thorsen, David Moller	Teal Inlet, East Falkland
1327	Thorsen, Gloria Penelope	Teal Inlet, East Falkland
1328	Turner, Diana Jane*	Rincon Grande, East Falkland
1329	Turner, Ronald	Rincon Grande, East Falkland
1330	Velasquez, Arleen	North Arm, East Falkland
1331	Watson, Glenda Joyce	Long Is. Farm, East Falkland
1332	Watson, Neil	Long Is. Farm, East Falkland
1333	Whitney, Daneila Grace	Mount Kent Farm, East Falkland
1334	Whitney, Dennis	Fitzroy, East Falkland
1335	Whitney, Keith	Home Farm, East Falkland
1336	Whitney, Lana Rose	Fitzroy, East Falkland
1337	Whitney, Leona Ann	Home Farm, East Falkland
1338	Whitney, Patrick George	Mount Kent Farm, East Falkland
1339	Whitney, Tyrone	Home Farm, East Falkland
1340	Wilkinson, David Clive Walter	Dunnose Head Farm, West Falkland
1341	Wilkinson, Rosemary	Dunnose Head Farm, West Falkland
1342	Yon, Gillian Rose	KIS, MPA. East Falkland
1343	Youde, Maxin Arthur	Turners, MPA. East Falkland
1344	Young, Julie	M.P.A. East Falkland
1345	Young, Nigel Anthony	Turners, MPA. East Falkland

\*NOT LIABLE TO SERVE AS A JUROR





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

Vol. CIII

31st AUGUST 1994

No. 412

## Appointments

Miss Priscilla Violet Morrison, Clerk, Public Service, 1.7.94.

Miss Tanya Lee, Clerk, Public Service, 1.7.94.

Dennis James Humphreys, Teacher, Education Department, 5.7.94.

Miss Lucille Anne McMullen, Clerk, Public Service, 1.8.94.

Jason Alan Plumb, Tradesman Plumber, Public Works Department, 1.8.94.

Miss Lisa Marie Laffi, Data Clerk, Fisheries Department, 8.8.94.

Mrs. Margaret Wiskow, Travelling Teacher, Education Department, 10.8.94.

## Acting Appointment

Mrs. Helen Jean Andrews, Acting Broadcasting Officer, Falkland Islands Broadcasting Station, 15.8.94-6.9.94.

## Completion of Contracts

Graham Leslie Bound, Deputy Representative, Falkland Islands, Government Office, 2.8.94.

Mrs. Catherine Ellenor Winthrop, Travelling Teacher, Education Department, 10.8.94.

## Resignation

Quentin James Fairfield, Data Clerk, Fisheries Department, 8.8.94.

## NOTICES

No. 54

30th June 1994.

### Findings of the Cost of Living Committee

The Findings of the Cost of Living Committee for the quarter ended 30th June 1994 are published for general information.

2. Calculation of the Index of Retail prices for the quarter ended 30th June shows an increase of 0.337%. This increase is insufficient to effect hourly rates of pay as defined by the FIG/GEU wages agreement and no adjustment to rates is therefore required.

F. B. WALLACE,  
*for Government Secretary.*

No. 55

1st August 1994.

### The Falkland Islands SCANFALK LIMITED

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

Dated this 1st day of August 1994.

V. BONNER,  
*Ag. Registrar of Companies.*



No. 56

1st August 1994.

The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948

NOTICE IS HEREBY GIVEN pursuant to section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this notice the following names are struck off the register and the companies are dissolved subject to the proviso to sub-section (5) of section 353 aforesaid:

WADNOR FALKLANDS LIMITED;  
FALKLAND SQUID SHIPPING LIMITED;  
STANMARR LIMITED;  
PEBBLE HOTEL LIMITED;  
SOLANDER FISHERIES (FALKLANDS) LIMITED.

Dated this 1st day of August 1994.

V. BONNER,  
*Ag. Registrar General.*

No. 57

11th August 1994.

**SDS FISHING LIMITED**  
Registered Company No. 8292

Pursuant to Section 290(4) of the Companies Act 1948 the company was deemed to be dissolved on the 29th day of May 1990 (the expiration of three months from the registration of the return lodged by Andrew Dey, liquidator, pursuant to section 290(3) of the Companies Act 1948)

Dated this 11th day of August 1994.

V. BONNER,  
*Ag. Registrar General.*

No. 58

11th August 1994.

**S.J. FISHERIES LIMITED**  
Registered Company No. 8285

Pursuant to Section 290(4) of the Companies Act 1948 the company was deemed to be dissolved on the 29th day of May 1990 (the expiration of three months from the registration of the return lodged by Andrew Dey, liquidator, pursuant to section 290(3) of the Companies Act 1948)

Dated this 11th day of August 1994.

V. BONNER,  
*Ag. Registrar General.*

No. 59

19th August 1994.

The Falkland Islands  
**STANLEY TRAWLERS LIMITED**

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

Dated this 19th day of August 1994.

V. BONNER,  
*Ag. Registrar General.*

No. 60

25th August 1994.

The Companies and Private Partnership Ordinance  
(Cap. 13)  
Companies Act 1948

NOTICE IS HEREBY GIVEN pursuant to section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this notice the following names are struck off the register and the companies are dissolved subject to the proviso to sub-section (5) of section 353 aforesaid:

PENGUIN SHIPPING LIMITED;  
PAULING (FI) LIMITED;  
EVERARDS BREWERY (FALKLAND ISLANDS) LIMITED;  
PACKE BROTHERS AND COMPANY LIMITED;  
HOLMSTED BLAKE AND COMPANY LIMITED;  
MOUNT USBORNE LIMITED.

Dated this 25th day of August 1994.

V. BONNER,  
*Ag. Registrar General.*

**Application for Residential Licence**

In accordance with section 7(1) of the Licensing Ordinance  
**Mr. William Anderson**  
has applied for a Restaurant Licence in respect of the premises known as "Blue Beach Lodge"

2. Any objections to the granting of a licence must be made to the Treasury within 21 days from the appearance of this notice in the Gazette and the Penguin News.

Treasury,  
Stanley,  
10th August 1994.

D. F. HOWATT,  
*Financial Secretary.*

### Application for Naturalisation

Notice is hereby given that Mr. Jerome Pierre Poncet of Beaver Island, Falkland Islands is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted, should send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Ross Road, Stanley.

1st August 1994.

J. E. SMITH,  
*Immigration Officer.*

### Application for Naturalisation

Notice is hereby given that Mr. Noel Neri Igao of Stanley, Falkland Islands is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted, should send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Ross Road, Stanley.

19th August 1994.

J. E. SMITH,  
*Immigration Officer.*

### Supreme Court of the Falkland Islands NOTICE UNDER THE ADMINISTRATION OF ESTATES ORDINANCE (Cap. 1)

TAKE NOTICE THAT Charles William Short, deceased of Stanley died at Stanley, on the 22nd day of August 1994 intestate.

WHEREAS Joseph Leslie Short, brother of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

NOTICE IS HEREBY GIVEN pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony 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.

Stanley,  
Falkland Islands.  
30th October 1994.  
Ref. : PRO/7/94.

V. BONNER,  
*Ag. Registrar, Supreme Court.*

### Appointment of Temporary Customs Officer Customs Ordinance (Cap. 16)

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

R8106411 Sgt. P. O'SHAUGHNESSY

to be a temporary Customs Officer until 31st December 1994.

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

### Appointment of Temporary Customs Officer Customs Ordinance (Cap. 16)

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943,

I hereby appoint —

C8181653 Cpl. G. R. JACKSON

to be a temporary Customs Officer until 31st October 1994.

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





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

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*Vol. CIII*

*30th September 1994*

*No. 12 13*

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## **Appointments**

David William McGill, Tradesman Electrician, Power & Electrical Section, Public Works Department, 1.9.94.

Andrew Murray Gurr, Chief Executive, Secretariat, 2.9.94.

Robert James Hancox, Road Engineer, Public Works Department, 10.9.94.

Gregory Bennett Scott, Sheep Scientist/Adviser, Department of Agriculture, 13.9.94.

## **Acting appointments**

Mrs. Vera Joan Bonner, Acting Registrar General, Justice Department, 9.5.94. - 18.9.94.

David Morris, Acting Chief Police Officer, Royal Falkland Islands Police, 21.7.94. - 13.9.94.

Mrs. Jean Waddell Smith, Acting Director of Education, Education Department, 20.4.94. - 21.6.94.

Peter Burnard, Acting Headmaster, Infant/Junior School, Education Department, 20.4.94. - 21.6.94.

Edward Laurence Bragger, Acting Senior Filtration Plant Operator, Public Works Department, 11.5.94. - 1.8.94.

Mrs. Valerie Ann Morrison, Acting Senior Clerk, Treasury, 22.6.94. - 20.7.94.

Sidney John Salter, Acting Water Supervisor, Public Works Department, 22.6.94. - 9.8.94.

John Aidan Kerr, Acting Director Of Agriculture, Department Of Agriculture, 20.7.94. - 9.9.94.

## **Confirmation of Appointment**

Kevin John Hewitt, Tradesman Carpenter, Public Works Department, 1.9.94.

## **Completion of Contracts**

Ronald Sampson, Chief Executive, Secretariat, 2.9.94.

Robert James Hancox, General Foreman/Engineer, Public Works Department, 9.9.94.

## **Resignation**

Michael Ford, Tradesman Mechanic, Public Works Department, 31.8.94.

## NOTICES

No. 61

4th May 1994

## THE FALKLAND ISLANDS

TAKE NOTICE that in accordance with the provisions of Section 353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the Companies named below 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 be shown as to why such action should not be taken.

JOHNSON AND SON LIMITED;  
SEA LION LODGE LIMITED;  
POULTRY PRODUCTS LIMITED.

V. BONNER,  
*Ag. Registrar of Companies.*

No. 62

1st September 1994

## The Companies and Private Partnership Ordinance (Cap13.)

## Companies Act 1948

NOTICE IS HERE BY GIVEN pursuant to section 2 of the companies and Private Partnership Ordinance and Section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this notice the following names are struck off the register and the Companies are dissolved subject to the proviso to sub-section (5) of section 353 aforesaid.

SWB FISHING LIMITED;  
FOX GUESTHOUSE LIMITED;  
ASSET MANAGEMENT LIMITED;  
SAN CARLOS MARKETING COMPANY LIMITED;  
ATLANTIC MARINE RECOVERIES LIMITED;  
THE FALKLAND ISLANDS TRADING COMPANY;  
FALKLAND SEA FOODS LIMITED.

V. BONNER,  
*Ag. Registrar of Companies.*

## The Companies and Private Partnership Ordinance (Cap.13)

## Companies Act 1948

NOTICE IS HEREBY GIVEN that STANLEY FISHERIES LIMITED was dissolved pursuant to Section 290(4) of the Companies Act 1948 on the 22nd day of July 1994. Dated this 15th day of September 1994.

V. BONNER,  
*Ag. Registrar of Companies.*

## Currency Notes Rules

In exercise of the powers conferred by Rule 3 of the Currency Notes Rules, His Excellency the Governor has been pleased to approve the appointment of Mrs. Danuta Cecelia Krystyna Valler to be a Currency Officer with the effect from 1st September 1994. The appointment of Mr. Nigel Dodd is hereby cancelled.

D. F. HOWATT,  
*for Commissioners of Currency.*

## Application For Naturalisation

Notice is hereby given that Mr. Michael Anthony Smallwood of Stanley, Falkland Islands, is applying to His Excellency the Governor for naturalisation, and that any person who knows why naturalisation should not be granted should send a written and signed statement of the facts to the Immigration Officer at the Customs and Immigration Department, Stanley within two weeks of publication herein of this notice.

J. SMITH,  
*Immigration Officer.*

## Application For Naturalisation

Notice is hereby given that Mrs. Margo Amee Smallwood of Stanley, Falkland Islands, is applying to His Excellency the Governor for naturalisation, and that any person who knows why naturalisation should not be granted should send a written and signed statement of the facts to the Immigration Officer at the Customs and Immigration Department, Stanley within two weeks of publication herein of this notice.

J. SMITH,  
*Immigration Officer.*

## School Terms 1995

## STANLEY SCHOOLS

1st term	2nd February	17th May
2nd term	1st June	23rd August
3rd term	14th September	13th December

## RECOGNISED CAMP SCHOOLS

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

## HOLIDAYS

Camp Sports	20th - 24th February inclusive
Good Friday	14th April
Queens Birthday	21st April
Liberation Day	14th June
Falklands Day	14th August
Battle Day	8th December
<i>(Public Holidays may be transferred)</i>	

## HOLIDAYS FOR TRAVELLING TEACHERS

Tuition shall take place except during Public Holidays and the following periods:

16th December 1994 - 3rd January 1995

Three additional days (to be taken by arrangement with the Camp Education Supervisor)

Term Ends: 14th December 1995  
Commences: 3rd January 1996.



# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CIII*

*31st October 1994*

*No. 14*

## Appointments

Gerard Alan Jaffray, Police Constable, Royal Falkland Islands Police, 1.10.94.

Mrs. Maria Anne Faria, Nursing Sister, Medical Department, 1.10.94.

Michael John Hanlon, Permanent Staff Instructor, F.I.D.F., 2.10.94.

## Acting Appointments

Miss Leeann Watson Eynon, Acting Legal Assistant, Justice Department, 18.7.94. - 31.8.94.

Miss Susan Jane Nightingale, Acting Legal Assistant, Legal Department, 1.9.94 - 30.9.94.

Mrs. Ann Murphy, Acting Senior Clerk, Post & Telecommunications Department, 14.9.94 - 7.10.94.

## Completion of Contract

Michael John Hanlon, Permanent Staff Instructor, F.I.D.F., 1.10.94.

## Retirement

Mrs. Phyllis Elizabeth Grace MacBeth, Clerk, Public Service 5.10.94.

## Resignation

Donald Mark Coulter, Police Constable, Royal Falkland Islands Police, 31.10.94.

## Notices

No. 63

1st October 1994

### The Companies and Private partnership Ordinance (Cap. 13) Companies Act 1994

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the name of MOLEHILL LIMITED is struck off the register and the Company is dissolved subject to the proviso to sub-section (5) of section 353 aforesaid.

Dated this 1st day of October 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 64

13th October 1994

### THE COLONY OF THE FALKLAND ISLANDS Certificate of Registration as a Minister for Celebrating Marriage

In accordance with section 5 of the Marriage Ordinance, 1949

I, DAVID EVERARD TATHAM, Companion of the Most Distinguished Order of St. Michael and St. George, Governor of the Colony of the Falkland Islands Grant to the Reverend Adrian Colin Gatrill this Certificate of Registration as a Minister for celebrating marriages in the Colony.

Given under my hand and the Public Seal at Stanley this 13th day of October 1994.



D. E. TATHAM,  
*Governor.*

No. 65

20th October 1994

## THE FALKLAND ISLANDS

TAKE NOTICE that in accordance with the provisions of Section 353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the Companies named below 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 be shown as to why such action should not be taken.

LOOKOUT LAUNDRY LIMITED;  
S.C. MILLER & SON LIMITED;  
SUNSCOT FISHERIES LIMITED;  
BOYANG OVERSEAS FALKLAND COMPANY LIMITED;  
BURWOOD MARINE LIMITED;  
B & F IMPORTS AND SUPPLIES LIMITED.

B. GREENLAND,  
*Registrar of Companies.*

No. 66

21st October 1994

SECTION 11A OF THE LAND ORDINANCE  
Cap. 36

TAKENOTICE THAT William Robert Luxton, of Chartres, West Falkland has applied in accordance with section 11A(1) of The Land Ordinance on behalf of Chartres Sheep Farming Company Limited to have executed in favour of Chartres Sheep Farming Company Limited a vesting Deed of certain land on West Falkland comprising approximately 97,171 acres and known as Chartres Farm.

The applicant's statutory declaration may be inspected by any person at the Registrar General's Office during normal business hours.

NOTICE IS HEREBY GIVEN that unless any objection has been received within 30 days following the publication of this notice the Registrar General under the terms of section 11A of the Land Ordinance will execute in favour of Chartres Sheep Farming Company Limited a vesting deed of the said land.

B. GREENLAND,  
*Registrar General.*

## SUPREME COURT OF THE FALKLAND ISLANDS

Notice under the Administration of Estates Ordinance  
(Cap. 1)

TAKE NOTICE THAT Jose Raul Huanel Hernandez, deceased, of Flat 1, 3 Jeremy Moore Avenue East, Stanley, Falkland Islands died at Punta Arenas, Chile, on the 1st day of October 1994 Intestate.

WHEREAS Luis Armando Huanel Hernandez by his Attorney Mr. Alan Barker, brother of the deceased, has applied for letters of Administration to administer the estate of the said deceased in the Colony.

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

Stanley,  
Falkland Islands,  
12th October 1994.  
Ref: PRO/1094.

B. GREENLAND,  
*Registrar General.*

## Customs Ordinance 1943

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I Hereby appoint:-

R8196438 Cpl. J. Taylor,

T8123086 Cpl. M. Davolls,

to be temporary Customs Officers until 31st January 1995.

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

## Customs Ordinance 1943

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I hereby appoint:-

C8186743 Cpl. J. R. Phillips

to be a temporary Customs Officer until 28th February 1995.

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

## Customs Ordinance 1943

In exercise of the powers conferred by section 4 of the Customs Ordinance 1943, I hereby appoint:-

24652400 WO2. G. R. Porter

to be temporary Customs Officer until 4th April 1995.

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

# WAGES AGREEMENT

The following agreement has been reached between the Government and the General Employees' Union. The agreement shall be effective for a period of twelve months from 1st July 1994 and shall apply to the hourly paid Union employees of Government in Stanley.

## 1. Basis of Wage Rates

During the course of this agreement wages shall be payable in accordance with the hourly rates set out in paragraph two except that any percentage change in the Retail Prices Index for Stanley shall be automatically applied as a Cost of Living Award adjustment to the hourly rates and date from the first day of the month following the quarter to which a review of the Index relates. Adjustments shall be rounded up or down to the nearest 1p on the following basis:

up to .49 of 1p to be rounded down  
upwards from .50 of 1p to be rounded up.

### (a) Craftsmen - Certificated

All Craftsmen shall be paid at the full basic rate and the following crafts shall be recognised -

Carpenters and Joiners  
Blacksmiths  
Painters  
Motor Mechanics

Masons  
Plumbers  
Electricians  
Plant Mechanics/Fitters

The normal entry to a craft shall be by a full term of apprenticeship or the recognition of a person's qualifications by the Industrial Training Committee.

### (b) Craftsmen - Uncertificated

This describes a skilled employee who is engaged to undertake a craft but who has not completed a formal Apprenticeship or gained other qualifications recognised by the Industrial Training Committee.

### (c) Handyman

This term includes those employees doing skilled or semi-skilled work in one or more trades, but who have not served an apprenticeship nor have been recognised by the Industrial Training Committee.

### (d) Plant Operator

This term applies to any employee whose primary task is to operate mechanical plant.

Operators should have a valid HGV Licence and hold a minimum of one proficiency certificate to be a Second Class Operator and a minimum of two proficiency certificates to be a First Class Operator. In exceptional circumstances, to be approved by the Director of Public Works, Operators who do not hold a valid HGV licence but have a minimum of two proficiency certificates can be graded as Second Class Operators. Such Operators will be given 12 months, or such other period of time (shorter or longer) as the Director of Public Works directs, in which to obtain an HGV Licence.

All operators must be approved by the P.W.D. Mechanical Supervisor to operate plant.

An operator showing proficiency shall be given the chance to gain experience on other types of plant when suitable opportunities arise.



(c) **Labourer**

This term describes an employee undertaking unskilled work, usually of a repetitive nature, ie digging, sweeping or carrying, and without any element of responsibility.

2. **Prevailing Rates**  
**Class**

		<b>Hourly Rate</b>			
		£			
1.	Foremen	5.32	5.48	5.64	
2.	Assistant Foremen	4.91	5.06	5.21	
3.	Certificated Craftsmen	4.71	4.87	5.02	5.17*
4.	Uncertificated Craftsmen	4.21	4.32	4.43	4.55*
5.	Apprentices				
	1st year				3.44
	2nd year				3.61
	3rd year				3.78
	4th year				3.97
	5th year				4.18
6.	Handymen (according to ability)	3.72	3.81	3.92	4.02 4.11*
7.	Labourers				
	Age				
	15 - 16				3.25
	16 - 17				3.38
	17 - 18				3.48
	18 and over				3.63
8.	Plant Operators (according to ability)				
	<u>Class 2</u>	3.72	3.81	3.92	4.02 4.11*
	<u>Class 1</u>	4.15	4.24	4.33	4.43 4.55

An apprenticeship should not commence before the school leaving age has been attained.

(\* Denotes Efficiency Bar. In the case of Handymen and Uncertificated Craftsmen this point shall only be passed on the completion of a trade test or equivalent; Plant Operators shall only progress beyond this point on the acquisition of the required number of proficiency certificates as set out in clause 1(d) of this Agreement).

The above hourly rates are minimum and the Government may, if it so wishes, offer higher rates, incentive bonuses, etc.

**Casual Labour** There is now no work which justifies a casual labour rate.

3. **Extra Payments**(a) **"Dirt Money"**

"Dirt" money should only be paid when the work is substantially dirtier than the work which an employee is normally called upon to do. The following jobs automatically qualify for 20p per hour -

working at the crushing plant; handling filtration plant chemicals, gas oil, tar or bitumen.

In addition, the following jobs qualify for 34p per hour where it is agreed that the job is substantially dirtier than the employee is normally called upon to do:-

handling cement in badly damaged bags; cleaning oil burners and chimney sweeping; cleaning blocked sewers; assembling bitumen-covered culverts; and such other jobs as may be approved by the Director of Public Works.

#### (b) Hazardous Work

Employees working on isolated structures, such as masts, at heights over 20 feet from the ground or where the structure joins the main roof of a building, shall be paid from 8p to 16p per hour according to the risk involved. This does not apply to work on properly erected scaffolding or on roofs where the work can be carried out from a position where the workman's feet are on a secured ladder. This Clause also relates to paint spraying.

#### (c) Extra Skill or Responsibility

- (i) Any employee specifically detailed to supervise the work of three or more other employees shall receive 25p per hour extra while taking this responsibility. This clause is intended for use on an occasional basis and does not cover people who continually supervise people or projects, such as Foremen or Assistant Foremen.
- (ii) Any labourer employed on semi-skilled work which would normally fall to a Handyman (eg painting, fencing, concrete laying) shall receive pay as a Handyman while engaged on this work. The precise rate shall be fixed by the Government according to the nature of the work and the skill of the particular labourer so employed. This will also apply to tallymen.

#### (d) Tool Allowance

A tool allowance of £21.28 per annum is payable at the commencement of each year to any craftsman or handyman who is required to provide his own tools and who has completed one year's continuous service with the Government. This allowance will not be paid where the necessary tools to carry out the duties are provided by the Government. The tool allowance shall be adjusted annually to take into account cost of living awards made during the course of the last four quarters.

### 4. Payment of Wages

As agreed between the parties to this Agreement existing employees who prefer to receive their wages in cash may continue to do so. The wages of any future employees will be paid to their accounts with the Standard Chartered Bank.

### 5. Working Hours

The normal working hours shall be 40 hours per week made up as follows, provided that where an employee is absent during any period of a working week, without a medical certificate, or on local leave, and subject to the request of the Government and acceptance of the employee, may be permitted to work at the ordinary hourly rate on the following Saturday, provided that the hours worked on Saturday do not exceed the completion of a 40 hour week, when any balance would be paid at the overtime rate.

Monday to Friday 07-30am to 4-30pm with dinner break from noon till 1pm. A refreshment break of fifteen minutes to be taken on site shall be allowed between 08-30 and 09-30am, the precise time being laid down by the Government after consultation with employees.

Other hours of work may be laid down by mutual agreement between the Government and employees, provided that the total number of hours does not exceed 40 per week.

## 6. Overtime

- (a) Overtime shall be paid for all hours worked outside normal working hours and overtime rates shall be as follows -

### Time and a half

- (i) between the end of the normal day and midnight
- (ii) from 6am to the start of the normal working day, provided that work did not start before 6am.

### Double time

- (i) between midnight and 6am
  - (ii) from 6am to the start of the normal working day, if work commenced before 6am
  - (iii) on Sundays and recognised Public Holidays
  - (iv) for meal hours or parts thereof, if work continues through the normal working day without a full meal-hour break.
  - (v) Double time rates shall also be paid during normal working hours if, exceptionally, an employee starts work before midnight and continues without a break into normal working hours. Double time rates shall then continue to apply until there is an (unpaid) break from work exceeding four hours, after which the normal rates will again apply.
- (b) Overtime, except for shift workers, is voluntary and an employee shall not be dismissed if he objects to working outside normal hours. However, certain jobs may require attendance at times outside the normal hours and in these cases employees shall be given the option of a 40 hour week by allowing time off during normal working hours, at a time to be agreed with the Government.

## 7. Public Holidays

In addition to receiving double time for working a public holiday employees shall be entitled to 8 hours holiday.

## 8. Holidays

- (a) Annual Holidays.

All employees shall be entitled to accumulate holidays at the rates and to the maximum hereinafter set out, namely -

<u>Class of Worker</u>	<u>Rate per annum</u>
a) Labourers, 1st and 2nd Year Apprentices	20 days
b) Assistant Foremen, Certificated and Uncertificated Craftsmen, Handymen and 3-5th Year Apprentices	22 days
c) Foremen	24 days

Maximum accumulation 400 hours

Paid holidays may be taken at times to be mutually agreed upon.

b) Public Holidays.

7

These are days on which Government offices are closed by notification in the Gazette and the following nine days shall be paid holidays for all employees -

New Year's Day, Good Friday, The Queen's Birthday and Commonwealth Day, Liberation Day, Falklands Day, Anniversary of the Battle of the Falkland Islands, Christmas Day, Boxing Day and one other day to coincide with the Annual Stanley Sports Meeting.

- c) Any allowance or special rates earned on both the working day preceeding and the working day following the holiday shall be paid for the holiday.
- d) When a dated holiday falls on a Saturday or a Sunday the next working day shall be the holiday.

9. Sick Pay

- a) Employees who have not completed three months' service with the Government shall not be entitled to sick pay.
- b) An employee shall be entitled to the following sick pay commencing on the first day of sickness upon the production of a medical certificate which states the sickness is not brought on by any fault of his own, but the periods listed below being limited to the total number of entitled weeks within a 52 week period from the first day of sickness -
  - (i) Employees who have completed three months' service with the Government -

Full pay for the first three weeks  
Half pay for the fourth and fifth weeks.
  - (ii) Employees who have completed two years' service with the Government -

Full pay for the first six weeks  
Half pay for the following twelve weeks.
  - (iii) Employees who have completed three years' service with the Government -

Full pay for the first eight weeks  
Half pay for the following sixteen weeks.
- (c) Full pay should be paid for any Public Holiday which falls during the first six weeks of sickness provided that the employee, when he has recovered, returns to work for the Government.
- (d) The Workmen's Compensation Ordinance shall apply in cases of sickness resulting from accidents at work. The Foreman and the Union Delegate should confirm in writing any accident at work.

10. Unpaid Leave

Employees may apply to take a period of unpaid leave in special circumstances, in addition to a period of holiday as provided for in clause 7 of the Wages Agreement, provided that the total period of absence from work does not normally exceed sixty working days.

Unpaid leave will not normally be granted for periods exceeding two weeks; nor will it be granted to employees who have not completed a minimum of two years' continuous service with the Government save in exceptional circumstance or on compassionate grounds.

Applications for unpaid leave shall be made through the employee's Head of Department to the Establishments Section of the Secretariat. Unpaid leave will be granted at the discretion of the Government.

## **11. Termination of Employment**

The Government may dismiss an employee summarily in any circumstance in which to do so would be fair if the Employment Protection Ordinance 1989 applied. Otherwise the following notice of termination shall be given by the Government -

- (a) Employees who have completed one month's service but less than two years' service - one week's notice.
- (b) Employees who have completed between two years' and twelve years' continuous service - one week's notice for each year of continuous employment.
- (c) Employees who have completed more than twelve years' continuous employment - not less than twelve weeks' notice.

If desired the Government may pay wages in (a), (b) or (c), as appropriate in lieu of giving notice.

## **12. General**

- (a) When a party of employees is required to carry meals to their work, one employee shall be allowed reasonable time to heat meals for the rest of the party.
- (b) The Government may lay down times when employees shall appear for their wages, provided that the payment is completed within normal working hours.
- (c) An official or delegation of a recognised union may, with the Government's consent, attend at a job or shop at any time to interview workmen, but no meeting shall take place in working hours without the express permission of the Government. If a dispute arises, the Government or its nominee shall interview, by appointment, any official representative of its employees.
- (d) The Government shall display for the benefit of its employees copies of regulations and rules pertaining to wages and conditions of service of workers.
- (e) The Government shall ensure that tractors are fitted with safety cabs.

## **13. Redundancy**

If the Government wishes to declare any job redundant the Government shall notify the employee at least three months before the redundancy becomes effective unless otherwise agreed with the employee. In the event of an employee being declared redundant he shall be entitled to such payment or payments as, after taking any pension, gratuity or commuted pension payment he receives, he would be entitled to under Part VII of the Employment Protection Ordinance 1989 if it applied to employees of the Government.

## **14. Disciplinary Proceedings**

Responsibility for disciplinary proceedings for all staff of the Government, including those employees employed under the Wages Agreement, is that of the Establishments Section of the Secretariat to which responsibility has been delegated by the Governor.

Foremen and Supervisors are charged with the day to day management of the employees working under them. It is within their authority to give verbal or written instructions to employees as necessary. Should an employee fail to observe verbal or written instructions or written rules relative to his employment, or if his conduct or performance fails to meet the accepted standards, a written warning may be issued by his Head of Department. The authority of Heads of Departments, Foremen and Supervisors extends only as far as requiring the removal of an employee from the workplace in appropriate circumstances. (Dismissal or other disciplinary action can only be authorised by the Establishments Section). The reason for the removal of an employee from the workplace must be reported to the Head of Department as soon as possible. The employee concerned must be permitted to explain his actions to the Head of Department.

Written warnings must be issued by the Head of Department and copied to the Establishments Section of the Secretariat and to the Foreman or Supervisor normally in charge of an employee. Should an employee receive three written warnings within any period of twelve months or less ordinarily he will be dismissed, if the Establishments Section of the Secretariat is satisfied that some lesser punishment would not be more appropriate in the circumstances of the case. In all cases the employee must be given the opportunity to explain his actions.

The right is reserved, however, to dismiss an employee without any written warning or warnings having been previously given if the case against him is serious enough to warrant immediate dismissal; provided that the employee is given the opportunity first to explain his actions.

Examples of misconduct for which written warnings or an order to leave the workplace may be given:

- a) regularly arriving late at place of work.
- b) not wearing appropriate safety clothing and equipment as instructed;
- c) unauthorised absence from work;
- d) improper treatment of plant, vehicles and/or equipment;
- e) refusing to obey instructions given by Supervisor;
- f) carrying unauthorised passengers in Government Vehicles; and
- g) consuming alcoholic beverages or being intoxicated at the workplace.

(The above list is illustrative only and is not an exhaustive list of examples of misconduct).

## 15. Payment for Public Service Duties

- (a) An employee to which this agreement applies shall be entitled to be paid in respect of any period of absence from work occasioned by the need for him to perform public duties. For the purpose of this clause "public duties" means any of the following:

Justices of the Peace

Jurors


Witnesses

Legislative Councillors

Members of any Committee established by the Government or by or under any Ordinance for which no payment is otherwise made, other than under the Legislative Council (Allowances) Ordinance in which case the employee may elect to receive the higher payment.

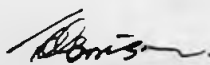
Any other duties approved by the Governor for the purpose of this clause.

- (b) Payments under this clause shall be at the basic hourly rate of the employee concerned whether the employee in question would otherwise have been attending for duty of a kind or at a time which qualified for an enhanced payment or not.
- (c) If the employee would ordinarily be working in excess of the normal working hours payments under this clause shall nevertheless be limited to payments due in respect of a basic working day.
- (d) The Government shall be entitled before making a payment under this clause to require satisfactory evidence that the absence in question was an absence qualifying for payment under this clause.



.....  
Government Secretary,  
for Falkland Islands Government.

Date 12 October 1994



.....  
Chairman,  
for General Employees' Union.

Date 13-10-94

In accordance with Section 9(3) of the Media Trust Ordinance 1989, the Accounts of the Media Trust for the years ended 30th June 1991 and 30th June 1992 are published for general information.

K Clarke  
Secretary  
Media Trust

## MEDIA TRUST ACCOUNTS FOR THE YEAR ENDED 30TH JUNE 1991

### AUDITOR'S REPORT TO THE TRUSTEES OF MEDIA TRUST

I have audited the financial statements in accordance with the Auditing Standards except that the scope of our work was limited by the matters referred to below.

The Trust's recorded turnover comprised cash sales, sales through subscriptions and advertising charges. There were no systems of control over such sales on which I could rely for the purpose of my audit and there were no satisfactory audit procedures that I could adopt to confirm independently that all sales were properly recorded.

In the absence of a record of payments made, other than bank statements, and in certain cases of supporting documentation for payments it was not possible to confirm that all expenditure comprised in sundry expenses amounting to £3,849 was validly incurred and properly categorised.

Subject to any adjustments that I might have found to be necessary had I been able to satisfy myself as to the matters referred to above, in my opinion the financial statements give a true and fair view of the state of the Trust's affairs at 30 June 1991 and of its loss for the year then ended and have been properly prepared in accordance with the Finance and Audit Ordinance 1988 and the Media Trust Ordinance 1989.

Peter J Campbell  
Principal Auditor  
Falkland Islands Government

Aberdeen  
Date 1 NOVEMBER 1993



MEDIA TRUST (PENGUIN NEWS)  
 PROFIT AND LOSS ACCOUNT  
 YEAR ENDED 30 JUNE 1991

	30/6/91		9 months to 30/6/90	
	£	£	£	£
TURNOVER		19,936		9,540
Distribution costs	1,518		1,654	
Administrative expenses	<u>41,063</u>		<u>26,380</u>	
		<u>42,581</u>		<u>28,034</u>
		(22,645)		(18,494)
OTHER OPERATING INCOME		<u>22,055</u>		<u>20,276</u>
(LOSS)/PROFIT ON ORDINARY ACTIVITIES		(590)		1,782
RETAINED PROFIT BROUGHT FORWARD		<u>1,782</u>		<u>-</u>
RETAINED PROFIT CARRIED FORWARD		<u>1,192</u> =====		<u>1,782</u> =====

**MEDIA TRUST (PENGUIN NEWS)  
BALANCE SHEET  
AS AT 30 JUNE 1991**

	£	<u>30/6/91</u> £	£	<u>30/6/90</u> £
<b>FIXED ASSETS</b>				
Tangible assets		2,138		55
<b>CURRENT ASSETS</b>				
Debtors	-		559	
Cash at bank and in hand	<u>7,659</u>		<u>4,538</u>	
	7,659		5,097	
<b>CREDITORS</b>				
Amounts falling due within one year	<u>(8,605)</u>		<u>(3,370)</u>	
<b>NET CURRENT ASSETS/ (LIABILITIES)</b>		<u>(946)</u>		<u>1,727</u>
		1,192		1,782
		=====		=====
<b>CAPITAL AND RESERVES</b>				
Profit and loss account		<u>1,192</u>		<u>1,782</u>
		=====		=====

Approved by the Trustees on 1 NOVEMBER 1993

G COCKWELL	] Trustees
.....]	
A HEATHMAN	
.....]	

**MEDIA TRUST ACCOUNTS FOR THE YEAR ENDED 30TH JUNE 1992****AUDITOR'S REPORT TO THE TRUSTEES OF  
MEDIA TRUST**

I have audited the financial statements in accordance with Auditing Standards, except that the scope of my work was limited by the matters referred to below.

The trust's recorded turnover comprised cash sales, sales through subscriptions and advertising charges. There were no systems of control over such sales on which I could rely for the purpose of my audit and there were no satisfactory audit procedures that I could adopt to confirm independently that all sales were recorded. In this respect alone I was unable to satisfy myself as to the completeness and accuracy of the accounting records.

Subject to any adjustments that I might have found to be necessary had I been able to satisfy myself as to the matter referred to above, in my opinion the financial statements give a true and fair view of the state of the trust's affairs at 30 June 1992 and of its loss for the year then ended and have been properly prepared in accordance with the Finance and Audit Ordinance 1988 and the Media Trust Ordinance 1989.

Peter J Campbell  
Principal Auditor  
Falkland Islands Government

Aberdeen

Date 1 NOVEMBER 1993

**MEDIA TRUST (PENGUIN NEWS)  
PROFIT AND LOSS ACCOUNT  
YEAR ENDED 30 JUNE 1992**

	£	<u>1992</u> £	£	<u>1991</u> £
TURNOVER		30,161		19,936
Distribution costs	2,511		1,518	
Administrative expenses	<u>55,974</u>		<u>41,063</u>	
		<u>58,485</u>		<u>42,581</u>
		(28,324)		(22,645)
Other operating income		<u>25,000</u>		<u>22,055</u>
LOSS ON ORDINARY ACTIVITIES		(3,324)		(590)
RETAINED PROFIT BROUGHT FORWARD		<u>1,192</u>		<u>1,782</u>
RETAINED PROFIT CARRIED FORWARD		(2,132) =====		1,192 =====

**MEDIA TRUST (PENGUIN NEWS)  
BALANCE SHEET  
AS AT 30 JUNE 1992**

	£	<u>1992</u> £	£	<u>1991</u> £
<b>FIXED ASSETS</b>				
Tangible assets		1,728		2,138
<b>CURRENT ASSETS</b>				
Debtors	2,594		-	
Cash at bank and in hand	<u>30</u>		<u>7,659</u>	
	2,624		7,659	
<b>CREDITORS</b>				
Amounts falling due within one year	<u>(6,484)</u>		(8,605)	
<b>NET CURRENT LIABILITIES</b>		<u>(3,860)</u>		<u>(946)</u>
		(2,132)		1,192
		=====		=====
<b>CAPITAL AND RESERVES</b>				
Profit and loss account		<u>(2,132)</u>		<u>1,192</u>
		(2,132)		1,192
		=====		=====

Approved by the board on 1 November 1993

G COCKWELL	] Trustees
.....]	
A HEATHMAN	
.....]	



# THE FALKLAND ISLANDS GAZETTE (Extraordinary)

PUBLISHED BY AUTHORITY

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*Vol. CIII*

*2nd NOVEMBER 1994*

*No. 15*

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The following are published in this Gazette —

**Proclamation No. 2 of 1994;  
Appointment of Returning Officer, Stanley Constituency;  
Writ of Election, Stanley Constituency;  
Notice of Election, Stanley Constituency.**

**PROCLAMATION**  
**FALKLAND ISLANDS CONSTITUTION**  
**ORDER 1985**

**SCHEDULE 1**  
**(Section 28(2))**

**PROCLAMATION TO FILL A VACANCY FOR STANLEY**  
**CONSTITUENCY OF THE LEGISLATIVE COUNCIL, REQUIRING**  
**THE HOLDING OF A BY-ELECTION AND APPOINTING A TIME IN**  
**RESPECT THEREOF**

(Proclamation No. 2 of 1994)

**WHEREAS** Charles Desmond Keenleyside (Jnr) a duly elected member for the Stanley Constituency of the Legislative Council for the said Colony resigned on the 31st day of October 1994;

It is necessary to make arrangements to fill the vacancy in the membership of the Legislative Council that has occurred as a result of the aforesaid resignation and

Section 28(2) of the Falkland Islands Constitution Order 1985 provides that whenever an elected member of the Legislative Council vacates his seat for any reason, other than a dissolution of the Council, an election shall be held to fill the vacancy on such date as the Governor shall appoint by Proclamation published in the Gazette within 70 days of the occurrence of the vacancy unless the Council is sooner dissolved or under Section 29(3) of the aforesaid Order will be dissolved within 126 days of the occurrence of the vacancy

**NOW I, DAVID EVERARD TATHAM**, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor of the Falkland Islands **IN EXERCISE** of my powers under Section 28(2) of Schedule 1 ("the Constitution") to the Falkland Islands Constitution Order 1985 and of all other powers enabling me in that behalf, **PROCLAIM** that -

A By-Election shall be held on the 15th day of December 1994 to fill the vacancy.

Made this 2nd day of November 1994 at Stanley under my hand and the Public Seal of the Falkland Islands

D.E.Tatham  
Governor

**GOD SAVE THE QUEEN**

**ELECTORAL ORDINANCE 1988**

**(Section 47(1))**

**APPOINTMENT OF RETURNING OFFICER  
STANLEY CONSTITUENCY**

**IN EXERCISE** of my powers under Section 47(1) of the Electoral Ordinance 1988, **I APPOINT BONITA GREENLAND** to be the Returning Officer in respect of the Stanley Constituency

Dated the 2nd day of November 1994

**D.E.Tatham**  
**Governor**



**WRIT OF ELECTION**

To: the Returning Officer for the Stanley Constituency

**IN THE NAME of HER MAJESTY ELIZABETH THE SECOND** By the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen Head of the Commonwealth Defender of the Faith

**BY HIS EXCELLENCY DAVID EVERARD TATHAM** Esquire,  
Companion of the Most Distinguished Order of Saint Michael and Saint George,  
Governor of the Colony of the Falkland Islands

To: the Returning Officer for Stanley Constituency **GREETING**

**WHEREAS** there is a vacancy in the elected membership of the Legislative Council of the Falkland Islands which has occurred as a result of a resignation and for that reason I have today signed a Proclamation pursuant to Section 28(2) of Schedule 1 to the Falkland Islands Constitution Order 1985

**AND WHEREAS** by the said Proclamation I appointed the 15th day of December 1994 as the date on which a By-Election is to be held within the Stanley Constituency.

**NOW THEREFORE I COMMAND THAT**, due notice having first been given, you do cause election to be made according to law of **ONE** member of the Legislative Council in respect of the Stanley Constituency **AND THAT** you do return this Writ endorsed as provided by law on or before the 19th day of December 1994

**GIVEN** under my hand and the Public Seal of the Falkland Islands at Government House Stanley this 2nd day of November in the year of Our Lord One Thousand Nine Hundred and Ninety Four

**D.E. Tatham**  
**Governor**

**NOTICE OF BY-ELECTION  
1994**

(Section 51 Electoral Ordinance 1988)

**STANLEY CONSTITUENCY**

I, Bonita Greenland, Returning Officer in respect of the Stanley Constituency **HEREBY GIVE NOTICE** in accordance with Section 51 of the Electoral Ordinance 1988 as follows:-

- (1) The number of persons to be elected as members of the Legislative Council in respect of the above constituency, and as a consequence of the Writ of Election transmitted to me on the 2nd day of November 1994 by the Governor, shall be **ONE**, that is to say -

**ONE** member in respect of the Stanley Constituency

- (2) Nomination papers for candidates in respect of the above constituency may be obtained from me from and including today, the 2nd day of November 1994 and until and including the 22nd day of November 1994, but not including Saturdays, Sundays, and public holidays falling between those dates.

- (3) The hours between which nomination papers may be obtained from me on the days above-mentioned are -

(a) between 8.30 am and 11.45 am and

(b) between 1.30 pm and 4.15 pm

While I am, at the request of any person, prepared to transmit nomination papers by post or other means to any person requesting them, I cannot accept any responsibility for the safe or timely delivery or arrival of them. All persons are therefore most strongly advised that wherever possible they should collect nomination papers from me.

- (4) The location of my office, for the purpose of collection of nomination papers is the Court offices, Ground Floor, Town Hall, Ross Road, Stanley (these offices are immediately to the west of the Legislative Council Chamber/Court Room). My telephone number at these offices is 27272.

- (5) The last day for delivery of completed nomination papers to me will be the 22nd day of November 1994 and completed nomination papers must be handed to me not later than 4.30 pm on that day, at the Court offices (located as stated in (4) above). While nomination papers may be sent to me by post or otherwise it is the responsibility of those nominating a candidate to ensure that it is actually received by me in due time and I draw attention to the provisions of Section 52(1) of the Electoral Ordinance 1988 -

"52(1) Every nomination paper shall be delivered or sent by or on behalf of the candidate so as to be received by the Returning Officer personally and shall be deemed not to have been received by the Returning Officer until it is received by him personally except that whenever a nomination paper is left at his office in an envelope addressed to him it shall (unless it is actually received by him at an earlier time) be deemed to have been received by him personally not later than half past four in the afternoon of the second business day following the day on which it was so left.

(2) No election shall be invalidated by the fact that the Returning Officer is absent from his office on any day provided that he is in personal attendance thereat on the last day for delivery of nomination papers between the hours specified pursuant to paragraph (f) of section 51(2) above".

- (6) I shall be personally in attendance at the Court offices to receive nomination papers between the hours of 8.30 am and 11.45 am and again between the hours of 1.30 pm and 4.30 pm on the 22nd day of November 1994.
- (7) In the event that more than **ONE** person after the close of nominations stands validly nominated as candidates for election in respect of the Stanley Constituency a poll will be necessary and will be conducted on the 15th day of December 1994 ("polling day"). The poll will be conducted between the hours of 10.00 am and 6.00 pm on polling day in Stanley at polling places to be appointed not later than ten days before polling day by the Governor pursuant to Section 59(1) of the Electoral Ordinance 1988 **BUT SUBJECT** to the provisions of the Voting in Institutions Regulations 1993, which permit inmates at the King Edward VII Memorial Hospital and Jack Hayward Housing, Stanley, and certain members of staff employed in relation thereto to vote on polling day during a visit by an electoral team to those institutions.

Dated this 2nd day of November 1994

Returning Officer  
Stanley Constituency





# THE FALKLAND ISLANDS GAZETTE (Extraordinary)

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*Vol. CIII*

*10th NOVEMBER 1994*

*No. 16*

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## COMMISSION OF INQUIRY - FALKLAND ISLANDS NATIONAL STUD FLOCK

In accordance with section 2 of the Commissions of Inquiry Ordinance and all other powers me enabling I **DAVID EVERARD TATHAM** Companion of the Most Distinguished Order of Saint Michael and Saint George Governor of the Falkland Islands hereby issue a Commission appointing the following persons to be Commissioners:

JAMES ARTHUR WOOD  
BROOK HARDCASTLE

By accepting this Commission you, the above named Commissioners, are hereby authorised to conduct an Inquiry into the affairs surrounding the importation into the Falkland Islands and subsequent management of the Falkland Islands National Stud Flock. In conducting the Inquiry you are further authorised and required to consider and, as far as you consider appropriate, investigate and report upon the matters set out below. These do not themselves constitute exclusive terms of reference and are not intended in any way to cut down the scope of the matters you may investigate and upon which you may report. It is desired to give you full discretion in this respect.

***Matters for consideration***

1. The circumstances surrounding the importation into the Falkland Islands of the National Stud Flock.
2. The decision to place the National Stud Flock upon Sea Lion Island.
3. The role of the Director of Agriculture and other officers of the Department of Agriculture in the management of the National Stud Flock and the discharge by the Director and those officers of their proper duties in relation to management of the National Stud Flock.
4. The adequacy of the resources available to the Department of Agriculture to discharge the responsibilities associated with the management of the National Stud Flock.
5. The circumstances surrounding the auction at Goose Green of various animals from the National Stud Flock and, in particular, the sale at that auction of ewes which subsequently turned out to be in lamb.
6. The reasons for and circumstances surrounding the deaths on Lively Island of animals comprising part of the National Stud Flock.
7. The adequacy of current arrangements for management of the National Stud Flock and any recommendations for future good management of the Flock.

I hereby direct that **JAMES ARTHUR WOOD** shall be Chairman of the Commission and further direct that you shall commence the Inquiry as soon as reasonably practicable after the date hereof with the Inquiry being conducted in Stanley or at such other place within the Islands as may in your opinion from time to time be reasonable or practicable and you are further directed to submit to me your report (or if the circumstances dictate an interim report) on or before 16 December 1994.

I further direct that the enquires and deliberations undertaken by the Commission shall not take place in public.

**D. E. TATHAM,**  
Governor.

Dated 9 November 1994

Archivist



# THE FALKLAND ISLANDS GAZETTE (Extraordinary)

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*23rd NOVEMBER 1994*

*No. 17*

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No. 67

22nd November 1994

## THE COLONY OF THE FALKLAND ISLANDS

### A P P O I N T M E N T

OF

### TEMPORARY REGISTRAR

In exercise of the powers conferred upon me by Section 4 of the Marriage Ordinance I, **D.E. Tatham**, Governor of the Falkland Islands -

**HEREBY APPOINT -**

**RODNEY WILLIAM LEE** a Registrar for the purpose of the marriage at Many Branch, Port Howard, West Falkland of **Trevor Alan Morris** and **Michelle Jane Goodwin**

Given under my hand at Stanley this 22nd day of November 1994.

**D. E. Tatham**  
Governor  
Falkland Islands

**The Electoral Ordinance 1988  
Notification of nominations, etc.  
Stanley Constituency**

In accordance with Section 69 of the Electoral Ordinance 1988, I give notice that a poll will be taken on Thursday, 15th December 1994, at the Town Hall, Stanley, for the election of one member to the Legislative Council for the Stanley Constituency. A mobile polling team will visit the King Edward VII Memorial Hospital and Jack Hayward Housing, Stanley, on the 15th December 1994 at a time or times to be fixed.

Candidates who have been nominated for election are those in the following list:

a) Candidates who have been nominated and are standing for election are as follows:

Candidate: John **ALLAN** of 3 Philomel Place, Stanley

Proposer: Ronald John Clarke

Seconder: Doreen Clarke

Supporters: William Henry Roberts  
Laura May Roberts  
Josephine Ann McKay  
Kenneth Andrew McKay

Candidate: Terence Severine **BETTS** of 6 Discovery Close, Stanley

Proposer: Sigrid Geraldine Wells Barnes

Seconder: Gladys Lee

Supporters: Paul Roderick Bonner  
Robin Myles Lee  
Terence Owen McPhee  
Robert John King

Candidate: John **BIRMINGHAM** of 4 Drury Street, Stanley

Proposer: Harold Bennett

Seconder: Shirley Peck

Supporters: Kita Muriel Bedford  
Tracy Porter  
Leonard Middleton  
Betty Josephine Biggs



Candidate: Janet Lynda **CHEEK** 25 Ross Road West, Stanley  
 Proposer: Rose Ann Shirley Hirtle  
 Secunder: Velma Malcolm  
 Supporters: John Mcleod  
 Joyce Shorrocks  
 Phyllis Mary Rendell  
 Andrew Raymond Newman

Candidate: Rodney John **HALFORD** of Tenacres, Stanley  
 Proposer: William Duncan  
 Secunder: Doreen Duncan  
 Supporters: Sheila Margaret McPhee  
 Sara McPhee  
 Terence Owen McPhee  
 Marjorie May McPhee

Candidate: John **POLLARD** of 23 Ross Road East, Stanley  
 Proposer: Elizabeth Eve Pollard  
 Secunder: Helena Joan Spruce  
 Supporters: Marjorie Rose Adams  
 David Albert Hall  
 Arthur John Barton  
 Natalie Marianne Smith

b) Candidates who have been nominated and have withdrawn from election are as follows:

Candidate: Frank Brian **CLAXTON** of 28 Ross Road East, Stanley  
 Proposer: James Gary Simpson  
 Secunder: Pauline Sackett  
 Supporters: Catherine Gladys Bertrand  
 Burned Brian Peck  
 Raynor Halliday  
 Harold Theodore Rowlands





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol.CIII*

*30th NOVEMBER 1994*

*No. 18*

## Appointments

Derek Samuel Goodwin, Mechanic, Public Works Department, 1.11.94.

Ms. Julie Ann Clarke, Casualty Nurse, Medical Department, 1.11.94.

Marc David Hoy, Police Constable, Royal Falkland Islands Police, 14.11.94.

## Re-Appointment

Miss Rhiannon Elinore Didlick, Auxiliary Nurse, Medical Department, 1.9.94.

## Confirmation of Appointments

Peter Burnard, Teacher, Education Department, 1.9.94.

Simon Roy Miller, Fisheries Protection Officer, Fisheries Department, 1.9.94.

Mrs. Jane McGill, Assistant Air Traffic Controller, Civil Aviation Department, 26.10.94.

## Completion of Contract

Miss Rhiannon Elinore Didlick, Auxiliary Nurse, Medical Department, 31.8.94.

## NOTICES

No. 69 30th November 1994.

### Planning Ordinance 1991

In accordance with the provision of the Planning Ordinance 1991, Part II Administration, Section 10, I hereby appoint —

**Graham Brian France**

to be the Planning Officer with effect from 29th March 1993.

D. E. TATHAM,  
*Governor.*

No. 70 30th November 1994.

### The Workmen's Compensation Ordinance 1960 Appointment (under section 23(1) of the Ordinance)

His Excellency the Governor has been pleased to appoint the Attorney General to be Commissioner for Workmen's Compensation for the Colony. This position was previously held by the Financial Secretary.

Secretariat,  
Stanley,  
Falkland Islands,  
1st November 1994.

E. W. DAVIES,  
*for Government Secretary.*

No. 71

30th November 1994.

## THE FALKLAND ISLANDS

TAKE NOTICE that in accordance with the provisions of Section 353 of the Companies Act 1948 in its application to the Falkland Islands and the requirements of the said section having been complied with the Companies named below 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.

CORAL LIMITED;  
ALPHA HOMES LIMITED;  
THE BERKELEY SOUND SHIPPING COMPANY LIMITED.

Dated this 25th day of November 1994.

B. GREENLAND,  
*Registrar of Companies.*

## Application for Naturalisation

Notice is hereby given that Miss Mary Joan Sigaton of Stanley, Falkland Islands is applying to His Excellency the Governor for naturalisation. Any person who has knowledge why naturalisation should not be granted, should send a written and signed statement of the facts to the Immigration Officer, Customs & Immigration Department, Ross Road, Stanley within two weeks of this notice.

J. SMITH,  
*Immigration officer.*



# THE FALKLAND ISLANDS GAZETTE (Extraordinary)

PUBLISHED BY AUTHORITY

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*Vol. CIII*

*2nd DECEMBER 1994*

*No. 19*

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## NOTICES

No. 72

1st December 1994.

IN EXERCISE of my powers under Section 59(1) and 59A(1) of the Electoral Ordinance 1988, I hereby appoint the Court and Council Chamber to be a Polling Place in accordance with the terms of the above provision and instruct that the King Edward VII Memorial Hospital, Stanley and the Jack Hayward Housing, Stanley be attended by a mobile polling team.

D E Tatham  
Governor

Dated the 1st day of December 1994

**THE ELECTORAL ORDINANCE 1988****BY ELECTION 1994**

In accordance with section 99 (1) of the Electoral Ordinance 1988, the following persons have been appointed to be election officials as indicated -

**Stanley Constituency:**

Mrs V. Bonner	Presiding Officer
Miss P. Card	Polling Clerk
Mr F. Wallace	Polling Clerk
Miss J. Smith	Polling Clerk
Mr R. Titterington	Polling Clerk
Mrs U. Wallace	Polling Clerk
Mr A. Livermore	Polling Clerk
Miss L. Jaffray	Polling Clerk

**Mobile Team:**

Mrs C. Blackley	Team Leader
Miss L. Lyse	Polling Clerk

B Greenland  
Returning Officer



# THE FALKLAND ISLANDS GAZETTE (Extraordinary)

PUBLISHED BY AUTHORITY

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*Vol. CIII*

*13th DECEMBER 1994*

*No. 20*

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NOTICE

No. 77

12th December 1994.

## COMMISSION OF INQUIRY - FALKLAND ISLANDS NATIONAL STUD FLOCK

WHEREAS on the 9th day of November 1994 I issued a Commission appointing JAMES ARTHUR WOOD and BROOK HARDCASTLE to be Commissioners in relation to those matters set out in the said Commission as published in the Falkland Islands Extraordinary Gazette of the 10th day of November 1994

AND WHEREAS the said Commissioners have indicated to me that they wish to defer submission of their report to a date later than that specified in the Commission

AND WHEREAS there appear to me to have been further deaths on Lively Island of animals comprising part of the National Stud Flock

NOW THEREFORE in accordance with Section 3 of the Commissions of Inquiry Ordinance and all other powers me enabling I DAVID EVERARD TATHAM Companion of the Most Distinguished Order of Saint Michael and Saint George Governor of the Falkland Islands vary the terms of the Commission issued by me on the 9th day of November 1994 as follows:

1. In conducting the Inquiry the said Commissioners are additionally authorised and requested to consider, investigate and report upon the reasons for and circumstances surrounding the deaths on Lively Island of animals comprising part of the National Stud Flock since the date of the original Commission and
2. The said Commissioners are directed to submit to me their report (or if the circumstances dictate an interim report) on or before the 31st day of January 1995.



D E Tatham  
Governor

Dated 9 December 1994





# THE FALKLAND ISLANDS GAZETTE

PUBLISHED BY AUTHORITY

*Vol. CIII*

*23rd December 1994*

*No. 21*

## Confirmation of Appointments

Edward Laurence Bragger, Assistant Filtration Plant Operator, Public Works Department, 27.8.94.

John Rodney Tuckwood, Water Supervisor, Public Works Department, 1.9.94.

Carol Susan Howes, Police Constable, Royal Falkland Islands Police, 16.10.94.

## Completion of Contracts

Timothy Simon Clarke, Teacher, Education Department, 14.12.94.

Kevin John Holland, Teacher, Education Department, 14.12.94.

Miss Donna Summers, Clerk, Public Service, 20.12.94.

## Re-Appointment

Miss Donna Summers, Clerk, Public Service, 21.12.94.

## NOTICES

### CORRIGENDUM

Gazette Notice No. 69 published in Gazette No. 18 dated 30th November 1994, the last line to read: to be the Planning Officer with effect from 29th March 1994.

No. 74

2nd December 1994

## The Companies and Private Partnership Ordinance (Cap. 13) Companies Act 1994

NOTICE IS HEREBY GIVEN pursuant to section 2 of the Companies and Private Partnership Ordinance and section 353 of the Companies Act 1948 in its application to the Falkland Islands that with effect from the publication of this Notice the names of SCANFALK LIMITED and STANLEY TRAWLERS LIMITED are struck off the register and the Companies are dissolved subject to the proviso to sub-section (5) of section 353 aforesaid.

Dated this 2nd day of December 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 76

7th December 1994.

## THE FALKLAND ISLANDS Insurance Brokers (Falklands) Limited

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

Dated this 7th day of December 1994.

B. GREENLAND,  
*Registrar of Companies.*

No. 79

12th December 1994.

**Vesting Deed - Chartres Farm**

Further to an application made by William Robert Luxton of Chartres West Falkland on behalf of Chartres Sheep Farming Company Limited pursuant to section 11A of the Lands Ordinance as published in the Gazette of 31st October 1994 and I hereby give notice that I have this day executed a Vesting Deed in the following form:

Registered No.:        on the    day of        1994  
Vol.                                Page.

**Crown Grants 347 and 481**  
Dated this 2nd day of December 1994.

WHEREAS on application made to me Bonita Greenland Registrar General pursuant to subsection 11A of the Lands Ordinance by William Robert Luxton, of Chartres West Falkland on behalf of Chartres Sheep Farming Company Limited I am satisfied that Chartres Sheep Farming Company Limited should be registered as the owner of the estate 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 Chartres Sheep Farming Company Limited SUBJECT only to such matters as are mentioned in the Crown Grant Numbers 347 and 481 relating to that land or have effect by virtue of those Crown Grants and to such easements rights privileges and encumbrances as it may have created prior to the date of this Deed.

**SCHEDULE**  
(description of land)

ALL THAT land currently known as the Chartres Station or Chartres Farm on West Falkland and comprising approximately 97,171 acres

Signed:            B. GREENLAND,  
                         Registrar General.

Any person aggrieved by a decision of the Registrar General to execute a vesting deed under this Ordinance may appeal to the Supreme Court within 30 days of the publication in the Gazette of this notice in accordance with the provisions of subsection 11A(a) of the Land Ordinance.

2nd December 1994.

No. 80

12th December 1994.

**Children Ordinance 1994**  
Notice of Commencement

TAKE NOTICE that in exercise of my powers under section 1 of the Children Ordinance 1994 I appoint 1st January 1995 as the date on which the Ordinance is to come into force.

Dated 12th day of December 1994.    D. E. TATHAM,  
   Governor.

No. 81

12th December 1994.

**Evidence Ordinance 1994**  
Notice of Commencement

TAKE NOTICE that in exercise of my powers under section 1 of the Evidence Ordinance 1994 I appoint 1st January 1995 as the date on which the Ordinance is to come into force.

Dated 12th day of December 1994.

D. E. TATHAM,  
Governor.

**Supreme Court of the Falkland Islands**

NOTICE UNDER THE ADMINISTRATION OF ESTATES ORDINANCE (Cap. 1)

**TAKE NOTICE THAT** Moira McGhie, deceased of Saunders Island died at Woolwich, London, on the 11th day of March 1994 intestate.

WHEREAS Thomas Forsyth McGhie, husband of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

**NOTICE IS HEREBY GIVEN** pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony 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.

Stanley,  
Falkland Islands.  
2nd November 1994.  
Ref: PRO/11/94.

B. GREENLAND,  
Registrar General, Supreme Court.

**Supreme Court of the Falkland Islands**

NOTICE UNDER THE ADMINISTRATION OF ESTATES ORDINANCE (Cap. 1)

**TAKE NOTICE THAT** Andrew Nutt Cartmell, deceased of Goose Green, Falkland Islands died at Goose Green, on the 4th day of December 1994 intestate.

WHEREAS Patrick Berntsen, nephew of the deceased, has applied for Letters of Administration to administer the estate of the said deceased in the Colony.

**NOTICE IS HEREBY GIVEN** pursuant to Section 4 of the Administration of Estates Ordinance to all persons resident in the Colony 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.

Stanley,  
Falkland Islands.  
19th December 1994.  
Ref: PRO/14/94.

B. GREENLAND,  
Registrar General, Supreme Court.



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*11th JANUARY 1994*

*No. 1*

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The following is published in this Supplement —

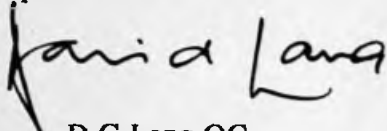
**The Extradition (Hijacking) (Amendment) Order 1993, No. 1574.**

**The Merchant Shipping Act 1979 (Overseas Territories) (Amendment) Order 1993, No. 1786.**

## EXPLANATORY NOTE

### The Extradition (Hijacking) (Amendment) Order 1993

The Extradition (Hijacking) Order 1992 was published in the Gazette Supplement 2 of 1992 as made in the United Kingdom. The 1992 Order contained an error mentioned and corrected in Article 2 of the above Order and the above Order has been made purely to correct that error. Both it and the original Order apply to the Falkland Islands because the Falkland Islands are one of the Dependent Territories specified in Schedule 5 of the 1992 Order.



D G Lang QC  
Attorney General

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## STATUTORY INSTRUMENTS

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1993 No. 1574

## EXTRADITION

### The Extradition (Hijacking) (Amendment) Order 1993

Made - - - - - 23rd June 1993

Laid before Parliament 5th July 1993

Coming into force - - - 27th July 1993

At the Court at Buckingham Palace, the 23rd day of June 1993

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty in exercise of the powers conferred on Her by sections 2, 17 and 21 of the Extradition Act 1870(a) and sections 4(1), 22(3), 30(1) and 37(3) of the Extradition Act 1989(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Extradition (Hijacking) (Amendment) Order 1993 and shall come into force on 27th July 1993.
2. The Extradition (Hijacking) Order 1992(c) shall be amended by substituting the words "section 22(4)(b)" for the words "section 22(4)(g)" where they appear in paragraph 1(a) of Part II of Schedule 4 to that Order.

N. H. Nicholls  
Clerk of the Privy Council

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(a) 1870 c. 52; the Act was repealed by the Extradition Act 1989, with the savings mentioned in section 37 of that Act.  
(b) 1989 c. 33  
(c) S.I. 1992/3200

## EXPLANATORY NOTE

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

This Order amends the Extradition (Hijacking) Order 1992 by substituting a reference to section 22(4)(b) of the Extradition Act 1989 for the reference to section 22(4)(g) of the same Act where it appears in paragraph 1(a) of Part II of Schedule 4 to that Order.

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STATUTORY INSTRUMENTS

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1993 No. 1786

**MERCHANT SHIPPING**

**The Merchant Shipping Act 1979 (Overseas Territories)  
(Amendment) Order 1993**

<i>Made</i> - - - - -	20th July 1993
<i>Laid before Parliament</i>	30th July 1993
<i>Coming into force</i>	21st August 1993

At the Court at Buckingham Palace, the 20th day of July 1993

Present,

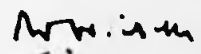
The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 47(1) of the Merchant Shipping Act 1979(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as The Merchant Shipping Act 1979 (Overseas Territories) (Amendment) Order 1993 and shall come into force on 21st August 1993.

2. The Merchant Shipping Act 1979 (Overseas Territories) Order 1989(b) shall be amended as follows:

—in article 2 after the words “the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1989”(c) there shall be added “as amended by the Merchant Shipping (Distress Signals and Prevention of Collisions) (Amendment) Regulations 1991”(d).

  
Clerk of the Privy Council

- 
- (a) 1979 c.39.  
(b) S.I. 1989/2400.  
(c) S.I. 1989/1798.  
(d) S.I. 1991/638.

**EXPLANATORY NOTE**

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

This Order amends the Merchant Shipping Act 1979 (Overseas Territories) Order 1989 by updating the reference to the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1989 to include a reference to the amendments to those regulations which came into force on 19th April 1991.





# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*12th JANUARY 1994*

*No. 2*

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The following are published in this Supplement —

**The Angola (United Nations Sanctions) (Dependent Territories) Order 1993, No. 2356;**

**The Libya (United Nations Sanctions) (Dependent Territories) Order 1993, No. 2808.**

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STATUTORY INSTRUMENTS

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1993 No. 2356

## UNITED NATIONS

The Angola (United Nations Sanctions)  
(Dependent Territories) Order 1993

<i>Made</i> - - - -	<i>29th September 1993</i>
<i>Laid before Parliament</i>	<i>30th September 1993</i>
<i>Coming into force</i>	<i>1st October 1993</i>

At the Court at Balmoral, the 29th day of September 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 15th September 1993, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Angola:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation, commencement, operation and extent**

1.—(1) This Order may be cited as the Angola (United Nations Sanctions) (Dependent Territories) Order 1993 and shall come into force on 1st October 1993.

(2) If, after the making of this Order, the Security Council of the United Nations takes a decision which has the effect of cancelling or suspending the operation of the resolution adopted by it on 15th September 1993, this Order shall cease to have effect or its operation shall be suspended, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Governor in a notice in the official Gazette of the Territory.

(3) (a) This Order shall extend to the territories listed in Schedule 3 to this Order.

(b) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

**Interpretation**

2.—(1) In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

"arms" includes conventional, chemical, biological and nuclear weapons and ballistic missiles;

"commander", in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

"export" includes shipment as stores;

"exportation" in relation to any vessel, submersible vehicle or aircraft, includes the taking out of the Territory of the vessel, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;



“Governor” means the Governor or other officer administering the government of the Territory;

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or the vehicle;

“owner”, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

“ship” has the meaning it bears in section 742 of the Merchant Shipping Act 1894(a);

“shipment” includes loading into an aircraft;

“vehicle” means land transport vehicle.

### **Supply of certain goods to Angola**

3.—(1) Except under the authority of a licence granted by the Governor under this article, no person shall:

(a) supply or deliver; or

(b) agree to supply or deliver,

any goods specified in Schedule 1 to this Order to any person in Angola.

(2) Nothing in paragraph (1)(b) of this article shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

### **Exportation of certain goods to Angola**

4. Except under the authority of a licence granted by the Governor under this article, the goods specified in Schedule 1 to this Order are prohibited to be exported from the Territory to any destination in Angola, or to any destination for the purpose of delivery directly or indirectly to or to the Order of a person in Angola.

### **Carriage of goods destined for Angola**

5.—(1) Without prejudice to the generality of article 3 of this Order, and except under the authority of a licence granted by the Governor under this article, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of any goods specified in Schedule 1 to this Order if the carriage is, or forms part of, carriage from any place outside Angola to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is—

(a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British protected person and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) of this article, then—

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in sub-paragraph (a) or sub-paragraph (b) of paragraph (2) of this article, the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Angola to any destination therein.

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(a) 1894 c.60.

(4) Nothing in paragraph (1) of this article shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Angola was authorised by a licence granted by the Governor under article 3 or article 4 of this Order.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

### **Application of Article 3**

6.—(1) The provisions of article 3 of this Order shall apply to any person within the Territory and to any person elsewhere who:

- (a) is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject, or a British protected person, and is ordinarily resident in the Territory; or
- (b) is a body incorporated or constituted under the law of the Territory.

(2) Subject to the provisions of paragraph (3) of this article, any person specified in paragraph (1) of this article who contravenes the provisions of article 3 of this Order shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of article 3 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Angola.

### **Powers to demand evidence of destination which goods reach**

7. Any exporter or any shipper of goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as he may allow proof to his satisfaction that the goods have reached either—

- (i) a destination to which they were authorised to be exported by a licence granted under this Order; or
- (ii) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

### **Offences in connection with applications for licences, conditions attaching to licences, etc.**

8.—(1) If for the purposes of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular or recklessly makes any statement or furnishes any document or information which is false in a material particular he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any condition attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

### **Declaration as to goods: powers of search**

9.—(1) Any person who is about to leave the Territory shall if he is required to do so by an officer authorised for the purpose by the Governor—

- (a) declare whether or not he has with him any goods specified in Schedule 1 to this Order which are destined for Angola or for delivery, directly or indirectly, to any person in Angola; and
- (b) produce any such goods as aforesaid which he has with him,

and such officer, and any person acting under his directions, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence under this Order.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under this Order.

#### **Investigation, etc. of suspected ships, aircraft and vehicles**

10.—(1) Where any authorised officer, that is to say, any such officer as is referred to in section 692(1) of the Merchant Shipping Act 1894, has reason to suspect that any ship registered in the United Kingdom or in any territory to which this Order extends has been or is being or is about to be used in contravention of paragraph (1) of article 5 of this Order, he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force, and he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and an authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request) may, in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 5 of this Order, exercise the following further powers with a view to the prevention of the commission (or the continued commission) of any such contravention or in order that enquiries into the matter may be pursued, that is to say, he may either direct the master to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified or request the master to take any one or more of the following steps:

- (a) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by any authorised officer that the ship may so proceed;
- (b) if the ship is then in a port in the Territory to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
- (c) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (b) of this paragraph; and
- (d) to take her to any other destination that may be specified by the officer in agreement with the master,

and the master shall comply with any such request or direction.

(2) Without prejudice to the provisions of paragraph (10) of this article, where a master refuses or fails to comply with a request made under this article that his ship shall or shall not proceed to or from any place or where an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with, any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(3) Where the Governor or any person authorised by him for that purpose either generally or in a particular case has reason to suspect that any aircraft registered in the United Kingdom or in any territory to which this Order extends or any aircraft for the time being chartered to any person specified in paragraph (2) of article 5 of this Order has been or is being or is about to be used in contravention of paragraph (1) of that article, the Governor or that authorised person may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify, and that authorised person may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force; and, if the aircraft is then in the Territory, any such authorised person (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request) may further request the charterer, operator and the commander or any of them to cause the aircraft to remain in the Territory until notified that the aircraft may depart, and the charterer, the operator and the commander shall comply with any such request.

(4) Without prejudice to the provisions of paragraph (10) of this article, where any person authorised as aforesaid has reason to suspect that any request that an aircraft should remain in the Territory that has been made under paragraph (3) of this article may not be complied with that authorised person may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft; and
- (c) use, or authorise the use of, reasonable force.

(5) Where the Governor or any person authorised by him for that purpose either generally or in a particular case has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of paragraph (1) of article 5 of this Order, the Governor or that authorised person may request the operator and driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify, and that authorised person may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force; and any such authorised person (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of such a request) may further require the operator or driver to cause the vehicle to remain in the Territory until notified that the vehicle may depart; and the operator and the driver shall comply with any such request.

(6) Without prejudice to the provisions of paragraph (10) of this article, where any person authorised as aforesaid has reason to suspect that any request that a vehicle should remain in the Territory that has been made under paragraph (5) of this article may not be complied with, that authorised person may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and upon that vehicle;
- (b) detain, or authorise the detention of, that vehicle; and
- (c) use, or authorise the use of, reasonable force.

(7) A person authorised by the Governor to exercise any power for the purposes of paragraph (3), (4), (5) or (6) of this article shall, if requested to do so, produce evidence of his authority before exercising that power.

(8) No information furnished or document produced by any person in pursuance of a request made under this article shall be disclosed except:

- (a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or

- (b) to any person who would have been empowered under this article to request that it be furnished or produced or to any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom or under or in the service of the Government of any territory to which this Order extends; or
- (c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Angola decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence under any enactment relating to customs or for an offence against any provision of law with respect to similar matters that is for the time being in force in any territory to which this Order extends.

(9) Any power conferred by this article to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document of cargo produced for inspection.

(10) Each of the following persons shall be guilty of an offence under this Order, that is to say:

- (a) a master of a ship who disobeys any direction given under paragraph (1) of this article with respect to the landing of any cargo;
- (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or driver of a vehicle who—
  - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under this article by any person empowered to make it, or
  - (ii) who wilfully furnishes false information or produces false documents to such a person in response to such a request;
- (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under this article.

(11) Nothing in this article shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

#### **Obtaining of evidence and information**

11. The provisions of Schedule 2 to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Governor, of evidence and information for the purpose of securing compliance with or detecting evasion of this Order and in order to facilitate the obtaining, by or on behalf of the Governor, of evidence of the commission of an offence under this Order or, with respect to any of the matters regulated by this Order, of an offence relating to customs or of an offence against any provision of law with respect to similar matters that is for the time being in force in any territory to which this Order extends.

#### **Penalties and Proceedings**

12.—(1) Any person guilty of an offence under article 5(3) or article 6(2) of this Order shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 10(10)(b)(ii) of this Order or paragraph 5(b) or (d) of Schedule 2 to this Order shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 8(1) or (2), or article 9(3) of this Order shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 7 or article 9(2) of this Order shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(5) Any person guilty of an offence under article 10(10)(a), (b)(i) or (c) of this Order or paragraph 5(a) or (c) of Schedule 2 to this Order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

#### **Exercise of Powers of the Governor**

13.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 2 to this Order to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

#### **Miscellaneous**

14. Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done in a country or place other than the Territory to which this Order extends or done elsewhere outside the Territory by a person who is ordinarily resident in, or by a body corporate incorporated or constituted under the law of, that country or place, provided that it is so done under the authority of a licence, in accordance with any law in force in that country or place (being a law substantially corresponding to the relevant provision of this Order), by the authority competent in that behalf under that law.

*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULE 1

Articles 3 &amp; 4

(1) Any arms and related matériel (including weapons, ammunition, military vehicles, military equipment and spare parts for any of the foregoing).

(2) The following goods:

Petroleum oils and oils obtained from bituminous minerals, crude

Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 per cent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations

Petroleum gases and other gaseous hydrocarbons

Petroleum jelly

Paraffin wax containing by weight less than 75 per cent of oil

'Slack wax', 'scale wax'

Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals

Bitumen and asphalt, natural; bituminous or oil shale and tar sands, asphaltites and asphaltic rocks

Bituminous mixture based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example bituminous mastics, cut-backs)

Acyclic hydrocarbons

Cyclohexane

Benzene

Toluene

o-Xylene

m-Xylene

p-Xylene

Mixed xylene isomers

Styrene

Ethylbenzene

Cumene

Methanol (methyl alcohol)

Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations based on lubricants) and preparations containing, as basic constituents, 70 per cent or more by weight of petroleum oils, or oils obtained from bituminous minerals but not as the basic constituent

Additives for lubricating oils: containing petroleum oils, or oils obtained from bituminous minerals

Petroleum sulphonates, excluding petroleum sulphonates of alkali metals, of ammonium or of ethanolamines; thiophenated sulphonic acids of oils obtained from bituminous minerals, and their salts.



## SCHEDULE 2

## Article 11

## EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor (or any person authorised by him for that purpose either generally or in a particular case) may request any person in or resident in the Territory to furnish to him (or to that authorised person) any information in his possession or control, or to produce to him (or to that authorised person) any document in his possession or control, which he (or that authorised person) may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any documents so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

2.—(1) If any judge, magistrate or justice of the peace is satisfied by information on oath given by any constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs or an offence against any provision of law with respect to similar matters that is for the time being in force in any territory to which this Order extends has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or
- (b) that any documents which ought to have been produced under paragraph 1 of this Schedule and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer, together with any other persons named in the warrant and any other police officers to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) A person authorised by any such warrant as aforesaid to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any document or article found on the premises or in the vehicle, ship or aircraft or on such person which he has reasonable ground to believe to be evidence of the commission of any such offence as aforesaid or any documents which he has reasonable ground to believe ought to have been produced under paragraph 1 of this Schedule or to take in relation to any such article or document any other steps which may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under this paragraph be searched except by a person of the same sex.

(3) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(4) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of or extract made of any document produced) by any person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) of this Schedule shall be disclosed except:



- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom or under or in the service of the Government of any territory to which this Order extends;
- (c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Angola decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Order (whether in the Territory or any other territory to which this Order extends) or, with respect to any of the matters regulated by this Order, for an offence under any enactment relating to customs or for an offence against any provision of law with respect to similar matters that is for the time being in force in any territory to which this Order extends.

5.—(1) Any person who—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or
- (b) wilfully furnishes false information or a false explanation to any person exercising his powers under this Schedule; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

## SCHEDULE 3

Article 1(3)(a)

## TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla  
Bermuda  
British Antarctic Territory  
British Indian Ocean Territory  
Cayman Islands  
Falkland Islands  
South Georgia and South Sandwich Islands  
Gibraltar  
Hong Kong  
Montserrat  
Pitcairn  
St Helena and its dependencies  
Sovereign Base Areas of Akrotiri and Dhekelia  
Turks and Caicos Islands  
Virgin Islands

## EXPLANATORY NOTE

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

This Order, made under the United Nations Act 1946, applies to each of the territories specified in Schedule 3. It imposes restrictions pursuant to a decision of the Security Council of the United Nations in Resolution No 864 of 15th September 1993, on the export to Angola and the supply to persons in Angola of arms and related matériel, and petroleum and petroleum products. It restricts certain related activities including the carriage of prohibited goods in ships, aircraft and vehicles.

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S T A T U T O R Y   I N S T R U M E N T S

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**1993 No. 2808**

**UNITED NATIONS**

**The Libya (United Nations Sanctions) (Dependent Territories) Order 1993**

<i>Made</i>	<i>16th November 1993</i>
<i>Laid before Parliament</i>	<i>26th November 1993</i>
<i>Coming into force</i>	<i>1st December 1993</i>

At the Court at Buckingham Palace, the 16th day of November 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolutions adopted on 31st March 1992 and 11th November 1993, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Libya:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation, commencement, operation and extent**

1.—(1) This Order may be cited as the Libya (United Nations Sanctions) (Dependent Territories) Order 1993 and shall come into force on 1st December 1993.

(2) If, after the making of this Order, the Security Council of the United Nations takes a decision which has the effect of cancelling or suspending the operation of the resolutions adopted by it on 31st March 1992 and 11th November 1993, this Order shall cease to have effect or its operation shall be suspended, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Governor in a notice in the official gazette of the Territory.

(3)(a) This Order shall extend to the territories listed in Schedule 3 to this Order.

(b) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

**Interpretation**

2.—(1) In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

"the 1992 Order" means the Libya (United Nations Sanctions) (Dependent Territories) Order 1992(b);

"export" includes shipment as stores;

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(a) 1946 c. 45.

(b) S.I. 1992/976.

"exportation" in relation to any vessel, submersible vehicle or aircraft, includes the taking out of the Territory of the vessel, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"Governor" means the Governor or other officer administering the government of the Territory;

"Libyan aircraft" means (a) any aircraft registered in Libya; and (b) any other aircraft for the time being chartered to a person connected with Libya;

"person connected with Libya" means

- (a) the Government of Libya;
- (b) any other person in, or resident in, Libya;
- (c) any body incorporated or constituted under the law of Libya;
- (d) any body, wherever incorporated or constituted, which is controlled by any of the persons mentioned in sub-paragraphs (a) to (c) above; or
- (e) any person acting on behalf of any of the persons mentioned in sub-paragraphs (a) to (d) above;

"shipment" includes loading into an aircraft;

"stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a vessel or aircraft as merchandise for sale by retail to persons carried therein;

"vehicle" means land transport vehicle;

"vessel" includes any ship, surface effect vehicle, small waterplane area twin-hull vessel and hydrofoil, and the hull or part of the hull of a vessel.

(2) In this Order references to an offence under any enactment relating to customs includes an offence against any provision of law with respect to similar matters that is for the time being in force in any territory to which this Order extends.

#### **Supply of certain goods to Libya**

3.—(1) Except under the authority of a licence granted by the Governor under this article or the 1992 Order, no person shall—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any goods specified in Schedule 1 to this Order to or to the order of a person connected with Libya.

(2) Nothing in paragraph (1)(b) or (c) of this article shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article or Article 4 of this Order or under the 1992 Order.

#### **Exportation of certain goods to Libya**

4. Except under the authority of a licence granted by the Governor under this article or the 1992 Order, the goods specified in Schedule 1 to this Order are prohibited to be exported from the Territory to any destination in Libya or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person connected with Libya.

#### **Licensing arrangements for arms and oil industry equipment**

5. Except under the authority of a licence granted by the Governor under this article or the 1992 Order, no person shall assign or transfer to any person connected with Libya, or enter into any licensing agreement or other arrangements for the use by any person connected with Libya of,—

- (a) any copyright;
- (b) any patent or application for a patent or any right in or under any patent;
- (c) any registered design, industrial design or utility model;
- (d) any design right or any document recording the design;
- (e) any trade mark or service mark; or
- (f) any technical information or know-how,

for or in connection with the manufacture or maintenance of any goods specified in Part A or Part D of Schedule 1 to this Order.

#### **Supply of certain technical advice, assistance or training**

6. Except under the authority of a licence granted by the Governor under this article or the 1992 Order, no person shall—

- (a) provide to a person connected with Libya, any technical advice, assistance or training related to the supply, delivery, manufacture, maintenance or use of any goods specified in Part A of Schedule 1 to this Order;
- (b) provide to a Libyan national, any advice, assistance or training as an aircraft pilot, aircraft flight engineer or aircraft or ground maintenance engineer.

#### **Servicing of aircraft**

7. Except under the authority of a licence granted by the Governor under this article or the 1992 Order, no person shall provide engineering or maintenance servicing for any Libyan aircraft or any other aircraft in Libya, or for any component of any such aircraft.

#### **Insurance of Libyan aircraft**

8.—(1) This article applies to any contract of insurance, other than a contract of re-insurance, upon any Libyan aircraft or upon the machinery, tackle, furniture or equipment of any such aircraft.

(2) Except under the authority of a licence granted by the Governor under this article or the 1992 Order—

- (a) no person shall make payment in full or partial settlement of any claim under a contract of insurance to which this article applies unless the claim is in respect of an incident occurring before the coming into force of the 1992 Order;
- (b) no person shall effect any new contract of insurance, or agree to any variation or extension of any existing contract of insurance, to which this article applies.

#### **Libyan Arab Airlines**

9.—(1) No person shall carry on any business, or establish or maintain any place of business, under the name of “Libyan Arab Airlines”.

(2) Except under the authority of a licence granted by the Governor under this article or the 1992 Order—

- (a) no person shall establish or maintain any place of business in connection with the carriage of persons or goods by air (whether to or from the Territory or elsewhere) by any person connected with Libya;
- (b) no person connected with Libya shall carry on any business of carrying persons or goods by air (whether to or from the Territory or elsewhere);
- (c) without prejudice to the other provisions of this Order, no person shall—
  - (i) enter into any new agreement or other arrangement with Libyan Arab Airlines;
  - (ii) agree to any variation or extension of any existing agreement or other arrangement with Libyan Arab Airlines;
  - (iii) make to receive from Libyan Arab Airlines any payment, or do any other act, under or pursuant to an agreement or other arrangement between that person and Libyan Arab Airlines.

#### **Aviation services**

10.—(1) Except under the authority of a licence granted by the Governor under this article, no person shall provide any engineering or other services to any person connected with Libya for the maintenance of any civil or military airfield in Libya, including any facilities and equipment on or associated with the airfield.

(2) The provisions of this article do not apply to services for maintenance of emergency equipment or equipment directly related to civilian air traffic control.

### **Making available of aircraft to Libya**

11. Except under the authority of a licence granted by the Governor under this article, no person shall enter into, agree to extend, or extend any contract or other arrangement for the purpose of making available for operation in Libya any aircraft or aircraft components.

### **Assets of Libya**

12.—(1) Except with permission granted by the Governor, no person shall—

- (a) make any payment or part with any gold, securities or investments; or
- (b) make any change in the persons to whose credit any sum is to stand or to whose order any gold, securities or investments are to be held,

where any such action is action to which this article applies.

(2) Subject to the provisions of paragraph (3) of this article, this article applies to any action which is likely to make available, or otherwise to result in the remittance or transfer, to or for the benefit of any of the following persons—

- (a) the Government of Libya;
- (b) any persons or bodies exercising for the time being public functions in Libya; or
- (c) any Libyan undertaking.

any funds or other financial resources, whether by their removal from the Territory or otherwise.

(3) The provisions of this article shall not apply to any funds or other financial resources which represent amounts derived from or are otherwise attributable to the sale of petroleum or petroleum products or agricultural products or commodities originating in Libya and exported therefrom after 30th November 1993:

Provided that any such funds (but not other financial resources) are held in an account with a relevant institution in the Territory which is used exclusively for such funds and any interest derived from them.

(4) Any permission granted by the Governor under this article may be granted either absolutely or subject to conditions and may be varied or revoked at any time by the Governor.

(5) In this article—

- (a) “gold”, “payment” and “securities” shall have the meanings they bear in section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964 of the United Kingdom<sup>(a)</sup>;
- (b) “investments” means any asset, right, or interest falling within any paragraph of Part 1 of Schedule 1 to the Financial Services Act 1986 of the United Kingdom<sup>(b)</sup>, which is not a security;
- (c) “Libyan undertaking” means any entity, wherever incorporated or constituted, which is controlled by the following persons—
  - (i) the Government of Libya;
  - (ii) any person or body exercising for the time being public functions in Libya; or
  - (iii) any person acting on behalf of any of the above-mentioned persons;

“petroleum” means a naturally occurring mixture including hydrocarbons;

“petroleum products” means any products, other than chemicals, which may be obtained by primary distillation or secondary refining from petroleum and includes natural gas, petroleum ether, solvents, benzene, naphtha, motor spirits (including aviation spirit), kerosenes (including jet fuel), heavy oils, fuel oils, lubricating oils, greases, petroleum jelly, paraffin wax and asphaltic bitumen;

“relevant institution” means—

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory in the course of carrying on a deposit-taking business, and for this purpose “deposit” has the meaning given to that term in section 5 of the Banking Act 1987 of the United Kingdom.

(a) 1964 c. 60.

(b) 1986 c. 60.

Kingdom(a) and "deposit-taking business" has the meaning given to that term in section 6 of that Act.

### **Bonds and indemnities**

13.—(1) Except under the authority of a licence granted by the Governor under this article or the 1992 Order—

- (a) no person shall make any payment to or to the order of any person to whom this article applies under or in respect of a bond to which this article applies;
- (b) no person shall do any act for the purpose of obtaining payment, or make any payment, in respect of any right to indemnity in respect of any bond to which this article applies where payment under the bond is, or if payment were to be made by a person referred to in Article 14(1) of this Order would be, unlawful by virtue of sub-paragraph (a) of this paragraph.

(2) The persons to whom this article applies are—

- (a) the Government of Libya;
- (b) any persons or bodies exercising for the time being public functions in Libya;
- (c) any entity, wherever incorporated or constituted, which is controlled by—
  - (i) the Government of Libya; or
  - (ii) any person or body exercising for the time being public functions in Libya;
- (d) any Libyan national; or
- (e) any person acting on behalf of any of the persons mentioned in sub-paragraphs (a) to (d) of this paragraph.

(3) A bond to which this article applies is a bond given in respect of a contract the performance of which is unlawful, wholly or in part, by virtue of this Order.

(4) In this article—

- (a) "bond" means an agreement under which a person ("the obligor") agrees that, if called upon to do so, or if a third party fails to fulfil contractual obligations owed to another, the obligor will make payment to or to the order of the other party to the agreement; and
- (b) "make any payment" means make payment by any method, including but not restricted to the grant, or any agreement to the exercise, of any right to set off, accord and satisfaction and adjustment of any account, or any similar means.

### **Application of Articles 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13**

14.—(1) The provisions of Articles 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Order shall apply to any person within the Territory and to any person elsewhere who—

- (a) is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British protected person, and is ordinarily resident in the Territory; or
- (b) is a body incorporated or constituted under the law of any part of the Territory.

(2) Subject to the provisions of paragraphs (3) to (14) of this article, any person specified in paragraph (1) of this article who contravenes the provisions of Articles 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of this Order shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of Article 3 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to or to the order of a person connected with Libya.

(4) In the case of proceedings for an offence in contravention of Article 5 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the transaction in question was for the transfer to, or the use of the right in question by, a person connected with Libya or that the right in question was to be transferred or used for or in connection with the manufacture or maintenance of goods specified in Part A or Part D, as the case may be, of Schedule 1 to this Order.

(5) In the case of proceedings for an offence in contravention of Article 6(a) of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the advice, assistance or training was being provided to a person connected with Libya or that it related to the supply, delivery, manufacture, maintenance or use of any goods specified in Part A of Schedule 1 to this Order.

(6) In the case of proceedings for an offence in contravention of Article 6(b) of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the advice, assistance or training was being provided to a Libyan national.

(7) In the case of proceedings for an offence in contravention of Article 7 of this order in relation to a Libyan aircraft or components thereof it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the aircraft was a Libyan aircraft or that the component was part of such an aircraft.

(8) In the case of proceedings for an offence in contravention of Article 8 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the aircraft was a Libyan aircraft or that the machinery, tackle, furniture or equipment was part of such an aircraft.

(9) In the case of proceedings for an offence in contravention of Article 9(2)(a) of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the carriage of persons or goods was by a person connected with Libya.

(10) In the case of proceedings for an offence in contravention of Article 9(2)(c) of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that he had made any payment to or received any payment from Libyan Arab Airlines.

(11) In the case of proceedings for an offence in contravention of Article 10 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the services were for the maintenance of an airfield in Libya or facilities and equipment on or associated with the airfield or that they were not for the maintenance of emergency equipment or equipment directly related to civilian air traffic control.

(12) In the case of proceedings for an offence in contravention of Article 11 of this Order it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the purpose was to make available the aircraft or component for operation in Libya.

(13) In the case of proceedings for an offence in contravention of Article 13(1)(a) of this Order, it shall be a defence for the accused person to prove that—

- (a) he did not know and had no reason to suppose that payment was made to or to the order of a person connected with Libya; or
- (b) (i) he did not know and had no reason to suppose that the bond was given in respect of a contract the performance of which was unlawful by virtue of this Order; and  
(ii) he made all reasonable enquiries to ascertain whether the bond was given in respect of such a contract.

(14) In the case of proceedings for an offence in contravention of Article 13(1)(b) of this Order, it shall be a defence for the accused person to prove that—

- (a) he did not know and had no reason to suppose that payment under the bond was or would be to or to the order of a person connected with Libya; or
- (b) (i) he did not know and had no reason to suppose that the bond was given in respect of a contract the performance of which was unlawful by virtue of this Order; and  
(ii) he made all reasonable enquiries to ascertain whether the bond was given in respect of such a contract:

Provided that sub-paragraph (b) shall not apply where the accused person is a party to the contract in respect of which the bond was given.

#### **Powers to demand evidence of destination which goods reach**

15. Any exporter or any shipper of goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as they may allow proof to their satisfaction that the goods have reached either—



- (i) a destination to which they were authorised to be exported by a licence granted under this Order or the 1992 Order; or
- (ii) a destination to which their exportation was not prohibited by this Order or the 1992 Order,

and, if he fails to do so, he shall be guilty of an offence under this Order unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

#### **Offences in connection with applications for licences, conditions attaching to licences, etc.**

16.—(1) If for the purposes of obtaining any licence or permission under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular or recklessly makes any statement or furnishes any document or information which is false in a material particular he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence or permission granted by the Governor under this Order who fails to comply with any condition attaching to that licence or permission shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence or permission.

#### **Declaration as to goods: powers of search**

17.—(1) Any person who is about to leave the Territory shall if he is required to do so by an officer authorised for the purpose by the Governor—

- (a) declare whether or not he has with him any goods specified in Schedule 1 to this Order which are destined for Libya or for delivery, directly or indirectly, to or to the order of a person connected with Libya; and
- (b) produce any such goods as aforesaid which he has with him,

and such officer, and any person acting under his directions, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence under this Order.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under this Order.

#### **Obtaining of evidence and information**

18. The provisions of Schedule 2 to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Governor, of evidence and information for the purpose of securing compliance with or detecting evasion of this Order and in order to facilitate the obtaining, by or on behalf of the Governor, of evidence of the commission of an offence under this Order or, with respect to any of the matters regulated by this Order, of an offence under any enactment relating to customs.

#### **Penalties and proceedings**

19.—(1) Any person guilty of an offence under Article 14(2) of this order shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under paragraph 5(b) or (d) of Schedule 2 to this Order shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (3) Any person guilty of an offence under Article 16(1) or (2) or Article 17(3) of this Order shall be liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (4) Any person guilty of an offence under paragraph 5(a) or (c) of Schedule 2 to this Order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (5) Any person guilty of an offence under Article 15 or Article 17(2) of this Order shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date in which the person charged first enters the Territory after committing the offence.
- (8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
- (9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:
- Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

#### **Exercise of Powers of the Governor**

20.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 2 to this Order to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

#### **Miscellaneous**

21. Any provision of this Order which prohibits the doing of a thing except under the authority of a licence or permission granted by the Governor shall not have effect in relation to any such thing done in a country or place other than the Territory to which this Order extends, or done elsewhere outside the Territory by a person who is ordinarily resident in, or by a body corporate incorporated or constituted under the law of, that country or place, provided that it is so done under the authority of a licence or permission granted, in accordance with any law in force in that country or place (being a law substantially corresponding to the relevant provision of this Order), by the authority competent in that behalf under that law.

## Revocation of 1992 Order

22. The 1992 Order is revoked.

*R.P. Bulling*  
Clerk of the Privy Council

## SCHEDULE 1

Articles 3 to 6

### PART A

(Arms)

- (1) Any arms and related material (including weapons, ammunition, military vehicles, military equipment and paramilitary police equipment).
- (2) Any component for any goods specified in paragraph (1) of this Part of this Schedule.
- (3) Any goods specially designed or prepared for use, or normally used, in the manufacture or maintenance of any goods specified in paragraph (1) or (2) of this Part of this Schedule.

### PART B

(Aircraft)

Any aircraft and any component specially designed for aircraft.

### PART C

(Airfield infrastructure)

Any materials specially designed or prepared or destined for the construction, improvement or maintenance of civilian or military airfields and their associated facilities and equipment, with the exception of emergency equipment and equipment directly related to civilian air traffic control.

### PART D

(Oil industry equipment)

1. Pumps of a capacity of 350 cubic metres per hour or more and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil or natural gas.
2. Equipment designed for use in crude oil export terminals, as follows:
  - loading buoys or single point moorings (spm)
  - flexible hoses of 12 to 16 inches in diameter for connection between underwater manifolds (plem)
  - single point mooring and floating loading hoses of 12 to 16 inches in diameter
  - anchor chains.
3. Equipment not specifically designed for use in crude oil export terminals but which because of their large capacity can be used for this purpose, as follows:
  - loading pumps with a capacity of 4,000 cubic metres per hour or more and of small head (10 bars)
  - boosting pumps within the same range of flow rates
  - inline pipe line inspection tools and cleaning devices (i.e pigging tools) of 16 inches or more in diameter
  - metering equipment with a capacity of 1,000 cubic metres per hour or more.
4. Refinery equipment, as follows:
  - pumps meeting American Petroleum Institute (API) 610 standards

- boilers meeting industry 1 standards
- furnaces meeting industry 8 standards
- fractionation columns meeting industry 8 standards
- catalytic reactors meeting industry 8 standards.
- prepared catalysts, including the following:
  - catalysts containing platinum
  - catalysts containing molybdenum.

5. Any spare parts or other equipment or supplies specially designed or prepared or destined for the manufacture or maintenance of any of the equipment listed in paragraphs 1 to 4 above.

6. Except as otherwise indicated, the standards referred to in paragraph 4 above are those of the American Society of Mechanical Engineers (ASME).

## SCHEDULE 2

Article 18

### EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor (or any person authorised by him for that purpose either generally or in a particular case) may request any person in or resident in the Territory to furnish to him (or to that authorised person) any information in his possession or control, or to produce to him (or that authorised person) any document in his possession or control, which he (or that authorised person) may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

2.—(1) If any judge, magistrate or justice of the peace is satisfied by information on oath given by any police officer, or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case—

- (a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) that any documents which ought to have been produced under paragraph 1 of this Schedule and have not been produced are to be found on any such premises or in any such vehicle, vessel or aircraft.

he may grant a search warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, vessel or aircraft.

(2) A person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, vessel or aircraft and may seize any document or article found on the premises or in the vehicle, vessel or aircraft or on such person which he has reasonable ground to believe to be evidence of the commission of any such offence as aforesaid, or any documents which he has reasonable ground to believe ought to have been produced under paragraph 1 of this Schedule, or to take in relation to any such article or document any other steps which may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under this paragraph be searched except by a person of the same sex.

(3) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, vessel or aircraft he may use such force as is reasonably necessary for that purpose.

(4) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of or extract made of any document produced) by any person in pursuance of a request made under this Schedule, and no document seized under paragraph 2(2) of this Schedule, shall be disclosed except—

(a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph, but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced, or to any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom, or under or in the service of the Government of any territory to which this Order extends;

(c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Libya decided upon by the Security Council of the United Nations; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence against any enactment relating to customs.

5. Any person who—

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) wilfully furnishes false information or a false explanation to any person exercising his powers under this Schedule; or

(c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

### SCHEDULE 3

(Article (1)(3)(a))

#### TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla  
 Bermuda  
 British Antarctic Territory  
 British Indian Ocean Territory  
 Cayman Islands  
 Falkland Islands  
 South Georgia and South Sandwich Islands  
 Gibraltar  
 Hong Kong  
 Montserrat  
 Pitcairn  
 St Helena and its dependencies  
 Sovereign Base Areas of Akrotiri and Dhekelia  
 Turks and Caicos Islands  
 Virgin Islands

**EXPLANATORY NOTE**

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

This Order, made under the United Nations Act 1946, applies to each of the territories specified in Schedule 3. The Order re-enacts, with certain modifications, the provisions of the Libya (United Nations Sanctions) (Dependent Territories) Order 1992 (S.I. 1992/976) and imposes restrictions, pursuant to a decision of the Security Council of the United Nations in Resolution No. 883 of 11th November 1993, on the export to Libya and the supply to persons connected with Libya, of further goods, including certain oil industry equipment and airfield infrastructure. It restricts certain activities including the training of Libyan pilots and other aviation personnel. The Order also places restrictions on certain actions making available or otherwise transferring certain funds or other financial resources to or for the benefit of certain persons connected with Libya.

(Copies of the API and ASME Standards referred to in Schedule 1 to the Order may be obtained from or through the British Standards Institution (BSI) at 3 Linford Wood, Milton Keynes, MK14 6LE, England.)



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*13th JANUARY 1994*

*No. 3*

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The following is published in this Supplement —

New Island South Sanctuary Order 1993, (S.R. & O. No. 14 of 1993).

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SUBSIDIARY LEGISLATION

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NATURE CONSERVATION

New Island South Sanctuary Order 1993

(S. R. & O. No. 14 of 1993)

Made: 24th December 1993

Published: 13th January 1994

Coming into operation: one month after publication

IN EXERCISE of my powers under section 4 of the Wild Animals and Birds Protection Ordinance(a) I make the following Order -

1. This Order may be cited as the New Island South Sanctuary Order 1993 and shall come into force on the expiry of one month after first publication in the Gazette.

*Citation and  
commencement.*

2. In this Order -

*Interpretation.*

"the Map" means the map identifying the boundary of the Sanctuary with adjoining land reproduced as Schedule 1 to this Order;

"the Ordinance" means the Wild Animals and Birds Protection Ordinance 1964;

"the Sanctuary" means the area of land described in Schedule 2 to this Order.

3.(1) With the consent of the owner, the Sanctuary is pursuant to section 4 of the Ordinance declared to be a wild animal and bird sanctuary.

*Declaration of  
sanctuary.*

(2) Except as permitted by or under the provisions of sections 5 or 8 of the Ordinance the doing in the Sanctuary of anything mentioned in paragraphs (a), (c) or (d) inclusive of section 4 of the Ordinance is prohibited.

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(a) No. 15 of 1964.



(paragraph 2)

3



**SCHEDULE 2**

(paragraph 2)

**DESCRIPTION OF SANCTUARY**

That part of New Island as is presently in the ownership of Mr Ian John Strange and lies predominately on the southern side of the line marked from points A to B to C to D to E to F to G and to H on the Map.

Made 24th December 1993.

D. E. TATHAM,  
*Governor.*

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**EXPLANATORY NOTE**

*(Not part of above Order)*

The effect of this Order is to render it an offence, except as provided in the Ordinance, to do within the Sanctuary declared by this Order anything which is mentioned in paragraphs (a), (c) and (d) of section 4 of the Ordinance.



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*1st FEBRUARY 1994*

*No. 4*

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The following is published in this Supplement —

Coins (Coronation Anniversary of Queen Elizabeth II 1953-1993) Order 1994, (S. R. & O. No. 1 of 1994).

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## SUBSIDIARY LEGISLATION

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### CURRENCY

#### Coins (Coronation Anniversary of Queen Elizabeth II 1953-1993) Order 1994

(S.R. & O No. 1 of 1994)

*(Made: 27th January 1994)*

*(Published: 1st February 1994)*

*(Coming into operation: 2nd June 1993)*

IN EXERCISE of my powers under section 22 of the Currency Ordinance 1987 (a) and all other powers me enabling in that behalf I make the following Order -

1. This Order may be cited as the Coins (Coronation Anniversary of Queen Elizabeth II 1953-1993) Order 1994 and shall be deemed to have come into operation on 2nd June 1993. *Citation and commencement.*
- 2.(1) A new gold £50 coin ("the £50 gold coin") being of a standard weight of 47.54 grammes, of a standard diameter of 38.61 millimetres, of a circular shape and of a millesimal fineness of 916 gold shall be made. *New coins.*
- (2) A new silver 50 pence coin ("the 50 pence silver coin") being of a standard weight of 28.28 grammes, of a standard diameter of 38.61 millimetres, of a circular shape and of a millesimal fineness of 925 silver shall be made.
- (3) A new cupro-nickel 50 pence coin ("the 50 pence cupro-nickel coin") being of a standard weight of 28.28 grammes, of a standard diameter of 38.61 millimetres, of a circular shape and of a fineness of 75% copper and 25% nickel shall be made.
- (4) No more than 100 of the £50 gold coin and no more than 10,000 of the 50 pence silver coin shall be made.
3. In the making of the £50 gold coin, the 50 pence silver coin and the 50 pence cupro-nickel coin a remedy (that is, a variation from the standard weight, diameter or composition specified in paragraphs 2(1), 2(2) and 2(3) respectively in relation to the said coins) shall be allowed of the amount permitted by the British Royal Mint. *Remedy permitted.*
- 4.(1) The obverse of each of the said coins shall depict the portrait of Her Majesty the Queen known as the Maklouf uncouped portrait with the inscriptions "Queen Elizabeth II" to the left and "Falkland Islands" to the right of the portrait respectively. *Design of the coins.*

(2) The reverse of each of the said coins shall depict the portrait of Her Majesty the Queen known as the Equestrian portrait surrounded by the inscription "Coronation Anniversary of Queen Elizabeth II 1953-1993" with the relevant denomination of each of the said coins above the dates at the bottom of the portrait.

(3) Each of the said coins shall have milled edges.

5. All of the coins authorised by this Order shall be current within the Falkland Islands.

*Currency of the coins.*

Made this 27th day of January 1994

D E TATHAM,  
*Governor.*

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EXPLANATORY NOTE  
(not part of above Order)

This Order relates to the special coins issued to commemorate the 40th Anniversary of the Coronation of Her Majesty Queen Elizabeth II.





# THE FALKLAND ISLANDS GAZETTE Supplement

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The following is published in this Supplement —

**Permitted Hours (Public Houses) (Amendment) Regulations 1994, (S. R. & O. No. 2 of 1994).**

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## SUBSIDIARY LEGISLATION

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### INTOXICATING LIQUOR

#### Permitted Hours (Public Houses) (Amendment) Regulations 1994

(S.R. & O. No.2 of 1994)

*(Made: 10th March 1994)*

*(Published: 11th March 1994)*

*(Coming into force: 1st March 1994)*

IN EXERCISE of my powers under sections 35(1) and 83 of the Licensing Ordinance (a) I make the following Regulations -

1. These Regulations may be cited as the Permitted Hours (Public Houses) (Amendment) Regulations 1994 and shall come into force on 1st March 1994. *Citation and commencement.*
2. In these Regulations, "the principal Regulations" means the Permitted Hours (Public Houses) Regulations 1991 (b). *Interpretation.*
3. The principal Regulations are amended in the manner specified in the Schedule to these Regulations. *Amendment of the principal Regulations.*

#### SCHEDULE

(Reg.3)

1. In regulation 3 of the principal Regulations -
  - (a) the full stop at the end of paragraph (c) is replaced with the word "and"; and
  - (b) the following paragraph is added -
 

"(d) any hours which hours specified by virtue of regulation 3A."
2. The following regulation is inserted after regulation 3 -
 

"3A. Any hours which -

  - (a) are hours during which passengers of a cruise ship are paying a visit to Stanley;
  - (b) fall between the hours 10.00 a.m. and 11.30 p.m.
  - (c) are not hours during which the sale of intoxicating liquor would be permitted by virtue of any of paragraphs (a) to (c) of regulation 3,

*Visits by cruise ships.*

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(a) Cap. 38 Laws of the Falkland Islands 1950 Edition

(b) S.R. & O. No. 17 of 1991



are by this regulation specified for the purposes of section 35(1) of the Licensing Ordinance (a) as hours during which intoxicating liquor may be sold in public houses in Stanley."

3. Regulation 4 of the principal Regulations is amended by replacing the words "Nothing in regulation 3" with the words "Nothing in regulations 3 or 3A".

Made this 10th day of March 1994.

D.E. TATHAM.  
*Governor.*

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#### EXPLANATORY NOTE

(This Note does not form part of the Regulations)

These Regulations permit public houses to be open for the sale of intoxicating liquor throughout the day when cruise ship passengers are visiting Stanley.





# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*17th MARCH 1994*

*No. 6*

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The following are published in this Supplement —

**The Finance and Audit (Amendment) Bill 1994;**  
**The Race Relations Bill 1994.**

# The Finance and Audit (Amendment) Bill 1994

(No:            of 1994)

## ARRANGEMENT OF PROVISIONS

### Clauses

1.        Short title
2.        Amendment of the Finance and Audit Ordinance 1988.

## A Bill

for

## An Ordinance

To amend the Finance and Audit Ordinance 1988 so as to enable Government funds to be invested in wider categories of investments.

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

1. This Ordinance may be cited as the Finance and Audit (Amendment) Ordinance 1994. *Short title.*
2. Section 24(1) of the Finance and Audit Ordinance 1988 is amended by replacing the words "or in a manner authorised for the investment of property by trustees by any law for the time being in force in United Kingdom" by the words "or in any manner authorised in writing by the Governor acting in his discretion after having consulted the Secretary of State." *Amendment of the Finance and Audit Ordinance 1988.*

## EXPLANATORY MEMORANDUM

### RACE RELATIONS BILL 1994

#### *Introductory*

Racial discrimination in any form would be condemned by most people in the Falkland Islands. Chapter 1 of the Constitution renders unconstitutional discriminatory legislation or discriminatory executive action (that is to say by the Government or by anybody acting by way of public authority). The constitutional provision does not however in any way prohibit racial discrimination by private persons or non-governmental bodies in relation to any activities. However the Crimes Ordinance 1989, by adopting the relevant provisions of the Public Order Act 1986 of the United Kingdom, has rendered certain acts of racial hatred criminal offences.

The International Convention on the Elimination of All Forms of Racial Discrimination applies to the Falkland Islands just as it does to the United Kingdom itself and all other Dependent Territories of the United Kingdom. As required by its obligations under the Convention, the Falkland Islands Government makes annual reports to United Nations as to compliance by the Falkland Islands with its obligations under the Convention. These reports, along with the United Kingdom's own report and those in relation to other Dependent Territories, are considered in a Committee of Experts appointed by the United Nations for the purpose. On consideration in August 1993, of the reports of all United Kingdom Dependent Territories the Committee of Experts drew attention to the fact that none of these Dependent Territories had enacted legislation to give effect to their obligations under the Convention and requested that early attention be given in all the Dependent Territories to the enactment of legislation on the subject. The Committee did not suggest that there is any problem of racial discrimination in the Falkland Islands but believed that the Falkland Islands' compliance with its obligations under the Convention was incomplete unless satisfactory legislation was introduced and enacted.

In reporting to the Governor the remarks made by the Committee of Experts, the United Kingdom Government asked that the Falkland Islands should consider the enactment of legislation modelled upon the Race Relations Act 1976. The Race Relations Bill 1994, to which this Explanatory Memorandum relates, would adopt a number of the provisions of the 1976 Act, subject in a number of cases to modifications so as to reflect local circumstances and authorities and about a third of the provisions would not be applied at all. These modifications, and the exceptions to adoption of provisions of the 1976 Act, will be found in the Schedule to the Bill.

#### *The effect of the adoption of the United Kingdom provisions by the Bill*

"Racial discrimination" would be defined by section 1 of the 1976, in the same way as it is England. "Discrimination" is defined by section 2 of the 1976 Act and similarly the expressions "racial grounds" and "racial group" are defined by section 3 of the 1976 Act.

Part II of the 1976 Act (sections 4 to 16) deals with discrimination in the employment field. Section 16 of the 1976 Act would not be adopted by the Bill because it relates to police forces in the United Kingdom and makes provision which is necessary because police officers employed by police authorities and not by the Crown directly.

Section 4 of the 1976 Act (which would be adopted without modification or exceptions) renders it unlawful to discriminate in offers of employment, terms of employment, access to opportunities for promotion, transfer or training, or in dismissal, except in relation to employment for the purposes of a private household. By section 5, the provisions of section 4 as to offers of employment do not apply where being of a particular racial group is a genuine occupational qualification for the job (and one obvious example, stated in section 5, is a part in a dramatic performance or as an artist's or photographic model).

Section 6 provides an exception in relation to employment intended to provide training and skills to be used overseas.

Protection for discrimination against contract workers on the grounds of race would be given by section 7. The words "employment at an establishment in the Falkland Islands" would be defined by section 8 as modified and section 9 would grant exemptions for employment on ships in the case of a person who was engaged outside the Falkland Islands. Section 10 of the 1976 Act prohibits racial discrimination in relation to offers of partnership in a firm and terms of partnership and section 11 prohibits racial discrimination in relation to membership of a trade union. Sections 12, 13 and 14 are a group of sections prohibiting discrimination in the grant of qualifications by professional and other institutions, by vocational training bodies in the provision of vocational training opportunities and by employment agencies in the provision of their services.

Section 15 which relates to the Manpower Services Commission would not be adopted. Nor would section 16 because it relates to the United Kingdom police.

Section 17 relates to discrimination by bodies in charge of educational establishments and, as modified by the Schedule to the Bill, would relate to discrimination by the Director of Education and the Board of Education in relation to education in Government schools and to discrimination by proprietors of independent schools. Section 18 would relate to other discrimination in the publicly funded education field. Section 19(1) would impose a general duty to secure that facilities for education provided by the Government, and any ancillary benefits of services, were provided without racial discrimination.

Section 20 would make it unlawful for any person concerned with the provision (whether for payment or not) of goods, facilities or service to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services. Examples of the goods, facilities or services to which section 20 would relate are given by section 20(2) of the Act are -

- (a) access to and use of any place which members of the public are permitted to enter;
- (b) accommodation in a hotel, boarding house or other similar establishment;
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (d) facilities for education;
- (e) facilities for entertainment, recreation or refreshment;
- (f) facilities for transport or travel; and
- (g) the services of any profession or trade, or any local or other public authority.

Section 21 would prohibit discrimination in the disposal or management of premises

- (a) in the terms on which they are offered; or
- (b) by refusal of a person's application for those premises; or
- (c) in treatment of the person in relation to any list of persons in need of premises of that description.

Section 21(2) would render it unlawful for a person, in relation to premises managed by him, to discriminate against a person occupying the premises in the way he affords access to any benefits or facilities, or by refusal or deliberate omission to deny that person access to those benefits or facilities or to evict him, or subject him to any other detrimental treatment. However under section 22 which says that there would be exceptions to section 20 and 21 sections 20(1) and 21 would not apply in relation to certain premises in owner occupation. There would be further minor exceptions from sections 20 and 21 under section 23. Section 24 would prevent a landlord's consent to assignment or sub-letting being refused on racial grounds except in circumstances in which the exceptions under section 22 would apply.

Section 25 would make provision in relation to racial discrimination as to membership of any association having 25 or more members ("association" has a wide meaning but would include a golf club or the Chamber of Commerce). It would be unlawful for such an association to discriminate on racial grounds in the terms on which it is prepared to offer a person membership or by refusing or deliberately omitting to accept his application for membership. Equally, racial discrimination in the provision or use of the benefits, facilities or services of membership would be prohibited. Under section 26 there is an exception from section 25 if the main object of the association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour (e.g. a Caledonian Society or Hibernian Society).

Part IV of the 1976 Act deals with other unlawful acts. Section 29 would prohibit racially discriminatory advertisements. Section 30 would render it unlawful for a person who has authority over another person or in accordance with whose wishes that other person is accustomed to act to instruct him to do any act which is unlawful under the provisions previously mentioned or to procure a person to attempt to procure the doing by him of any such act. Similarly, section 31 would render it unlawful to induce, or attempt to induce, a person to do any such act. The Act provides that an employer is liable for a discriminatory act done by his employee, whether or not it was done with the employer's knowledge or approval. However a person would not be liable for anything done by his agent which was discriminatory unless it was done with his authority (whether express or implied, and whether given before or after a discriminatory act). This liability is civil only.

Section 33(1) states that a person who knowingly aids another person to do an act made unlawful by the Act shall be treated for the purposes of the Act as himself doing an unlawful act of the like description. An employee or agent is, by section 33(2) in those circumstances to be deemed to aid the doing of the act by the employer or principal. However, under section 33(3), there is a defence that the person acted on reliance on a statement made to him by the person he is alleged to have aided that by reason of any provision of the Act, the act which he aids would not be unlawful if it was reasonable for him to rely on that statement. A person who knowingly or recklessly made such a statement is, if it is an material respect false or misleading, guilty of a criminal offence.

Section 40 makes special provision in relation to certain charities and sections 35 to 42 contain a number of special exemptions from the earlier provisions of the Act, the most important of which is probably section 39 which makes special provision in relation to sporting competitions where the qualification to take part or to represent any country or place may be related to nationality or place of birth or length of residence (e.g. for the Olympic Games, the Commonwealth Games or a national championship). It cannot, however, lawfully be related to colour or religion.

Sections 43 to 52 deal with the Commission for Racial Equality in the United Kingdom and are wholly inappropriate in relation to the Falkland Islands. For that reason they would be excluded by the Schedule to the Bill.

Part VIII of the Act (sections 53 to 69) deals with the enforcement of the provisions of the Act against racial discrimination. There are basically two means of enforcement - criminal proceedings in relation to a criminal offence under the Act and civil proceedings. Under section 54 (as modified) a person who complained that somebody has discriminated against him on racial grounds could complain to the Summary Court. Conciliation in respect of such a complaint would be provided for by section 55. This would provide that conciliation could only occur at the request of both the complainant and the person against whom the complaint is made or if the conciliation officer (even if there has not been such a request) thinks that there is a reasonable prospect of success of conciliation.

On hearing a complaint of racial discrimination, under section 56 of the Act as modified, the Summary Court could as it considers just and equitable -



- (a) make an Order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates; and/or
- (b) make an Order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by the Magistrate's Court to pay to the complainant if the complaint had fallen to be dealt with under section 57; and/or
- (c) make a recommendation that the respondent take within a specified period action appearing to the Summary Court to be practicable for the purpose of obviating or reducing the adverse affect on the complainant of any act of discrimination to which the complaint relates. By section 56(2) such an award of damages could not exceed £10,000.

Section 57 as adopted would provide for civil proceedings in the Magistrate's Court for damages for an act of racial discrimination.

Sections 58 to 64 and 66 relate to enforcement by the Commission for Racial Equality and would not be applied by the Schedule to the Bill. Section 55 relates to prescribing of forms to enable a person to formulate and present his case in the most effective manner. Section 68 prescribes the period within which proceedings in the Summary Court would have to be commenced (three months) and the period within which the Magistrate's Court would have to be commenced (six months in most cases). However there would in each case be power to extend time so that the claim could be brought outside the time limits if the court in question thought that it was just and equitable to extend time.

Section 72 would render void any provision of a contract which was racial and discriminatory contrary to the Act and would enable the Magistrate's Court to make such Order as it thinks just for removing or modifying any term made unenforceable by section 72(2).

By section 75 the Act would apply to the Crown as employer just as it would apply to private employers. Section 78 defines certain terms used in the Act.

D G Lang QC  
Attorney General

February 1994

## The Race Relations Bill 1994

(No:            of 1994)

### ARRANGEMENT OF PROVISIONS

#### Clauses

1.      Short title and commencement.
2.      Application of Race Relations Act 1976.
3.      Exclusion of s.78 of Interpretation and General Clauses Ordinance 1977.

#### Schedule

A Bill  
for  
An Ordinance

To make provision with respect to discrimination on racial grounds and relations between people of different racial groups.

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

- |  |  |
|--|--|
| 1. This Ordinance may be cited as the Race Relations Ordinance 1994 and shall come into force on such date as is appointed by the Governor by notice published in the Gazette.   | <i>Short title and commencement.</i>   |
| 2. The Race Relations Act 1976 is adopted as law of the Falkland Islands to the extent, and subject to the modifications and exceptions, specified in the Schedule to this Ordinance.  | <i>Application of Race Relations Act 1976.</i>                                 |
| 3. The reference in section 2 of this Ordinance to the Race Relations Act 1976 is a reference to that Act in the form it was in force in England at the date of enactment of this Ordinance, and section 78 of the Interpretation and General Clauses Ordinance 1977 shall not have effect in relation to the Act. | <i>Exclusion of s.78 of Interpretation and General Clauses Ordinance 1977.</i> |

THE SCHEDULE

Part I  
*Introductory*

1. In this Schedule, and except where the context otherwise requires, "the Act" means the Race Relations Act 1976 in its application to the Falkland Islands by virtue of this Ordinance.

Part II  
*General modifications*

- 2.(1) Every reference in the Act -

(a) except in section 65(7), which is added by paragraph 16 of this Schedule, to "Great Britain", "England and Wales" or "the United Kingdom" shall be replaced by a reference to the Falkland Islands; and

(b) to an industrial tribunal, shall be replaced by a reference to the Summary Court.

(2) There shall be omitted every provision or part of a provision of the Act that has reference only to Scotland.

### Part III

#### *Provisions of the Act excepted from application to the Falkland Islands*

3.(1) Sections 8(6) and (7), 14(2), 15, 16, 19(2) to 19(5), 43 to 52, 56(3), 58 to 64, 66 and 67, 68(3) to (6), 69(2) to 71, 73 and 74, 75(3) and (7) to (9), 76 and 77, 79 and 80(2) of and Schedules 1 and 2 to the Act shall not apply to the Falkland Islands.

(2) Without prejudice to the application to and in respect of them of provisions of the Race Relations Act 1976 under and by virtue of the law of the United Kingdom, none of the provisions of the said Act shall by virtue of this Ordinance apply to or in respect of Her Majesty's armed forces or to or in respect of service under the Crown in right of the United Kingdom or service under the Crown otherwise than in right of the Falkland Islands.

### Part IV

#### *Modifications of particular provisions of the Act*

4. Section 8(5) of the Act is replaced by the following subsection -

"(5) In relation to employment concerned with the exploration of the sea bed or subsoil or the exploitation of their natural resources, the Governor may with the consent of the Secretary of State by Order provide that the application of the foregoing provisions of this section shall extend in respect of employment within areas which are designated areas for the purposes of [the Offshore Minerals Ordinance 1994] as if those designated areas were part of the Falkland Islands and an Order under this subsection may provide that, in relation to employment to which the Order applies, this Part is to have effect with such modifications as are specified in the Order."

5. Section 9(3) of the Act is replaced by the following subsection -

"(3) Subsections (1) and (2) do not apply to employment or work concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources in any area which for the time being is a designated area for the purposes of the [Offshore Minerals Ordinance 1994]."

6. Section 13(2) of the Act is modified -

(a) by the omission of paragraphs (a) and (b); and

(b) by replacing the words "Secretary of State" in paragraph (d) by the word "Governor".

7. The Table which forms part of section 17 of the Act is replaced by the following Table -

## "TABLE

***Establishment***

1. Educational establishment  
maintained by the Crown

***Responsible body***

The Director of Education, the  
Board of Education or the school  
managers, according to which of  
them has the function in question.

2. Independent school

Proprietor"

8. Section 18 is replaced by the following section -

"18. It is unlawful for the Director of Education, the Board of Education or the Scholarship and Training Awards Committee, in carrying out any of their respective functions under the Education Ordinance 1989 as do not fall under section 17, to do any act which constitutes racial discrimination."

9. Section 19(1) of the Act is replaced by the following subsection -

"(1) Without prejudice to their obligations to comply with any other provision of this Act, the Director of Education and the Board of Education shall be under a general duty to secure that the facilities for education provided by the Crown, and any ancillary benefits and services, are provided without racial discrimination."

10. Section 28(3) of the Act is replaced by the following subsection -

"(3) Proceedings in respect of a contravention of this section shall be brought only by the Attorney General or by a person acting under his direction."

11. In section 37(3)(b) of the Act the words "Secretary of State" are replaced by the word "Governor".

12. Section 41 of the Act is amended by the insertion of the words "or the Governor" after the words "Minister of the Crown" wherever the latter words appear in that section.

13. Section 55 of the Act is modified by the addition of the following subsection -

"(5) In this section "conciliation officer" means the Government Secretary or any other person designated by the Governor under this subsection to be a conciliation officer for the purposes of this section."

14. Section 56(2) of the Act is replaced by the following subsection -

"(2) The amount of the compensation awarded to a person under subsection (1)(b) shall not exceed £10,000 or such higher sum as from time to time is fixed for the purposes of that provision by an Order of the Governor under this subsection."

15. Section 57(2) of the Act is replaced by the following subsection -

"(2) Proceedings under subsection (1) shall be brought only in the Magistrate's Court, but all such remedies shall be obtainable in such proceedings as, apart from this section and section 53(1) would be obtainable in the Supreme Court."

15. The words "Secretary of State", wherever they appear in section 57(5) and 65 of the Act are replaced by the word "Governor".

16. Section 65 of the Act is further modified -

(a) by replacing paragraph (a) of section 65(6) with the following paragraph -

"(a) in relation to proceedings in the Magistrate's Court, means rules relating to civil proceedings in the Magistrate's Court and made or having effect under any provision of the Administration of Justice Ordinance," and

(b) by the addition of the following subsection -

"(7) The Governor may, if he sees fit, exercise his powers to make an Order under subsection (1) or (3) by Order applying, with or without modifications, any Order made by the Secretary of State under the corresponding provision of the Act as it has effect in the United Kingdom."

17. The words "A country court or the sheriff court" in section 68(2) are replaced by the words "The Magistrate's Court".

18. Section 69(1) of the Act is replaced by the following subsection -

"(1) Any finding by a court under this Act, in respect of any act shall, if it becomes final, be treated as conclusive in any proceedings under this Act."

19. In section 72(5) of the Act the words "a designated county court or a sheriff court" are replaced by the words "the Magistrate's Court".

20. Section 75 of the Act is modified -

(a) in subsections (1) and (2), by omitting the words "of a Minister";

(b) in subsection (4), by replacing the words "Government of the United Kingdom" with the words "Government of the Falkland Islands";

(c) in subsection (5)(a), by omitting the words "prescribed for the purposes of this section by regulations made by the Minister for the Civil Service";

(d) in subsection (6) -

(i) by inserting, after the words "Crown Proceedings Act 1947", the words "in its application to the Falkland Islands by virtue of the Application of Enactments Ordinance 1954";

(ii) by replacing the words "England and Wales" with the words "Falkland Islands"; and

(iii) by omitting all words from and including the words "except that" to the end of the subsection; and

(e) in subsection (10), by omitting paragraphs (a) and (c).



# THE FALKLAND ISLANDS GAZETTE Supplement

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*No. 7*

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The following is published in this Supplement —

The Fishing Licences (Application and Fees) Regulations Order 1994,  
(S.R. & O. No. 3 of 1994).

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## SUBSIDIARY LEGISLATION

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### THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1986

(No. 11 of 1986)

#### The Fishing Licences (Application and Fees) Regulations Order 1994

(S.R. & O. No. 3 of 1994)

*(Made: 25th March 1994)*

*(Published: 25th March 1994)*

*(Commencing: 25th March 1994)*

IN EXERCISE of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986 I make the following Order -

1.(1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 1994 and shall come into operation on the date it is first published in the Gazette and cease to have effect on the 31st December 1994. *Citation and commencement.*

(2) This Order is hereinafter called "these Regulations" and any paragraph of this Order may be cited as (and is hereafter described as) a regulation bearing the same number as that paragraph and every subparagraph of a paragraph of this Order may be cited as (and is hereafter described as) a paragraph of the same number of the regulation in which it appears.

2. Nothing in these Regulations applies to licences for exploratory or scientific purposes or to fishing within the territorial sea or internal waters. *Application of Regulations.*

3. In these Regulations - *Interpretation.*

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

"fishing licence" means a licence to catch or take fish within the fishing waters;

"the fishing season" means -

(a) in relation to an "R" Licence a period commencing on 1st July 1994 and ending on 31st December 1994;

(b) in relation to an "X" Licence the period commencing on 1st August 1994 and ending 31st October 1994;



(c) in relation to a "Y" Licence a period commencing on 1st July 1994 and ending on 31st December 1994;

(d) in relation to a "Z" Licence a period commencing on 1st July 1994 and ending on 31st December 1994;

"the principal regulations" means the Fishing Regulations Order 1987.

4. For so long as these Regulations are in force such of the provisions of the principal regulations as are inconsistent with these Regulations shall not be in force, but except as aforesaid the provisions of the principal regulations remain in force and shall be complied with in addition to those of these Regulations. *Variation of principal regulations.*

5.(1) For the purpose of these Regulations there shall be the following categories of licence - *Categories of licences.*

- (a) an "R" Licence;
- (b) an "X" licence;
- (c) a "Y" Licence; and
- (d) a "Z" Licence.

(2) An "R" Licence issued under these Regulations shall permit the catching or taking of all species of the family RAJIDAE (Skate) and shall not permit the taking of other species of finfish or squid of any kind.

(3) An "X" Licence issued under these Regulations shall authorise the catching or taking of squid of the species *Loligo gahi* from on or after the 1st August 1994 until and including 31st October 1994.

(4) A "Y" Licence issued under these Regulations shall permit the catching or taking of any finfish, that is to say vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case include squid of any kind.

(5) A "Z" Licence issued under these Regulations shall permit the catching or taking of any finfish except Hake (*Merluccius spp.*) that is to say a vertebrate fish having a dorsal fin, a ventral or pectoral fin and not in any case including squid or Hake (*Merluccius spp.*) of any kind:

Provided that a "by-catch" which in the reasonable opinion of the Director of Fisheries could not reasonably be avoided shall not be deemed to have been caught or taken without the authority of a licence.

6. (1) Applications for licences in respect of the whole or any part of any fishing season shall be made to the Director of Fisheries at the Falkland Islands Fisheries Department, P O Box 122, Stanley, Falkland Islands. *Applications for licences.*

(2) Any application to which paragraph (1) of this regulation relates shall be accompanied by an application fee of £200 (which shall not be returnable whether or not the application is granted) and shall be made so as to be received there by Tuesday, 12th April 1994.

(3) The Director of Fisheries in his discretion may consider an application lodged after the time and date mentioned in paragraph (2) of this regulation but shall not be bound to do so.

7. (1) Table 1 of the Schedule to these Regulations applies in respect of the fees payable for type "R" Licences. *Tables of fees.*

(2) Table 2 of the Schedule to these Regulations applies in respect of the fees payable for type "X" Licences.

(3) Table 3 of the Schedule to these Regulations applies in respect of the fees payable for type "Y" Licences.

(4) Table 4 of the Schedule to these Regulations applies in respect of the fees payable for type "Z" Licences.

(5) All fees payable under this regulation shall be paid in pounds sterling and in accordance with the principal Regulations.

(6) The explanatory notes at the commencement of each Table in the Schedule to these Regulations are for guidance only and shall not have legislative effect.

(7) The fees for transshipment or transshipment and export licences for the period 1st July 1994 to 31st December 1994 shall be £150 per transshipment operation.

## THE SCHEDULE

Provisions as to fishing licences in respect of the fishing season

### TABLE 1

Skate. Type "R" Licences.

(Explanatory Notes:

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take species of the family RAJIDAE.
3. The season for this type of licence commences on 1st July 1994 and ends on 31st December 1994 and will be subject to a closed area and mesh restrictions.

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with International Tonnage Measurement Rules;

B. A licence is not transferable.

### FORMULA

Fee payable per licensed month is the result of:

$$£(5672 + (0.70 \times GT))$$

### TABLE 2

#### Squid - Type "X" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take squid.
3. The season for this type of licence commences on 1st August 1994 and ends on 31st October 1994.
4. Fees calculated by the Formula set out in this Table are for the full season only and are not payable per month)

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in Tonnage Certificates issued in accordance with the International Tonnage Measurement Rules.

B. A Licence is not transferable.

### FORMULA

Fee payable is the result of

$$£(40242 + (22.73 \times GT))$$

### TABLE 3

#### Finfish Only. All Areas - Type "Y" Licences

(Explanatory Notes:

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish species but not squid.
3. The season for this type of licence commences on 1st July 1994 and ends on 31st December 1994 and will be subject to a closed area and mesh restrictions.

## Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with International Tonnage Measurement Rules;

B. A licence is not transferable.

## FORMULA

Fee payable per licensed month is the result of:

$$£(3705 + (5.45 \times GT))$$

## TABLE 4

Finfish Only. Species Restricted - Type "Z" licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish except Hake (*Merluccius spp.*).
3. The season for this type of licence commences on 1st July 1994 and ends on 31st December 1994 and will be subject to a closed area and mesh restrictions).

## Effective text (of legislative effect)

A. In the following Formula "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.

B. A licence is not transferable.

## FORMULA

Fee payable per licensed month is the result of whichever of the following is applicable;

I. Where the vessel has a Gross Tonnage of less than 2000 GT;

$$£(7861 + (0.31 \times GT))$$

II. Where the vessel has a Gross Tonnage of 2000 GT or greater;

$$£(GT \times 10.85) - 4745))$$

Made this 25th day of March 1994.

D.E. TATHAM,  
Governor.





# THE FALKLAND ISLANDS GAZETTE Supplement

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The following are published in this Supplement —

- The Family Law Reform Bill 1994;**
- The Statute Law Revision Bill 1994;**
- The Application of Enactments (Amendment) Bill 1994;**
- The Affiliation Proceedings Bill 1994;**
- The Building Control Bill 1994.**

## EXPLANATORY MEMORANDUM

### THE FAMILY LAW REFORM BILL

#### *Introductory*

The first and principal subject of this Bill is illegitimacy. The drafting policy lying behind it is that to the greatest possible extent the legal position of a child born to unmarried parents should be the same as that of one born to married parents. The Bill does not seek to abolish the status of illegitimacy. Its aim is to remove so far as possible any avoidable discrimination against, or stigma attaching to, children born outside marriage. Such legislation has been enacted elsewhere, for example in the United Kingdom (the Family Law Reform Act 1987) New Zealand (the Children Act 1969), Australia, Switzerland, the Netherlands, West Germany and France. The European Convention on Human Rights contains provisions against discrimination and that Convention applies to the Falkland Islands. The European Court of Human Rights has held that laws discriminating against those born outside marriage are, unless justifiable on some special ground, inconsistent with the guarantees provided by the Convention.

#### *Summary of the Bill's provisions*

Clause 2 would lay down the general principle that, in the absence of a contrary intention, a relationship between two persons is to be construed without regard to whether either of them, or any person through whom the relationship is deduced, is or is not legitimate. This principle would be applied to the provisions of the Bill and would apply, if the clause is enacted, to all future enactments. By clause 3 the Governor would be given power by an Order to apply that principle to existing enactments.

An effect of the Bill, when read with the Children Bill 1994 would be, assuming that both Bills are enacted, that in proceedings relating to a child, the child's welfare would be the first and paramount consideration, and whether the child is illegitimate or legitimate. This would apply to children of all parents, irrespective of whether the parents are married or not, and whether divorced or not.

While the present Bill and the Children Bill are separate pieces of proposed legislation, they are intended to form part of a composite whole.

Clauses 4 and 5 of the Bill would make relatively minor provision in relation to certain financial matters.

Part IV deals with rights of succession to property on intestacy. The effect of the provisions contained in that Part are that illegitimacy is not to be taken into consideration in determining -

- (i) the rights of succession of an illegitimate person;
- (ii) rights of succession to the estate of an illegitimate person; and

(iii) rights of succession traced through an illegitimate relationship.

("Rights of succession" means a right to inherit property on a person's death).

Clause 8 would make certain reforms intended to benefit illegitimate persons in relation to succession under wills and trusts created during a person's life time. The effect of clause 9 of the Bill is that trustees and personal representatives ("personal representatives" means persons who have taken out probate of a will of a deceased person or letters of administration to the estate of a deceased person who died intestate) would be obliged to take into account the possibility that a deceased had had children outside marriage. The reason for this is so that persons are not accidentally deprived of their inheritance.

Clause 10 would make provision necessary in relation to the grants of probate or administration. The clause provides that unless otherwise shown it is to be assumed that the deceased left no surviving illegitimate relatives, or relatives whose relationship is traced through an illegitimate person. The purpose of this is to avoid a need for extensive enquiries before the Grant (which enables the deceased's property to be administered) is taken out. The reason is to avoid delay.

#### *Part V of the Bill*

This Part deals with the determination of relationships. The Supreme Court will have jurisdiction to entertain an application under the section if, and only if, the applicant is domiciled in the Falkland Islands on the date of the application ("domiciled in the Falkland Islands" very roughly means "has his permanent home in the Falkland Islands") or has been "habitually resident in the Falkland Islands for a period of one year ending with that date".

There are four declarations which could be made under clause 11 -

- (i) that a person named is or was the parent of the applicant;
- (ii) that the applicant is the legitimate child of his parents;
- (iii) that the applicants has become a legitimated person; and
- (iv) that the applicant has not become a legitimated person.

Clause 12 deals with formal declarations that an adoption outside the Falkland Islands is to be recognised by the law of the Falkland Islands so as to make the person legally the child of his adoptive parents.

Clauses 13, 14 and 15 would make supplementary provision in relation to the declarations mentioned above. Clause 16 contains a most important provision in relation to artificial insemination. The effect of clause 16 would be that where a married woman is artificially inseminated then unless it is proved that the husband did not consent to the insemination, the child is to be treated as the child of the husband of the marriage and not the child of the man whose semen was used. On the other hand, no provision is made in relation to surrogate motherhood (where a woman has a child by a man by contract or arrangement with the intent that the child shall be treated as that of the man's wife) : unless the man and woman marry each other such a child will at common law always be illegitimate (but it would have the same rights as others).



Part VI of the Bill, as its title indicates, contains a number of provisions in relation to scientific tests used in determining parentage. Scientific developments, including the use of DNA tests, are taken into account in these provisions.

### ***Clause 22 of the Bill***

This clause, read with Schedules 1 and 2 would amend the Maintenance Orders (Reciprocal Enforcement) Ordinance 1979 and the Matrimonial Causes Ordinance 1979 and make necessary transitional provision in relation to the coming into force of the new law. Clause 22(3) provides that the Affiliation Proceedings Ordinance 1994 (which would be superseded by the provisions of the Bill) should cease to have effect in the Falkland Islands. That Ordinance, if enacted, would have brought in provisions of the Family Law Reform Act 1987 which would be replaced, for the future, by direct provision in Falkland Islands' law contained in the Bill.

Schedule 1 to the Bill would make a minor, consequential, amendment to the Maintenance Orders (Reciprocal Enforcement) Ordinance 1979.

A subsidiary purpose of the Bill (stated in its long title) is to amend the Matrimonial Causes Ordinance 1979. The amendments set out in relation to that Ordinance in Schedule 1 to the Bill are not consequential, for the most part, on the preceding provisions of the Bill, although they will be applicable to illegitimate children as well as to legitimate children. They are minor and straightforward amendments, necessary for the purpose of updating the 1979 Ordinance.

Schedule 2 to the Bill merely saves the validity of existing court orders and applications for court orders pending at the time of coming into force of the Ordinance.

### ***Concluding remarks***

Births outside marriage are now much more common than they used to be. A number of couples live in a stable relationship and have children without marrying.

While the Bill would not, if enacted, abolish the status of illegitimacy; it would provide as a general principle that the question whether a person's mother and father have been married to each other is legally irrelevant. Although the Bill would apply this principle to any future legislation, it would only affect existing legislation in so far as an Order made by the Governor under it expressly provides. There will remain a number of areas where the old concept of legitimacy will still be relevant to a child's rights. The most important such area is in relation to citizenship. Under the British Nationality Act 1981, the relationship of parent and child exists only between a man and his legitimate child. A illegitimate child cannot acquire British citizenship through his father. A child born outside marriage to a father who has British citizenship and a foreign mother is not automatically entitled to British citizenship. Secondly the father of an illegitimate child will not automatically have parental rights in relation to the child, even if the Children Bill 1994 is enacted. Thirdly, there is no presumption of parentage where parents are unmarried. There is a presumption that a child born in wedlock to a married woman is the child of her husband. Developments in blood testing and the new genetic figure-printing should make it relatively easy to establish paternity in most cases, but where it is contested, proof of parentage will remain a pre-requisite to any claim by a father outside a married relationship to exercise rights in relation to the child.

Marital status will remain relevant and the status of illegitimacy would not be abolished : the discrimination, for the most part, would be between fathers rather than children.

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Attorney General

March 1994

# The Family Law Reform Bill 1994

(No.            of 1994)

## ARRANGEMENT OF PROVISIONS

### Sections

#### **Part I Introductory**

1.     Short title.

#### **Part II General principle**

2.     General principle.
3.     Orders applying section 2 to other enactments.

#### **Part III Miscellaneous**

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#### **Part IV Property rights**

5.     Succession on intestacy.
6.     Dispositions of property.
7.     No special protection for trustees or personal representatives.
8.     Entitlement to grant of probate etc.

#### **Part V Determination of Status**

9.     Declarations of parentage, legitimacy or legitimation.
10.    Declarations as to adoptions effected overseas.
11.    General provisions as to the making and effect of declarations.
12.    Provisions relating to the Attorney General.
13.    Supplementary provisions as to declarations.
14.    Artificial insemination.

## **Part VI**

### **Provisions for use of scientific tests in determining parentage**

15. Interpretation of Part VI.
16. Power of court to require use of scientific tests and taking of bodily samples.
17. Consents etc required for taking of bodily samples.
18. Power to provide for manner of giving effect to direction for bodily samples.
19. Failure to comply with direction for scientific tests.

## **Part VII**

### **Amendments etc**

20. Amendment of various Ordinances, transitional provisions and repeals.

**SCHEDULE 1: Amendments to Ordinances**

**SCHEDULE 2: Transitional Provisions and Savings**

A Bill  
for  
An Ordinance

To reform the law relating to the consequences of birth outside marriage; to make further provision with respect to the rights and duties of parents and the determination of parentage; to make amendments to the Maintenance Orders (Reciprocal Enforcement) Ordinance 1979 and the Matrimonial Causes Ordinance 1979 and for purposes connected with the foregoing purposes.

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

Part I

*Introductory*

1. This Ordinance may be cited as the Family Law Reform Ordinance 1994.

*Short title.*

Part II

*General Principle*

2.(1) In this Ordinance and enactments passed and instruments made after the coming into force of this Ordinance, reference (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.

*General principle.*

(2) In this Ordinance and enactments passed after the coming into force of this Ordinance, unless the contrary intention appears -

(a) references to a person whose father and mother were married to each other at the time of his birth include; and

(b) references to a person whose father and mother were not married to each other at the time of his birth do not include,

references to any person to whom subsection (3) of this section applies, and cognate references shall be construed accordingly.

(3) This subsection applies to any person who -

(a) is treated as legitimate by virtue of section 1 of the Legitimacy Act 1976 in its application to the Falkland Islands;

(b) is a legitimated person within the meaning of section 10 of that Act;

(c) is an adopted child within the meaning of Part IV of the Adoption Act 1976 in its application to the Falkland Islands; or

(d) is otherwise treated in law as legitimate.

(4) For the purpose of construing references falling within subsection (2) of this section, the time of a person's birth shall be taken to include any time during the time beginning with -

(a) the insemination resulting in his birth; or

(b) where there was no such insemination, his conception,

and (in either case) ending with his birth.

3.(1) The Governor may by Order make provision for the construction in accordance with section 2 of this Ordinance of such enactments passed before the coming into force of this Ordinance as may be specified in the Order.

*Orders applying section 2 to other enactments.*

(2) An Order under this section shall so amend the enactments to which it relates as to secure that (so far as is practicable) they continue to have the same effect notwithstanding the making of the order.

### Part III

#### *Miscellaneous*

4.(1) In this section "the court" means the Supreme Court in the exercise of its jurisdiction in relation to the wardship of children and "ward of court" means a ward of the Supreme Court.

*Maintenance for wards of court.*

(2) Subject to the provisions of this section, the court may make an order -

(a) requiring either parent of a ward of court to pay to the other parent; or

(b) requiring either parent or both parents of a ward of court to pay to any other person having actual custody of the ward or to the ward, such weekly or other periodical sums towards the maintenance and education of the ward as the court thinks reasonable having regard to the means of the person or persons on whom the requirement is imposed.

(3) An order under subsection (2) of this section may require such sums as are mentioned in that subsection to continue to be paid in respect of any period after the date on which the person for whose benefit the payments are to be made ceases to be a minor but not beyond the date on which he attains the age of twenty-one, and any order made as aforesaid may provide that any sum which is payable thereunder for the benefit of that person after he ceases to be a minor shall be paid to that person himself.

(4) Subject to the provisions of this section, where a person who has ceased to be a minor but has not attained the age of twenty-one has at any time been the subject of an order making him a ward of court, the court may, on the application of either parent of that person or that person himself, make an order requiring either parent to pay to the other parent, to anyone else for the benefit of that person or to that person himself, in respect of any period not extending beyond the date when he attains the said age, such weekly or other periodical sums towards his maintenance or education as the court thinks reasonable having regard to the means of the person on whom the requirement in question is imposed.

(5) No order shall be made under this section, and no liability under such an order shall accrue, at a time when the parents of the ward or former ward, as the case may be, are residing together, and if they so reside for a period of three months after such an order is made it shall cease to have effect; but the foregoing provisions of this subsection shall not apply to any order made by virtue of subsection (2)(b) of this section.

(6) The court shall have power from time to time by an order under this section to vary or discharge any previous order thereunder.

#### Part IV

##### *Property rights*

5.(1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of an estate of an intestate), in its application to the Falkland Islands, references (however expressed) to any relationship between two persons shall be construed in accordance with section 2 of this Ordinance.

*Succession on  
intestacy.*

(2) For the purposes of subsection (1) of this section and that Part of that Act in its application to the Falkland Islands, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

(3) In section 50(1) of that Act (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in addition to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of the section (but in relation to instruments inter vivos made or will or codicils coming into operation earlier) be construed as including references to this section.

(4) The foregoing provisions of this section do not affect any rights under the intestacy of a person dying before the coming into force of this Ordinance.

(5) This section has effect without prejudice to the application and operation, under section 78 of the Interpretation and General Clauses Ordinance 1977, before the coming into force of this Ordinance, of section 18 of the Family Law Reform Act 1987 which made provision identical in effect, but the said section 18 shall cease to have effect on the coming into force of this Ordinance.

6.(1) In the following dispositions namely -

*Dispositions of property.*

(a) dispositions inter vivos made on or after the date on which this Ordinance comes into force; and

(b) dispositions by will or codicil where the codicil/or will is made after that date,

(references whether express or implied) to any relationship between two persons shall be construed in accordance with section 2 of this Ordinance.

(2) It is hereby declared that the use, without more, of the word "heir" or heirs" or any expression which is used to create an entailed interest in real or personal property does not show a contrary intention for the purposes of section 2 as applied by subsection (1) of this section.

(3) In relation to the dispositions mentioned in subsection (1) of this section, section 33 of the Trustee Act 1925 in its application to the Falkland Islands (which specifies the trust implied by a direction that the income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 2 of this Ordinance.

(4) This section is without prejudice to section 42 of the Adoption Act 1976 (construction of dispositions in the case of adoption) in its application to the Falkland Islands.

(5) In this section "disposition" means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.

(6) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this Ordinance comes into force shall not be treated for the purposes of this section as having been made after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

7.(1) Subject to subsection (2) of this section, on the commencement of this Ordinance there shall cease to have effect any enactment or rule of law which enables trustees and personal representatives to distribute property without having ascertained that no person whose parents were not married to each other at the time of his birth, or who claims through such a person, is or may be entitled to an interest in the property.

*No special protection for trustees or personal representatives.*

(2) Subsection (1) is without prejudice to the effect of sections 27 (advertisement for claims) and 61 (grant by court of relief to personal representative who has acted honestly and reasonably and who ought fairly to be excused) of the Trustee Act 1925 in its application to the Falkland Islands.



8.(1) For the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived - *Entitlement to grant of probate etc.*

(a) by any person related to him whose father and mother were not married to each other at the time of the birth of that person; or

(b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) of this subsection.

(2) In this section "probate rules" means rules made or having effect under the Administration of Estates Ordinance or the Administration of Justice Ordinance.

(3) This section does not apply in relation to the estate of a person dying before the coming into effect of this Ordinance.

## Part V

### *Determination of Status*

9.(1) Any person may apply to the Supreme Court for a declaration -

(a) that a person named in the application is or was his parent; or

(b) that he is the legitimate child of his parents.

*Declarations of parentage, legitimacy or legitimation.*

(2) Any person may apply to the Supreme Court for one (or for one or, in the alternative, the other) of the following declarations, that is to say -

(a) a declaration that he has become a legitimated person;

(b) a declaration that he has not become a legitimated person.

(3) The Supreme Court shall have jurisdiction to entertain an application under this section if, and only if -

(a) the applicant is domiciled in the Falkland Islands on the date of the application; or

(b) he has been habitually resident in the Falkland Islands throughout a period of one year ending with that date.

(4) Where a declaration is made on an application under subsection (1) of this section, a copy of the order of the court incorporating the declaration shall be transmitted by the court to the Registrar General.

(5) In this section "legitimated person" means a person legitimated or recognised as legitimated -

(a) under section 2 or 3 of the Legitimacy Act 1976 in its application to the Falkland Islands;

(b) under section 1 or 8 of the Legitimacy Act 1926 in its application to the Falkland Islands;

(c) by a legitimation (whether or not by the subsequent marriage of his parents) recognised by the law of the Falkland Islands and effected under the law of another country.

10.(1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either -

*Declarations as to adoptions effected overseas.*

(a) an overseas adoption as defined by section 72(2) of the Adoption Act 1976 in its application to the Falkland Islands; or

(b) an adoption recognised by the law of the Falkland Islands and effected under the law of any country outside the United Kingdom,

may apply to the Supreme Court for one (or for one, or in the alternative, the other) of the declarations mentioned in subsection (2) of this section.

The said declarations are -

(a) a declaration that the applicant is for the purposes of section 39 of the Adoption Act 1976 the adopted child of that person;

(b) a declaration that the applicant is not for the purposes of that section the adopted child of that person.

(3) The Supreme Court shall have jurisdiction to entertain an application under subsection (1) of this section if, and only if, the applicant -

(a) is domiciled in the Falkland Islands on the date of the application;

(b) has been habitually resident in the Falkland Islands throughout the period of one year ending with that date.

11.(1) Where on an application for a declaration under this Part the truth of the proposition is declared to be proved to the satisfaction of the Supreme Court, the Supreme Court shall make the declaration unless to do so would manifestly be contrary to public policy.

*General provisions as to the making and effect of declarations.*

(2) A declaration under this Part shall be binding on Her Majesty in right of Her Government of the Falkland Islands and on all other persons.

(3) The court, on dismissal of an application for a declaration under this Part shall not have any power to make any declaration for which an application has not been made.

(4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.

(5) No declaration may be made by any court, whether under this Part or otherwise -

(a) that a marriage was at its inception void;

(b) that any person is, or was, illegitimate.

(6) Nothing in this section shall affect the powers of any court to grant a decree of nullity of marriage.

12.(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all the necessary papers in the matter be sent to the Attorney General.

*Provisions relating to the Attorney General.*

(2) The Attorney General, whether or not he is sent papers in relation to an application for a declaration under this Part, may -

(a) intervene in the proceedings on that application as he thinks necessary or expedient;

(b) argue before the court any question in relation to the application which the court thinks necessary to have fully argued.

(3) Where any costs are incurred by the Attorney General in connection with an application under this Part, the Supreme Court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

13.(1) Any declaration under this Part, and any application for such a declaration, shall be in the form prescribed by rules of court.

*Supplementary provisions as to declarations.*

(2) Rules of court may make provision -

(a) as to the information required to be given by any applicant for a declaration under this Part;

(b) as to the persons who are to be parties to proceedings on an application under this Part;

(c) requiring notice of an application under this Part to be served on the Attorney General and on persons who may be affected by any declaration applied for.

(3) No proceedings under this Part shall affect any final judgment or decree already made or pronounced in any court of competent jurisdiction.

(4) The Supreme Court may direct that the whole or any part of proceedings under this Part shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

(5) In this section "rules of court" means rules made by the Chief Executive under this subsection for the purposes of this section.

(6) Until rules under subsection (5) are made and come into effect, the rules of court having effect in relation to the corresponding provisions of the Family Law Act 1986 shall have effect with such modifications only as are necessary (for example the substitution of references to proceedings in the Supreme Court for references to proceedings in the Family Division of the High Court or in a county court).

14.(1) Where after the commencement of this Ordinance a child is born in the Falkland Islands as the result of the artificial insemination of a woman who - *Artificial insemination.*

(a) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled); and

(b) was artificially inseminated with the semen of some person other than the other party to that marriage,

then, unless it is proved to the satisfaction of the court by which the matter has to be determined that the other party to that marriage did not consent to the insemination, the child shall be treated in law as the child of the parties to that marriage and shall not be treated as the child of any person other than the parties to that marriage.

(2) Any reference in this section to a marriage includes a reference to a void marriage if at the time of the insemination resulting in the birth of the child both or either of the parties reasonably believed that the marriage was valid; and for the purposes of this section it shall be presumed, unless the contrary is shown, and one of the parties so believed at that time that the marriage was valid.

## Part VI

### *Provisions for use of scientific tests in determining parentage*

15. In this Part of this Ordinance -

*Interpretation of Part VI.*

"bodily sample" means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

"scientific tests" means scientific tests carried out under this Part of this Ordinance and made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.

16.(1) In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on the application of any party to the proceedings, give a direction -

*Power of court to require use of scientific tests and taking of bodily samples.*

(a) for the use of scientific tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person; and

(b) for the taking, within a period specified in the direction, of bodily samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings,

and the court may at any time revoke or vary a direction previously given by it under this subsection.

(2) Where -

- (a) an application is made for a direction under this section; and
- (b) the person whose paternity is in issue is under the age of eighteen when the application is made,

the application shall specify who is to carry out the tests.

(3) In the case of a direction made on an application to which subsection (2) applies the court shall -

- (a) specify, as the person who is to carry out the tests, the person specified in the application; or
- (b) where the court considers it would be inappropriate to specify that person (whether because to specify him would be incompatible with any provision made by or under regulations made or having effect under section 20 of this Ordinance or for any other reason),

decline to give the direction applied for.

(4) The person responsible for carrying out scientific tests in pursuance of a direction under subsection (1) of this section shall make to the court a report in which he shall state -

- (a) the results of the tests;
- (b) whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined; and
- (c) in relation to any party who is not so excluded, the value, if any of the results in determining whether that party is the father or mother of that person;

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(5) Where the proceedings in which the parentage of any person falls to be determined are proceedings on an application under section 11 of this Ordinance, any references in subsections (1) or (2) of this section to any party to the proceedings shall include a reference to any person named in the application.

(6) Where a report has been made to a court under subsection (2) of this section, any party may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed for the purposes of this section to form part of the report made to the court.

(7) Where a direction under this section has been given in any proceedings, a party to the proceedings, unless the court otherwise directs, shall not be entitled to call as a witness the person responsible for carrying out the tests for the purpose of giving effect to the direction, or any person by whom any thing necessary for the purpose of enabling those tests to be carried out was done, unless within fourteen days after receiving a copy of the report he serves notice on the other parties to the proceedings, or such of them as the court may direct, of his intention to call that person; and where any such person is called as a witness the party who called him shall be entitled to cross-examine him.

(8) Where a direction is given under this section the party on whose application the direction is given shall pay the costs of taking and testing bodily samples for the purpose of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for the purpose), and of making a report to the court under this section, but the amount paid shall be treated as costs incurred by him in the proceedings.

17.(1) Subject to the provisions of subsections (3) and (4) of this section, a bodily sample which is required to be taken from any person for the purpose of giving effect to a direction under section 16 of this Ordinance shall not be taken from a person except with his consent.

*Consents etc  
required for taking  
of bodily samples.*

(2) The consent of a child who has attained the age of sixteen years to the taking from himself of a bodily sample shall be as effective as it would be if he were of full age; and where a child has by virtue of this subsection given an effective consent to the taking of a bodily sample it shall not be necessary to obtain any consent for it from any other person.

(3) A bodily sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in subsection (4) of this section, if the person who has actual custody of him consents.

(4) A bodily sample may be taken from a person who is suffering from mental disorder and who is incapable of understanding the nature and purpose of bodily samples if the person who has the care and control of him consents and the medical practitioner in whose care he has certified that the taking of a bodily sample from him will not be prejudicial to his proper care and treatment.

(5) This section has effect without prejudice to the provisions of section 18 of this Ordinance.

18.(1) The Governor may by regulations make provision as to the manner of giving effect to directions under section 18 of this Ordinance, but unless the Governor has exercised his power under this section to make such regulations, the regulations made by the Secretary of State under section 22 of the Family Law Reform Act 1969 (which corresponds with this section) in relation to directions under section 20 of that Act (which corresponds with section 18 of this Ordinance) and for the time being in force shall have effect as if they had been made under this section, and with such modifications only as are required under section 76 of the Interpretation and General Clauses Ordinance 1977.

*Power to provide for  
manner of giving effect to  
direction for bodily samples.*

(2) Regulations made by the Governor under subsection (1) of this section may -

(a) provide that bodily samples shall not be taken except by such medical practitioners as may be appointed or approved by the Governor;

(b) regulate the taking, identification and transport of bodily samples;

(c) require the production at the time when a bodily sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;

(d) require any person from whom a bodily sample is to be taken, or in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness or condition or undergone any such treatment as may be so prescribed or received a transfusion of blood;

(e) provide that scientific tests shall not be carried out except by such persons, and at such places, as may be appointed by the Governor;

(f) prescribe the scientific tests to be carried out and the manner in which they are to be carried out;

(g) regulate the charges that may be made for the taking and testing of scientific samples and for the making of a report to the court under section 18 of this Ordinance;

(h) make provision for securing that so far as practicable the bodily samples to be tested for the purpose of giving to a direction under section 18 of this Ordinance are tested by the same person;

(i) prescribe the form of report to be made to a court under section 18 of this Ordinance.

19.(1) Where a court gives direction under section 18 of this Ordinance and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

*Failure to comply with direction for scientific tests.*

(2) Where in any proceedings in which the parentage of any person falls to be determined by the court hearing the proceedings there is a presumption of law that the person is legitimate, then if -

(a) a direction is given under section 18 of this Ordinance in those proceedings, and

(b) any party who is claiming relief in those proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable the party to take that step, and if at the end of that period he has failed without reasonable cause to take it, the court may, without prejudice to subsection (1) of this section, dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 18 of this Ordinance fails to consent to the taking of a bodily sample from himself or any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take the step required of him for the purpose of giving effect to the direction.

## Part VII

### *Amendments etc*

- 20.(1) The Ordinances mentioned in Schedule 1 to this Ordinance are amended in the manner there specified. *Amendment of various Ordinances, transitional provisions and repeals.*
- (2) The transitional provisions and savings set out in Schedule 2 to this Ordinance shall have effect.
- (3) The Affiliation Proceedings Ordinance 1994 (the provisions of which are superseded by the provisions of this Ordinance) shall cease to have effect.

## SCHEDULE 1

Section 20(1)

### *AMENDMENTS TO ORDINANCES*

The Ordinances mentioned in this Schedule are amended in the manner specified in this Schedule in relation to them.

#### *The Maintenance Orders (Reciprocal Enforcement) Ordinance 1979*

1. Section 9(3) is replaced by the following subsection -

"(3) An order which by virtue of this section is enforceable by the Magistrate's Court or the Summary Court shall be enforceable as if it were a maintenance order made by that court, and for the purposes of this section "maintenance order" means an order of the Magistrate's Court or of the Summary Court corresponding to an order of a magistrate's court in England of a kind specified in Schedule 8 to the Administration of Justice Act 1970 and includes such an order which has been discharged if any arrears are recoverable thereunder."

#### *The Matrimonial Causes Ordinance 1979*

1. Section 26 is amended by the addition of the following subsection -

"(6) Where the court -

(a) makes an order under this section for the payment of a lump sum; and

(b) directs -

(i) that payment of that sum or any part of it shall be deferred; or

(ii) that that sum or any part of it shall be paid by instalments;

the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due."



2. The following new section is inserted immediately after section 27 -

"27A.(1) Where the court makes an order under section 26 or 27 of this Ordinance a secured periodical payments order, an order for payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

*Order for sale  
of property.*

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include -

(a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates;

(b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

(3) Where an order is made under subsection (1) on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.

(4) Where an order is made under subsection (1), the court may direct that the order, or such provision thereof as the court may specify, shall not take place until the occurrence of an event specified by the court or the expiration of a period so specified.

(5) Where an order under subsection (1) contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or remarriage of that person.

(6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations in relation to that order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 28(1) of this Ordinance."

3. Section 28 is replaced by the following section -

"28.(1) It shall be the duty of the court in deciding whether to exercise its powers under section 26, 27 or 27A and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 26(1)(a), (b) or (c), 27 or 27A in relation to a party to the marriage, the court shall in particular have regard to the following matters -

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the parties be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under section 26(1)(d), (e) or (f), (2) or (4), 27 or 27A above against a party to the marriage in favour of a child of the family who is not a child of that party, the court shall also have regard -

(a) to whether that party assumed any responsibility or the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.

4. The following section is inserted immediately after section 28 -

28A.(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 26(1)(a), (b) or (c), 27 or 27A in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

*Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.*

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any future application in relation to that marriage for an order under section 26(1)(a) or (b) above."

5. In section 30(1) paragraphs (a) and (b) are replaced by the following -

"(a) has failed to provide reasonable maintenance for the applicant; or

(b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family."

6. The existing section 30(3) and (4) are repealed and the following new subsections are inserted in their place -

"(3) Where an application under this section is made on the ground mentioned in subsection (1)(a) of this section, then, in deciding -

(a) whether the respondent has failed to provide reasonable maintenance for the applicant, and

(b) what order, if any to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 28(2), and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while under the age of eighteen.

(4) Where an application is made on the ground mentioned in subsection (1)(b) of this section then, in deciding -

(a) whether the respondent has failed to provide, or make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and

(b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 28(2)(a) to (e), and where the child of the family to whom the application relates is not the child of the respondent, including the matters mentioned in section 28(3)."

7. The following new subsection is inserted immediately after section 30(4) -

"(4A) In relation to an application under this section on the ground mentioned in subsection (1)(a) of this section, section 28(2)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) of this section, section 28(2)(c) (as it applies by virtue of section 28(3)(e)) shall have effect as if for the reference therein to the breakdown of the marriage there was substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates."

8. The following subsections are inserted immediately after section 30(6) -

"(6A) An application for a variation under section 34 of this Ordinance of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date when the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that -

(a) the child is, will be or, (if an order were made under this subsection) would be receiving education at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under section 34 of this Ordinance in relation to any order so revived."

## SCHEDULE 2

### Section 22(2)

#### **TRANSITIONAL PROVISIONS AND SAVINGS**

##### *Applications pending under amended or repealed enactments*

1. This Ordinance (including the repeals amendments and modifications made by it) shall not have effect in relation to any application made under any enactment repealed, amended or modified by this Ordinance if that application is pending at the time that this Ordinance comes into force.

##### *Affiliation orders*

2. Neither section 20(3) of this Ordinance nor any associated amendment or repeal shall affect, or affect the operation of any enactment in relation to -

(a) any affiliation order made under the Affiliation Proceedings Act 1957 in its application to the Falkland Islands or the Affiliation Proceedings Ordinance 1994 which is in force immediately before the commencement of this Ordinance; or

(b) any affiliation order made under that Act or the Affiliation Proceedings Ordinance 1994 by virtue of paragraph 1 of this Schedule.

## The Statute Law Revision Bill 1994

(No:            of 1994)

### ARRANGEMENT OF PROVISIONS

#### Clauses

1.      Short title.
2.      Repeal of obsolete Ordinances.

A Bill  
for  
An Ordinance

To repeal a number of provisions of law and Ordinances which serve no useful purpose.

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

1. This Ordinance may be cited as the Statute Law Revision Ordinance 1994.
2. The Ordinances mentioned in the Schedule to this Ordinance are repealed to the extent there specified in relation to them.

*Short title.*

*Repeal of obsolete Ordinances.*

**SCHEDULE**

**Exchange Control Ordinance 1958**

*Extent of repeal*

The Whole Ordinance

**Industrial Research Council (Vesting of Property) Ordinance 1958**

*Extent of repeal*

The Whole Ordinance

**Overseas Service Ordinance 1962**

*Extent of repeal*

The Whole Ordinance

**The Oaths Ordinance 1969**

*Extent of repeal*

In section 3 all words following the words "Promissory Oaths Act 1868"

**The Stanley Town Services Ordinance 1971**

*Extent of repeal*

Part III

**The Coastguard Ordinance 1989**

*Extent of repeal*

The Whole Ordinance

## EXPLANATORY MEMORANDUM

### APPLICATION OF ENACTMENTS (AMENDMENT) BILL 1994

#### *Introductory*

The Application of Enactments Ordinance 1954, as originally enacted applied the provisions of over sixty Acts of Parliament as law of the Falkland Islands. In some cases the whole of an Act was applied and others some only of the provisions of the Act. Importantly, the 1954 Ordinance applied many of the provisions of the Children and Young Persons Act 1933 and of the Bankruptcy Act 1914. The Application of Enactments (Amendment) Bill 1994 seeks to make amendments to the application of those two Acts to the Falkland Islands. Sections 45 to 49 of the Children and Young Persons Act 1933 make provision in relation to the trial of persons under the age of 18 years in respect of criminal offences.

First of all, courts of summary jurisdiction constituted for the purpose of trying young persons of offences are to be known as juvenile courts. Section 46 of the Act assigns certain matters to those courts which are known as "juvenile courts". Section 47 provides for the procedure of such courts and section 48 makes a number of miscellaneous provisions as to the powers of courts of summary jurisdiction sitting as juvenile courts. Section 49 contains restrictions on newspaper reports of proceedings in juvenile courts. It is not clear why those provisions were not adopted by the 1954 Ordinance, since their provisions have been applied in the Falkland Islands. In the course of the current preparation of the Revised Edition of the Laws of the Falkland Islands the omission to apply them has been discovered and the Bill seeks to rectify that omission.

Section 50 of the Children and Young Persons Act 1933 provides that "it shall be conclusively presumed that no child under the age of 10 years can be guilty of any offence". That provision is now being omitted from application under the Application of Enactments Ordinance 1954 (amended, as it would be, by the Bill) not because it is sought to change the law in this respect but because section 50 of the 1933 Act has now been replaced by local provision in the Crimes Ordinance 1989 to exactly the same effect.

#### *Bankruptcy Act 1914*

The Bankruptcy Act 1914 makes provision in relation to the insolvency of individuals and continues to apply in the Falkland Islands notwithstanding the fact that it has been repealed and replaced in England by provisions of the Insolvency Act 1986. Under the 1914 Act an official called the "Official Receiver" is responsible for carrying out a number of administrative and statutory duties in connection with the insolvency of individuals. In the application of the Bankruptcy Act 1914 to the Falkland Islands the Application of Enactments Ordinance 1954 provided that the "Official Receiver" in the Falkland Islands was to be the Registrar General. Unfortunately the person holding the office of Registrar General is also Registrar of the Supreme Court and has duties towards the courts who are also involved in relation to bankruptcy matters. Much of the Official Receiver's duties are accountancy and financial matters and it is more appropriate that the duties of the Official Receiver in the Falkland Islands should be undertaken by the Financial Secretary or by a member of his department appointed by him for the purpose. For that reason the Bill proposes an amendment of the 1954 Ordinance in relation to the Bankruptcy Act 1914 which would have that effect.

D G Lang QC  
Attorney General

March 1994



# The Application of Enactments (Amendment) Bill 1994.

(No:        of 1994)

## ARRANGEMENT OF PROVISIONS

### Clauses

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

**A Bill  
for  
An Ordinance**

To amend the Application of Enactments Ordinance 1954.

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

1. This Ordinance may be cited as the Application of Enactments (Amendment) Ordinance 1994. *Short title.*
2. The Application of Enactments Ordinance 1954 ("the principal Ordinance") is amended in the manner specified in the Schedule to this Ordinance. *Amendment of principal Ordinance.*

**SCHEDULE**

The Schedule to the principal Ordinance is amended as follows -

- (a) in paragraph 16 (which applies certain provisions of the Bankruptcy Act 1914) the last sentence shall be replaced with -

"In section 7(1) the words "an official receiver shall be thereby constituted receiver" shall be replaced with the words -

"Section 7 of the Act is amended by the addition of the following subsection -

"(3) The Financial Secretary shall be the official receiver and shall have and may exercise either personally or through any public officer appointed by him for the purpose all the powers of an official receiver under this Act and in every other provisions of this Act the words "the official receiver," and "an official receiver" shall be construed accordingly."

- (b) in relation to the application by paragraph 38 of that Schedule (which applies certain provisions of the Children and Young Persons Act 1933) -

(i) by replacing the figures "44, 50" appearing therein with the figures and words "44 to 49" ( and so as to apply to the Falkland Islands certain provisions relating to youth courts); and

(ii) by inserting the following sentence immediately before the sentence beginning "Section 55" -

"In section 45 the words "constituted in accordance with the second Schedule to this Act" shall be omitted."

## EXPLANATORY MEMORANDUM

### AFFILIATION PROCEEDINGS BILL 1994

#### *Introductory*

The Affiliation Proceedings Act 1957 and which dealt with applications to a court to require the putative father of an illegitimate child to pay money towards its upkeep, applied in the Falkland Islands up to 1 April 1959, when it was repealed by the Family Law Reform Act 1987. The 1957 Act applied by virtue of provisions of section 78 of the Interpretation and General Clauses Ordinance, as the successor to the Bastardy Act 1923 and under section 81A of that Ordinance as a successor to 19th Century statutes as to illegitimate children all of which had been applied to the Falkland Islands.

Ordinarily, under the provisions of section 78 of the Interpretation and General Clauses Ordinance 1977 when an English statute repeals an English statute which the Falkland Islands have applied and replaces it with more modern provisions, the replacement provisions automatically apply. This prevents far more legislation having to be introduced in the Legislative Council than would otherwise be the case.

Under the provisions of the Interpretation and General Clauses Ordinance referred to above, the provisions of the Family Law Reform Act 1987 as to illegitimate children would ordinarily and very clearly have applied as law of the Falkland Islands in place of the Affiliation Proceedings Act 1957. There are two reasons why it is not absolutely clear that that was what happened. The first is that the 1987 Act applied in respect of illegitimate children the provisions of the Guardianship of Minors Act 1971 and other provisions of English law which dealt with non-illegitimate children. It did so because the whole object of the 1987 Act in this respect was to sweep away legal distinctions between legitimate and illegitimate children so far as their rights and obligations and the rights and obligations of other people were concerned. Because the Falkland Islands have their own laws on some of the topics concerned (eg: the Guardianship of Minors Ordinance 1979, based on the 1971 Act) this throws doubt on whether the 1987 Act could have applied. The second reason is that the provisions of English law which were applied by the 1987 Act to illegitimate children also applied, as stated, to other children and applying those laws only to illegitimate children would, in effect, be contrary to the philosophy of the English Act. On the other hand, to apply them to all children would have been contrary to Falkland Islands' (eg: the 1979 Ordinance) laws which made parallel provision to the English laws concerned.

In several cases the Falkland Islands' courts in fact applied the Family Law Reform Act 1987 provisions in relation to illegitimate children. If they had not done so there would have been no law at all of the Falkland Islands relating to financial provision for illegitimate children.

#### *The purpose of the Bill*

The purpose of the attached Bill is to make it clear that what the courts in fact did - as described above - was legally correct. Otherwise the courts' orders would be void.

For the future, a separate Bill - the Family Law Reform Bill 1994 - sets out the provisions which will apply, adapt those of the 1987 Act and if that Bill is enacted the 1987 Act will no longer form part of the law of the Falkland Islands. The Falkland Islands would have their own locally made law on the subject matter.

D G Lang QC  
Attorney General

March 1994

MILLICAN/STANLEY 1994  
THE AFFILIATION PROCEEDINGS BILL 1994

## The Affiliation Proceedings Bill 1994

(No.            of 1994)

### ARRANGEMENT OF PROVISIONS

#### Clauses

1.     Short title.
2.     Application of law in relation to affiliation proceedings.

A Bill  
for  
An Ordinance

To remove any doubt as to the jurisdiction of the Magistrate's Court and the Summary Court to entertain affiliation proceedings and to make orders therein during the period between 1st April 1989 and the coming into force of this Ordinance.

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

1. This Ordinance may be cited as the Affiliation Proceedings Ordinance 1994.

*Short title.*

2.(1) Those provisions of the Family Law Reform Act 1987 which had reference to affiliation proceedings shall be deemed to have had effect as law of the Falkland Islands from 1st April 1989 (being the date on which the Affiliation Proceedings Act 1957 ("the 1957 Act") was repealed by the said Act) and as if they had on that date been adopted by Ordinance as law of the Falkland Islands so far only as they related to affiliation proceedings and subject matter which was previously dealt with by the 1957 Act.

*Application of law in relation to affiliation proceedings.*

(2) Subsection (1) has effect notwithstanding the repeal of the Family Law Reform Act 1987 by the Children Act 1989.

# The Building Control Bill 1994

(No:                      of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title.
2. Interpretation.
3. Power to make building regulations.
4. Continuing requirements.
5. Defence exemption.
6. Exemption of particular classes of buildings or of particular areas.
7. Penalty for contravening building regulations.
8. Removal or alteration of offending work.
9. Appeal against section 8 notice.
10. Further Appeal to Supreme Court.
11. Application to the Crown.
12. Regulations.
13. Repeal.
14. Transitional.

### SCHEDULE

A Bill  
for  
An Ordinance

to make improved provision as to the control of the erection and construction drainage and other servicing of buildings and structures and alterations of and additions to buildings and structures and for connected purposes

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

*Introductory*

1. This Ordinance may be cited as the Building Control Ordinance 1994.

*Short title.*

2.(1) In this Ordinance, and unless the context otherwise requires -

*Interpretation.*

"building" means any permanent or temporary building and includes any other structure or erection whatsoever (whether permanent or temporary) and includes any part of, addition to or alteration of a building, structure or erection;

"Committee" means the Planning and Building Committee;

"continuing requirements" means requirements to which section 5 relates;

"Planning and Building Committee" means the Committee of that name established by the Planning and Building Ordinance 1991;

"services" includes the provision of drainage, whether foul drainage or surface water drainage, the provision of electricity and the provision of a supply of water.

(2) A reference in this Ordinance to the supply of services, fittings and equipment in or connected with buildings, or to services, fittings and equipment so provided includes a reference to the affixing of things to buildings or, as the case may be, to things so affixed.

(3) For the purposes of this Ordinance, except where specifically stated to the contrary, each of the following operations is deemed to be the erection of a building -



(a) the re-erection of a building or part of a building when an outer wall of that building or, as the case may be, that part of a building, has been pulled down, or burnt down, to within one metre of the surface of the ground adjoining the lowest storey of the building or of that part of the building;

(b) the re-erection of a framed building or part of a framed building when -

(i) that building or part of a framed building was previously more than one storey in height;

(ii) that building or part of a building has been so far pulled down, or burnt down, as to leave only the framework of the lowest storey of the building or of that part of the building; and

(c) the roofing over of an open space between walls or buildings,

and "erect" shall be construed accordingly.

3.(1) The Governor may, for any of the purposes of -

*Power to make  
building regulations.*

(a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings; and

(b) preventing waste, undue consumption, misuse or contamination of water,

make regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings.

(2) Regulations made under subsection (1) are known as building regulations.

(3) The Schedule to this Ordinance has effect with respect to the matters as to which building regulations may provide.

(4) Building regulations may confer powers and impose duties on the Planning and Building Committee and upon any public officer.

4.(1) Building regulations may impose on owners and occupiers of buildings to which building regulations are applicable such continuing requirements as the Governor considers appropriate for securing, with respect to any provision of building regulations designated in the regulations as a provision to which those requirements relate, that the purposes of that provision are not frustrated; but a continuing requirement imposed by virtue of this subsection does not apply in relation to a building unless a provision of building regulations so designated as one to which the requirement relates applies to that building.

*Continuing  
requirements.*

(2) Building regulations may impose on owners and occupiers of buildings of a prescribed class (whenever erected, and whether or not any building or regulations were applicable to them at the time of their erection) continuing requirements with respect to all or any of the following matters -

(a) the conditions subject to which any services, fittings or equipment provided in or in connection with a building may be used;

(b) the inspection and maintenance of any services, fittings or equipment so provided;  
and

(c) the making of reports to a prescribed authority on the condition of any services, fittings or equipment so provided.

(3) If a person contravenes a continuing requirement imposed by virtue of this section, the Crown, without prejudice to the bringing of criminal proceedings in respect of the contravention, may -

(a) execute any work or take any other action required to remedy the contravention;

(b) recover, if necessary by proceedings brought by the Attorney General in its name, the expenses reasonably incurred in so doing.

(4) Where the Crown has power under subsection (3) to execute any work it may, instead of exercising that power, by notice require the owner or the occupier of the building to which the contravention referred to in that subsection relates to execute that work or take that action.

(5) A notice under subsection (4) shall indicate the nature of the works or take any action to be executed and state the time within which they are to be executed.

(6) Subject to any right of appeal conferred by subsequent provisions of this section, if the person required by such a notice to execute works or take any action fails to execute them within the time limited by the notice -

(a) the Crown may itself execute the works or take any action required by the notice and paragraph (b) of subsection (3) shall apply in respect of the expenses reasonably incurred by it in so doing;

(b) without prejudice to paragraph (a), he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale and to a further fine not exceeding £10 for each day on which the default continues after he is convicted.

(7) Where a person is given a notice under subsection (4), he may appeal to the Magistrate's Court on any of the following grounds that are appropriate in the circumstances of the particular case -

(a) that the notice or requirement is not justified by the terms of the provision of building regulations in relation to which the notice has been given;

(b) that there has been some informality, defect or error in, or in connection with the notice;

(c) that the Committee have refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;

(e) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served; and

(f) where the works for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expenses of executing any works required.

(8) The appellant -

(a) shall, where the grounds upon which the appeal is brought include a ground specified in subsection (7)(e) or (f) above, serve a copy of his notice of appeal on each other person referred to; and

(b) may, in the case of any appeal under this section, serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal the court may make such order as it thinks fit with respect to -

(i) the person by whom any works are to be executed and the contribution to be made by any other person towards the cost of the works; or

(ii) the proportions in which any expenses that may become recoverable by the Crown are to be borne by the appellant and such other person.

(9) In exercising its powers under subsection (8), the court shall have regard -

(a) as between an owner and an occupier, to the terms and conditions of the tenancy and to the nature of the works required; and

(b) in any case, to the degree of benefit to be derived by the different person concerned.

*Exemptions from building regulations*

5. Nothing in building regulations shall apply to any building required for the purposes of Her Majesty's Armed Forces in the Falkland Islands or to any building upon land for the time being owned by or in the occupation of the Ministry of Defence of Her Majesty's Government in the United Kingdom.

*Defence exemption.*

6.(1) Building regulations may exempt a prescribed class of building, services, fittings or equipment from all or any of the provisions of the building regulations.

*Exemption of particular classes of buildings or of particular areas.*

(2) Building regulations may exempt from all or any of the provisions of the building regulations-

(a) a particular class of building;

(b) buildings in a prescribed area of the Falkland Islands; or

(c) a particular class of building in a prescribed area of the Falkland Islands,

either unconditionally or subject to compliance with any conditions specified in building regulations.

*Breach of building regulations*

7. A person who contravenes any provision contained in building regulations, other than a provision designated in the regulations as one to which this section does not apply, commits an offence and is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale and to a further fine not exceeding £50 for each day on which the default continues after he is convicted. *Penalty for contravening building regulations.*

8.(1) If any work to which building regulations are applicable contravenes any of those regulations, the Committee, without prejudice to any power under section 7 or any other provision of law to bring criminal proceedings, may by notice require the owner - *Removal or alteration of offending work.*

(a) to pull down or remove the work; or

(b) if he so elects, to effect such alterations in it as may be necessary to make it comply with the regulations.

(2) If, in a case where the Committee are by any provision of building regulations expressly required or authorised to reject plans, any work to which building regulations are applicable is executed -

(a) without plans having been deposited;

(b) notwithstanding the rejection of plans; or

(c) otherwise than in accordance with any requirements subject to which the Committee passed the plans,

the Committee may by notice to the owner -

(i) require him to pull down or remove the work; or

(ii) require him either to pull down or, if he so elects, to comply with any other requirements specified in the notice, being requirements that they might have made under building regulations as a condition of passing plans.

(3) If a person to whom a notice has been given under subsection (1) or (2) fails to comply with the notice before the expiration of 28 days, or such longer period as the Governor may on his application allow, the Crown may -

(a) pull down or remove the work in question; or

(b) effect such alterations in it as the Committee deem necessary,

and the Attorney General in the name of and on behalf of the Crown may recover from him the expenses reasonably incurred in so doing.

(4) A notice under subsection (1) or (2) (a "section 8 notice") shall not be given after the expiration of 12 months from the date of the completion of the work in question.

(5) A section 8 notice shall not be given, in a case where plans were deposited and the work was shown on them, on the ground that the work contravenes any building regulations or, as the case may be, does not comply with the Committee's requirements if -

(a) the plans were passed by the Committee; or

(b) notice of their rejection was not given within two months from their deposit,

and if the work has been executed in accordance with the plans and any requirement made by the Committee as a condition of passing the plans.

(6) This section does not affect the right of the Attorney General (in the name of and on behalf of the Committee or in the name of and on behalf of the Crown) or the right of any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or provision of this or any other Ordinance; but if -

(a) the work is one in respect of which plans were deposited;

(b) the plans were passed by the Committee, or notice of their rejection was not given within two months from their deposit,

the court on granting the injunction may order the Crown to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall, if the Attorney General is not already a party to the proceedings, cause the Attorney General to be joined as a party to them in the name of and on behalf of the Crown.

9.(1) A person aggrieved by the giving of a section 8 notice may appeal to the Governor by notice in writing.

*Appeal against  
section 8 notice.*

(2) Subject to subsection (3), on an appeal under this section the Governor shall -

(a) if he is advised by the Attorney General that the Committee were entitled to give the notice, confirm the notice; and

(b) in any other case, give the Committee a direction to withdraw the notice.

(3) If, in a case where the appeal is against a notice under section 8(2), the Governor -

(a) is advised by the Attorney General that the Committee were entitled to give the notice; but

(b) is satisfied that in all the circumstances of the case the purpose for which the regulation contravened was made has been substantially achieved,

the Governor may direct the Committee to withdraw the notice.

(4) An appeal under this section shall be brought within 28 days of the giving of the section 8 notice, and the notice of appeal shall -

(a) state whether it is alleged that the Committee had no power to give the section 8 notice and, if so alleged, the grounds on which it is so alleged; and

(b) if it is not alleged that the Committee had no power to give the section 8 notice, and the notice was given under section 8(2), the reasons on the basis of which the appellant asks the Governor to be satisfied that in all the circumstances of the case the purpose of the regulation contravened has been substantially achieved so that he may, if he sees fit, direct the Committee under subsection (3) of this section to withdraw the notice.

(5) Where an appeal is brought under this section -

(a) the section 8 notice is of no effect pending the final determination or withdrawal of the appeal; and

(b) section 8(3) has effect in relation to that notice as if after the words "28 days" there were inserted the words "(beginning, in a case where an appeal is brought under section 9, on the date when the appeal is finally determined or, as the case may be, withdrawn)".

10.(1) Subject to subsection (2), where a person is aggrieved by a decision of the Governor under section 9, he may, within 28 days of the notification of that decision to him, appeal to the Supreme Court.

*Further Appeal to Supreme Court.*

(2) The Committee has no right of appeal to the Supreme Court against a direction of the Governor that it shall withdraw a section 8 notice.

(3) The Supreme Court may order that the operation of a section 8 notice which was the subject of the appeal to the Governor under section 9 and is the subject of an appeal to it shall be stayed pending the final determination or, as the case may be, withdrawal of the appeal to it under subsection (1) of this section, but unless it so orders the operation of the section 8 order is not stayed.

(4) Where the Supreme Court makes an order of the kind to which subsection (3) relates, section 9(5) has effect as if -

(a) the reference in it to an appeal under section 9 were a reference to an appeal under this section; and

(b) the reference in paragraph (b) of that subsection (modification of section 8(3)) to section 9 were a reference to this section.

#### *Application to the Crown*

11.(1) Except as provided by section 5 and by building regulations, the requirements of building regulations and continuing requirements apply to the Crown in the same way as they apply to other persons -

*Application to the Crown.*

(a) whether or not the work carried out by or on behalf of the Crown is to or in relation to a building owned or occupied or intended to be owned or occupied by the Crown;

(b) in the case of continuing requirements, if the building is owned or occupied by the Crown.

(2) Where a section 8 notice has been given by the Committee in respect of work carried out by or on behalf of the Crown, the Director of Public Works may within 28 days of the giving of the notice request the Governor to direct the Committee to withdraw the notice, but the Governor shall not give any such direction unless he is satisfied -

(a) that the Committee had no power to give the notice; or

(b) in the case of a notice served under section 8(2), that in all the circumstances of the case the purpose for which the regulation contravened was made has been substantially achieved.

(3) The Crown shall have no right of appeal under section 9 and no appeal shall lie from the decision of the Governor on request under subsection (2) of this section.

(4) Where a request has been made under subsection (2) of this section, section 9(5) shall have effect as if the request were an appeal under section

#### *Further powers to make regulations*

12.(1) The Governor may make regulations -

*Regulations.*

(a) requiring the keeping by or on behalf of the Committee registers as to notices and certificates given to or by or on behalf of the Committee;

(b) the inspection of any such register by members of the public;

(c) prescribing the form of any notice, certificate or other document which it is necessary or convenient to prescribe for the purposes of this Ordinance or of building regulations.

(2) The Governor may by regulations revoke all or any of the by-laws 5 to 44 of the Board of Health By-laws ("the Building By-laws").

#### *Repeal and Transitional Provisions*

13. Section 18(1)(ii) of the Public Health Ordinance shall continue to have effect until the date upon which building regulations first made under section 3 of this Ordinance came into operation and on that date the said section 18(1)(ii) is repealed by this section.

*Repeal.*

14. Notwithstanding the prospective repeal of section 18(1)(ii) of the Public Health Ordinance by section 13 of this Ordinance -

*Transitional.*

(a) any approval of any plans of a building deposited pursuant to Building By-laws given or made within the four years immediately preceding that repeal shall for all purposes have effect as if the same had been approved on the date of commencement of the building regulations first made under this Ordinance, pursuant to those regulations; and

(b) any works which -

(i) would not have required any such approval or consent under the Building By-law; and which are reasonably necessary properly to complete any building substantially commenced prior to such repeal; and

(ii) which are also wholly carried out within a period of two years from that date of commencement, or such greater period as the Governor may allow,

may lawfully be carried out and completed, and no section 8 notice may be given in respect of those works.

**SCHEDULE (section 3(3))**  
Permitted contents of Building Regulations

1. Building regulations may provide for particular requirements of the regulations to be deemed to be complied with where prescribed methods of construction prescribed types of materials or other prescribed types of materials or other prescribed means are used in or in connection with buildings.

2. Building regulations may include provision as to -

- (a) the giving of notices,
- (b) the deposit of plans of proposed work or work already executed (including provision as to the number of copies to be deposited),
- (c) the retention by the Committee of copies of plans deposited with them in accordance with the regulations,
- (d) the inspection and testing of work,
- (e) the taking of samples.

3. Without prejudice to the generality of section 3(1) of this Ordinance, building regulations may -

(a) for any of the purposes mentioned in section 3(1) of this Ordinance make provision with respect to any of the following matters -

- (i) preparation of sites,
- (ii) suitability, durability and use of materials and components (including surface finishes),
- (iii) structural strength and stability, including -
  - (a) precautions against overloading, impact and explosion,
  - (b) measures to safeguard adjacent buildings and services,
  - (c) underpinning,
- (iv) fire precautions, including -
  - (a) structural measures to resist the outbreak and spread of fire and to mitigate its effects,



- (b) services, fittings and equipment designed to mitigate the effects of fire or to facilitate fire-fighting,
- (c) means of escape in case of fire and means for securing that such means of escape can be safely and effectively used at all material times,
- (v) resistance to moisture and decay,
- (vi) measures affecting the transmission of heat,
- (vii) measures affecting the transmission of sound,
- (viii) measures to prevent infestation,
- (ix) measures affecting the emission of smoke, gases, fumes, grit or dust or other noxious or offensive substances,
- (x) drainage (including waste disposal units),
- (xi) cesspools and other means for the reception, treatment or disposal of foul water,
- (xii) storage, treatment and removal of waste,
- (xiii) installations utilising solid fuel, oil, gas, electricity or any other fuel or power (including appliances, storage tanks, heat exchangers, ducts, fans, and other equipment),
- (xiv) water services (including wells and bore-holes for the supply of water) and fittings and fixed equipment associated therewith,
- (xv) telecommunications services (including telephones),
- (xvi) lifts, escalators, hoists, conveyors and moving footways,
- (xvii) plant providing air under pressure,
- (xviii) standards of heating, artificial lighting, mechanical ventilation and air-conditioning and provision of power outlets,
- (xix) open space about buildings and the natural lighting and ventilation of buildings,
- (xx) accommodation for specific purposes in or in connection with buildings, and the dimensions of rooms and other spaces within buildings,
- (xxi) means of access to and egress from buildings and parts of buildings,
- (xxii) prevention of danger and obstruction to persons in and about buildings (including passers-by),
- (xxiii) matters connected with or ancillary to any of the foregoing matters.

(b) require things to be provided or done in connection with buildings (as well as regulating the provision or doing of things in or in connection with buildings),

(c) prescribe the manner in which work is to be carried out.

4.(1) Building regulations may be made with respect to -

(a) alterations and extensions of buildings and of services, fittings and equipment in or in connection with buildings,

(b) new services, fittings or equipment provided in or in connection with buildings,

(c) buildings and services, fittings and equipment in or in connection with buildings, so far as affected by -

(i) alterations or extensions of buildings, or

(ii) new, altered or extended services, fittings or equipment in or in connection with buildings,

(d) the whole of a building, together with any services, fittings or equipment provided in or in connection with it,

(e) buildings or parts of buildings, together with any services, fittings or equipment provided in or in connection with them, in cases where the purposes for which or the manner or circumstances in which a building or part of a building is used change or changes in a way that constitutes a material change of use of the building or part within the meaning of the expression "material change of use" as defined for the purposes of this paragraph by building regulations.

(2) So far as they relate to matters mentioned in sub-paragraph (1) of this paragraph building regulations may be made to apply to or in connection with buildings erected before the date on which the regulations came into force but, except as aforesaid (and subject to section 4(2) of this Ordinance, shall not apply to buildings erected before that date.

5. Building regulations may prescribe the form of any notice or certificate to be given under the provisions of building regulations.

6. Building regulations may provide for any notice or certificate to be given to or by any person or to or by the Committee to be given to or by any public officer named or described therein for and on behalf of the Committee.

7. Building regulations may provide for the composition of the Committee when exercising functions as to the approval or rejection of plans thereunder.

8. Building regulations may revoke amend or replace any building regulations previously made under the provisions of section 3 of this Ordinance and may contain such transitional provisions related to any such revocation, amendment or replacement as the Governor thinks expedient.

9. Building regulations may provide for such incidental or supplementary matters as the Governor thinks expedient.

#### **OBJECTS AND REASONS**

To enable the out of date existing Building By-laws to be replaced by more modern and suitable provisions and to provide for enforcement of the new building laws and connected matters.





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The following is published in this Supplement —

**The Taxes Bill 1994.**

**EXPLANATORY MEMORANDUM**

**TAXES BILL 1994**

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## EXPLANATORY MEMORANDUM

### TAXES BILL 1994

#### I N T R O D U C T I O N

The Taxes Bill 1994 has been drafted to give effect to several important recommendations of the Tax Review Committee contained in the report of that Committee produced in 1993. The principal recommendations favoured the introduction of a separate tax on the income of companies and new provisions for tax relief on pension contributions. In view of the wide scope of the recommendations the new Bill both restates the law on income tax and introduces the new provisions, in preference to an amending Bill which would have led to a later consolidation Bill. Inconsistencies in the existing legislation have been removed as they have come to light in the preparation of the Consolidation and obscure or ambiguous wording has been clarified.

# EXPLANATORY MEMORANDUM

## TAXES BILL 1994

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## PART I - GENERAL PROVISIONS

### Clause

- 1 Title and commencement.  
The new Bill will apply for income tax for the year of assessment 1995 (1994 income) and later years. The new corporation tax for companies (see Part II, Chapter II-III) will commence for the 1996 corporation tax year. Transitional provisions (see 2.1 of Corporation Tax) will accommodate existing companies.
- 2 Interpretation Section - This clause contains the primary interpretation of the Bill. There are a number of new terms arising out of the introduction of corporation tax, for example, a corporation tax year is any period of 12 months starting on 1st January.
- 3 Transitional provisions.
- 4,5 Commissioner of Taxation (new title) - duties and powers.
- 6 General power to reduce or waive tax liabilities if felt just and equitable to do so.

## PART II - CHAPTER I - INCOME TAX

- 7 General provision charging worldwide income to income tax whether or not remitted to FI. Income to include prescribed value (only) of benefits in kind. Clause 12 offers relief to certain persons for non FI income.
- 8 Prior year basis for income tax.  
Requirement in normal circumstances to make up accounts to 31st December
- 9 Rates of income tax       £20,000 at 20%  
                                  Excess  
                                  over £20,000 at 25%
- 10 Income tax to be paid 90 days after assessment date (or if later, 31st July in year of assessment). Interest at 3% over base rate charged from payment date.

(N.B: this contrasts with the position for companies who will have to pay tax normally eight months after the end of their accounting period under Pay and File without an assessment being issued).

- 11 Taxpayer to notify chargeability to tax within 4 months of start of year of assessment if return not submitted. Each source of income to be specified. Failure to comply with these provisions may attract the penalties provided for in Clause 145 or 146.

Taxpayer to furnish return within 60 days of issue. CIT to require business to submit accounts (audited if necessary) and any relevant information.

- 12 FI income will always be chargeable in full. This section covers the tax treatment of non FI income of persons who are not resident, not ordinarily resident or not domiciled in the FI.

Status	Non FI Income
Not Resident/Not Ordinarily Resident	Not chargeable
Resident, but not domiciled	Remittances to FI
Resident, but not ordinarily resident	
Not resident, but ordinarily resident	

Non FI income arising while a person is not resident or not ordinarily resident or not domiciled will not be taxable when remitted.

Non FI employment income is carefully defined so as to relate to the place where duties are performed (12(4)). The location of the employer is irrelevant (except for certain POAT purposes).

The above gives effect to the existing practice.

- 13 Wife's income normally deemed as income of husband.

Provisions for separate assessment of wife's earnings. (Small policy change to now allow wife's earnings to be also reduced by pension/life assurance contributions and infirm relative relief (old s15(3)) where she makes appropriate payment or provision).

- 14 - Earned income relief - 15%  
("earned income" is now defined in Clause 162)
- Relief for certain maintenance payments
- Relief for interest on housing loans of up to £50,000. The provisions here have been tightened. The Commissioner's discretion to disallow the deduction has been extended to include all cases where the house is not occupied by the borrower. The intention will be for the Commissioner to allow relief where the house is;

- either the individual's residence
- or it is intended to be his residence and he does not own his residence at present.

It is possible that at some future day, tax relief at source on housing loan interest (akin to UK MIRAS) will be introduced.

- Relief for certain subscriptions (new provision to confirm relief due)
  - Relief for payments for self and wife under Old Age Pensions Ordinance
- 15    Personal allowance                      £3,200  
       Dependent relative allowances       £1,100  
       ("dependent relative" is widened to include the taxpayer's father, whether incapacitated or not. Other allowance available when daughter or son provides services etc to parent).
- 16    Married Man's Allowance                £2,050  
       Wife's earnings relief (up to)       £3,200
- 17    Age Allowance - based on old age pension in year of assessment.
- 18,19 Additional allowance in respect of children.  
       (introduced in The Income Tax (Amendment) Ordinance 1993).
- 20    Provisions re deceased persons.

## **PART II - CHAPTERS II - III - CORPORATION TAX**

### **1.    Basic Principles**

- 1.1    Companies have hitherto been subject to income tax on a prior year basis. The rules for computation of profits are broadly similar to those for unincorporated businesses. Companies are however charged at different rates of tax. The shareholder receives a tax credit on any dividend received.
- 1.2    A separate tax for companies ("Corporation Tax") is now to be introduced. Corporation tax rather than income tax will be chargeable on;
- FI resident company - worldwide income.
  - Non-FI resident company - trading income from business in FI (Clauses 21 (2)(b), 30(2)).

(A non-FI resident company without a business in the FI will be chargeable to income tax on its FI income - Clauses 21(3)(b), 30).

- 1.3 Company residence is determined by the place of central management and control of the company's business. The place of incorporation is irrelevant (Clause 15(1)). This continues the principle presently adopted.
- 1.4 If a company receives income which has suffered income tax at source, it is liable to corporation tax on this income with a credit for the income tax suffered (Clause 21(4)).
- 1.5 The computation of a company's chargeable income subject to corporation tax will generally follow income tax principles unless otherwise stated (Clause 23).
- 1.6 Corporation tax will be charged for "corporation tax years" (calendar years). Different rates of corporation tax may apply for corporation tax years (Clause 22).
- 1.7 The company's income will be computed by reference to "accounting periods" (Clause 22(2)). Assuming a company makes up accounts for a 12 month period, this will normally be its "accounting period" for corporation tax purposes. The definition of "accounting period" is set out in Clause 24 and this should cover all eventualities. It follows UK statute law.

#### Examples

##### (a) Normal Scenario

A Ltd makes up its accounts for the year to 31.12.99. This would normally be its accounting period (24(3)(a)).

##### (b) Long Accounting Period

B Ltd makes up its accounts for the 15 months to 31.03.2000. It will have 2 accounting periods;

AP to 31.12.99 (24(3)(a))

3m to 31.03.00 (24(3)(b))

##### (c) Short Accounting Period

C Ltd makes up its accounts for the 6 months to 30.06.99. This will be its accounting period for corporation tax (24(3)(b)).

##### (d) Cessation of Trade

D Ltd makes up its accounts for the year to 31.12.99, but had ceased to trade on 30.11.99. Its accounting period would be for the 11 months to 30.11.99 (24(3)(c)).

It should be noted that a very similar definition of accounting period is already in the existing section 2 (2A - 2F). However this definition had not yet come into operation.

The broad interaction of corporation tax years and accounting periods is demonstrated by the following example'

#### Example

Bulwark Ltd has an accounting period for the 12 months to 31.03.2000 in which its taxable income is £80,000. The corporation tax rate is 25% in the 1999 corporation tax year, but is increased to 27% for the 2000 year.

Tax payable - Accounting period to 31.03.2000

#### CT Year 1999

£80,000 x 9/12 x 25%	15,000
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#### CT Year 2000

£80,000 x 3/12 x 27%	5,400
----------------------	-------

Tax payable	20,400
-------------	--------

- 1.8 Corporation tax will normally be payable 8 months after the end of the accounting period (25(2)) (i.e. 30.11.2000 in the above example). Transitional provisions accommodate certain companies (see (2.5) below). Interest (at 3% over base rate) will automatically run from then on any unpaid tax (29(1)) whether or not an assessment has been issued.
- 1.9 A company must file its accounts within 9 months of the end of its accounting period. If this is not done, automatic penalties apply although these may be mitigated if the CIT thinks fit (Clause 6(3)). Transitional provisions accommodate certain companies (see (2.6) below).

The normal penalties for an ongoing company will be;

#### Accounts are late by

#### Penalty

0 - 3 months	£100
3 - 6 months	£200
6 - 12 months	10% of tax unpaid
More than 12 months	20% of tax unpaid

These are increased if a company is late in filing for three consecutive accounting periods.

1.10 The rates of corporation tax are set out in Clause 25.

Normal	25%
Profits of business of non-resident company	32.5%
Profits paid to non-residents	32.5%

These are similar to those prevailing at present although it is confirmed that profits of the business of a non-resident company are to be charged at the higher rate. (The question of quantification of profits paid to a non-resident (Clause 25(1)(b)(i)) is left open and could do with further clarification; e.g. will the higher rate be charged if, for example, profits are lent to a non-resident).

2. Introduction of New Company Taxation/Transitional Provisions

- 2.1 Corporation tax will be introduced with effect from the end of the accounting period chargeable to income tax for the 1996 Year of Assessment (for companies that are so chargeable).

Example

- a) X Ltd makes up its accounts to 31st March 1995. These are assessed to income tax in the 1996 Year of Assessment. Corporation Tax will apply to X Ltd from 1st April 1995.
- b) Y Ltd makes up its accounts to 31st December 1995 and these are assessed to income tax in the 1996 Year of Assessment. Corporation tax will apply from 1st January 1996.

Assuming no change in their year end, the companies' first corporation tax liabilities will be based on their accounting periods to 31st March and 31st December 1996 respectively. (Clause 28).

**Note** it would not be possible to bring in corporation tax for earlier periods since if it applied from the date that the company was assessed to income tax for the 1995 Year of Assessment, corporation tax would already have started for some companies! (e.g. those with 31st January year end).

- 2.2 If conceivably a company's accounts ending in 1995 are the basis of assessment for 1996 Year of Assessment and it then makes up accounts for a second short period, corporation tax will apply from the end of the first accounting period. (Clause 28).

### Example

B Ltd makes up its accounts for the year to 31st March 1995 and these form the basis for the 1996 Year of Assessment. It then makes up accounts to 30th September 1995. It is confirmed that corporation tax will apply for the accounting period to 30th September 1995.

**Note** this is provided for to prevent any question of profits dropping out of assessment due to a change in accounting date. In the absence of such a specific provision and due to the imprecise nature of present income tax rules on such a change, this is felt prudent.

- 2.3 New companies, not within the charge to income tax for the 1996 Year of Assessment, will immediately be within the charge to corporation tax.

### Example

C Ltd commences business on 1st February 1995

### Alternative scenarios

- it makes up its first accounts to 31st January 1996. There is no question of any liability to income tax for the 1996 Year of Assessment and hence C Ltd is within the charge to corporation tax from the outset.
  - it makes up its first accounts for a short 6 month accounting period to 31st July 1995. These could be regarded as forming a basis period for the 1996 income tax year and thus corporation tax would not start until 1st August 1996.
- 2.4 Dividends will give rise to a payment of advance corporation tax ("ACT") to the Treasury once corporation tax is introduced (see (3) for more detail). This will normally be due 30 days after the end of the month in which that dividend is paid together with a return. The ACT is treated as a payment on account of corporation tax. The Bill contains a transitional provision whereby a company within charge to corporation tax in 1995 will not have to pay ACT on a dividend paid in 1995 under 1st February 1996. (Clause 43).

### Example

X Ltd (as in (1) above) is within charge to corporation tax for its year to 31st March 1996. It pays a dividend in August 1995. The ACT would normally be due on 1st October 1995, but under this transitional rule is not due until 1st February 1996.

**Note** this generous transitional rule will enable companies to get used to the new system.

- 2.5 Corporation tax will normally be paid eight months after the end of the accounting period (see 1.8 above). For existing companies (i.e. not "new" companies as per (3) above) the payment date will be gradually phased in by one month from the date prevailing for income tax (it is assumed that this is 31st August giving issue of assessments in May and 90 day payment period). (Clause 28(4)).

**Example**

LM Ltd has been trading for many years and makes up accounts to 30th September each year.

**Year to:**

30th September 1994 - 1995 Income Tax - tax due, say	31.08.95
1995 - 1996 Income Tax -	31.08.96
1996 - Corporation Tax	31.08.97
1997 - Corporation Tax	31.07.98
1998 - Corporation Tax	31.06.99
1999 - Corporation Tax	31.05.2000

The payment date is now the "normal" 8 month period and thus the payment date will continue to be 31st May.

**Note** these transitional provisions are as previously agreed by Committee and prevent companies having a sudden acceleration of their tax payment date. However the Treasury's revenue will gradually increase as the date comes forward.

- 2.6 A pay and file system will be introduced with corporation tax. The tax liability should be paid at the appropriate time (without issue of an assessment) otherwise interest will run. The accounts must also be filed within nine months otherwise a penalty will be charged. (see 1.9 above).

Transitional provisions will "protect" existing companies. (Clause 28(7)).

i.e.

1st accounting period within corporation tax  
- File within 18 months

2nd accounting period within corporation tax  
- File within 12 months

**Example**

LM Ltd - facts as (2.5) above.

	Tax Due (as (5))	Filing Due
Year to 30th September 1996	31.08.97	31.03.98 (18m)
1997	31.07.98	30.09.98 (12m)
1998	31.06.98	30.06.99 (9m)



**Note** for many companies at present, it might be fair to say that tax is payable following issue of assessments well before accounts are in fact filed. This situation is recognised in the longer initial period given for filing under these transitional provisions. Although the 9 month filing deadline ultimately allowed is fairly harsh, it will not apply until 1999 for existing companies.

**3. Advance Corporation Tax ("ACT")**

- 3.1 At present, a shareholder gets a tax credit on dividends received of one-quarter. This effectively satisfies the lower rate liability and would give rise to a refund if the shareholder is not a taxpayer.

However a problem may arise if the company is not paying tax and the shareholder is therefore getting a tax credit where the dividend has been paid out of tax free or low taxed profits.

To combat this, an ACT system is to be introduced. This will require payment of ACT within 30 days of the end of the month in which the dividend is paid (Clause 40). The ACT is both a tax credit to the shareholder and a prepayment of corporation tax as far as the company is concerned for the accounting period in which the dividend is paid (Clause 33).

- 3.2 The rate of ACT is set by the fraction

$$\frac{I}{100 - I} \quad (\text{Clause 31})$$

I is the lower rate of tax. Thus assuming present tax rates, the rate of ACT would be 20/80 (i.e. 20 )

$$\frac{20}{100 - 20} \quad (\text{Clause 31})$$

Provisions exist for continued use of the existing ACT rate where a new one has not be fixed (Clause 39).

- 3.3 ACT is in the first instance to be offset against the company's corporation tax liability for the accounting period in which the dividend is paid (Clause 33(1)).

If the amount of ACT is greater than the CT liability for the accounting period, this is termed "surplus ACT". Surplus ACT can be carried back against CT liabilities for the previous 6 years (Clause 33(2)).

If the surplus ACT is not carried back, it can be carried forward against future CT liabilities (Clause 33(3)).

### Example

Geotek Ltd pays ACT of £10,000 in its AP to 31.12.2010. It's CT liability for that year is £3,000 and there is therefore "surplus ACT" of £7,000 (10,000 - 3,000).

Geotek Ltd paid CT of £1,000 in the AP to 31.12.2008, but had not otherwise paid CT in the previous 6 years.

### Tax treatment

- Geotek sets £3,000 of the ACT against the 2010 CT liability leaving no liability
- Geotek claims to carry back £1,000 of surplus ACT to 2008. A refund of £1,000 is obtained for that year
- £6,000 of surplus ACT remains and this is carried forward against future CT liabilities

### 3.4 There are restrictions on carryforward of surplus ACT where there is both a;

- change in ownership of the company and;
- a major change in the nature or conduct of the trade or the scale of activities becomes small or negligible etc (Clause 38).

These are similar to the restrictions on carryforward of business losses in such circumstances (see Clauses 109-110).

### 3.5 ACT is payable 30 days from the end of the month in which the dividend is paid. A return is made at the same time (Clause 40). There are transitional provisions for certain dividends paid in 1995 (see 2.4).

There are detailed rules for computation of ACT where a company has received dividends as well as paid them (Clauses 34,41,42). Broadly though a company can use the tax credit on the dividend received by way of offset against ACT payable on dividends paid.

### 3.6 A company is not chargeable to CT on dividends received from other FI companies. (Clause 47).

Where the company receives more dividends than it pays, it will have "surplus franked investment income". A claim can be made for business losses, whether current or brought forward, to be set against this and for the tax credit on that surplus repaid (Clauses 35-36).

### Example

Siboney Ltd has business losses of £30,000 comprising £20,000 brought forward and £10,000 of the current period. It has gross dividends received of £70,000 and gross dividends paid of £60,000. It has no other income.

### Tax treatment

- Siboney Ltd has no tax to pay on its gross dividends as these are exempt. It has no ACT to pay on dividends paid (as these are covered by dividends received).
- it could carry forward the £30,000 of business losses against future profits or it could set £10,000 of them against the "surplus FII" of £10,000 (70,000 - 60,000). If it did this, the ACT of £2,000 on the surplus FII would be repaid.

- 3.7 The shareholder treats the ACT as a tax credit on his dividend income for his income tax (Clause 46). If he is not a taxpayer, he will receive a repayment of that ACT. If he is a higher rate taxpayer, he will have further tax to pay.

### Example

Eagle Ltd pays a dividend of £6,000 on 31.12.2000 to its shareholder Ark who is a 25% taxpayer.

### Tax consequences (assuming current tax rates)

#### 1. Company

- Eagle Ltd has to account for ACT of £1,500 (25% x 6,000) by 31.01.2001.
- the ACT of £1,500 is treated as prepayment of corporation tax for the accounting period in which the dividend is paid.

#### 2. Shareholder

- Ark receives a cash dividend of £6,000 and this is grossed up by the tax credit of £1,500 to £7,500.

Taxable dividend - cash	6,000
- tax credit	1,500
	<hr/>
"Gross" taxable income	7,500
	<hr/>
Tax at 25%	1,875
Less: tax credit	(1,500)
	<hr/>
Tax payable	375
	<hr/>

**Note** if Ark had been a lower rate taxpayer, his tax chargeable would be based on 20% of the dividend (£1,500). This would be fully covered by the tax credit leaving no tax to pay.

A tax credit is available in this way to FI residents and certain non-residents (Clause 48).

- 3.8 The technical phrases used in the legislation are "franked investment income" ("FII") and "franked payments". These relate to dividends received and paid respectively, but also cover other "distributions". This is considered to mean any other transfer, payment or benefit to the shareholder (e.g. a gift or sale at an undervalue of a company asset).

## PART II - CHAPTER IV

### Clause

- 52 Miscellaneous exemptions from tax - these are largely taken from the existing s8 although the opportunity has been taken to review and rationalise.

The following exemptions have been deleted

- income of any FI building society (formerly part of s8(c)).
- allowance etc of designated officer under Overseas Service (FI) Agreement 1972 (Former s8(m)).

Amendments have been made to the exemptions below

- the age limit for educational grants is now up to 25 (Clause 52(1)(f) - previously up to 18 in form s8(j)).
- tax free annual allowance to elected Councillors - chiefly reference has been made to more recent legislation.
- the wording of the exemption for the Governor's emoluments (Clause 52(1)(a)) has been shortened from the previous s8(a).
- following the recent Executive Council decision, the exemptions for employees not ordinarily resident in the FI who are working for exempt defence contractors etc is only to apply to employees who were recruited outside the FI. This is taken to mean employees who were not resident, not ordinarily resident and not domiciled at the time of recruitment (Clause 52(1)(h)(ii), (3)).

For the sake of clarity the legislation now incorporates the existing exemption for bounty paid to members of the Falkland Islands Defence Force (Clause 51(1)(q)).

- 53 This covers two existing general deductions for expenses wholly and exclusively incurred in the production of income

- interest on certain loans
- rent paid by tenant

These were formerly in the former s10(3) which required the relevant expenditure to satisfy the "wholly and exclusively" test. The latter did not seem appropriate to housing loan interest, certain maintenance payments and personal OAP contributions so these have moved to a general deductions section B7.

- 54 Deductions prohibited. Extended to cover interest on overdue tax and penalties.

- 55 Tax treatment of partnerships.

- 56 10% withholding tax on royalties paid to non-resident. New enforcement provisions are introduced, making interest payable on late or unpaid tax and requiring notice to be given of liability to pay a royalty to which the section relates, with failure to comply attracting a default fine (currently £10,000).

### PART III - PENSIONS AND LIFE ASSURANCE

#### 1. Introduction

The present legislation on this important subject is very brief and permits a tax deduction for pension and life assurance premiums on the lower of;

- a) premiums paid and;
- b) one sixth of chargeable income (s17)

The lack of detailed rules has made the situation unclear for both taxpayers and the Income Tax Officer. It is generally felt desirable for individuals to be encouraged to provide for their retirement, but the limited scope of the existing legislation has created uncertainty. The new legislation also substantially increases the reliefs available.

The new legislation is fairly lengthy, but provides for a detailed code on the tax treatment of pensions scheme contributions and benefits. On the other hand, the rules for tax relief for life assurance premiums reproduce the existing position in that they are expressed in a simple, broad form.

All the provisions have been discussed in detail by the Tax Review Committee and the final recommendations are contained in the paper presented to Executive Council on 23rd June 1993.

2. "Relevant Earnings" (Clause 58)

As noted in (1) above, relief for pension and life assurance premiums is presently linked to "chargeable income", being earned and unearned income.

The new relief is related to "relevant earnings" which broadly comprises earned income, but not pensions, disability benefits or certain lump sums (e.g. on termination of employment). In the case of a married couple, each spouse will have their own relevant earnings by reference to which premiums can be paid.

The term "relevant earnings" is therefore narrower in scope than the former "chargeable income" although the percentage of relevant earnings allowed for tax relief is much higher than previously.

[It should be noted that both terms are defined as being after all other reliefs and allowances except the personal deduction and deduction for wife].

3. Life Assurance (Clause 59)

There has been little change in the law here although the aggregate relief for life assurance and pension contributions is now 35% of relevant earnings rather than one-sixth of chargeable income, as previously. The relief is available on a policy on the individual's life or a spouse's life.

If pension and life premiums together exceed 35% of relevant premiums, the new legislation provides that the pension premiums are to be allowed in priority (Clause 59(3)). The old legislation did not make it clear which was to be allowed.

Relief continues to be available for premiums on life policies which may contain a substantial investment element as well as life cover.

4. Pension Schemes

4.1 Retirement Benefit Schemes

These would typically be under a pension scheme set up by the employer whether that be a government, company or unincorporated business.

## Clause

- 60 This provides for certain payments by employees and employers to such schemes to be tax deductible up to the following limits.

Employee	20% Relevant Earnings	(Clause 60(3))
Employer	Ordinary annual contributions - 35% relevant earnings	
	Any other contribution	
	Lower of - £25,000	
	35% employee's relevant earnings for current and previous 6 chargeable periods (or such higher amounts as CIT allows) - (Clause 60(7)).	

Employee limits are based on years of assessment whereas employer's are geared to chargeable periods. Earnings for the above purpose comprises earnings from the employment in question.

Schemes to be generally exempt from tax on their investment income (Clause 60(4,5)).

- 63 These provisions allow an individual who does not use his percentage relief in a tax year to carry this forward for six years.

### Example 1

Albert has relevant earnings of £30,000 and has not paid any pension premiums in the past six years in which his relevant earnings from his current employment have been £75,000.

The maximum premium that A could have paid into his company scheme is £21,000;

i.e.	20% x £30,000	6,000	(Clause 60(3))
	20% x £75,000	15,000	(Clause 63)
		<hr/>	
		21,000	
		<hr/>	

[His employer could pay £10,500 (£30,000 x 35%) into the company scheme as an ordinary annual contribution (Clause 60(7)(a)) and a higher amount of £25,000 as a special contribution.

i.e. lower of - £25,000 and;  
- £36,750 (35% x (30,000 + 75,000)  
(Clause 60(7)(b))

64,65 These provisions broadly apply to rare instances where a retirement benefits scheme has not been approved or is not a scheme operated by a foreign government. It is imagined that it would probably operate in practice where a closely held company set up an over generous "pension" scheme for a director/shareholder.

Contributions paid by the employer are taxable on the employee as income (Clause 64).

Benefits received from such a scheme (e.g. pension, lump sum) will normally be taxed as income in the hands of recipient, but Clause 65 is a "catch all" provision designed to tax benefits unless they are otherwise chargeable. Clause 65 would, for example, operate to tax a recipient on a payment in kind from a scheme.

#### **Example 2**

Other Ltd set up an unapproved retirement benefit scheme for its director Mr Otus. The Commissioner has not approved the scheme as the scheme may provide for the fund to be paid out as a lump sum prior to Otus's retirement.

Other Ltd pays premiums of £10,000 each year for three years. After three years, the fund's value has grown to £36,000 which is invested entirely in one UK government stock. Other Ltd then transfers the government stock to Otus as his lump sum.

**Tax treatment** - each premium of £10,000 is taxable as income on Mr Otus (Clause 64(1)(a)).

- Other Ltd should be able to claim tax relief on the premiums paid as a business expense under the "wholly and exclusively" principle (former s10(3) now Clause 89).
- in the absence of a general system for taxing benefits in kind, Mr Otus would not be chargeable on the government stock, but is chargeable by virtue of Clause 65(3)(b), (4).

66 **Repayment of employee contributions** from an approved scheme to be taxed in full in year of receipt subject to election to spread receipt for tax purposes over up to previous 6 years. The latter means the tax relief originally given is cancelled and also that the recipient, if a lower rate taxpayer, will be less likely to have to pay higher rate tax on a lump sum receipt of this nature.

#### **Example 3**

Artemis receives a refund of contributions from a retirement benefits scheme of £20,000 in 2001. This comprises four annual contributions of £5,000 made in each of the past four years.



**Tax treatment** - £20,000 will comprise taxable income 2001.  
- or if he elects, £5,000 will be added to income  
for each of the years 1997 - 2000.

- 67 Only 25% of the fund can normally be paid tax free to the retiring employee as a lump sum.
- 68 Return of surplus funds to employee or for his benefit to be taxed as income.
- 69 Payment from approved scheme to be chargeable in full as income upon employee where payment not authorised by scheme rules.
- 70 Refund to employer to be taxed as income.  
(similar provisions to Clauses 64-65, 67, 69) exist for personal pensions i.e. - Clauses 72, 71, 76, 71 respectively).

#### 4.2 Personal Pension Schemes

This would typically be a "free standing scheme" set up by the individual taxpayer for his own benefit. The relevant taxpayers would be employees not in company pension schemes and the self employed.

- 61 Tax deduction limited to 35% relevant earnings or such higher relief as CIT allows (Clause 61(2)). Contributions paid in excess of this can be carried forward to future years.
- 62 Employer's contributions not to be taxed on employee (Clause 62(1)). Pension scheme exempt from tax on investment income (Clause 62(2)). Provisions for utilisation of unused relief from earlier years as for retirement benefit schemes (Clause 63 - example 1 above).
- 71 Unauthorised payments back to contributor chargeable to tax in full as income.
- 72 Contributions by employer to unapproved schemes to be charged to tax as income of employee.

#### 4.3 Approval of Pension Schemes

This sets out the criteria that the Commissioner will adopt before approving a retirement benefits and a personal pension scheme. Approval is necessary to confer the valuable tax benefits available.

- 73 These set out the general criteria that will need to be present before the Commissioner will approve a RBS. However the Commissioner is given wide discretion to approve or otherwise and the prescribed benefits to be provided by the scheme are not set out in detail (contrast with PPS below).

The Commissioner will issue guidance notes to inform employers etc of the main conditions likely to be necessary for approval of RBS's.

74- These set out the detailed conditions that PPS's will need to  
78 comply with. These generally follow the UK rules.

#### 4.4 Transitional Provisions

Clause 79 permits the CIT to continue relief for arrangements existing at the commencement date for the new legislation for the provision of life assurance and pension even though they would not rank for relief under the new provisions.

## PART IV - POAT - PAYMENTS ON ACCOUNT OF TAX

### INTRODUCTION

These provisions were previously s32A-32H and have been reproduced largely in the same form in the new Income Tax Ordinance. The only three policy changes of any note are:

- interest on overdue POAT to be charged at base rate + 3% (previously 10%) Clause 81(6).
- failure to account for POAT is to be a criminal offence (Clause 88).
- non-resident POAT to be accepted as final liability to FI tax unless a return of income is submitted within 1 year or if Commissioner believes final liability is higher (Clause 87).

The POAT legislation makes provision for POAT regulations (Clause 85) and these contain detailed rules for day to day operation of POAT. These will need to be amended in order to increase the non-resident POAT rate from 15% to 20% (Clause 85(3)(c)).

The old Income Tax Ordinance contained several references to deduction of tax which became irrelevant with the advent of POAT. The opportunity has therefore been taken to delete these (e.g. old s21(3)).

### COMMENTARY

#### Clause

80 Scope of POAT - taxable income for employee under contract of service

However only income within sub-clause(5) which is not excluded by sub-clause(4) is within the scope of POAT. **Foreign remuneration** within sub-clause(4)(b) and (c) is potentially subject to tax but is exempt from POAT largely because of the practical difficulties in requiring foreign employers to make POAT deductions. However it does leave something of a loophole for recipients of foreign remuneration if they are negligent in reporting their income.

- 81 General interpretation of scope. Interest on overdue POAT to be charged at base rate + 3% (Clause 81(6)).
- 82 Deduction of tax by employer. Employer to provide certificate of deduction of tax to each employee.
- 83 Status of POAT - payments on account of tax (as name suggests), not tax payments as such (but see Clause 87 for non-resident employees). Right of offset by CIT.
- 84 Employee's right to repayment of POAT if this exceeds liability to tax on earned income.
- 85 Provision for POAT regulations.
- 86 Priority for POAT debts in bankruptcy etc of employer.
- 87 Status of POAT for non-resident or not ordinarily resident employees
  - to be treated as payments of tax (notwithstanding D4(1))
  - to be final liability to FI tax unless a Tax Return is submitted within 1 year (sub-clause(2))
  - non-resident POAT for earlier years to be treated as final liability (sub-clause(3))
  - above provisions do not apply where CIT believes non-resident POAT is less than actual liability. Generally it would be more than the actual liability, but CIT needs the power to collect extra tax from occasional cases (e.g. those with significant other income).
- 88 Failure to account for POAT to be a criminal offence with a maximum fine currently set at £1,000.

#### PART V - CHAPTER I - TAXATION OF BUSINESS

- 89 Requirement for expenses to be "wholly and exclusively" for purposes of business.  
  
Certain deductible expenses specified.

(The former "wear and tear" allowance contained in the former s10(3)(c) is abolished. It is infrequently claimed and depreciation allowances should be available on such expenditure). Provisions concerning deduction for bad debts (sub-clause(2)).

- 90 Provisions concerning entertainment expenses.
- 91- Special provisions for calculation of profits and tax liabilities  
92 of insurance companies and shipowners. These are infrequently employed in practise, but are retained provisionally.
- 93 15% income withholding tax on certain management fees now confined to payments to non-residents. New consequential interest and penalty provisions.
- 94(1) New provision to prohibit deduction for "excess benefits" provided  
(2) to directors or employees. The extent of the provision will be determined by rules made by the Governor in Council. This provision is designed to deter employers from providing "excessive" tax free perks to employees. This follows the decision not to tax all employees on the estimated value of their benefits.

The rules are likely to define "excess benefits" as being those in excess of 50% of taxable remuneration. Broad rules will be provided for quantification of benefits for this purpose.

#### Example

Armstrong Ltd pays taxable remuneration (salary) of £30,000 to its employee Armstrong. It also provides tax free benefits-in-kind of £18,000. Since the latter exceed 50% of taxable remuneration ( $50\% \times £30,000 = £15,000$ ), Armstrong Ltd will have the excess of £3,000 ( $£18,000 - £15,000$ ) taxed as business income.

- 94(3) Restriction on deduction for remuneration to certain non-resident  
-5) directors.

Two changes have been made to existing provisions

- restriction will not apply if remuneration is chargeable income in hands of director (sub-clause(5)).
  - directors' shareholdings are widened to cover holdings of "connected persons" rather than the more limited definition presently prevailing.
- 95 150% deduction for training costs
- 96 Relief for pre-trading expenditure where business commenced on 1st January 1994 or thereafter. This confirms existing practise.

- 97 Thin capitalisation provisions concerning interest payments to non-residents. (Introduced in The Income Tax (Amendment) Ordinance 1993). The Commissioner will be publishing guidance notes which will set out when such payments will be deductible against business income.

## **PART V - CHAPTER II - DEPRECIATION ALLOWANCE**

### **1. INTRODUCTION**

The present legislation comprises section 11 and the Sixth and Seventh Schedules as amended by section 7 of Income Tax (Amendment) Ordinance 1993. There have been no changes of policy on depreciation allowance other than the new Clause 102 relief, but the opportunity has been taken to rationalise the lay out and wording of what had become some of the most confusing and messy legislation in the old Income Tax Ordinance. Consequential references to the new corporation tax for companies have been included. The new legislation comprises just seven clauses.

The main rates and allowances therefore continue to be broadly as follows;

Machinery and plant (including ships and motor vehicles, but not aircraft)	100%	IA	Clause 99(3)
Aircraft	25%	WDA	Clause 99(4)
Industrial, commercial or agricultural building or building used for mining or fishing	50% then 10%		Clause 99(5) WDA
Most other buildings except for certain residential accommodation	10%	WDA	Clause 99(6),(7)

### **2. MATERIAL POINTS ARISING FROM REVIEW**

- 2.1 The new Clause 102 is introduced for transfers of business on or after 1st January 1995.

Clause 102 provides that, subject to an election, broadly no balancing charge or allowance will arise on incorporation of a business provided the appropriate conditions are satisfied. These are similar to those provided for transfer of losses on such an incorporation - see Clause 107.

- 2.2 Transitional provisions are set out in Clause 104.

- 2.3 The definition of "written down value" has been tightened up from the present ones employed in para 1 of the 6th and 7th Schedules. Basically the words "or which could have been made" have been deleted from the third line. If this had not been done, it seems that written down value would have been reduced by allowances that might have been disclaimed or not available perhaps because of non-business use.

However a proviso has been inserted (Clause 98(6)) to cover the situation where a trader brings an asset into use in the business after a period of non business use. In such a case depreciation allowance can only be claimed on market value at time of first business use (assuming less than cost).

- 2.4 The wording of Schedule 7 Para 4 has been amended slightly in the new Clause 99(7) to state that relevant excess of sale proceeds etc of a residence is not to be treated as a "balancing charge" rather than not to be treated as "additional income". The latter has wider connotations than balancing charge and might be construed as giving a property dealer an exemption from tax on a profit made on a residence on which depreciation allowance has been claimed.
- 2.5 The term "associated person" in the old Schedule 7 Para 3(2) has been replaced with a new term "connected person" (see Clause 164) which has a wider and tighter definition.
- [2.6 Although not as such a depreciation allowance, the "wear and tear" allowances for capital expenditure previously available by virtue of s10(3)(c) are being terminated].

## **PART V - CHAPTER III - LOSS RELIEF FOR BUSINESS**

### **INTRODUCTION**

The existing s13 allows business losses to be set first against other current income and then to be carried forward, without time limit, against any future income.

It has been decided to introduce the following changes;

- to obtain relief, losses must arise from business carried out on commercial basis (Clause 105).
- losses can only be carried forward so long as the business continues (Clauses 106, 108).
- losses incurred prior to incorporation of a business to be carried forward against post incorporation profits or dividends drawn (Clause 107).

- anti avoidance provisions are introduced to prevent a carry forward of losses where there is both a change in ownership of a company and a major change in the nature or conduct of the trade. This is intended to prevent a market developing in tax loss companies (Clause 109-110).

However the carryback of losses against previous profits is not to be permitted due to the potential cost to the Treasury. References and special reliefs for the new corporation tax have been included in this Chapter.

## COMMENTARY

### Clause

- 105 Loss must arise from business carried on a commercial basis and with a view to realisation of profits.
- 106 Business losses of an individual (whether operating alone or in partnership)
- set first against other current year income
  - then set against future income as long as business continues

### Example

Brading is a farmer and makes a loss in the year to 31st December 1996 of £10,000. He has other income of £4,500 in 1996 and the farm makes a profit of £3,000 in the year to cessation of trade at 31st December 1997. Other 1997 income is £500.

### Tax Treatment

- of the loss, £4,500 is set against other 1996 income leaving £5,500 to carry forward
- in 1997, the £5,500 loss brought forward is first set against farming profits of £3,000 and then against other income of £500
- the balance of £2,000 (£5,500 - £3,000 - £500) cannot be carried forward as the business has ceased. (Under present legislation it could be carried forward against future income).

A company would normally claim a similar corporation tax relief (see Clause 108 below). However where it is within the charge to income tax (i.e. for years prior to introduction of corporation tax) or exempt from tax by virtue of the Special Exemptions, a similar carryforward of losses is permitted (Clause 106(2)).

- 107 A loss arising prior to incorporation of a business would normally be forfeited on incorporation due to cessation of the business as carried on by the former proprietor. However this could be perceived as a deterrent to incorporating businesses and thus a form of carryforward of loss relief is permitted. This will basically apply where a business is transferred to a company in consideration for an issue of shares.

The former proprietor can set the unrelieved loss against dividends on the shares issued. The shareholder might decide not to make such a claim and in such instances, the company can set the loss off against future income (subject to the shareholder's consent).

#### **Example**

Demon operates a shop as a sole trader and at 31st December 1996, has unrelieved business losses from the shop of £20,000. For commercial reasons, he wishes to incorporate the business. A new company, Demon Ltd is formed and issues 100 shares to Demon as consideration for the shop business. Demon Ltd pays a dividend to Demon of £11,000 on 30th June 1997.

#### **Tax Treatment**

The unrelieved losses can be carried forward against future dividend income from Demon Ltd. The £11,000 dividend received by Demon is therefore fully covered by this. The balance of £9,000 can either be set against future dividends or future profits of Demon Ltd.

It should be noted that the legislation permits the relief to apply where an existing company (perhaps owned by some unconnected party) acquires a business for shares issued to the proprietor of that business.

#### **Example**

Afan Ltd operates a fishing business and is owned entirely by Afan. It acquires the business of Demon and issues 100 shares to Demon as consideration. Clause 107 as presently drafted, would allow any unrelieved losses of the Demon business to be utilised against Demon's dividend income from Afan Ltd or future income of Afan Ltd.



The legislation, as presently drafted gives the shareholder priority in utilising the losses against future dividend income. If the company claims relief for the losses against its profits and later the shareholder makes a claim for those same losses to be set against a dividend, the company's relief will be forfeited. In order to allow the company an opportunity to utilise the losses without creating a conflict between the company and the individual shareholder, the shareholder must consent to the company's utilising the losses. If this were not required the possibility of the company making a claim and the shareholder making a later claim would have to be allowed for, with the attendant complex unravelling of past years' tax liabilities.

108 This is the corporation tax equivalent of Clause 106. A company will set a business loss first against other income and then against future income so long as the business continues.

109- Although a company can now only carryforward a loss as long as a  
110 business is carried on, restrictions are introduced to prevent a loss being carried forward where in a three year period there is both;

- a major change in the ownership of a company;
- and either
- a major change in the nature or conduct of the trade; or
- the scale of activities becomes small or negligible

#### Example

Pintail Ltd operates a factory which cans fish and has unrelieved business losses of £200,000 at 31st December 1997. At that date, Pintail sells his shares in Pintail Ltd to Volage. Pintail Ltd continues to operate the canning factory, but then the company changes its location, purchases a boat to catch fish rather than buying them from fishermen and stops dealing with certain key customers.

Pintail Ltd has continued to carry on the core business of canning fish and thus by virtue of Clause 108 can prima facie continue to carryforward the tax losses of £200,000 against future income. However arguably a major change to the nature or conduct of the trade has occurred and as this is accompanied by a change in ownership, the losses cannot be carried forward by virtue of Clause 109.

Clause 110 contains detailed provisions as to what constitutes a change of ownership.

Clauses 109-110 are modelled on the UK legislation in s768 and s769 Taxes Act 1988.

## **PART V CHAPTER IV - GROUP RELIEF**

These are new provisions allowing members of the same group of companies to surrender current year business losses to each other ("group relief"). (Clause 111).

### **Example**

Cavalier Ltd owns 95% of the shares of both Caprice Ltd and Dainty Ltd. In their accounting periods to 31st December 1997, they have the following profits and losses.

Cavalier Ltd	£110,000 profit
Caprice Ltd	(£215,000) loss
Dainty Ltd	£180,000 profit

### **Tax Treatment**

Under present rules, Caprice Ltd could only carry its loss forward against future profits whereas Cavalier and Dainty would pay tax on their full profits.

Under group relief since Caprice and Dainty are 75% subsidiaries of Cavalier Ltd, they constitute a tax group. Caprice Ltd could therefore consent to "surrender" up to the whole amount of its loss of £215,000 to Cavalier and Dainty. It might therefore choose to surrender £110,000 to Cavalier and £105,000 to Dainty.

Cavalier will therefore have no taxable profits for 1997, while Dainty's will be reduced to £75,000 (£180,000 - 105,000).

All companies concerned must be Falkland resident (Clause 111(2)). Payments made for group relief are not tax deductible or taxable. (e.g. in above example, Caprice might have been paid by Cavalier and Dainty for the losses claimed).

There are special provisions restricting group relief where companies join or leave a group in an accounting period (Clauses 112-113).

There are also rules on claims for profit making group members claiming losses by group relief and for loss making companies consenting to the surrender of their losses. (Clauses 116-117).

Future legislation is likely to provide for "consortium relief" where less than 75% of shares are held in the related company.

## PART VI - TAX AVOIDANCE

- 102- Transfer pricing provisions - ability of Commissioner to  
103 substitute market value in dealings with non-resident connected  
parties. (Introduced in the Income Tax (Amendment) Ordinance  
1993).
- 123 General anti-avoidance provision to tax person who transfers  
property to family member with a view to avoiding tax. This wide  
ranging provision is only intended to be used in cases where there  
would otherwise be a substantial loss to the exchequer. (e.g.  
certain transfers of property to minor children in order to reduce  
tax on income arising thereon).
- 124 Provisions concerning person leaving Falklands.
- 125- Provisions concerning migration of companies. Company residence  
126 is to be defined by reference to central management and control  
(Clause 157(1)). A FI resident company might relinquish its  
residence by, for example, appointing non FI resident directors.  
Although such a company would still be liable to tax on its FI  
income, it is thought prudent for the CIT to be given advance  
notice of its intention to shed its FI residence. These  
provisions therefore require such notice to be given and for the  
company to satisfy the CIT that it has made appropriate  
arrangements for settling outstanding FI tax liabilities

## PART VII - DOUBLE TAXATION RELIEF

- 127 Power of Governor-in-Council to instigate Double Taxation Relief  
Arrangements.  
(At present there is only such an arrangement with the UK).
- 128 Provisions for tax credits where tax is suffered on income in the  
country where arrangements under 127 entered into (sub-clause(1)).  
Income to be grossed up for foreign tax suffered (sub-  
clause(4)(b)). Credit allowed for overseas tax against FI tax  
liability on that income. Where overseas tax exceeds attributable  
FI tax liability, tax deduction available for that excess as an  
expense.

These provisions are only available to FI residents. (Thus, for  
example, a non FI resident company with a FI branch or agency  
could not claim double taxation relief).

- 129- Limits on credit against income and corporation tax for tax  
130 suffered under Clause 128. The credit cannot exceed the  
attributable FI tax - the latter is calculated by applying the  
marginal rate of FI tax for the chargeable period to the  
attributable overseas income (rather than the average rate as  
previously).

**Example**

Cam receives £9,000 of net UK income which has suffered £3,000 UK  
tax at source.

For FI tax purposes, the income is "grossed up" to £12,000.

Cam's marginal tax rate is 25%, but the average rate of tax paid  
on his total income is only 21%. As there is a Double Tax  
Arrangement with the UK, Clauses 128-130 apply.

**FI Tax Computation**

	£
Net income	9,000
UK tax	3,000
	<hr/>
	12,000
	<hr/>
FI tax (marginal rate)	
£12,000 x 25%	3,000
Tax credit	
UK Tax Paid	(3,000)
	<hr/>
Tax payable	Nil
	<hr/>

Under the old regime, only £2,520 (£12,000 x 21%) would have been  
allowed as double tax relief leaving £420 payable.

- 131 **Unilateral tax credit**  
Generally similar to above except it will apply where there is no  
Double Taxation Arrangement with the overseas country concerned.
- 132 **Disclosure of information under Double Taxation Arrangements and  
for purposes of giving Double Tax Relief.**

**PART VIII - ASSESSMENTS ETC**

- 133 **Provisions concerning issue of assessments for income tax.** These  
largely follow existing s38.

134 Assessments to corporation tax.

Although Pay and File will require companies to pay their corporation tax 8 months after their accounting period without an assessment being issued, assessments will still be necessary where;

- agreed assessment where accounts etc accepted (sub-clause(2)(a))
- assessment to best of CIT's judgement where broadly;
  - accounts not initially accepted (sub-clause(2)(b))
  - no accounts received (sub-clause(3))
  - accounting period uncertain (sub-clause(4))

135 Additional assessments if inadequate assessment initially issued.

136 Taxpayer may object to assessment with 2 months in normal circumstances.

137 Burden of proof.

138- Right of appeal to Tax Appeal Tribunal. These almost entirely  
140 follow existing legislation although it is understood that there  
Sch1 has been no occasion yet for the Tribunal to meet.

The right to appeal to the Appeal Tribunal against the imposition of a penalty (not a fine) has been removed because the application of the penalty is automatic and the amount of the penalty is fixed. If a person fails to comply with a requirement of the Ordinance breach of which attracts a penalty, then he is liable to pay the full amount of the penalty. There can therefore be no appeal against the amount of the penalty although the Commissioner may in his discretion (having regard to the interests of the exchequer in enforcing payment of tax, as well as to the particular situation of the individual defaulter) commute a penalty (in part or entirely). But that decision of the Commissioner is not a matter which is suitable for review by the Tribunal, although judicial review will remain available to protect people from unreasonable decisions. This alteration in the law brings civil penalties into line with interest on tax and fines etc, which are already excluded from the right to appeal to the Tribunal, see Clause 139(2)(a) to (e).

141 Right to postpone tax normally within 30 days of assessment.

Where income tax is postponed, the tax not postponed will be due on the later of;

- 30 days after the CIT determines the amount payable and;
- 90 days after date of assessment
- 1st August in Year of Assessment

Where corporation tax is postponed, the tax not postponed will be due 30 days after the CIT's determination. The rule is harsher than for income tax as under Pay and File, a corporation tax assessment would not normally be issued until after the normal payment date.

142 Collection of tax and of interest on overdue tax.

143- Refunds of income and corporation tax.

144

145- Penalties for fraud, incorrect returns etc.

147

The criminal penalties under sections 145 and 146 are being increased to a maxima currently standing at £15,000 and £10,000 respectively.

In addition Clause 145 provides for a compulsory tax geared penalty of treble the tax in certain cases of fraud etc. In practice, the Commissioner may mitigate these penalties, at his discretion.

Clause 146 provides for a penalty of double the tax in certain specified cases.

Tax geared penalties are intended to offer a realistic deterrent to the taxpayer. In many cases this may not be possible with fixed monetary penalties which may be trivial to the large taxpayer.

148- Supplementary provisions concerning criminal proceedings etc.

149

## **PART IX - GENERAL AND SUPPLEMENTARY PROVISIONS**

150 Appointment and duties of agent for taxpayer.

- respective duties and liabilities

151 Appointment of agent in the UK by CIT.

152 Agent etc of person not resident to FI will be assessed etc in like manner as non-resident. Various exceptions to this.

Non-residents normally will not get personal allowances (sub-clause(2)) unless they are physically present in the FI. New rules will be necessary under Clause 160 to provide for the apportionment of allowances given to non-residents by reference to the period of their stay in the FI. This confirms existing practice.

"World income computation" for non-residents (sub-clause(3)). Provided non-Falkland income is declared all non-residents can claim proportionate allowances. Previously only non-resident British subjects could do this.

Gains and profits of non-residents charged in name of resident where CIT feels non-resident controls and is connected with resident (sub-clause (5)).

Taxation of non-resident on percentage of turnover where profit cannot be readily ascertained.

153 Trustees etc of incapacitated persons.

154 Duties of officer of company.

155 Duties of trustee of incapacitated person etc.

156 Indemnification of representatives of taxpayer.

157(1) Company residence - place where central management and control exercised. Place of incorporation irrelevant.

(2) Ordinary residence of individuals.

(3) Residence for individuals. Rules clarified. Individuals will be resident if in FI for 183 days or more in a year.

158 Official Secrecy.

159 Commissioner's powers to gather information.

160 The power of the Governor in Council to make rules supplementing the Ordinance generally is reproduced in this clause. The power to prescribe forms etc has been transferred from the Governor in Council to the Commissioner, see Clause 4(3), for convenience and ease in altering forms etc speedily to reflect changing situations. The existing Rules, except for rule 8 (deduction of tax from certain income of non-FI residents), made under section 89 of the Income Tax Ordinance are largely spent or obsolete and are therefore repealed by the new Ordinance.

161 Normal 6 year time limit for making claims (unless otherwise specifically allowed).

#### Definitions

162 Earned and unearned income.

163 Subsidiaries.

164 Connected Persons. (This term is now used fairly frequently in the new Ordinance to replace similar phrases used in the old Ordinance).

165 Control.

Other Supplementary Provisions

166 Errors in assessments.

167 Service of notices.

168 Signature of notices.

169 Repeals.

**SCHEDULES**

1. Tax Appeals - detailed provisions mainly concerned with the operation of the Tax Appeal Tribunal.
2. Proceedings for the recovery of tax.

Paragraphs 10 to 15 of Schedule 2 reproduce sections 69 to 74 of the Income Tax Ordinance. These provisions allow the Government to recover unpaid tax by execution against the land or houses of defaulting taxpayers. Under these provisions, the land or houses of defaulting taxpayers may be auctioned and the proceeds of sale used to satisfy the tax debt. In addition to this means of recovering unpaid tax, the Commissioner of Taxation may sue in the courts for the tax and if judgement is given against the taxpayer the usual means of enforcing judgement debts may be employed to enforce the judgement. It is believed that sections 69 to 74 have never in fact been used to recover tax although their existence has encouraged defaulting taxpayers to make good their default before their property has been put up for auction.

The new Ordinance provides an opportunity to consider afresh whether the provisions of sections 69 to 74 of the Income Tax Ordinance are still required or whether paragraphs 10 to 15 of Schedule 2 to the Bill for the new Ordinance should be deleted.

3. Warrants and other forms.
4. Repeals.

\* \* \* \* \*



# THE TAXES BILL 1994

(No. of 1994)

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7. The charge to income tax.
8. Basis of assessment.
9. Rates of income tax.
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14. Earned income relief and other deductions.
15. Personal allowance and dependent relative allowances.
16. Married man's allowance and wife's earnings relief.
17. Age allowance.
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19. Provisions supplementary to section 18.
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21. The charge to corporation tax and exclusion of income tax.
22. Basis of assessments, and chargeable income.
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24. Accounting periods.
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26. Tax on company in liquidation.
27. Filing of accounts etc.
28. Transitional provisions for companies within charge to income tax before 1.1.96.
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30. Companies not resident in Falkland Islands.

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31. ACT and qualifying distributions.
32. Interpretation of Chapter III.
33. Set-off of ACT against liability to corporation tax.
34. Calculation of ACT where company receives franked investment income.
35. Set-off of losses against surplus of franked investment income.
36. Set-off of loss brought forward.
37. Further provisions relating to claims under section 35 or 36.
38. Calculation etc. of ACT on change of ownership of company.
39. Charge of ACT at previous rate until new rate fixed, and changes of rate.
40. Payment of ACT.
41. Receipt of franked investment income after payment of ACT.
42. Claims for set-off in respect of franked investment income received by a company.
43. Transitional provisions for companies within charge to tax on commencement.
44. Distributions which are not payments and payments of uncertain nature.
45. Assessments and due date of ACT.

#### *Tax credits and Falkland Islands company distributions*

46. Tax credits for certain recipients of qualifying distributions.
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60. Retirement benefit schemes.

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63. Carry-forward of relief.

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74. Requirements as to scope of benefits and other conditions.  
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- 120. Transactions between associated persons.
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- 157. Residence of companies and individuals.

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## *Taxes Bill*

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# TAXES BILL 1994

A Bill

for

An Ordinance

To restate the law relating to income tax with amendments and to introduce corporation tax.

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

## PART I

### GENERAL PROVISIONS

*Short title  
and commencement.*

1.—(1) This Ordinance may be cited as the Taxes Ordinance 1994.

(2) Except as otherwise provided, this Ordinance shall apply in relation to the charge to income tax for years of assessment beginning on or after 1st January 1995 and for the charge to corporation tax for corporation tax years beginning on or after 1st January 1996.

*General interpretation  
of Ordinance.*

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

"accounting period" has the meaning given by section 24;

"ACT" has the meaning given by section 31;

"bank" means a financial institution licensed under the Banking Ordinance 1987;

"base lending rate" means the rate of interest payable in respect of loans to customers in the Falklands Islands for the time being as announced by the Standard Chartered Bank, Stanley Branch;

"body of persons" means any body politic or corporate, and any company or partnership or society of persons whether corporate or unincorporate;

"business" means any trade, business, profession or vocation;

"chargeable income", in relation to any chargeable period, means the aggregate amount of the income of any person for that period (less any amounts which may be deducted or allowed in accordance with this Ordinance) in respect of which income tax or corporation tax is chargeable under this Ordinance;

"chargeable period" means, in relation to income tax, a year of assessment and, in relation to corporation tax, a corporation tax year;

"Commissioner" means the Commissioner of Taxation but any reference to a decision or determination of the Commissioner includes a reference to a decision or determination of the Tribunal on appeal from the Commissioner and a reference to a decision or determination of the Supreme Court on a further appeal

from the Tribunal on a point of law;

"company" means any body corporate or unincorporated association but does not include a partnership or a local authority;

"corporation tax year" means the period of 12 months beginning on 1st January in any calendar year;

"earned income" has the meaning given by section 162;

"earned income relief" means relief under section 14(1);

"incapacitated person" means any person under the age of 18 years or any person under a mental incapacity;

"maintenance payments" means payments under an order of the court in the Falkland Islands or the United Kingdom—

(a) by one of the parties to a marriage (whether subsisting, dissolved or annulled) for the maintenance of the other party; or

(b) to any person for the benefit, maintenance or education of a person under the age of 21 years not being a payment mentioned in paragraph (a);

and for the purposes of this Ordinance a court order which varies, supplements or replaces an earlier court order shall be taken to be made on the day that earlier order was made, or if that earlier order itself fell within this provision, on the day that earlier order was taken to have been made;

"notice" means notice in writing;

"notice of assessment" has the meaning given by section 136;

"period of account", in relation to a company or a business, means a period for which the accounts of the company or business are made up;

"person" includes a body of persons;

"prescribed" means prescribed by rule under this Ordinance;

"registered co-operative society" means a co-operative society registered under the Co-operative Societies Ordinance 1987;

"relevant accounting period", in relation to any chargeable period, means, for corporation tax purposes, the accounting period or periods, and for income tax purposes, the period of account, on the income of which tax for that period falls to be charged;

"return of income" means a return of income under section 11(1);

"tax", except where the context otherwise requires, means either income tax or corporation tax;

"the Tribunal" means the Tax Appeal Tribunal constituted in accordance with section 138;

"year of assessment" means the period of 12 months beginning on 1st January in any year.

(2) In this Ordinance references to the higher rate or to the lower rate shall be construed in accordance with section 9.

(3) In this Ordinance—

(a) any reference to a person being connected with another person, shall be construed in accordance with section 164;

(b) any reference to a person being in control of another, shall be construed in accordance with section 165; and



(c) any reference to a subsidiary shall be construed in accordance with section 163.

(4) For the purposes of income tax and corporation tax a source of income is within the charge to income tax or corporation tax if that tax is chargeable on

the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax shall be similarly construed.

*Transitional provisions.*

3.—(1) The continuity of the law relating to income tax shall not be affected by the substitution of this Ordinance for the enactments repealed by this Ordinance and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Ordinance or any Ordinance amended by this Ordinance) to, or to things done or falling to be done under or for the purposes of, any provision of this Ordinance shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made or otherwise coming into existence after the commencement of this Ordinance) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Ordinance has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Where an offence for the continuation of which a penalty was provided has been committed under an enactment repealed by this Ordinance, proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance in the same manner as if the offence had been committed under the corresponding provision of this Ordinance.

*Appointment and duties  
of Commissioner of  
Taxation, etc.*

4.—(1) The Governor shall appoint a public officer to be Commissioner of Taxation ("the Commissioner"), and income tax and corporation tax shall be under the care and management of the Commissioner.

(2) The Governor shall appoint such collectors and officers as may be necessary to collect, receive and account for income tax and corporation tax.

(3) The Commissioner shall generally carry out the provisions of and exercise the powers delegated to or vested in him under this Ordinance and may in particular prescribe the form of returns, claims, statements and notices under this Ordinance.

*Impeding or obstructing  
Commissioner or  
officers.*

5. Any person who obstructs or impedes or molests the Commissioner or a collector or other officer lawfully authorized by this Ordinance in the discharge of his duties or in his official capacity or in the exercise of his powers commits an offence under this Ordinance.

*Power to remit.*

6.—(1) The Governor in Council may remit the whole or any part of the tax payable by any person if he is satisfied that it would be just and equitable to do so.

(2) Notice of any remission of tax under this section shall be published in the Gazette.

(3) The Commissioner may in his discretion mitigate any penalty, or stay or compound any proceedings for a penalty, and may also after judgment further mitigate or entirely remit the penalty.

## PART II

### THE CHARGE TO INCOME TAX AND CORPORATION TAX

#### CHAPTER I

#### INCOME TAX

##### *The charge to income tax*

*The charge to income  
tax.*

7.—(1) Subject to the provisions of this Ordinance, income tax shall be payable for a year of assessment at the rate or rates specified in section 9 for that year on the income of any person accruing in or derived from the Falkland Islands or elsewhere, and whether received in the Falkland Islands or not in respect of—

- (a) gains or profits from any business carried on by or exercised by that person;
- (b) gains or profits from any employment received in money;
- (c) the prescribed annual value of any prescribed benefit received otherwise than in money in respect of any employment;
- (d) the prescribed annual value of land and improvements thereon;
- (e) dividends, interest, or discounts;
- (f) any pension, charge or annuity;
- (g) rents, royalties, premiums, and any other profits arising from property;
- (h) maintenance payments paid in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993.

(2) In subsection (1)(d) above the reference to land and improvements thereon includes housing used rent-free or for which a token rent is paid by the occupier for enjoyment, but does not include any land or housing which is not provided to or for the benefit of that person by reason of his employment.

(3) Rules made by the Governor in Council prescribing benefits and annual values for the purposes of subsection (1)(c) and (d) above shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following the publication of the rules.

*Basis of assessment.*

8.—(1) Income tax shall be charged, levied and collected for each year of assessment on the chargeable income of any person for the year immediately preceding the year of assessment.

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of his business to a date other than 31st December, the Commissioner shall permit the gains or profits of that business to be computed, for the purposes of income tax, on the income of the year terminating on the business's accounting date in the year immediately preceding the year of assessment.

(3) In subsection (2) "accounting date" means the date to which the accounts in question have usually been made up.

(4) Subject to any provision to the contrary in this Ordinance, the date to which the accounts of any business the profits of which are within the charge to income tax are made up shall not be changed by any voluntary act (excepting voluntary liquidation or bankruptcy or ceasing to carry on the business), unless the Commissioner so requires or approves.

*Rates of income tax.*

9. Income tax shall be charged on the chargeable income of a person at the following rates—

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

(b) on the remainder of his chargeable income, at 25 per cent; and in this Ordinance any reference to the lower rate or the higher rate, in relation to income tax, is a reference to the rate specified in paragraph (a) or (b) respectively.

*Time for payment of income tax and interest on overdue tax.*

10.—(1) Income tax charged in an assessment for a year of assessment shall be payable before—

(a) the expiry of the period of 90 days beginning with the date of service of the notice of assessment, or

(b) if later the 1st August in that year.

(2) Interest shall be due on any income tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

*Notice of chargeability and tax returns.*

11.—(1) The Commissioner may by notice require any person chargeable to income tax to furnish him within 60 days of the date of issue of the notice with a return relating to his income which shall include such particulars as the Commissioner may require for the purposes of this Ordinance.

(2) The Commissioner may by notice require any person chargeable to income tax for a year of assessment, who claims to be or the Commissioner believes to be carrying on a business in the Falkland Islands, to lodge with his return under subsection (1) above or within such period thereafter as may be specified in the notice—

(a) accounts of that business for the period of account last ending before the commencement of that year of assessment in such form as may be specified in the notice, and

(b) any notes to the accounts and an explanation of any matter which may be necessary to enable the accounts to be understood;

and the accounts shall if the notice so requires be audited by an auditor approved by the Commissioner.

(3) Every person chargeable to income tax for any year of assessment shall not later than 4 months after the beginning of that year give notice to the Commissioner that he is so chargeable, specifying each source of income separately, unless he has previously received a notice under subsection (1) above or made a return of his income for that year.

(4) Any person who fails or neglects to lodge any accounts or other information in accordance with subsection (2) shall be liable to a penalty—

- (a) if the accounts or other information are delivered not more than 3 months after the due time, of £100;
- (b) if the accounts or other information are delivered more than 3 months after the due time, of £200.

*Income from sources  
outside Falkland  
Islands.*

12.—(1) This section applies to income which arises from a source outside the Falkland Islands.

(2) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if it accrues to a person who is neither resident nor ordinarily resident in the Falkland Islands at the time the income accrues to him.

(3) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if the income—

- (a) is not remitted to the Falkland Islands, and
- (b) accrues to a person who either—
  - (i) is not domiciled in the Falkland Islands at the time the income accrues to him, or
  - (ii) if he is domiciled in the Falkland Islands, is not ordinarily resident in the Falkland Islands at the time the income accrues to him.

(4) For the purposes of this section—

- (a) a source of income is outside the Falkland Islands if it is an office or employment the duties of which are performed outside the Falkland Islands, and
- (b) if the duties of the office or employment are performed partly outside and partly within the Falkland Islands, the amount of the remuneration from that office or employment which is to be taken as arising from a source outside the Falkland Islands shall be such part of the total remuneration for the period in question as the Commissioner shall determine having regard in particular to the amount of time devoted to the performance of the duties outside the Falkland Islands as compared to the amount of time devoted to the duties performed within the Falkland Islands.

*Married women.*

13.—(1) Subject to the following provisions of this section, the income of a married woman shall for the purposes of this Ordinance be deemed to be the income of her husband and shall be charged in the name of the husband and not in her name nor in that of her trustee.

(2) So much of the total amount of tax charged upon the husband as bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of husband and wife may, if necessary, be collected from the wife, notwithstanding that an assessment has not been made on her.

(3) A married woman separated from her husband—

- (a) under an order of a court of competent jurisdiction, or
  - (b) under a written agreement, or
  - (c) in such circumstances that the Commissioner considers that the separation is likely to be permanent,
- shall be treated as an unmarried person.

(4) A married woman in receipt of earned income and her husband may elect to be assessed separately, and where an election made under this section the following provisions shall apply—

- (a) both husband and wife shall be assessed for tax as single persons and shall be entitled to the personal relief for single persons under section 15(1);
- (b) the additional relief for a wife under section 16(1) shall not be granted;
- (c) relief under section 17 shall be granted to the husband only;
- (d) the question whether a person is eligible for relief under section 18 shall be determined without regard to paragraph (a) above; and
- (e) the husband's income shall include all income of his wife other than her earnings.

(5) An election for separate assessment under this section shall be made jointly by the husband and wife in writing to the Commissioner not later than 1st April in the year of assessment as respects which the election is first to have effect.

(6) If no election has been made by the parties concerned, the Commissioner may tax both parties individually or jointly, whichever is to the advantage of the taxpayers, subject to the agreement of both parties.

(7) When an election is made in respect of any year of assessment it shall be irrevocable in respect of that year and such election shall continue to apply in respect of subsequent years until the election is jointly revoked by the husband and wife.

(8) When an election is revoked after 1st April in any year the revocation shall not have effect in respect of that year but shall affect subsequent years.

(9) Revocation of an election shall not be a bar to further election.

#### *Ascertainment of chargeable income of individuals*

#### *Earned income relief and other deductions.*

14.—(1) In computing the chargeable income of an individual, an amount equal to 15 per cent. of the earned income of that individual shall first be deducted from that earned income ("earned income relief") and, subject to subsection (2), the deductions allowed under subsection (3) below or section 53 or 89 shall be allowed against earned income after the deduction of earned income relief.

(2) Any deduction allowed under subsection (3) or section 53 or 89 shall

be allowed against an individual's unearned income only to the extent (if any) that his earned income (after deduction of earned income relief) is insufficient.

(3) There shall be deducted from an individual's income—

- (a) any maintenance payment paid by him in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993;
- (b) sums payable by him by way of interest upon any housing loan, provided that the Commissioner shall have discretion to disallow the same, in whole or in part, in respect of any period that the house is unoccupied by that person;
- (c) subject to subsection (4) below, any annual subscription paid to a body of persons approved for the purposes of this section by the Commissioner;
- (d) any sums paid by the individual in respect of himself or his spouse under the Old Age Pensions Ordinance.

(4) A subscription shall not be deducted under subsection (3) above unless—

- (a) it is deducted from the emoluments of an office or employment, and
- (b) it is paid to a body the activities of which, so far as they are directed at the objects mentioned in subsection (5) below, are relevant to the office or employment, that is to say the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

(5) The Commissioner shall not approve any body of persons for the purposes of subsection (3)(c) above unless the activities of the body are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—

- (a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions);
- (b) the maintenance or improvement of standards of conduct and competence among the members of any profession.

(6) In this section "housing loan" means such part of any principal sum advanced for the purpose of purchasing, building, adding to or altering a dwelling house in the Falkland Islands as does not exceed £50,000.

*Personal allowance and dependent relative allowances.*

15.—(1) In computing the chargeable income of an individual there shall be allowed a deduction of £3,200.

(2) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year that he maintained at his own expense a dependent relative whose total income from all sources for that preceding year did not exceed £4,000, there shall be made a deduction not exceeding £1,100 a year in respect of each dependent relative whom he so maintains.

Where two or more persons jointly maintain a dependent relative the

deduction to be made under this subsection shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year, by reason of old age or infirmity, he was compelled to depend upon the service of a son or daughter resident with and maintained by him, there shall be made a deduction not exceeding £1,100 a year.

(4) In this section "dependent relative", in relation to any person, means a relative of that person or of his spouse who is incapacitated by old age or infirmity from maintaining himself.

*Married man's  
allowance and wife's  
earnings relief.*

16.—(1) In ascertaining the chargeable income for a year of assessment of a man who proves to the satisfaction of the Commissioner that he had during the year immediately preceding that year of assessment his wife living with him or wholly maintained by him a deduction shall be made of £2,050.

(2) In ascertaining the chargeable income for a year of assessment of a husband in any case where he is assessed jointly with his wife who has earned income arising during the year immediately preceding that year of assessment, then, subject to subsection (3), a deduction shall be made of £3,200 or the amount of the wife's earned income, whichever is the less.

(3) In any case where a loss arises in the year immediately preceding a year of assessment in the exercise of any business carried on by the husband or the wife or a loss is brought forward under section 106 and set against the profits of such a business or other income of the husband arising in that preceding year, the amount of the deduction made under subsection (2) shall not exceed the amount (if any) by which the wife's earned income for that preceding year exceeds the amount (or aggregate amount) of any such loss.

(4) In this section, any reference to earned income is a reference to earned income after making any deductions allowed by sections 14 and 53 and Chapters I and II of Part V.

*Age allowance.*

17.—(1) In computing the chargeable income for a year of assessment of any married man who proves that at any time during the year immediately preceding that year he was of the age of 60 years or upwards and that his wife was living with him or was wholly maintained by him, there shall be deducted an amount equal (whether or not he actually receives the same) to the annual value of the Falkland Islands contributory old age pension at the married man's rate payable as at the beginning of the year of assessment in question.

(2) In computing the chargeable income for a year of assessment of any individual who is not entitled to a deduction under subsection (1) in making that computation, who proves that at any time within the year immediately preceding the year of assessment he was of the age of 60 years or upwards, a deduction shall be made of an amount equal (whether or not he actually receives the same) to the annual value of the Falkland Islands contributory old age pension at the single person's rate payable as at the beginning of that year.

*Additional allowance in  
respect of children.*

18.—(1) In ascertaining the chargeable income of any person for any year of assessment—

- (a) any individual who was not throughout the year preceding the year of assessment either married and living with his spouse or wholly maintaining his spouse; and
- (b) any man who for the whole or any part of the year preceding the year of assessment is married to and living with a wife who is totally incapacitated by physical or mental infirmity throughout the year,

a deduction may be made in accordance with subsection (2) below.

(2) The amount of the deduction to be made under this section for any year of assessment—

- (a) if the person proves that the child was resident with him for the whole of the preceding year, shall be £1,100, and
- (b) if the person proves that the child was resident with him for only part of the preceding year, shall be an amount which bears the same proportion to £1,100 as that part of the year bears to the whole.

(3) An individual is entitled to only one deduction under this section for any year of assessment irrespective of the number of qualifying children resident with him in that year.

(4) An individual shall not be entitled to relief under this section for a year of assessment if during any part of the preceding year he is married and living with his spouse unless the child in respect of whom the relief is claimed is resident with that individual during a part of the preceding year when he is not married and living with his spouse.

(5) Where—

- (a) a man and a woman who are not married to each other live together as husband and wife for the whole or any part of the year preceding the year of assessment, and
  - (b) apart from this subsection each of them would on making a claim be entitled to a deduction under this section,
- neither of them shall be entitled to such a deduction except in respect of the youngest of the children concerned (that is to say, the children in respect of whom either would otherwise be entitled to a deduction).

(6) For the purposes of this section a qualifying child means, in relation to an individual and any year, a child who—

- (a) is born in, or is under the age of 16 years at the commencement of, the year or, being over that age at the commencement of that year, is receiving full-time instruction at any university, college, school or other educational establishment; and
- (b) is a child of the individual or, not being such a child, is born in, or is under the age of 18 years at the commencement of, the year and maintained for the whole or part of that year by the individual at his own expense.

*Provisions  
supplementary to  
section 18.*

19.—(1) In section 18(6)(a) the reference to a child receiving full-time instruction at an educational establishment includes a reference to a child undergoing training by any person ("the employer") for any trade, profession or vocation in such circumstances that the child is required to devote the whole of



his time to the training for a period of not less than two years.

(2) In section 18(6)(b) the reference to a child of an individual includes a reference to a stepchild of his, an illegitimate child of his if he has married the other parent after the child's birth and an adopted child of his if the child was under the age of 18 years when he was adopted.

(3) For the purposes of section 18(6) a child whose birthday falls on 1st January shall be taken to be over the age of 16 at the commencement of the year which begins with his 16th birthday and over the age of 18 at the commencement of the year which begins with his 18th birthday.

(4) Where for any year of assessment two or more individuals are entitled to relief under section 18 in connection with the same child—

(a) the amount of the deduction under that section shall be apportioned between them; and

(b) the deduction to which each of them is entitled under that section shall, subject to subsection (5) below, be equal to so much of that amount as is apportioned to him.

(5) Where for any year of assessment amounts are apportioned to an individual under this section in respect of two or more children, the deduction to which he is entitled for that year under section 18 shall be equal to the sum of those amounts or the amount specified in subsection (2)(a) of that section, whichever is the less.

(6) Any amount required to be apportioned under this section shall be apportioned between the individuals concerned in such proportions as may be agreed between them or, in default of agreement, in proportion to the length of the periods for which the child in question is resident with them respectively in the year preceding the year of assessment; and where the proportions are not so agreed, the apportionment shall be made by the Commissioner.

(7) For the purposes of this section an individual shall not be regarded as entitled to relief under section 18 for any year of assessment in connection with the same child as another individual if there is another child in connection with whom he, and he is alone, is entitled to relief under that section for that year.

*Deceased persons.*

20.—(1) In any case where—

(a) any person dies during the year immediately preceding a year of assessment and such person would but for his death have been chargeable to tax for that year of assessment, or

(b) any person dies during the year of assessment as respects which no assessment has been made on him, or a person dies within 2 years after the expiration of such a year of assessment,

the personal representative of that person shall be liable to and charged with the payment of the tax with which that person would have been chargeable, and shall be answerable for doing all such acts, matters and things as that person would if he were alive be liable to do under this Ordinance.

(2) If, in a case falling within subsection (1)(a)—

(a) the personal representative distribute the deceased's estate before 1st January immediately following the death, and

(b) the rate of tax for the year of assessment has not been fixed

at the date of distribution of the estate,  
the personal representative shall pay the tax at the rate or rates in force at that date.

## CHAPTER II

## CORPORATION TAX

*The charge to corporation tax*

*The charge to  
corporation tax and  
exclusion of income tax.*

21.—(1) Corporation tax shall be charged on income of companies, and the enactments relating to corporation tax shall apply, for any corporation tax year beginning on or after 1st January 1996.

(2) Section 28 applies to determine (amongst other things) the first accounting period for the purposes of corporation tax of any company which is within the charge to income tax immediately before the coming into force of this section.

(3) The provisions of this Ordinance relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—

(a) the company is resident in the Falkland Islands, or

(b) the income is, in the case of a company not so resident, within the chargeable income of the company as defined for the purposes of corporation tax by section 30(2).

(4) Subject to the provisions of the enactments relating to corporation tax, where a company resident in the Falkland Islands receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax).

(5) References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(6) A company shall not be entitled to a repayment of income tax by virtue of subsection (2) above or to set off any amount of income tax under subsection (4) above except on a claim made in that behalf and effect shall also be given to any other exemption from income tax conferred by the corporation tax legislation which calls for repayment of tax by means of a claim.

*Basis of assessments,  
and chargeable income.*

22.—(1) Except as otherwise provided by this Ordinance, corporation tax for any corporation tax year shall be charged on a company on the full amount of its income for that year, wherever the income arises and whether or not it is received in or transmitted to the Falkland Islands, without any other deduction than is authorized by this Ordinance.

(2) The amount of a company's income for a corporation tax year shall be determined by reference to accounting periods of the company and where an accounting period of a company falls in more than one corporation tax year, the

amount chargeable shall, where necessary and after making any deduction authorized by this Ordinance, be apportioned between those years.

(3) A company shall be chargeable to corporation tax on income accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the income accrued to it directly; and a company shall be chargeable to corporation tax on income arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on income accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those income.

*Computation of income:  
application of income  
tax principles.*

23.—(1) Except as otherwise provided by this Ordinance, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include so much of any enactment as makes special provision for individuals in relation to matters referred to in subsection (1) above, and in particular does not include sections 12 to 21 of this Ordinance.

(3) Without prejudice to the generality of subsection (1) above, any enactment which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(4) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax—

(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the enactments relating to corporation tax, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose, references in any enactment applying to both taxes to a relief from or charge to income tax, or to a specified enactment relating to income tax, shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding enactment relating to corporation tax.

*Accounting periods.*

24.—(1) This section has effect in relation to corporation tax for the purpose of determining when an accounting period of a company begins and ends,

and has effect subject to section 28.

(2) An accounting period of a company begins, unless the Commissioner otherwise approves, whenever—

(a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the Falkland Islands or acquiring a source of income, or otherwise; or

(b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for the purposes of corporation tax on the occurrence of the first of the following—

(a) the expiration of 12 months from the beginning of the accounting period;

(b) an accounting date of the company or the end of any period for which the company does not make up accounts;

(c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;

(d) the company beginning or ceasing to be resident in the Falkland Islands;

(e) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of corporation tax a company resident in the Falkland Islands, if not otherwise within the charge to corporation tax, comes within the charge to corporation tax at the time when it commences to carry on business.

(5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) shall apply with reference to the accounting date of such one of the trades as the Commissioner may determine.

(6) Notwithstanding anything in subsections (1) to (5) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up and thereafter, subject to section 26, an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

(7) For the purposes of subsection (6), a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding-up petition if no such resolution has previously been passed and a winding-up order is made on the petition, or the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act 1948 in its application to the Falkland Islands.

Rates of corporation tax  
and time for payment  
of tax.

25.—(1) The chargeable income of a company shall be charged to tax at the following rates—

(a) in the case of a company trading through a branch or agency in the Falkland Islands, on its chargeable income computed in accordance with section 30, at the rate of 32.5 per cent; and

(b) in the case of any other company—

(i) on any part of its income which the company pays to any person not ordinarily resident or company not resident in the Falkland Islands, at the rate of 32.5 per cent; and

(ii) on all other income, whether distributed or undistributed, at the rate of 25 per cent.

(2) Subject to section 28, corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of 8 months from the end of that accounting period (whether or not the tax has been assessed).

*Tax on company in liquidation.*

26.—(1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsection (3) below, corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed for the penultimate year by an Ordinance passed before the completion of the winding-up.

(3) If, before the affairs of the company are completely wound up, the rate mentioned in subsection (2) above has been fixed for the final year, that subsection shall have effect in relation to that rate as if for the references to the penultimate year there were substituted references to the final year.

(4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.

(5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 24(6).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 24(6) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.

(7) Where the winding-up commenced before the company's final year, subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

*Filing of accounts etc.*

27.—(1) Subject to section 28, a company which is chargeable to corporation tax for any corporation tax year by reference to an accounting period shall deliver to the Commissioner the accounts of the company for the period of account which is or includes whole or any part of that accounting period within 9 months of the end of that period of account or such longer period as the Commissioner may allow.

(2) The reference in subsection (1) above to the accounts of a company—

(a) if the company is required by the Companies Act 1948 as it applies in the Falkland Islands or by the Companies Act 1985 (whether as it applies in the United Kingdom or elsewhere) to prepare accounts for that period of account, is a reference to those accounts together with any documents annexed to those accounts;

(b) in any other case, is a reference to accounts which give a true and fair view of the company's affairs and its profit and loss for that period of account.

(3) The Commissioner may, if he thinks fit, extend the period for delivery of accounts by any company.

(4) The Commissioner may by notice require a company to submit such other information as may be specified in the notice, and the company shall comply with the notice within 60 days of the date of service of the notice.

(5) Subject to the provisions of this Ordinance, a company shall make any claim, election or disclaimer under or for the purposes of this Ordinance relating to the company's liability to corporation tax for any period by notice delivered to the Commissioner together with the accounts of the company referred to in subsection (1) above, or by notice delivered later which shall include any necessary amendments to the accounts, but (notwithstanding any other provision of this Ordinance) the company may not in any case make such a claim, election or disclaimer after an assessment for that period has been made except with the consent of the Commissioner.

*Transitional provisions  
for companies within  
charge to income tax  
before 1.1.96.*

28.—(1) This section applies in relation to any company which is within the charge to income tax for the year of assessment 1996 in respect of the income of a period ending on an accounting date of the company falling in the year of assessment 1995.

(2) In any case where a company is within the charge to income tax for the year of assessment 1996, the company's first accounting period for the purposes of corporation tax shall begin at the end of the company's last accounting period as respects which the company was within the charge to income tax for that year (notwithstanding that the accounting period begins before 1st January 1996), and an accounting period of the company beginning in 1995 shall not end by virtue only of the company's coming within the charge to corporation tax.

(3) In relation to the year 1995, if the company has more than one accounting period ending in the year 1995, the company shall be within the charge to corporation tax for the corporation tax year 1996 in respect of each such accounting period other than the first.

(4) In relation to any company to which this section applies—

(a) corporation tax charged on the income for an accounting period ending in the corporation tax year 1996 (or if subsection (2) above applies, ending in 1995) shall be due and payable on the day following the expiry of the period of 8 months following the end of that year or the day found under section 25(2), whichever is the later;

(b) corporation tax charged on the income of an accounting period ending in the corporation tax year 1997 shall be

due and payable on the day following the expiry of the period of 7 months following the end of that year or the day found under section 25(2), whichever is the later;

(c) corporation tax charged on the income of an accounting period ending in the corporation tax year 1998 shall be due and payable on the day following the expiry of the period of 6 months following the end of that year or the day found under section 25(2), whichever is the later;

and so on for subsequent accounting periods, subject to subsection (5).

(5) Subsection (4) shall not apply in relation to the company for determining the day for payment of tax charged on the income of an accounting period if the day as found under that subsection is the same as that found under section 25(2), or as respects any later period.

(6) Any reference in this Ordinance (however expressed) to the requirements of section 25 as to the time within which corporation tax is due and payable includes, where appropriate, a reference to the requirements of subsection (4) above.

(7) A company to which this section applies shall not be in breach of section 27(1) if it delivers the accounts required by that section—

(a) where the period of account in question is the company's first as respects which it is within the charge to corporation tax, before the expiry of the period of 18 months beginning with the end of that period;

(b) where the period of account in question is the company's second as respects which it is within the charge to corporation tax, before the expiry of the period of 12 months beginning with the end of that period.

(8) In any case where subsection (7) above applies the Commissioner may, if he thinks fit, extend the period within which the company is required by that subsection to deliver its accounts.

(9) Any reference in this Ordinance (however expressed) to the requirements of section 27 as to the time within which accounts are to be delivered includes, where appropriate, a reference to the requirements of subsection (7) above (read with subsection (8)).

*Interest on tax paid late, and penalties for late filing of accounts etc. and late payment of tax.*

29.—(1) Interest shall be due on any corporation tax (including ACT) remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(2) A company which does not deliver its accounts for an accounting period within the time allowed by section 27 ("the due time") shall be liable—

(a) if the accounts are delivered not more than 3 months after the due time, to a penalty of £100;

(b) if the accounts are delivered more than 3 months after the due time, to a penalty of £200;

(c) if the accounts are delivered more than 6 months but not more than 12 months after the due time and any corporation tax for the period is unpaid at the time immediately before the accounts are delivered, to a penalty (in addition to any other penalty) equal to 10 per cent. of that unpaid tax;

(d) if the accounts are delivered more than 12 months after the due time and any corporation tax for the period is unpaid on the day immediately following the end of that 12 month period, to a penalty (in addition to any other penalty) equal to 20 per cent. of that unpaid tax.

(3) In any case where a company does not deliver its accounts within the due time for any 3 consecutive accounting periods, subsection (2) above shall apply as respects the third accounting period—

(a) with the substitution in paragraph (a) of "£500" for "£100", and

(b) with the substitution in paragraph (b) of "£1,000" for "£200".

(4) Any penalty to which a company may be liable under subsection (2) above is in addition to any liability to which the company may also be subject under subsection (1) above as respects the payment of interest on tax remaining unpaid after the date on which it is due.

(5) Any company which fails to comply with a notice under section 27(4) shall be liable—

(a) if the company is not more than 3 months late in complying with the requirements of section 27(4), to a penalty of £100;

(b) in any other case, to a penalty of £200.

*Companies not resident in Falkland Islands.*

30.—(1) A company not resident in the Falkland Islands shall not be within the charge to corporation tax unless it carries on a business in the Falkland Islands through a branch or agency but, if it does so, it shall, subject to any exceptions provided for by the enactments relating to corporation tax, be chargeable to corporation tax on all its chargeable income wherever arising.

(2) For purposes of corporation tax the chargeable income of a company not resident in the Falkland Islands but carrying on a business there through a branch or agency shall be any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this subsection shall not include distributions received from companies resident in the Falkland Islands).

### CHAPTER III

#### ADVANCE CORPORATION TAX, FRANKED INVESTMENT INCOME AND TAX CREDITS

##### *Advance corporation tax and franked investment income*

*ACT and qualifying distributions.*

31.—(1) Where a company resident in the Falkland Islands makes a distribution in an accounting period as respects which the company is within the charge to corporation tax it shall be liable to pay an amount of corporation tax ("ACT") in accordance with subsection (2) below.

(2) Subject to section 34, ACT shall be payable on an amount equal to the amount or value of the distribution, and shall be so payable at a rate which shall be fixed by the fraction—



$$\frac{I}{100-I}$$

where I is the percentage at which income tax at the lower rate is charged for the year of assessment which coincides with that corporation tax year.

(3) The provisions of this Ordinance as to the charge, calculation and payment of corporation tax (including provisions conferring any exemption) shall not be construed as affecting the charge, calculation or payment of ACT, and the enactments relating to corporation tax shall apply for the purposes of ACT whether or not they are for the time being applicable for the purposes of corporation tax other than ACT.

*Interpretation of  
Chapter III.*

32.—(1) In this Chapter—

"ACT" means advance corporation tax, that is to say, corporation tax payable in accordance with section 31;

"franked investment income" means income of a company resident in the Falkland Islands which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);

"franked payment" means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made;

"surplus ACT" has the meaning given by section 33(2);

"surplus of franked investment income" means any such excess as is mentioned in section 34(3) (calculated without regard to franked investment income which by virtue of subsection (4) of that section cannot be used to frank distributions);

"tax credit" means a tax credit under section 46;

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

(2) References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 34(4).

(4) References in this Chapter to an amount of income on which corporation tax falls finally to be borne are references to the amount of those income after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those income, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

*Set-off of ACT against liability to corporation tax.*

33.—(1) ACT paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(2) Where in the case of any accounting period of a company there is an amount of surplus ACT, the company may, within 2 years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in any of its accounting periods beginning in the 6 years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be required, be repaid accordingly.

In this subsection "surplus ACT", in relation to any accounting period of a company, means ACT which cannot be set against the company's liability to corporation tax for that period because the company has no income charged to corporation tax for that period or because of section 130(3).

(3) Where in the case of any accounting period of a company there is an amount of surplus ACT which has not been dealt with under subsection (2) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in the next accounting period.

(4) Effect shall be given to subsections (1) and (3) above as if on a claim in that behalf by the company and, for that purpose, accounts or other information submitted to the Commissioner in pursuance of section 27 containing particulars of ACT or surplus ACT which falls to be dealt with under those subsections shall be treated as a claim.

(5) For the purposes of this section the income of a company charged to corporation tax for any period shall be taken to be the amount of its income for that period on which corporation tax falls finally to be borne.

(6) Nothing in subsection (2) above shall be construed as authorising any amount of ACT to be set off against a company's liability to income tax.

(7) This section has effect subject to the following provisions of this Chapter.

*Calculation of ACT where company receives franked investment income.*

34.—(1) Where in any accounting period a company receives franked investment income the company shall not be liable to pay ACT in respect of qualifying distributions made by it in that period unless the amount of the franked payments made by it in that period exceeds the amount of that income.

(2) If in an accounting period there is such an excess, ACT shall be payable on an amount which, when the ACT payable thereon is added to it, is equal to the excess.

(3) If the amount of franked investment income received by a company in an accounting period exceeds the amount of the franked payments made by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as franked investment income received by the company in that period.

(4) Franked investment income shall not be used to frank distributions of a company (that is to say, used in accordance with this Chapter so as to relieve the company from, or obtain repayment of, ACT for which the company would otherwise be liable) if the amount of the tax credit comprised in it has been paid under section 46(2); and no payment shall be made under that subsection in respect of the tax credit comprised in franked investment income which has been so used.

*Set-off of losses against surplus of franked investment income.*

35.—(1) Where a company has a surplus of franked investment income for any accounting period—

(a) the company may, on making a claim for the purpose, require that the amount of the surplus shall for the purpose of setting off trading losses against income under section 108(1) be treated as if it were a like amount of income chargeable to corporation tax; and

(b) this section shall apply to reduce the amount of the surplus for purposes of section 34(3); and

(c) the company shall be entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

(2) Where a company makes a claim under this section for any accounting period, the reduction falling to be made in income of that accounting period shall be made, as far as may be, in income chargeable to corporation tax rather than in the amount treated as income so chargeable under this section.

(3) Where—

(a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a business; and

(b) in a later accounting period the franked payments made by the company exceed its franked investment income;

then (unless the company has ceased to carry on the business or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 108(2), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of—

(i) the excess referred to in paragraph (b) above; and

(ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier accounting period.

(4) A claim under this section shall be made within the time limit that would, by virtue of section 108(6), be applicable in the case of a claim under section 108(1) in respect of the losses in question.

(5) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period; and for the purposes of subsection (3) above franked investment income which by virtue of section 34(4) cannot be used to frank distributions of a company shall be left out of account.

*Set-off of loss brought forward.*

36.—(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 35, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 108(2); and the following subsections shall have effect where the company makes a claim under this section for any accounting period.

(2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.

(3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(4) Section 35(3) shall apply in relation to the claim.

(5) A claim under this section shall be made before the expiry of the period of 6 years from the end of the accounting period for which the claim is made.

(6) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

*Further provisions relating to claims under section 35 or 36.*

37.—(1) Without prejudice to section 35(5) or 36(6), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.

(2) Where in consequence of a claim under section 35 or 36 for any accounting period a company is entitled to payment of a sum in respect of tax credit—

- (a) an amount equal to that sum shall be deducted from any ACT which apart from this subsection would fall, under section 33, to be set against the company's liability to corporation tax for the next accounting period; and
- (b) if that amount exceeds that ACT or there is no such ACT, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

*Calculation etc. of ACT on change of ownership of company.*

38.—(1) This section applies if—

- (a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or
- (b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Sections 33, 34 and 40 to 45 shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the income of the company charged to corporation tax for the accounting period (as defined in section 33(5)) shall be apportioned between those parts.

(3) ACT paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall not be treated under section 33(3) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(4) Advance corporation tax paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall not be treated under section 33(2) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(5) Sections 109(4), (7) and (8) and 110 shall apply also for the purposes of this section and as if in section 110(3) the reference to the benefit of the losses were a reference to the benefit of ACT.

*Charge of ACT at previous rate until new rate fixed, and changes of rate.*

39.—(1) If, at the beginning of any corporation tax year, the rate at which income tax is to be charged for the appropriate year of assessment has not been determined then, subject to subsection (2) below, ACT in respect of distributions made in that corporation tax year shall be payable and may be assessed according to the rate of ACT fixed for the previous corporation tax year.

(2) Subsection (1) above does not apply with respect to any distribution made in a corporation tax year after—

- (a) the date on which the income tax rate or rates for the appropriate year of assessment is or are fixed; or
- (b) 5th August in that year, whichever is the earlier.

(3) If a rate of ACT for any corporation tax year is not fixed, under section 31(2) or any other enactment, or if ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

(4) In subsections (1) and (2) above "the appropriate year of assessment", in relation to a corporation tax year, means the year of assessment which coincides with that corporation tax year.

(5) Where the rate of advance corporation tax for any corporation tax year differs from the rate last fixed—

- (a) any advance corporation tax payable in respect of a distribution made in that year on or before 5th April shall be calculated according to the rate last fixed, and this Chapter and section 46 shall accordingly have effect in relation to the distribution as if the rate for that year were the same as the rate last fixed;
- (b) if a distribution is made on or before 5th April in an

accounting period which extends beyond 5th April in that year and another distribution is made, or franked investment income is received, in that period after that date, then—

(i) the company's liability for advance corporation tax,

(ii) the amount of any such tax, and

(iii) the amount of any surplus of franked investment income,

for that accounting period, shall be determined under sections 34 and 40 to 45 as if the part of the accounting period ending with, and the part of it beginning after that date were separate accounting periods.

*Payment of ACT.*

40.—(1) Subject to the following provisions of this section and sections 41 to 45, where a company makes a distribution in respect of which it is liable to pay ACT, the ACT shall be due and payable 30 days after the end of the calendar month in which the distribution is made, whether or not the ACT has been assessed, and the following provisions of this section shall have effect to determine the amount of ACT payable.

(2) Where subsection (1) above applies and the company has in that month made a franked payment, the company shall make a return to the Commissioner before the expiry of the period of 30 days following that month of—

(a) the franked payments made by it in that month, and

(b) any franked investment income received by it in that month, and ACT shall be payable by the company for that month on an amount equal to the amount of the franked payments made in that month less the amount of any franked investment income received by it in that month.

(3) For the purposes of subsection (2) above the company may include in the amount of the franked investment income received by it in the month any franked investment income not previously set against franked payments made by the company before the beginning of the month in question, but this subsection shall not be taken to permit a company to include in any return under this section any payment made or income received before the company came within the charge to corporation tax.

(4) Subject to section 44(2), ACT in respect of franked payments required to be included in a return under this section shall be due at the time by which the return for that period is to be made, and ACT so due shall be payable without the making of any assessment.

(5) ACT which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.

(6) If it appears to the Commissioner that there is a franked payment which ought to have been and has not been included in a return, or if the Commissioner is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any ACT due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

*Receipt of franked investment income after payment of ACT.*

41.—(1) This section shall have effect where—

(a) a return has been made of franked payments made in any return period falling within an accounting period and ACT has been paid in respect of those payments; and

(b) the company receives franked investment income after the end of the return period but before the end of the accounting period.

(2) The company shall make a return under section 40 for the return period in which the franked investment income is received whether or not it has made any franked payments in that period, and, subject to subsection (3) below, shall be entitled to repayment of any ACT paid (and not repaid) in respect of franked payments made in the accounting period in question.

(3) If no franked payments were made by the company in the return period for which a return is made by virtue of subsection (2) above the amount of the repayment shall not exceed the amount of the tax credit comprised in the franked investment income received; and in any other case the repayment shall not exceed the amount of the tax credit comprised in so much of that franked investment income, if any, as exceeds the amount of the franked payments made in that return period.

*Claims for set-off in respect of franked investment income received by a company.*

42.—(1) Where under section 40 or 41 franked investment income received by a company falls to be taken into account in determining—

(a) whether ACT is payable or repayable, or

(b) the amount of ACT which is payable or repayable,

the inclusion of that franked investment income in the appropriate return shall be treated as a claim by the company to have it so taken into account, and any such claim shall be supported by such evidence as the Commissioner may reasonably require.

(2) Where a claim has been made under subsection (1) above proceedings for collecting ACT which would fall to be discharged if the claim were allowed shall not be instituted pending the final determination of the claim, but this subsection shall not affect the date when the ACT is due.

(3) When the claim is finally determined any ACT underpaid in consequence of subsection (2) above shall be paid.

(4) Where proceedings are instituted for collecting ACT assessed, or interest on ACT assessed, under any provision of this Chapter, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the ACT charged by the assessment or of interest thereon, until the claim has been finally determined.

(5) When the claim is finally determined any ACT overpaid in consequence of subsection (4) above shall be repaid.

(6) References in this section to proceedings for the collection of ACT include references to proceedings by way of distraint for ACT.

*Transitional provisions  
for companies within  
charge to tax on  
commencement.*

43. ACT payable in respect of any distribution made by a company before 1st January 1996 in an accounting period as respects which the company is within the charge to corporation tax shall be due and payable on 1st February 1996 and section 40(2) shall apply in relation to any franked payment made by a company in any such accounting period to require the return relating to that payment to be submitted on or before 1st February 1996.

*Distributions which are  
not payments and  
payments of uncertain  
nature.*

44.—(1) This section applies to—

- (a) any distribution which is not a payment; and
- (b) any payment in respect of which the company making it would be liable to pay ACT if, but only if, it amounted to or involved a distribution and it is not in the circumstances clear whether or how far it does so.

(2) No amount shall be shown in respect of the distribution or payment under section 40(2), and section 40(4) shall not apply to the payment of ACT in respect of the distribution.

(3) Particulars of the distribution or payment shall be given separately in the return for the return period in which it is made and if, apart from that distribution or payment, no franked payment is made in that period, a return containing those particulars shall be made for that period under section 40.

(4) Any ACT payable in respect of the distribution or payment shall be assessed on the company and shall be so assessed without regard to any franked investment income received by the company but—

- (a) relief shall be given from the ACT assessed (by way of discharge) to the extent, if any, to which that ACT exceeds the ACT that would have been payable if the amount of the franked payment comprising the distribution or payment, calculated on its amount or value shown in the assessment, had been included in the return under section 40(2) and the ACT had been calculated in accordance with section 40(2); and

(a) for the purposes of the application of section 40(3) to any subsequent return period, the amount of that franked payment shall be taken to be the amount so calculated.

*Assessments and due  
date of ACT.*

45.—(1) The enactments relating to corporation tax which make provision as to the time within which an assessment may be made, shall, so far as they refer or relate to the accounting period for which an assessment is made, or the accounting period to which an assessment relates, apply in relation to an assessment to ACT notwithstanding that the assessment may relate to a month or other period which is not an accounting period.

(2) ACT assessed on a company shall be due within 14 days after the issue of the notice of assessment (unless due earlier under section 40(4)).

(3) Subsection (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when ACT is due under section 40(4).

(4) On the determination of an appeal against an assessment, any ACT overpaid shall be repaid.



(5) Where more than one amount of ACT is assessable on a company, it may all be included in one assessment if the ACT so included is all due on the same date (whether or not it is all assessable under the same provision).

*Tax credits and Falkland Islands company distributions*

*Tax credits for certain recipients of qualifying distributions.*

46.—(1) Where a company resident in the Falkland Islands makes a distribution and the person receiving the distribution is another such company or a person resident in the Falkland Islands, not being a company, the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made.

(2) For the purposes of this Ordinance any such distribution in respect of which a person is entitled to a tax credit shall be treated as representing income equal to the aggregate of the amount of the distribution and the amount of the credit, and income tax shall be charged on that aggregate in accordance with the provisions of this Ordinance.

(3) Subject to section 34(4), a company resident in the Falkland Islands which is entitled to a tax credit in respect of a distribution may claim to have the amount of the credit paid to it if—

- (a) the company is wholly exempt from corporation tax or is only not exempt in respect of trading income; or
- (b) the distribution is one in relation to which express exemption is given, whether specifically or by virtue of a more general exemption from tax, under any provision of this Ordinance.

(4) A person, not being a company resident in the Falkland Islands, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income for the year of assessment in which the distribution is made and where the credit exceeds that income tax, to have the excess paid to him.

(5) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of this Ordinance is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether he is entitled to a tax credit in respect of it shall be determined by reference to where he, and not the actual recipient, is resident).

*Falkland Island company distributions not chargeable to corporation tax.*

47. Except as otherwise provided by this Ordinance, corporation tax shall not be chargeable on distributions of a company resident in the Falkland Islands nor shall any such distribution be taken into account in computing income for corporation tax.

*Tax credits for non-residents.*

48.—(1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part II by virtue of section 152(3) in respect of any year of assessment shall be entitled to a tax credit in respect of any qualifying distribution received by him in that year to the same extent as if he were resident in the Falkland Islands.

(2) Where a distribution is income of, or of the government of, any sovereign power or of any international organisation, that power, government or

organisation shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 46(1).

In this subsection "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Governor stating any fact relevant to that question shall be conclusive evidence of that fact.

*Taxation of certain recipients of distributions.*

49. Where in any year of assessment the income of any person, not being a company resident in the Falkland Islands, includes a distribution in respect of which that person is not entitled to a tax credit—

- (a) an assessment shall not be made on that person in respect of income tax at the lower rate on the amount or value of the distribution;
- (b) that person's liability under any assessment made in respect of income tax at a higher rate on the amount or value of the distribution or on any part of the distribution shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at that higher rate;
- (c) the amount or value of the distribution shall be treated as income which is not chargeable at the lower rate.

*Information relating to distributions.*

50.—(1) A company which makes a distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

*Taxation of dividends prior to introduction of corporation tax.*

51.—(1) Where a company registered in the Falkland Islands pays a dividend to a shareholder in a year of assessment and section 31 does not apply in relation to that dividend, the shareholder shall be entitled to a tax credit equal to one-quarter of the dividend in relation to that year of assessment, but no credit shall be allowed unless the income of the company out of which the dividend is paid suffered tax under the provisions of this Ordinance.

(2) In computing the shareholder's chargeable income for tax purposes the amount of the dividend and the tax credit shall be added to the other income of the shareholder.

(3) There shall be deducted from the amount of tax assessed on the shareholder for the year of assessment in which the dividend was paid an amount equal to the amount of the tax credit and, should the net amount of tax then payable be less than the amount of the tax credit, the difference shall be refunded to him.

CHAPTER IV  
MISCELLANEOUS PROVISIONS

*Exemptions.*

- 52.—(1) There shall be exempt from tax—
- (a) the emoluments of the Governor;
  - (b) the income of any local authority in so far as such income is not derived from a business carried on by the local authority;
  - (c) the income of any ecclesiastical, charitable or educational institution or trust of a public character;
  - (d) the emoluments payable to members of the permanent Consular Services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
  - (e) any emoluments paid out of United Kingdom Government funds by way of remuneration to—
    - (i) any person serving in Her Majesty's Armed Forces;
    - (ii) any person in the service of Her Majesty in a civil capacity under Her Government in the United Kingdom;
  - (f) wound and disability pensions granted to members of Her Majesty's Armed Forces;
  - (g) gratuities granted to members of Her Majesty's Armed Forces in respect of war services;
  - (h) in so far as relates to income received for the provision of services connected with the defence of the Falkland Islands—
    - (i) by any person being an institution, corporation or contractor to Her Majesty's Government in the United Kingdom notified to the Commissioner by the Governor as being entitled to exemption under this paragraph, or
    - (ii) by every employee of an institution, corporation or contractor so notified but only so far as it relates to income received by him by reason of employment in the provision of such services;
  - (i) the income of any statutory or registered friendly society;
  - (j) any grant made from the public revenue of the Falkland Islands in respect of any person under the age of 26 years, who is receiving full-time instruction at a recognized educational establishment outside the Falkland Islands;
  - (k) the income of the Falkland Islands Development Corporation or any company wholly owned by the Falkland Islands Development Corporation;
  - (l) interest receivable in respect of any funds deposited in an interest-bearing account maintained at a bank or branch of a bank in the Falkland Islands or with a registered co-operative society;
  - (m) any allowance paid to any elected member of the Legislative Council under the provisions of the Elected Councillors' Allowances Ordinance 1990 by reference to an annual rate;
  - (n) any allowance paid to a public officer in addition to his salary which the Commissioner is satisfied is paid to that

public officer in order to enable him to meet the increased expenses incurred or to be incurred by him and arising wholly or mainly by virtue of the fact that he is required to perform the duties of his office outside the Falkland Islands;

- (o) allowances paid under the Family Allowances Ordinance 1960 or any allowances substituted therefor;
- (p) maintenance payments other than any maintenance payment falling within section 7(1)(h);
- (q) any sum paid by way of bounty under the Falkland Islands Defence Force Ordinance 1991 to a member of the Falkland Islands Defence Force.

(2) Subsection (1)(c) above does not apply to any income derived by any such institution or trust as is mentioned in that paragraph from a business carried on by it unless the profits are applied solely to the purposes of the institution or trust and either—

- (a) the business is carried on in the course of the actual carrying out of a primary purpose of the institution or trust; or
- (b) the people working in the business are wholly or mainly the beneficiaries of the institution or trust.

(3) Paragraph (1)(h)(ii) above only applies in relation to an employee if at the time of his recruitment to the employment in question he was neither domiciled nor ordinarily resident nor resident in the Falkland Islands.

(4) The Governor may by proclamation published in the *Gazette* provide that interest payable on any loan charged on the public revenue of the Falkland Islands shall be exempt from tax, either generally or only in respect of interest payable to persons not resident in the Falkland Islands; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

(5) Except where with the context otherwise requires, nothing in this section shall be construed as exempting in the hands of the recipients any dividends, interest, bonuses, salaries or wages paid wholly or partly out of income which is exempt from tax under subsection (1).

*Other allowable deductions.*

53.—(1) In computing a person's chargeable income for any period there shall be deducted from the person's income all outgoings and expenses wholly and exclusively incurred by him during that period in the production of the income, including—

- (a) sums payable by him by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
  - (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- and any other deduction prescribed by rules made under this Ordinance.

(2) An amount shall not be deducted under subsection (1) if it is deductible under section 89(1).

*Deductions not allowed.*

54. Subject to any contrary provision of this Ordinance, no deduction in respect of—

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) interest paid under section 10(2) or 30(1) and any civil penalty paid under this Ordinance;
- (h) any amounts paid or payable in respect of tax imposed in a country or territory outside the Falkland Islands (but without prejudice to Part VII);
- (i) any amount paid or payable under section 5 of the Medical Services Levy Ordinance 1979;

shall be allowed in computing a person's chargeable income.

*Partnerships.*

55.—(1) In computing for any chargeable period the chargeable income of any person carrying on a business in partnership, his income from the partnership for any period shall be deemed to be the share in the income of the partnership to which he was entitled for that period (such income being ascertained in accordance with the provisions of this Ordinance).

(2) The partner's income from a partnership for a chargeable period shall be included—

- (a) in the case of a corporate partner, in the company accounts delivered in accordance with section 27 for that period;  
or
- (b) in any other case, in his return of income for that period.

(3) The precedent partner shall, when required by the Commissioner, make a return to the Commissioner—

- (a) of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and
- (b) of the names and addresses of the other partners in the firm together with the amount of the share of the partnership income to which each partner was entitled for period to which the return relates.

(4) In this section "precedent partner" means in relation to any partnership, the partner who is resident or ordinarily resident in the Falkland Islands and—

- (a) who is first named in the agreement of partnership; or
- (b) if there is no agreement, whose name is or is the first in the usual name of the partnership;

but for the purposes of this definition any partner who would apart from this provision be the precedent partner shall be disregarded if he is not an active partner.

(5) In any case where none of the partners is resident or ordinarily resident in the Falkland Islands, the Commissioner may require the return to be made by any attorney, agent, manager or factor of the partnership who is resident in the Falkland Islands.

(6) Any person who fails to comply with a requirement of the Commissioner under subsection (3) or (5) above shall be liable—

(a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;

(b) in any other case, to a penalty of £200.

*Royalties.*

56.—(1) Notwithstanding anything to the contrary in any other provision of this Ordinance, royalties arising in the Falkland Islands and paid to a person not resident in the Falkland Islands shall be subject to tax at the rate of 10 per cent. of the gross amount of the royalties.

(2) For the purpose of this section "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and rights to variable or fixed payments as consideration for the working of or the right to work mineral or mineral oil deposits sources and other natural resources.

(3) Tax charged under this section shall be payable by and recoverable from the person paying the royalty and shall be paid to the Commissioner within 30 days of the date of payment of the royalty.

(4) Interest shall be due on any such tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(5) Any person who is liable to make a payment in accordance with subsection (3) shall within 30 days of the date on which the royalty is paid give notice to the Commissioner that he is so liable, and the Commissioner may prescribe the form by which the notice is to be given.

(6) Any person who fails to comply with subsection (5) above commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

PART III  
LIFE ASSURANCE, PENSION SCHEMES, ANNUITIES ETC  
CHAPTER I  
GENERAL PROVISIONS

*"Approved schemes"  
and other definitions.*

57.—(1) In this Part, except in so far as the context otherwise requires—  
"approved"—

(a) in relation to a scheme, means approved by the Commissioner in accordance with this Part; and

(b) in relation to arrangements, means made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme;

but does not refer to cases in which approval has been withdrawn;

"employee" includes—

(a) in relation to a company, any officer or director of the company and any other person taking part in the management of the affairs of the company, and

(b) past and future employees,  
and related expressions shall be construed accordingly;

"member", in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

"pension" includes an annuity;

"personal pension arrangements" means arrangements made by an individual in accordance with a personal pension scheme;

"personal pension scheme" means a scheme whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme;

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, but does not include any benefit payable solely on the disablement or death of the employee by accident occurring during his employment;

"retirement benefits scheme" means a scheme for the provision of relevant benefits;

"scheme" includes a deed, agreement, series of agreements or other arrangements providing for relevant benefits for or in respect of one or more employees;

"administrator", in relation to any scheme, means the person resident in the Falkland Islands who is responsible for the management of the scheme.

(2) For the purposes of this Part the cash equivalent of a benefit in kind is—

(a) the amount which would be the annual value of the benefit under section 7 if it were chargeable under that section,  
or

(b) if that benefit is not a prescribed benefit for the purposes of

section 7, such amount as, in the opinion of the Commissioner, may fairly and reasonably be taken to be the cash equivalent of the benefit,

treating, in either case, any sum made good by the recipient as made good by the employee.

(3) In this Part any reference to the provision for employees of an employer of relevant benefits under a scheme includes a reference to provision made in pursuance of a contract made by the scheme administrator or the employer or the employee with another person, and any reference to payments under a scheme includes a reference to payments in accordance with such a contract.

(4) An application for approval under this Part shall be made in such form and manner and within such time limits as the Commissioner may prescribe, and shall be accompanied by such information as may be so prescribed.

*Meaning of "relevant earnings".*

58.—(1) References in this Part to relevant earnings shall be construed in accordance with this section.

(2) In relation to premiums or contributions paid by an individual under a policy of life assurance or personal pension arrangements, "relevant earnings" means—

(a) any earned income (including any amount which is deemed to be earned income) of his which is chargeable to tax for the year of assessment in question, less

(b) the amount of any deductions, other than a deduction under this Part or under Chapter I of Part II in respect of the individual or the individual's wife, which fall to be made from that earned income in computing for the purposes of income tax his chargeable income for that year;

but does not include any relevant benefit or any amount paid on account of a person's disablement.

(3) In relation to contributions made by an employee or his employer to a retirement benefits scheme, "relevant earnings" means the earnings of that employee from his employment with that employer.

(4) In the case of a married couple —

(a) if the husband makes a claim under section 59 or 61 in respect of any payment made by him, then, whether or not an election for separate assessments is in force under section 13(4), in computing his relevant earnings for the purposes of that claim, there shall be disregarded any earned income of the wife;

(b) if the wife makes any payment within section 59(1) or 61(1) or makes a contribution to a scheme within section 60(1)—

(i) if such an election is not in force, the husband may claim relief in respect of that payment but for this purpose the wife's relevant earnings shall be deemed to be his (and any earned income of his shall be disregarded);

(ii) if such an election is in force, the wife may claim relief in respect of the payment (by reference to her own relevant earnings).



(5) Sums received by an individual on account of the termination of an employment or the alteration in any of the terms and conditions of his employment are not income within subsection (2) above.

## CHAPTER II

### TAX RELIEF

#### *Life assurance premiums*

*Deduction in respect of life insurance.*

59.—(1) Any person who pays in any year a premium under a policy of insurance on his own life or on the life of his spouse shall, on a claim being made, be allowed a deduction in computing his chargeable income for the year of assessment following that year of an amount equal to the annual amount of that premium.

(2) A deduction shall be not be allowed under this section in respect of any amount in so far as it exceeds an amount equal to 35 per cent. of that person's relevant earnings.

(3) In any case where a person is entitled to relief under this section and to relief under section 60 or 61, a deduction shall not be allowed under this section in so far as aggregates of the amounts claimed under this section and section 60 or 61 exceeds an amount equal to 35 per cent. of his relevant earnings.

(4) In the case of a married couple where the husband makes more than one claim under this section for the same year of assessment, subsections (3) and (4) above shall apply with any necessary modifications separately in relation to each claim.

#### *Retirement benefit schemes*

*Retirement benefit schemes.*

60.—(1) This section has effect as respects—

- (a) any approved retirement benefit scheme which is shown to the satisfaction of the Commissioner to be established under irrevocable trusts; or
- (b) any other approved retirement benefits scheme as respects which the Commissioner, having regard to any special circumstances, direct that this section shall apply.

(2) In computing an employee's chargeable income for a year of assessment, any contribution paid by him under the scheme in the year preceding that year shall, on a claim, be allowed to be deducted from his relevant earnings.

(3) The amount allowed to be deducted by virtue of subsection (2) above in respect of contributions paid by an employee in any year (whether under a single scheme or under two or more schemes) shall not exceed 20 per cent. of his relevant earnings for that year.

(4) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Commissioner is satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Commissioner is satisfied that, the underwriting commissions are applied for the purposes of the schemes and would, but for this subsection, be chargeable to tax otherwise than as trading income.

(6) Any sum paid by an employer by way of contribution under the scheme shall for the purposes of income tax or corporation tax be allowed to be deducted as an expense incurred in the chargeable period in which the sum is paid.

(7) The amount of an employer's contributions in respect of any employee which may be deducted under subsection (6) above shall not exceed—

(a) in the case of an ordinary annual contribution, 35 per cent. of the employee's relevant earnings for the chargeable period in question;

(b) in the case of any other contribution—

(i) £25,000, or

(ii) 35 per cent. of the aggregate of employee's relevant earnings for that chargeable period and the preceding 6 chargeable periods; whichever is the lower, or such higher amount as the Commissioner may allow.

#### *Personal pension schemes*

##### *Member's contributions.*

61.—(1) Where contributions are paid in any year by an individual under approved personal pension arrangements made by him then, subject to the provisions of this Part—

(a) in computing his chargeable income for the year of assessment following that year an amount equal to the aggregate of those contributions or to so much of that aggregate as does not exceed the maximum permitted deduction for that year shall be deducted from any relevant earnings of his; and

(b) in so far as the amount of the contributions paid in that year (aggregated with any amounts carried forward under this provision from an earlier year) exceeds the maximum permitted deduction for that year, the excess shall be carried forward and treated as if it were a contribution paid by the individual under the arrangements in the next year.

(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year, means an amount equal to 35 per cent. of his relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the individual for that year.

(3) Where relief under this section for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under this section for that or any subsequent year as are appropriate.

(4) In any case where a person is entitled to relief for any year of assessment under this section and to relief under section 60, a deduction shall not be allowed under this section in so far as the aggregate of the amounts claimed under this section and that section exceeds the aggregate of an amount equal to 20 per cent. of his relevant earnings for the purposes of that section and an amount equal to 35 per cent. of his relevant earnings for the purposes of this section less those relevant earnings.

(5) In the case of a married couple where the husband makes more than one claim under this section for the same year of assessment, subsections (3) and (4) above shall apply with any necessary modifications separately in relation to each claim.

(6) Where relief under this section is claimed and allowed for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of this Ordinance for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

*Employer's  
contributions and  
personal pension  
income etc.*

62.—(1) Where contributions are paid by an employer under approved personal pension arrangements made by his employee, those contributions shall not be regarded as remuneration of the employee for the purposes of this Ordinance.

(2) Income derived by a person from investments or deposits held by him for the purposes of an approved personal pension scheme shall be exempt from income tax.

*Carry-forward of relief*

*Carry-forward of relief.*

63.—(1) Where—

- (a) an individual's chargeable income of any year includes relevant earnings from any business or employment carried on or held by him, and
- (b) there is an amount of unused relief for the year of assessment following that year,

relief may be given under this Part up to the amount of the unused relief, in respect of so much of any contributions paid by him under an approved scheme in any of the 6 years following that year as exceeds the amount permitted to be deducted for that year under this Part.

(2) In this section, any reference to an amount of unused relief for any year of assessment is to an amount which could have been deducted from the individual's relevant earnings under this Part if—

- (a) the individual had paid contributions under an approved scheme in the year preceding that year; or
- (b) any such contributions paid by him in that preceding year had been greater.

(3) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.

(4) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than 6 years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment—

- (a) that amount shall not be available for giving relief by virtue of this section for any of the 6 years following that year; but
- (b) the individual may, within the period of 6 months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be given, up to that

amount, in respect of so much of any contributions paid by him under an approved scheme within that period as exceeds the amount permitted to be deducted under this Part from his income for the year in which they are paid; and to the extent to which relief in respect of any contributions is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(5) In this section—

- (a) "a relevant assessment to tax" means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings, and
- (b) "an approved scheme" includes a policy within section 59.

### CHAPTER III CHARGE TO TAX IN CERTAIN CASES *Retirement benefit schemes*

*Non-approved schemes:  
payments by employers.*

64.—(1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme within subsection (2) below, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency)—

- (a) the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for the purposes of income tax to be income of that employee for that year of assessment and assessable to tax accordingly; and
- (b) where the payment is made under such an insurance as is mentioned in section 59, relief, if not otherwise allowable, shall be given to that employee under that section in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance under which the payment is made had been made with him.

(2) Subsection (1) above applies to any retirement benefits scheme other than a scheme for the time being approved for the purposes of this Part or a scheme set up by a government outside the Falkland Islands for the benefit, or primarily for the benefit, of its employees.

(3) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(4) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.

*Non-approved schemes:  
taxation of benefits  
received.*

65.—(1) Where in any chargeable period a person receives a benefit provided under a retirement benefits scheme to which section 64(1) applies, tax shall be charged in accordance with the provisions of this section.

(2) The recipient of the benefit shall be charged to tax for that period in an amount determined in accordance with subsection (3) below.

(3) The amount to be charged to tax is—

- (a) in the case of a cash benefit, the amount received, and
- (b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(4) In any case where the benefit is chargeable to income tax under this section and under another provision of this Ordinance—

- (a) if the amount chargeable to income tax apart from this section is less than the amount which would be chargeable to tax under this section the amount chargeable to tax under this section shall be reduced by the amount chargeable to tax apart from this section;
- (b) if paragraph (a) does not apply, tax shall not be charged under this section in the case of the benefit.

(5) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum—

- (a) which is deemed to be the income of a person by virtue of section 64(1), and
  - (b) in respect of which that person has been assessed to tax;
- and for this purpose the provision of a benefit shall be presumed not to be attributable to the payment of such a sum unless the contrary is shown.

*Repayment of  
employee's  
contributions.*

66.—(1) Subject to the provisions of this section, tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the repayment is made under a scheme which is or has at any time been an approved scheme within section 60.

(2) Where any repayment is chargeable to tax under this section—

- (a) it shall be added to the chargeable income of the employee for the year of assessment following the year in which the payment is made, or
- (b) if the employee elects, amounts equal to the contributions (if any) made in the year of assessment in which the repayment is made and in each of the preceding 6 years shall be added to the income of the employee in each of those years and charged to tax accordingly, and if the repayment exceeds the aggregate of those amounts an amount equal to the excess shall be added to his chargeable income for the year following the year in which the repayment is made.

(3) An election under subsection (2) above may not be made more than 2 years after the end of the year in which the payment is made, and all adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(4) Subsection (1) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an approved scheme within section 60).

(5) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

*Commutation of pension.*

67.—(1) Where a retirement benefits scheme which is or has at any time been an approved scheme contains a rule allowing a payment in commutation of the whole or part of an employee's pension, and any pension is commuted, whether wholly or not, under the rule, income tax shall be charged on the amount by which the sum receivable exceeds one-quarter of the total value as at the time the sum is paid of the benefits to be provided for the employee under the scheme.

(2) Where any amount is chargeable to tax under this section the administrator of the scheme shall be charged to income tax on that amount.

(3) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

(4) In applying subsection (1) above—

- (a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Commissioner in applying section 73; and
- (b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

*Payments out of surplus funds of retirement benefits schemes.*

68.—(1) Any payment made to or for the benefit of an employee or to his personal representatives by way of a return of surplus funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 60 shall be treated as income of that employee for the year in which it is made (whether or not he is the recipient).

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, an amount equal to the cash equivalent of whatever is transferred shall be treated as income of the employee for the year in which the transfer took place.

*Unauthorised payments under retirement benefit schemes to or for employees.*

69.—(1) In any case where—

- (a) a payment is made to or for the benefit of an employee, otherwise than in course of payment of a pension, and
- (b) the payment is made out of funds which are held for the purposes of a retirement benefit scheme which is an approved scheme, and
- (c) the payment is not expressly authorised by the rules of the scheme,

the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) Any payment chargeable to tax under this section shall not be chargeable to tax under section 66 or 67.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

*Payments to employers.*

70.—(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 60 then—

(a) if the scheme relates to a business carried on by the employer, the payment shall be treated for the purposes of the enactments relating to income tax or corporation tax as a receipt of that business receivable when the payment falls due or on the last day on which the business is carried on by the employer, whichever is the earlier;

(b) if the scheme does not relate to such a business, the employer shall be charged to tax on the amount of the payment as the income of the employer.

This subsection shall not apply to a payment which fell due before the scheme became an approved scheme within section 60.

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, the value of whatever is transferred shall be taken to be equal to its cash equivalent.

#### *Personal pension schemes*

##### *Unauthorised payments.*

71.—(1) Where any payment within subsection (2) below is made—

(a) out of funds which are or have been held for the purposes of a personal pension scheme which is or has at any time been approved; and

(b) to or for the benefit of an individual who has made personal pension arrangements in accordance with the scheme, that individual, whether or not he is the recipient of the payment, shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) A payment is within this subsection if—

(a) it is not expressly authorised by the rules of the scheme; or

(b) it is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorised by the rules of the scheme or by the arrangements when the scheme, or as the case may be the arrangements, were last so approved.

(3) This section applies to a transfer of assets or other transfer of money's worth as it applies to a payment, and in relation to such a transfer the reference in subsection (1) above to the amount of the payment shall be read as a reference to the value of the transfer.

##### *Contributions under unapproved personal pension arrangements.*

72. Where contributions are paid by an employer under personal pension arrangements made by his employee then, if those arrangements are not approved arrangements and the contributions are not otherwise chargeable to income tax as income of the employee, the contributions shall be regarded for all the purposes of income tax as emoluments of the employment chargeable to income tax.

#### CHAPTER IV APPROVAL OF SCHEMES *Retirement benefit schemes*

##### *Conditions for approval of retirement benefit schemes.*

73.—(1) Subject to subsections (2) and (3) below, the Commissioner shall not approve any retirement benefits scheme for the purposes of this Part unless the scheme satisfies all of the following conditions—

(a) that the scheme is bona fide established for the sole purpose

of providing relevant benefits in respect of service as an employee, being benefits payable to the employee or to the widow, widower, children or dependants or personal representatives of the employee;

- (b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;
- (c) that there is a person resident in the Falkland Islands who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Part;
- (d) that the employer is a contributor to the scheme;
- (e) that the scheme is established in connection with some trade or undertaking carried on in the Falkland Islands.

(2) The Commissioner shall not approve any retirement benefits scheme which provides for a lump sum payment on the death of a member if the lump sum exceeds the greater of the following amounts—

- (a) £100,000;
- (b) an amount equal to 4 times the annual remuneration of the member at the time of his retirement or, if he dies before retirement, at the time of his death.

(3) The conditions set out in subsections (1) and (2) above are referred to below as "the prescribed conditions".

(4) The Commissioner may, if they think fit having regard to the facts of a particular case, and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Part notwithstanding that it does not satisfy one or more of the prescribed conditions.

(5) If in the opinion of the Commissioner the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time by notice to the administrator withdraw their approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of their approval), as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, any approval given as regards the scheme before the alteration shall not apply after the date of the alteration unless the alteration has been approved by the Commissioner.

(7) Subsections (8) to (10) below apply where the Commissioner is considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

- (a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Part, and



- (b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Commissioner in order for them to decide whether to give approval for the purposes of this Part.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

*Personal pension schemes*

*Requirements as to scope of benefits and other conditions.*

74.—(1) The Commissioner shall not approve a personal pension scheme which makes provision for any benefit other than—

- (a) the payment of an annuity satisfying the conditions in section 75;
- (b) the payment to a member of a lump sum satisfying the conditions in section 76;
- (c) the payment after the death of a member of an annuity satisfying the conditions in section 77;
- (d) the payment on the death of a member of a lump sum satisfying the conditions in section 78(1) or (2).

(2) Subsection (1) above shall not prevent the approval of a scheme which makes provision for insurance against a risk relating to the non-payment of contributions.

(3) The Commissioner shall not approve a personal pension scheme unless it makes provision for the making, acceptance and application of transfer payments which in the opinion of the Commissioner is appropriate.

(4) The Commissioner shall not approve a personal pension scheme which permits the acceptance of contributions other than—

- (a) contributions by members;
- (b) contributions by employers of members.

*Annuity to member.*

75.—(1) Subject to subsection (2) below, the annuity must not commence before the member attains the age of 50 or after he attains the age of 75.

(2) The annuity may commence before the member attains the age of 50 if—

- (a) it is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted; or
- (b) the Commissioner is satisfied that his occupation is one in which persons customarily retire before that age.

(3) Subject to subsection (4) below, the annuity must be payable to the member for his life.

(4) The annuity may continue for a term certain not exceeding 10 years,

notwithstanding the member's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the member and before expiry of that term, on the happening of any of the following—

- (a) the marriage of the annuitant;
- (b) his attaining the age of 18;
- (c) the later of his attaining that age and ceasing to be in full-time education.

(5) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

*Lump sum to member.*

76.—(1) The lump sum—

- (a) must be payable only if the member so elects on or before the date on which an annuity satisfying the conditions in section 75 is first payable to him under the arrangements made in accordance with the scheme; and
- (b) must be payable when that annuity is first payable.

(2) The lump sum must not exceed one quarter of the total value, at the time it is paid, of the benefits provided for by the arrangements made by the member in accordance with the scheme.

(3) The right to payment of the lump sum must not be capable of assignment or surrender.

*Annuity after death of member.*

77.—(1) The annuity must be payable to the surviving spouse of the member, or to a person who was at the member's death a dependant of his.

(2) The aggregate annual amount (or, if that amount varies, the aggregate of the initial annual amounts) of all annuities to which this section applies and which are payable under the same personal pension arrangements shall not exceed—

- (a) where before his death the member was in receipt of an annuity under the arrangements, the annual amount (or, if it varied, the highest annual amount) of that annuity; or
- (b) where paragraph (a) does not apply, the highest annual amount of the annuity that would have been payable under the arrangements to the member (ignoring any entitlement of his to commute part of it for a lump sum) if it had vested on the day before his death.

(3) Subject to subsections (4) to (8) below, the annuity must be payable for the life of the annuitant.

(4) Where the annuity is payable to the surviving spouse of the member and at the time of the member's death the surviving spouse is under the age of 60, the annuity may be deferred to a time not later than—

- (a) the time when the surviving spouse attains that age; or
- (b) where the member's annuity is payable to the surviving spouse for a term certain as mentioned in section 75(5) and the surviving spouse attains the age of 60 before the

time when the member's annuity terminates, that time.

(5) The annuity may cease to be payable on the marriage of the annuitant.

(6) Where the annuity is payable to the surviving spouse of the member, it may cease before the death of the surviving spouse if—

- (a) the member was survived by one or more dependants under the age of 18 and at the time of the member's death the surviving spouse was under the age of 45; and
- (b) at some time before the surviving spouse attains that age no such dependant remains under the age of 18.

(7) Where the annuity is payable to a person who is under the age of 18 when it is first payable, it must cease to be payable either—

- (a) on his attaining that age; or
- (b) on the later of his attaining that age and ceasing to be in full-time education,

unless he was a dependant of the member otherwise than by reason only that he was under the age of 18.

(8) The annuity may continue for a term certain not exceeding 10 years, notwithstanding the original annuitant's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the original annuitant and before the expiry of that term, on the happening of any of the following—

- (a) the marriage of the annuitant to whom it is payable;
- (b) his attaining the age of 18;
- (c) the later of his attaining that age and ceasing to be in full-time education.

(9) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

*Lump sum on death of member.*

78.—(1) The lump sum—

- (a) must be payable only if no annuity satisfying the conditions in section 75 or 76 has become payable; and
- (b) subject to subsection (2) below, must represent no more than the return of contributions together with reasonable interest on contributions or bonuses out of profits.

(2) To the extent that contributions are invested in units under a unit trust scheme, the lump sum referred to in subsection (1) above may represent the sale or redemption price of the units.

## CHAPTER V TRANSITIONAL PROVISIONS

*Commissioner's discretion to allow continuation of existing relief.*

79. The Commissioner may if he thinks fit permit relief from tax to be given as if this Ordinance had not been enacted in relation to—

- (a) premiums paid on or after 1st January 1994 under any policy of life assurance made before that date; and
- (b) contributions made after that date under schemes for the provision of relevant benefits to or in respect of persons who were members of the scheme before that date.

PART IV  
PAYMENTS ON ACCOUNT OF TAX BY EMPLOYEES

*Amounts to be deducted  
from earned income etc.*

80.—(1) Subject to subsections (1) to (6) below, every person before making any payment to which this subsection applies to an employee or former employee of his in any year of assessment shall—

- (a) deduct from the payment such sum as he is required to deduct by the POAT regulations, and
- (b) account to the Commissioner for all sums so deducted in the manner and at the time or times required by the POAT regulations.

(2) Subject to subsections (4) and (5) below, subsection (1) above applies to any payment of any sum which is earned income of the employee or former employee but only in respect of sums paid by an employer to any of his employees exclusively related to and arising out of a contract of service or expired contract of service (in writing or not) between the employer and the employee, whether paid by way of remuneration or otherwise.

(3) No deduction is required to be made from any payment of any pension or annuity (voluntary or otherwise) by virtue of subsection (1) above unless the person making the payment has reason to believe that the total amount of such payments when aggregated with other earned income paid by him or any other person on his behalf to the recipient will in the year in question exceeds £4,400 or such other higher amount prescribed by the POAT regulations.

(4) Subsection (1) above does not apply—

- (a) in any case where the earned income in question is exempt from income tax under this Ordinance;
- (b) in relation to any remuneration paid to a person not ordinarily resident in the Falkland Islands (and whether or not any part of that remuneration is paid in or subsequently transferred to the Falkland Islands) by an employer who is not resident in the Falkland Islands;
- (c) in relation to any pension or annuity paid by a person not resident in the Falkland Islands (and whether or not any part of that pension is paid in or subsequently transferred to the Falkland Islands).

(5) Subject to subsection (4) above, subsection (1) above applies—

- (a) where the employee is resident and ordinarily resident in the Falkland Islands, and does not perform his duties under the contract of service wholly outside the Falkland Islands, in relation to earned income paid to the employee in that year;
- (b) where the employee is not resident or, if resident, then not ordinarily resident in the Falkland Islands, only in relation to earned income paid to the employee in respect of duties under the contract of service performed in the Falkland Islands in that year, whether or not that earned income is paid to him in the Falkland Islands; and
- (c) where the employee is resident in the Falkland Islands (whether ordinarily resident or not), only in relation to earned income received in the Falkland Islands in a year of assessment—
  - (i) being earned income either for that year or any earlier year in which he was resident

in the Falkland Islands, and

(ii) in respect of any earlier period of employment under a contract of service with that employer.

*Provisions  
supplementary to  
section 80.*

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

(a) a person who is a public officer is deemed to be an employee employed under a contract of service with the Crown, and

(b) a director of a company is an employee of that company; and any reference in this Part to an employee, an employer, employment or a contract of service shall be construed accordingly.

(2) For the purposes of this Part, any payment to which this Part would apply if made to the employee in question shall be deemed to have been paid to the employee if it is paid to another person by the employer at the request or by authority of the employee or by order of any court, whether by reason of the employee's incapacity or otherwise.

(3) In any case where a person who was an employee of an employer has died and the employer makes a payment of a pension or annuity or any other payment to the deceased's widow, widower, personal representative or dependants, this Part (apart from this subsection) shall have effect as if any reference to an employee were or included (as the context requires) a reference to the widow, widower, personal representative or dependants of the deceased person.

(4) Any contract, agreement or arrangement whatsoever between an employer and any other person inconsistent with the obligation of the employer under section 80(1) is, to the extent of the inconsistency, void.

(5) Any sum required by the POAT regulations to be deducted from any payment, but not paid to the Commissioner as required by such regulations, shall be recoverable from the employer by the Commissioner as a civil debt; and the Senior Magistrate shall have jurisdiction to try and determine any action brought by the Commissioner by virtue of this subsection and to make any order that the Supreme Court could have made in civil proceedings in that court in respect of that sum, and notwithstanding that the amount claimed would otherwise be beyond his jurisdiction.

(6) Any sum not paid to the Commissioner in accordance with the POAT regulations shall bear interest in favour of the Crown on the sum for the time being remaining unpaid, before as well as after any judgment, at the rate of 3 per cent. per annum over the base lending rate, and subsection (5) above shall also apply in respect of such interest.

(7) Nothing in subsection (5) shall operate so as to prevent proceedings being brought in the Supreme Court, but if so brought subsection (6) shall apply in respect of interest claimed.

*Liability of employer  
with respect to sums  
deducted etc.*

82.—(1) It shall be a defence to any action brought by an employee against his employer to recover any sum which the employer is obliged to deduct under section 80(1) for the employer to show that he was obliged to deduct that sum, and a certificate of the Commissioner that the employer was so obliged to deduct any sum shall, as between employer and employee, be conclusive in accordance with its tenor.

(2) As between an employee and the Commissioner or the Crown, any sum deducted by his employer under section 80(1) shall be deemed to have been paid by the employee to the Commissioner on account of his liability to pay income tax, and irrespective of whether the employer has accounted to the Commissioner for such deduction or not.

(3) If any sum deducted in accordance with section 80 is lost, mislaid or destroyed before it is received by the Commissioner, the employer and not the Commissioner or the Crown shall bear the loss; and, accordingly, the employer in such an event remains liable to pay the same to the Commissioner.

(4) An employer shall within 7 days of the expiration or determination of an employee's contract of service, or, if the employee is a former employee paid a pension or annuity, or the employee continues in the employer's employment, within 7 days of 31st December, furnish to the employee a certificate of the total amount deducted under section 80(1) up to the relevant date, and shall send a copy of the certificate to the Commissioner.

(5) The certificate referred to in subsection (4) shall contain the following information—

- (a) the name of the employer and his principal place of business in the Falkland Islands;
- (b) the full name of the employee and, if known, his address;
- (c) the aggregate amount of all the income, in money, gross of all deductions, of the employee under that employer during the year in question or (where appropriate) up to the date of the certificate; and
- (d) the aggregate amount of deductions from that income made by that employer during the year in question under section 80(1).

(6) In subsections (4) and (5), "relevant date" means the date of determination or expiration of the employee's contract of service in the year in question or, in the case of a contract of service which continues thereafter, 31st December in that year.

*Payments on account of  
tax: application.*

83.—(1) For the avoidance of doubt, it is hereby declared that sums deducted in accordance with section 80(1)—

- (a) are not income tax, but are on account of the liability to income tax, whether determined or yet to be determined, of the employee in respect of whom they are made, and
- (b) may be applied at any time by the Commissioner in payment or reduction of that liability in respect of any year of assessment other than a year which has not begun at that time.

(2) Where an employee is liable to income tax for any year of assessment preceding the year in which the sum is deducted, and the amount of that liability has been determined, the Commissioner shall apply such sums so that any such liability in respect of an earlier year of assessment is wholly discharged before any such sums are applied in satisfaction (or partial satisfaction) of any such liability in respect of any later year of assessment.

*Repayment of sums deducted.*

84. If an individual who is resident or ordinarily resident in the Falkland Islands satisfies the Commissioner, by his return of income or otherwise, that the deductions made under section 80(1) from his earned income for any year of assessment exceed the aggregate of—

(a) his liability to income tax in respect of that earned income; and

(b) any outstanding liability of his to tax in respect of any preceding year of assessment,

the Commissioner shall repay to him the excess without undue delay.

*The POAT regulations.*

85.—(1) In this Part "the POAT regulations" means regulations under this section.

(2) The Governor may make regulations prescribing the sums which an employer is, under section 80(1), required to deduct from payments to any employee of that employer in any year of assessment, and such regulations shall—

(a) relate the sums to be deducted to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee who is ordinarily resident in the Falkland Islands does not exceed the likely liability of that employee for income tax in that year (but, nevertheless, the regulations shall not be invalid merely because, for any reason, they fail to achieve that result);

(b) prescribe the amounts to be deducted in respect of any pay period in respect of any employee who is resident in the Falkland Islands, having regard either—

(i) to that employee's gross earnings from that employment during the calendar year to date; or

(ii) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this paragraph "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods;

(c) prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under section 80(1).

(3) Regulations under this section—

(a) shall exempt from liability to suffer deduction the earnings of any employee of an employer (not being a pensioner or annuitant of that employer) who has not worked for that employer—

(i) in the case of weekly paid employees at least 15 hours during that pay period and who has not worked 84 hours in aggregate during that pay period and the 3 pay periods preceding that

pay period;

(ii) in the case of monthly paid employees, at least 60 hours during the month constituting the pay period; and

(b) may provide for other exemptions from deductions under section 80(1); and

(c) may prescribe different rates of deductions in respect of employees who are resident in the Falkland Islands and those who are not.

(4) Regulations under this section shall not require deductions to be made from any payment which is not a payment of earned income.

(5) Regulations under this section may provide for any other matter necessary or convenient to be prescribed in the regulations, and in particular but without prejudice to the generality of the foregoing the regulations may—

(a) make provision with respect to the preservation and production to employees of records and other information relating to deductions,

(b) make provision with respect to the confidentiality of information, and

(c) prescribe acts or omissions which shall be offences punishable with imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both such imprisonment and fine.

*Bankruptcy and liquidation.*

86. If an employer—

(a) being an individual, is adjudicated bankrupt, or

(b) being a company, has a winding-up order made in respect of it and is insolvent,

then, notwithstanding any other provision of law, sums deducted under section 80(1) from the earned income of the employees of that employer and not paid to the Commissioner by that employer shall rank in priority to all debts which are not secured debts of the employer and shall be discharged in full before any other unsecured debts, preferred or unpreferred, of the individual or company may rank for dividend or otherwise be paid in whole or in part.

*Non-resident employees.*

87.—(1) In any case where, in accordance with this Part, an amount—

(a) has been deducted from the earned income for a year of assessment of an employee who is not, or not ordinarily, resident in the Falkland Islands for the whole of that year, and

(b) has been applied in payment or reduction of the liability to income tax of that employee for that year,

the amount deducted shall, subject to subsection (2), be deemed for all purposes to be the amount of income tax due for that year in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(2) Subsection (1) shall not prevent the Commissioner from repaying the whole or any part of an amount deducted in any year of assessment to the employee in accordance with section 84 if the employee submits a return of income for that year before the end of the year immediately following that year.



(3) In any case where, before the commencement of this Ordinance—

(a) an amount has been deducted in accordance with sections 32A to 32F of the Income Tax Ordinance from the earned income for any year of assessment of an employee who was not, or not ordinarily, resident in the Falkland Islands for the whole of that year, and

(b) the liability of that employee to income tax for that year has not been finally determined,

the amount deducted shall, subject to subsection (4), be deemed for all purposes to be the amount of income tax due for that year in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(4) If the employee makes a claim in the prescribed form before such date as may be prescribed for the purposes of this subsection, the Commissioner may repay the whole or any part an amount deducted as mentioned in subsection (3) above if having regard to the claim, and any other information available, he is satisfied that a repayment would be just and equitable.

(5) Subsections (1) to (4) above shall not apply in any case where in the opinion of the Commissioner the amount deducted in any year of assessment is less than the liability to income tax of the employee for that year.

*Criminal penalties.*

88. Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner commits an offence and shall be liable on conviction to a fine not exceeding level 4 on the standard scale.

## PART V TAXATION OF BUSINESSES CHAPTER I

### *General provisions*

*Deductions allowable.*

89.—(1) Subject to the following provisions of this Chapter, in computing the income of a business for any relevant accounting period there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period for the purposes of the business, including—

(a) sums payable by way of interest upon borrowed money where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;

(b) rent paid for any land or buildings occupied for the purposes of the business;

(c) any sum expended for repair of premises, plant and machinery employed in the business or for the renewal, repair or alteration of any implement, utensil or article so employed;

(d) subject to subsection (4) below, bad and doubtful debts incurred in any business;

and any other deduction prescribed by rules made under this Ordinance.

(2) Bad and doubtful debts incurred in any business may be deducted under subsection (1) above from income arising in the relevant accounting period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period if but only if—

(a) they have been proved to the satisfaction of the Commissioner to have become bad during that period or, in the case of a doubtful debt, to the extent that it is estimated to the satisfaction of the Commissioner to have become bad during that period, and

(b) the Commissioner is satisfied that all steps that ought reasonably to have been taken to recover the debts have in fact been taken;

and all sums recovered during the period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the business for that period.

(3) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

*Entertainment expenses.*

90. Any item of expenditure incurred in entertainment by a person carrying on a business shall be wholly disallowed in ascertaining the profits of the business unless the Commissioner is satisfied that it was reasonably incurred for the purpose of that business.

*Special provisions relating to insurance companies.*

91.—(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) In any case where the gains or profits of an insurance company (other than a life insurance company) accrue in part outside the Falkland Islands, the gains or profits on which tax is chargeable for a chargeable period shall be ascertained by—

(a) taking the gross premiums and interest and other income received or receivable in the Falkland Islands (less any premiums returned to the insured and premiums paid on re-insurances), and

(b) deducting from the balance so arrived at, a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the relevant accounting period, and

(c) adding thereto a reserve similarly calculated for unexpired risks outstanding at the beginning of the relevant accounting period, and

(d) from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

(3) Subject to subsection (4) below, the gains or profits of a life insurance company, whether mutual or proprietary, on which tax is payable shall be the investment income less the management expenses (including commission).

(4) Where such a company received premiums outside the Falkland Islands, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Falkland Islands bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

*Special provisions  
relating to shipowners.*

92.—(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) The gains or profits of the business of a shipowner, shall, if he produces or causes to be produced to the Commissioner a certificate issued by a tax authority outside the Falkland Islands, be taken to be a sum bearing the same ratio to the sums payable in respect of fares or freight for passengers, goods, or mails shipped in the Falkland Islands as his total profits for the relevant accounting period shown by that certificate bear to the gross earnings for that period.

(3) If the gains or profits of a shipowner have for the purpose of tax in the Falkland Islands been computed on any basis other than the ratio of the gains or profits shown by the tax authority's certificate and an assessment has been made accordingly, the shipowner shall upon production of such a certificate at any time within 2 years from the end of the chargeable period to which the assessment refers be entitled to such adjustment as may be necessary to give effect to the said certificate and to have any tax paid in excess refunded.

(4) In this section any reference to a certificate issued by a tax authority is a reference to a certificate issued by the taxing authority of the place in which the principal place of business of the shipowner is situated stating—

- (a) that the shipowner has furnished to the satisfaction of that authority an account of the whole of his business; and
- (b) the ratio of the gains or profits for the relevant accounting period as computed according to the tax law of that place (after deducting interest on any money borrowed and employed in acquiring the gains and profits) to the gross earnings of the shipowner's fleet or vessel for that period.

(5) In this section "shipowner" means an owner or charterer of ships whose principal place of business is situated outside the Falkland Islands.

*Management fees.*

93.—(1) Notwithstanding anything to the contrary in the other provisions of this Ordinance, management fees and any such sums paid or credited to or for the benefit of a person who at the time of payment or credit is not resident or ordinarily resident in the Falkland Islands for the management of or supervision in connection with the carrying on of a business to the extent that such fees, payments or credits do not constitute reimbursement of expenditure which is—

- (a) deductible under any provision of this Ordinance in computing the chargeable income of the business, and
- (b) incurred in relation to the fees, payments or credits by the person receiving them,

shall bear tax at the rate of 15 per cent.

(2) In this section "management fees" means payments of any kind to any person, other than to an employee of the person making the payments, for or in respect of the provision of industrial, scientific or commercial advice, or management or technical services, or similar services or facilities.

(3) Tax chargeable by virtue of this section shall be payable by and recoverable from the person paying the fees or making the payments or credits and shall be paid to the Commissioner within 30 days of the date of payment of the fees or of making the payments or credits.

(4) Interest shall be due on any such tax remaining unpaid after the date

on which it is due at the rate of 3 per cent. per annum over base lending rate.

(5) Any person who is liable to make a payment in accordance with subsection (3) shall within 30 days of the date on which the fees or payments or credits are paid give notice to the Commissioner that he is so liable, and the Commissioner may prescribe the form by which the notice is to be given.

(6) Any person who fails to comply with subsection (5) above commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

*Excess benefits in kind,  
and remuneration of  
non-resident directors.*

94.—(1) Where—

- (a) an employer carrying on a business incurs in any relevant accounting period expenditure on the provision of any prescribed benefit to or in respect of any employee of his employed in that business, and
- (b) the prescribed value of that benefit (or aggregate values if more than one is provided to the employee) exceeds the employee's remuneration or a prescribed percentage of his remuneration, or exceeds such other amount as may be prescribed,

an amount equal to the amount of that excess shall be treated as a trading receipt of the business for that period.

(2) The Governor in Council may make rules for the purposes of subsection (1) above which shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following publication of the rules.

(3) In the case of any company—

- (a) any of the directors of which is non-resident, and
- (b) more than 50 per cent. of the issued ordinary shares in which is held by its directors,

the deduction permitted to be made in respect of any such director's remuneration from the company's profits and gains arising in an accounting period during which any director is non-resident shall not exceed—

- (i) 15 per cent. of the company's chargeable income derived from the business in that accounting period (computed before making any deduction in respect of the remuneration of the directors) or

- (ii) £7,500,

whichever is the greater, so however that the deduction shall in no case exceed £15,000.

(4) For the purposes of subsection (3)—

- (a) shares are held by a director if they are held by the director himself or by any person connected with him; and
- (b) "non-resident" means not resident in the Falkland Islands.

(5) Subsection (3) does not apply in relation to the remuneration of any director if that remuneration (after making any deduction permitted by any provision of this Ordinance apart from this section) is chargeable income in the hands of the director.

*Augmented deduction of training expenses.*

95.—(1) Where the Commissioner is satisfied—

- (a) that any expenditure has reasonably been incurred by a person carrying on a business on the training or education of a person employed or intended to be employed in that business; and
- (b) that the training or education was incurred for the purpose of improving the value of that person as an employee in that business or of fitting him (if not already employed) for employment in the business,

the Commissioner shall, in addition to the actual amount of that expenditure, allow a further sum equal to one-half of that amount to be deducted from the profits of the business.

(2) For the purposes of subsection (1)—

- (a) a sole owner of and any partner in any business shall be taken to be employed, as an employee, in that business, and
- (b) "training or education" does not include education at any school, college, institution or establishment however described which a person attends for the purpose of non-vocational education below the tertiary education level.

*Relief for pre-trading expenditure.*

96.—(1) Where a person incurs expenditure for the purposes of a business before he commences to carry on that business, then subject to subsection (2) he shall be deemed for all the purposes of income tax and corporation tax, to have incurred that expenditure on the first day on which he commences to carry on that business.

(2) Relief under subsection (1) shall be given on a claim but the Commissioner may disallow any claim for the relief in any case where he is satisfied that the expenditure was not incurred in good faith for the purposes of the business.

(3) Subsection (1) above does not apply where the business was commenced before 1st January 1994.

*Certain payments of interest not deductible.*

97.—(1) Any payment of interest by a company on or after 1st July 1993 in respect of securities issued by the company—

(a) where the securities are held by a non-resident company and either—

(i) that company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of the issuing company, or

(ii) another non-resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both companies;

or

(b) where—

(i) the securities are held by a non-resident company, and

(ii) a resident company directly owns less than 90 per cent. of the share capital of the issuing company and another resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both the

issuing company and the company holding the securities,  
shall not be deductible in ascertaining the chargeable income of the company unless the Commissioner directs the company that the payment may be deducted.

(2) In this section—

"non-resident company" means a company which is not resident in the Falkland Islands;

"resident company" means a company which is resident in the Falkland Islands, and

"securities" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

## CHAPTER II DEPRECIATION ALLOWANCES

*Initial and writing  
down allowances:  
general provisions.*

98.—(1) In ascertaining the chargeable income of any person carrying on a business, there shall, subject to subsection (2) below, be made initial and writing-down allowances and balancing allowances and charges in accordance with this Chapter.

(2) A person may elect not to take the benefit of the whole or part of any allowance or deduction to which he is entitled under this Chapter.

(3) Effect shall be given to any allowance and deduction authorized by this Chapter on a claim being made in that behalf by the person entitled to the allowance or deduction.

(4) Effect shall be given to any balancing charge under this Chapter by treating the amount of the charge as a trading receipt of the business concerned.

(5) In this Chapter—

"basis period" in relation to a chargeable period, means the period on the income of which income tax or corporation tax for that chargeable period falls to be computed;

"building" does not include land;

"expenditure", in relation to the acquisition of a capital asset, means, subject to subsection (5) below, the amount spent on the provision of that asset by the person claiming the depreciation deduction, reduced by the amount of any grant, subsidy or contribution towards that cost made by any other person or authority, but any amount spent on the provision of a building does not include the cost or value of the land on which it is built; and

"written-down value", in relation to a capital asset, means the amount of the expenditure incurred in acquiring the asset less the sum of any initial and writing-down allowances made in respect of the asset for all earlier chargeable periods.

(6) In any case where—

(a) a person claims an allowance under this Chapter as respects

an asset the expenditure on the acquisition of which was incurred in a chargeable period earlier than the period in which the asset it first used for the purposes of a business, and

(b) the asset was used for other purposes before first being using for the purposes of the business, and

(c) the market value of the asset at the time it is first so used is less than the expenditure on its acquisition actually incurred by that person,

then, for the purposes of this Chapter, the expenditure on the acquisition of the asset shall be taken to be equal to the market value of that asset at the time it is so first used.

*Initial allowances and writing-down allowances for capital expenditure.*

99.—(1) Where in the basis period for a chargeable period a person carrying on a business incurs expenditure in the acquisition of any capital asset mentioned in any of subsections (3) to (7) below which is or is to be used for the purposes of the business, in computing that person's chargeable income for that and subsequent chargeable periods there shall be allowed, subject to subsection (2) below, an initial allowance or writing-down allowances in that and subsequent chargeable periods (or both) in accordance with the subsection in question.

(2) An allowance shall not be made under this section in any chargeable period in respect of a capital asset acquired for use in a business unless the asset is used during the basis period for that chargeable period for the purposes of that business.

(3) If the asset is any machinery and plant (including for this purpose ships and motor vehicles but not aircraft)—

(a) an initial allowance of up to 100 per cent. of the expenditure shall be made;

(b) if the full 100 per cent. initial allowance is not claimed under paragraph (a), in subsequent periods a writing-down allowance of 25 per cent. per annum of the written-down value of the asset shall be made.

(4) If the asset is an aircraft, a writing-down allowance of 25 per cent. per annum of the written-down value of the asset shall be made.

(5) If the asset is—

(a) an industrial building used for the purpose of productive manufacturing or processing, or

(b) a commercial or agricultural building, or

(c) any building used for the purposes of mining or fishing,

an initial allowance of up to 50 per cent. of the expenditure and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(6) If the asset is a hotel building, an initial allowance of up to 50 per cent. and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(7) Subject to subsection (8), if the asset is any other building, a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made, and, notwithstanding any provision to the contrary in this Ordinance, the excess of sale proceeds or insurance recoveries over the written-down value of a building which is occupied as a residence shall not give rise to

a balancing charge.

(8) In the case of a building used as residential accommodation, an allowance shall not be made under subsection (7)—

- (a) except as provided by subsection (9), where the building is occupied by the person claiming the allowance or by a person connected with that person;
- (b) except as provided by subsection (9), where the building is occupied by a major shareholder of the person claiming the allowance or by a person connected with such a shareholder;
- (c) except as provided by subsection (10), where the freehold title or lease out of which the tenancy or occupation of the building derives passes to the ownership of any person other than the person who originally incurred the expenditure involved in the construction of the building.

(9) Subsection (8)(a) and (b) do not apply where the Commissioner is satisfied that the building is or is to be occupied principally for agricultural purposes.

(10) Subsection (8)(c) does not apply where the Commissioner is satisfied—

- (a) that the new owner is engaged in the business of agriculture; and
- (b) that the building is or is to be occupied principally for agricultural purposes.

(11) In any case where a building is or is to be used for more than one purpose, this section shall apply in relation to each part separately and such apportionment of expenditure shall be made as between the different parts as is in the opinion of the Commissioner just and equitable.

*Interpretation of section 99.*

100. For the purposes of section 99—

"industrial building" includes—

- (i) a warehouse;
- (ii) any building used for the purpose of a transport or dock undertaking;
- (iii) any other building used for industrial purposes except any building occupied as a residence;
- (iv) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is an industrial building by virtue of paragraphs (i), (ii) or (iii) above;

"commercial building" includes—

- (i) a shop;
- (ii) a restaurant or café;
- (iii) an office;
- (iv) any other building which is not an industrial building, an agricultural building, hotel, house or other dwelling if, and only if, the Commissioner is satisfied that it is bona fide being used principally for the purposes of a



business operated with a view to the realization of profit;

(v) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is a commercial building by virtue of paragraph (i), (ii), (iii) or (iv) above;

"agricultural building" does not include any office or any shop on a farm settlement or any storehouse unless used solely to store agricultural produce;

"major shareholder", in relation to any company, means a person who is, or who together with any person connected to him is, the beneficial owner of 25 per cent. or more of the issued share capital of the company carrying voting rights at general meetings of the company.

*Balancing charges and allowances.*

101.—(1) This section applies where, during the basis period for a chargeable period ("the relevant period"), any of the following events occurs in relation to a capital asset in respect of which a writing-down allowance has been made to any person carrying on a business ("the owner")—

- (a) the asset ceases to belong to him; or
- (b) that person loses possession of the asset in circumstances where it is reasonable to assume that the loss is permanent; or
- (c) the asset ceases to exist as such (as a result of destruction, dismantling or otherwise);
- (d) the asset begins to be used wholly or partly for purposes which are other than those of the business; or
- (e) the business is permanently discontinued.

(2) Where subsection (1) above applies in relation to any asset—

- (a) if there are no sale, insurance, salvage or compensation moneys or those moneys are less than the written-down value of the asset, there shall be allowed in computing the owner's chargeable income for the relevant period a deduction equal to that value or, as the case may be, the excess of that value over those moneys;
- (b) if the sale, insurance, salvage or compensation moneys exceed the written-down value of the asset, a balancing charge shall be made on an amount equal to the excess for the relevant period.

(3) Subsection (2) shall have effect in relation to any sale or other disposition of any asset where the parties are not at arm's length and the consideration for the disposition is less than the market value of the asset as if the asset had been disposed of at market value.

(4) Where (by virtue of subsection (3) or otherwise) the moneys referred to in subsection (2) exceed the expenditure in respect of which the writing-down allowance was made, the amount of the excess shall be disregarded for the purposes of that subsection.

*Assets transferred on transfer of business.*

102.—(1) In any case where—

- (a) on or after 1st January 1995, a business is transferred by an

individual, either alone or in partnership, to a company, and

(b) the transfer includes the transfer of an asset used in that business as respects which an allowance under this Chapter has been made to or disclaimed by the transferor, and

(c) section 107 applies to the transfer,

then, whether or not the transferor makes a claim under that section and whether or not such a claim is allowed, the transferor may elect that the provisions of this section shall apply in relation to that asset.

(2) Section 101 shall not apply in relation to the transfer of the asset but all such allowances and charges shall be made to and on the transferee under and in accordance with this Chapter as would have fallen to be made if the transferor had continued to carry on the business.

(3) Subject to subsection (4) below, an election under subsection (1) above shall be made by notice which shall be irrevocable, and where more than one asset is transferred, the transferor may make an election under this section with respect to all or any of those assets.

(4) An election under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer.

(5) All such adjustments shall be made as may be necessary in consequence of an election being made under this section, whether by way of assessments to tax on the company or by repayment or discharge of tax or otherwise.

*Apportionment of sale  
etc. receipts.*

103.—(1) This section applies in any case where a capital asset in respect of which a writing-down allowance has been made has been sold or destroyed together with or at the same time as any other property and—

(a) the consideration received on the sale or the insurance recoveries is a sum which relates to all the property sold or the insurance recoveries is a sum which relates to all the property destroyed or the subject of the claim under the relevant insurance contract;

(b) the total consideration received on the sale has by agreement or arrangement between the parties been apportioned between the various items sold at the same time by the same vendor to the same purchaser, and whether by or under the same contract or under separate contracts, or similarly insurance recoveries have been apportioned between insured and insurer.

(2) In any case falling within paragraph (a) of subsection (1)—

(a) the Commissioner may agree with the former and new owners the apportionment of the sum referred to in that paragraph between the various items of property to which it relates;

(b) if no such agreement is reached, the Commissioner may apportion the sum referred to in subsection (1)(a) between the various items of property to which it relates.

(3) In any case falling within paragraph (b) of subsection (1), the Commissioner may—

- (a) agree with the parties an apportionment of the sale consideration or insurance recoveries between the various items of property, or
- (b) if he considers that that apportionment would (if agreed by him) afford an unjust tax advantage to the new owner or former owner, apportion the sale consideration or the insurance recoveries between the various items of property in accordance with his view of the true value of such items.

(4) The values attributed to any items of property in accordance with this section shall apply for the purposes of this Chapter both in relation to the new owner and (as to the operation of section 101(2)(b)) in relation to the former owner.

(5) The Commissioner shall give notice to the persons affected of any apportionment made or agreed by him in pursuance of this section.

*Transitional provisions.*

104.—(1) Where a person is, on the coming into force of this Ordinance, entitled to an allowance or deduction under paragraph 3 of the Seventh Schedule of the Income Tax Ordinance, that allowance shall continue to be made in accordance with the provisions of that Ordinance and not in accordance with this Chapter.

(2) Section 101 shall not apply in any case where a capital asset in respect of which a wear and tear or a depreciation allowance has been made under the Sixth or Seventh Schedule of the Income Tax Ordinance is sold, scrapped or destroyed at a time falling after 31st December 1992 but before 1st July 1993 during a period which as respects the year of assessment 1995 is the relevant accounting period, but in such a case—

- (a) if the amount of the sale proceeds or insurance recoveries is less than the written-down value, there shall be made a deduction for the year of assessment 1995 equal to the amount of the deficiency;
- (b) if the amount of the sale proceeds or insurance recoveries exceeds the written-down value, the amount of the excess, a balancing charge shall be made on an amount equal to that excess or to the total amount of all wear and tear and depreciation allowances made, if less.

## CHAPTER III

### LOSS RELIEF FOR BUSINESSES

*Restrictions on loss relief.*

105.—(1) Effect shall be given to this Chapter by a claim but a claim may not be made in respect of a loss sustained in any business unless the business was being carried on, during the period in which the loss was sustained, on a commercial basis and with a view to the realisation of profits.

(2) Relief shall not be given in respect of the same loss or the same portion of a loss under more than one provision of this Ordinance.

*Carry forward of  
business losses for  
individuals.*

106.—(1) Where a loss is sustained in any period of account of a business carried on (either alone or in partnership) by any person who is within the charge to income tax for the relevant year of assessment in respect of that business and the loss cannot be wholly set off against that person's income from other sources chargeable to tax for the same year, the amount of the loss shall, to the extent to which it is not set off against his income from other sources chargeable to tax for the same year, be carried forward and (so long as he continues to carry on the business)—

(a) shall be set off against the profits of that business arising in the following period of account, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment following the relevant year,

and so on for subsequent years in succession until the amount of such loss is exhausted.

(2) A company may make a claim under this section in respect of a loss sustained in a period—

(a) as respects which the company was within the charge to income tax; or

(b) as respects which the company was exempt from tax by virtue of the Special Exemption Ordinance,

notwithstanding that the company is, as respects subsequent periods, within the charge to corporation tax.

(3) A claim may not be made under this section more than 6 years after the end of the period of account in which the loss was incurred.

(4) In this section "the relevant year of assessment", in relation to a period of account, is the year of assessment for which income arising in that period is chargeable to income tax.

*Allowance of business  
losses for individuals in  
cases of transfer of  
business.*

107.—(1) In any case where—

(a) a business carried on by an individual, either alone or in partnership, is transferred to a company and in consideration for the transfer the company issues shares in the company to that individual, and

(b) prior to the transfer a loss was sustained in the course of carrying on the business but not set off against the profits of the business, and

(c) the amount of the loss has not been and is not being set against any other income of the individual (either in that year or any earlier year),

then, subject to subsections (2) to (7) below, in computing his chargeable income for any year of assessment following the year in which the transfer takes place, the individual may set against any dividend he receives in respect of those shares in the immediately preceding year of assessment, an amount equal to the amount of that loss.

(2) The Commissioner may disallow any claim under subsection (1) above if in all the circumstances of the case he is of the opinion that it should not be allowed.

(3) Subject to subsection (7) below, where a business is transferred as mentioned in subsection (1), the acquiring company may not deduct any losses

suffered in the course of the business prior to the date of the transfer from the profits of the business accruing on or after that date or from any other profits or income.

(4) Subject to subsection (5) below, a claim for relief under subsection (1) shall be irrevocable and have effect in relation to all losses sustained in the business by the individual not otherwise set off against any income of the individual.

(5) A claim for relief under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer and shall have effect for all years of assessment beginning after the date of the transfer.

(6) All such adjustments shall be made as may be necessary in consequence of a claim being made under this section, whether by way of repayment or discharge of tax or otherwise.

(7) If a claim is not made by the individual under this section or such a claim is disallowed, the company to which the business is transferred may make a claim to set off the amount of the losses sustained in the business before the transfer in accordance with section 108, and that section shall apply in relation to any such loss as if it had been sustained in the business immediately after the transfer was effected; but—

(a) a claim shall not be allowed by virtue of this subsection unless the individual has consented, in writing, to the claim being made; and

(b) the individual may not make a claim under subsection (1) after giving his consent for the purposes of paragraph (a) above.

*Loss relief for companies.*

108.—(1) Where, in any accounting period, a company carrying on a business incurs a loss in the business the company may make a claim requiring that the loss be set off for the purposes of corporation tax against income of that accounting period.

(2) Where in any accounting period a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any income of the company in succeeding accounting periods; and where such a claim is made (and so long as the company continues to carry on the business) the amount of the loss, or so much of that amount as cannot, on a claim (if made) under subsection (1) above, be set off against income of an earlier accounting period—

(a) shall be set off against the profits of that business arising in the following accounting period, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income from other sources arising in that period;

and so on for subsequent accounting periods in succession until the amount of such loss is exhausted.

(3) The amount of a loss incurred in a business in an accounting period shall be computed for the purposes of this section in the same way as business income from the business in that period would have been computed.

(4) For the purposes of this section "business income" means, in relation to any business, the income which falls or would fall to be included in respect of

the business in the total profits of the company.

(5) In this section references to a company carrying on a business refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(6) A claim under subsection (1) above may only be made within the period of 2 years immediately following the accounting period in which the loss is incurred or within such further period as the Commissioner may allow.

(7) A claim under subsection (2) above must be made within 6 years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of 6 years.

*Change in ownership of company: disallowance of trading losses.*

109.—(1) If—

(a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

relief shall not be given under section 108 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a trade" includes--

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or

(b) a major change in customers, outlets or markets of the trade; and this section applies even if the change is the result of a gradual process which began outside the period of 3 years mentioned in subsection (1)(a) above.

(5) Where relief in respect of a company's losses has been restricted under this section then, in applying the provisions of Chapter II of this Part about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made under that Chapter for any chargeable period of the company before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

(6) In applying subsection (5) above it shall be assumed that any profits are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(7) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than 3 years after), an assessment to give effect to the provisions of this section shall not be out of time if made within 6 years from that time, or the latest of those times.

(8) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by the Commissioner given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities or of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

*Rules for ascertaining  
change in ownership of  
company.*

110.—(1) For the purposes of section 109 there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than 3 years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is

unsolicited and made without regard to the provisions of section 109, any gift of shares, shall be left out of account.

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 109, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

(4) Where section 109 has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of section 109 if—

- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
- (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(7) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

- (a) any ordinary share capital of another



company, and

(b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(8) For the purposes of this section—

(a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;

(b) the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies shall be determined in accordance with subsections (5) to (11) of section 163; and

(c) "shares" includes stock.

(9) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

## CHAPTER IV

### GROUP RELIEF

*Surrender of relief  
between members of  
groups.*

111.—(1) Subject to and in accordance with this Chapter, relief for trading losses and other amounts eligible for relief from corporation tax may be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief" in accordance with subsection (5) below.

(2) In this Chapter any reference to a company is a reference to a body corporate resident in the Falklands Islands.

(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.

A claim made by virtue of this subsection is referred to as a "group claim".

(4) Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.

(5) If in any accounting period the surrendering company has incurred a loss in carrying on a business, the amount of the loss may be set off for the purposes of corporation tax against the total income of the claimant company for its corresponding accounting period.

(6) A payment for group relief—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any of the purposes of the enactments relating to corporation tax be regarded as a distribution;

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

*Corresponding  
accounting periods.*

112.—(1) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

(a) the amount which may be set off against the total income of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity); and

(b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity);

where—

A is the length of the period common to the two accounting periods;

B is the length of the accounting period of the surrendering company; and

C is the length of the corresponding accounting period of the claimant company.

*Companies joining or  
leaving group.*

113.—(1) Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group, then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that—

(a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection); and

- (b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and
- (c) the amount of total income for the true accounting period of the company against which group relief may be allowed in accordance with section 112(5) is also apportioned to the component accounting periods;

and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(3) Where the one company is the surrendering company and the other company is the claimant company—

- (a) references in subsection (1) above and section 112 to accounting periods shall be construed in accordance with subsection (2) above (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);
- (b) references in section 112 to income, and amounts to be set off against the income, shall be construed in accordance with subsection (2) above, (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).

(4) In subsections (1) and (2) above "arrangements" means arrangements of any kind whether in writing or not.

(5) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that the two companies are connected with each other.

*Exclusion of double allowances.*

114.—(1) Without prejudice to section 105, relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

(3) Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and—

- (a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 113, and
- (b) there is a part of the surrendering company's accounting period during which none of those claimant companies is

a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.

(5) Subject to subsection (6) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and—

(a) all the claims so made are admissible only by virtue of section 113(2) and (3), and

(b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(6) If claims falling within subsection (5) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.

*Group relief by way of substitution for loss relief.*

115.—(1) Group relief may be given in respect of a loss notwithstanding that relief has been given in respect of it under section 108.

(2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 108.

(3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the Commissioner notice of consent to surrender relating to the loss.

(4) For the purposes of this section relief under section 108 shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

*Claims.*

116.—(1) A claim for group relief for an accounting period of a company, or the withdrawal of such a claim, may not be made if—

(a) the company has been assessed to corporation tax for the period, and

(b) the assessment has become final and conclusive.

(2) Subsection (1) above shall not apply in the case of a claim, or withdrawal of a claim, made before the end of 2 years from the end of the period.

(3) Subject to subsections (4) and (5) below, a claim for an accounting period of a company, or the withdrawal of such a claim, may not be made after the end of 6 years from the end of the period.

(4) Where under subsections (2) and (3) above a claim, or withdrawal of a claim, may not be made after a certain time, it may be made within such further time as the Commissioner may allow.

(5) A claim for an accounting period of a company, or the withdrawal of such a claim, may be made after the end of 6 years from the end of the period if—

- (a) the company has been assessed to corporation tax for the period before the end of 6 years from the end of the period,
- (b) the company has appealed against the assessment, and
- (c) the assessment has not become final and conclusive.

(6) A claim for an accounting period of a company, or withdrawal of such a claim, may not be made under subsection (5) after the end of 6 years and 3 months from the end of the period.

(7) A claim, or withdrawal of a claim, shall be made by being included in the accounts and other information submitted by the company in accordance with section 27 for the period for which the claim is made.

(8) A claim may be made for less than the full amount available.

(9) A claim, other than one under subsection (5) above, shall be for an amount which is quantified at the time the claim is made.

(10) A claim under subsection (5) above shall be expressed to be conditional, as to the amount claimed, on, and only on, the outcome of one or more relevant matters specified in the claim, and for the purposes of this subsection a matter is relevant if it is relevant to the determination of the assessment of the claimant company to corporation tax for the period for which the claim is made.

*Requirements as to  
consent of surrendering  
companies.*

117.—(1) A group claim shall require the consent of the surrendering company.

(2) Consent to surrender shall be of no effect unless, at or before the time the claim is made, notice of consent is given by the consenting company to the Commissioner.

(3) Notice of consent to surrender, in the case of consent by the surrendering company, shall be of no effect unless it contains the following particulars—

- (a) the name of the surrendering company;
- (b) the name of the company to which relief is being surrendered;
- (c) the amount of relief being surrendered;
- (d) the accounting period of the surrendering company to which the surrender relates.

(4) A claim shall be of no effect unless it is accompanied by a copy of the notice of consent to surrender given for the purposes of this paragraph by the surrendering company.

(5) In the case of consent to surrender by the surrendering company, consent which relates to relief which is the subject of more than one claim under section 116(5) shall be of no effect unless it specifies an order of priority in relation to the claims.

*Recovery of excess relief.*

118.—(1) If the Commissioner discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax in the amount which ought in his opinion to be charged.

(2) Subsection (1) above is without prejudice to the making of an assessment under section 135 and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

(3) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to a claim or the withdrawal of a claim.

(4) An assessment under this paragraph shall not be out of time if it is made—

- (a) in the case of a claim, within one year from the date on which an assessment of the claimant company to corporation tax for the period for which the claim is made becomes final and conclusive, and
- (b) in the case of the withdrawal of a claim, within one year from the date on which the claim is withdrawn.

*Interpretation of Chapter IV.*

119.—(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) In this Chapter—

- "claimant company" has the meaning given by section 111(1);
- "group claim" means a claim for group relief made by virtue of section 111(3);
- "group relief" has the meaning given by section 111(1); and
- "surrendering company" has the meaning given by section 111(1).

(3) For the purposes of this Chapter—

- (a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;
- (b) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and
- (c) "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) In applying for the purposes of this Chapter the definition of "75 per cent. subsidiary" in section 163 any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) References in this Chapter to a company apply only to bodies corporate resident in the Falkland Islands; and in determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(6) Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—

(a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits the subsidiary company available for distribution, and

(b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution on a winding-up.

## PART VI

### TAX AVOIDANCE

*Transactions between associated persons.*

120.—(1) Subject to the provisions of this section, where any property is sold on or after 1st July 1993 and—

(a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control, and

(b) the property is sold at a price ("the actual price") which is either--

(i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length ("the arm's length price"), or

(ii) greater than the arm's length price,

then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.

(2) Subsection (1) above shall not apply--  
(a) in any case where--

(i) the actual price is less than the arm's length price, and

(ii) the buyer is resident and carrying on a business in the Falkland Islands, and

(iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that business for tax purposes; or

(b) in any case where—

(i) the actual price is greater than the arm's length price, and

(ii) the seller is resident and carrying on a business in the Falkland Islands, and

(iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that business for tax purposes; or

(c) in relation to any other sale, unless the Commissioner so directs.

(3) Where a direction is given under subsection (2)(c) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

*Information for purposes of section 120, and appeals.*

121.—(1) The Commissioner may, by notice given to any body corporate, require it to give to the Commissioner, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Commissioner—

(a) to be, or to be connected with, a transaction with respect to which the Commissioner might give a direction under section 120; or

(b) to be relevant for determining whether such a direction could or should be given in any case; or

(c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm's length.

(2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

(3) Where, in the case of a transaction with respect to which it appears to the Commissioner that a direction under section 120 might be given—

(a) one of the parties is a body corporate resident outside the Falkland Islands more than 50 per cent. of the ordinary share capital of which is owned by a body corporate ("the parent body") resident in the Falkland Islands; and

(b) more than 50 per cent. of the ordinary share capital of the other party is owned by the parent body or the parent



body is the other party,  
 the Commissioner may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.

(4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the Falkland Islands over which the parent body has control, it appears to the Commissioner, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Commissioner shall direct that the parent body need not comply with the requirement.

(5) If, on an application under subsection (4) above, the Commissioner refuses to give a direction under that subsection, the parent body may, by notice given to the Commissioner within 30 days after the refusal, appeal to the Tribunal who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

(6) Where it appears to the Commissioner that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 120 might be given, then, for the purpose of assisting the Commissioner to determine whether such a direction should be given, an officer of the Income Tax Office specifically authorised in that behalf by the Commissioner may, at any reasonable time, on production if so required of his authority--

- (a) enter any premises used in connection with the business carried on by that body of persons in the course of which the transaction or transactions were effected,
- (b) inspect there any books, accounts or other documents or records whatsoever relating to that business which he considers it necessary for him to inspect for that purpose, and
- (c) require any such books, accounts or other documents or records to be produced to him there for inspection.

(7) An officer's authority for entering any premises under subsection (6) above shall state his name and the name of the body of persons carrying on the business in connection with which the premises are used.

*Provisions supplementary to sections 120 and 121.*

122.—(1) Nothing in section 120 shall be construed as affecting the operation of Chapter II of Part V.

(2) Section 120 shall be disregarded in determining for the purposes of section 152 what, if any, profits are produced by a business.

(3) For the purposes of sections 120 and 121 a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

(4) For the purposes of sections 120 and 121 "control", in relation to a body corporate, means the power of a person to secure--

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body

corporate, or

- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

(5) In determining whether any person (alone or with others) has control over a body of persons--

- (a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;

- (b) there may also be attributed to him any rights or powers of a person with whom he is connected including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.

(6) Sections 120, 121 and this section shall, with the necessary adaptations, have effect in relation to—

- (a) lettings and hirings of property, grants and transfers of rights, interests or licences, and

- (b) providing business facilities whether by way of making loans or guaranteeing debts or other liabilities to third parties or by the provision of any other kind of business facility whatsoever,

as they have effect in relation to sales, and the references in those sections to sales, buyers and prices shall be deemed to be extended accordingly.

*Transfer of property to evade taxation.*

122. Any person who reduces his income by the transfer or assignment of any real or personal, movable or immovable property to any member of his family shall nevertheless be liable to be taxed as if such transfer or assignment had not been made, unless the Commissioner is satisfied that such transfer or assignment was not made for the purpose of evading the whole or any part of any tax imposed under this Ordinance.

*Tax payable before departure from Falkland Islands, etc.*

123.—(1) If the Commissioner has reason to believe that any person who has been assessed to tax may leave the Falkland Islands before the tax becomes payable without having paid such tax, he may by notice to that person demand payment of the tax within the period specified in the notice.

(2) Tax demanded by notice under subsection (1) shall be payable at the end of the specified period and, in default of payment and unless security for payment thereof be given to the satisfaction of the Commissioner, shall be recoverable forthwith in the manner prescribed by section 142(3).

(3) If the Commissioner has reason to believe that tax on any chargeable income may not be recovered, he may at any time and as the case may require—

- (a) by notice require any person to make a return and to furnish particulars of any chargeable income within the specified period;

- (b) make an assessment on that person in the amount of the income returned, or if default is made in making such return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;
- (c) by notice to the person assessed require security for the payment of the tax assessed to be given to his satisfaction.

(4) If the Commissioner has reason to believe that tax on any income which will become chargeable to such tax (assuming tax to be chargeable on that income), may not be recovered he may at any time—

- (a) by notice to the person by whom the tax would be payable determine a period ("the tax period") for which tax shall be charged and require such person to render within the specified period returns and particulars of the income for the tax period;
  - (b) make an assessment upon the person in the amount of the income returned, or if default is made in making a return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;
- and an assessment under this subsection shall be made at the rate of tax imposed by the last preceding proclamation.

(5) Notice of any assessment made in accordance with the provisions of subsection (3) or (4) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subsection (3) or (4)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in accordance with section 142(3).

(6) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under subsection (3) or (4) shall have the rights of objection and appeal conferred by sections 136 and 139 and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(7) Subsections (3) or (4) are without prejudice to the powers of the Commissioner under section 135.

(8) In this section "specified period", in relation to any notice, means such period as may be specified in the notice.

(9) This section applies in relation to assessments made before as well as after the coming into force of this section, and in relation to tax for chargeable periods beginning before the coming into force of this section.

*Company migration.*

124.—(1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the Falkland Islands.

(2) The requirements of this subsection are satisfied if the company gives to the Commissioner—

- (a) notice of its intention to cease to be resident in the Falkland Islands specifying the time ("the relevant time") when it intends so to cease;

- (b) a statement of the amount which, in its opinion, is the amount of tax which is or will be payable by it in respect of periods beginning before that time; and
- (c) particulars of the arrangements which it proposes to make for securing the payment of that tax.

(3) The requirements of this subsection are satisfied if—

- (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and
- (b) those arrangements as so made are approved by the Commissioner for the purposes of this subsection.

(4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Tribunal whose decision shall be final.

(5) If any information furnished by the company for the purpose of securing the approval of the Commissioner under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Commissioner under that subsection, any resulting approval of the Commissioner shall be void.

(6) In this section and section 126 any reference to the tax payable by a company includes a reference to—

- (a) any amount which it is liable to pay under the POAT regulations made under section 85;
- (b) any tax which it is liable to pay under section 56 or 93.

(7) In this section and section 126 any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.

(8) In this section and section 126 any reference to a provision of this Ordinance shall be construed, in relation to any time before the commencement of that provision as a reference to the corresponding enactment repealed by this Ordinance.

*Penalties for failure to  
comply with section  
125.*

125.—(1) If a company fails to comply with section 125 at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.

(2) If, in relation to a company ("the migrating company"), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 125 at any time and either—

- (a) that person is a person to whom subsection (3) below applies;  
or
- (b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that

subsection applies,  
that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.

(3) This subsection applies to the following persons, namely—

- (a) any company which has control of the migrating company;  
and
- (b) any person who is a director of the migrating company or of a company which has control of the migrating company.

(4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above—

- (a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and
- (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 125 was to his knowledge such an act.

(5) References in this section to a company failing to comply with section 125 are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the Falkland Islands.

(6) In this section "director", in relation to a company, includes—

- (a) any person managing, or who is a member of the body managing, the affairs of the company (by whatever name called),
- (b) any person (other than a person advising in a professional capacity) in accordance with whose directions or instructions the other directors are accustomed to act; and
- (c) any person who, or who together with any connected person, beneficially owns, directly or indirectly, at least 20 per cent. of the ordinary share capital of the company.

PART VII  
DOUBLE TAXATION RELIEF

*Double taxation relief  
arrangements.*

127.—(1) If the Governor in Council by order declares—

- (a) that arrangements specified in the order have been made with the Government of any territory outside the Falkland Islands with a view to affording relief from double taxation in relation to income tax or corporation tax or any tax of a similar character imposed by the laws of that territory, and
- (b) that it is expedient that those arrangements should have effect,

the arrangements shall have effect in relation to income tax and corporation tax notwithstanding anything to the contrary in any enactment.

(2) Any order made under this section may be revoked by a subsequent order.

(3) The Governor in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

*Limit on credit: general  
provisions.*

128.—(1) This section shall have effect where, under double taxation relief arrangements, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in the Falkland Islands.

(2) In subsections (3) to (7) below and sections 129 and 130—

"foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed, and

"tax" means income tax or corporation tax chargeable under this Ordinance.

(3) A credit shall not be allowed against tax for any chargeable period unless the person entitled to the income is resident in the Falkland Islands for that period, but subject to that, the amount of tax chargeable in respect of the income shall, on a claim being made in that behalf, be reduced by the amount of the credit.

(4) In computing the amount of the income—

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the tax chargeable depends on the amount received in the Falkland Islands, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (c) where the income includes a dividend and, under the arrangements, foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of

credit;

but notwithstanding anything in paragraphs (a) to (c) above a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(5) Where—

(a) the double taxation relief arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(6) Any claim for an allowance by way of credit under this section for any chargeable period shall be made not later than two years after the end of that period, and in the event of any dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

(7) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the Falkland Islands or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made whether in the Falkland Islands or elsewhere, as are material in determining whether any and if so what credit falls to be given.

*Limit on credit: income tax.*

129.—(1) The amount of the credit for foreign tax which, under any arrangements is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between—

(a) the amount of tax which would be chargeable (before allowance of any credit under this Part) on the total income of that person, and

(b) the amount of tax which would be so chargeable on the total income of that person less the income in respect of which the credit is to be allowed.

(2) Without prejudice to subsection (1), the total credit to be allowed to a person for any chargeable period for foreign tax under this Part shall not exceed the total tax payable by him for that period.

(3) Paragraphs (a) and (b) of section 128(4) (but not the remainder of that subsection) shall apply to the computation of total income for the purpose of subsection (1) above, and shall so apply in relation to all income in the case of which credit falls to be given for foreign tax under double taxation relief arrangements.

*Limit on credit:  
corporation tax.*

130.—(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income ("the relevant income") shall not exceed the corporation tax attributable to the relevant income, determined in accordance with subsection (2) below.

(2) The amount of corporation tax attributable to the relevant income shall be treated as equal to such proportion of the amount of that income as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income for the accounting period in which the income arises ("the relevant accounting period").

(3) Where in accordance with section 33 any ACT falls to be set against the company's liability to corporation tax on its income for the relevant accounting period—

- (a) so far as that liability relates to the relevant income it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income as determined in accordance with subsection (2) above; and
- (b) the amount of ACT which may be set against that liability, so far as it relates to the relevant income, shall not exceed the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income.

*Unilateral tax credit.*

131.—(1) Where any person resident or ordinarily resident in the Falkland Islands proves that he had paid, by deduction or otherwise, overseas tax on any part of his income which arises from a source outside the Falkland Islands and which is also chargeable to Falkland Islands tax, he shall be entitled to a credit against such Falkland Islands tax equal to the overseas tax or the Falkland Islands tax on that part of his income whichever is the less.

(2) For the purposes of this section—

"overseas tax" means an income tax or corporation tax or tax of a similar character imposed by the laws of any territory outside the Falkland Islands other than a territory with the Government of which arrangements have been made which have effect under section 127; and

"income arising from a source outside the Falkland Islands" does not include, in the case of income from an employment, such part of that income as constitutes remuneration for services actually performed in the Falkland Islands.

(3) For the purpose of calculating the amount of any credit under this section, the provisions of sections 128, 129 and 130 shall apply as if references in those sections to double taxation relief arrangements were references to this section and as if references to foreign tax were references to overseas tax.

*Disclosure of  
information.*

132.—(1) Where any arrangements have effect by virtue of section 127, the obligation as to secrecy imposed by section 158 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(2) Without prejudice to subsection (1) above, where, under any law in force in any territory outside the Falkland Islands, provision is made for the allowance of relief from tax on income in respect of the payment of tax in the Falkland Islands, the obligation as to secrecy imposed by section 158 shall not



prevent the disclosure to the authorized officers of the Government in that part of the Commonwealth of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from tax on income in that part of the Commonwealth.

## PART VIII ASSESSMENTS, APPEALS, COLLECTION, REPAYMENT OF TAX, OFFENCES AND PENALTIES

### *Assessments to income tax and corporation tax*

*Assessments to income tax.*

133.—(1) The Commissioner shall assess every person chargeable to income tax for any year of assessment as soon as is reasonably practicable after the expiration of the time allowed to such person for the delivery of his return under section 11 for that year.

- (2) Where a person has delivered his return the Commissioner may—
- (a) accept the return and make an assessment accordingly; or
  - (b) refuse to accept the return, and, to the best of his judgment, determine the amount of the chargeable income of that person and assess him accordingly.

(3) Where a person has not delivered a return for any year within the time permitted and the Commissioner is of the opinion that he is chargeable to income tax for that year, he may, according to the best of his judgment, determine the amount of the chargeable income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(4) In any case where a person has been required to lodge accounts and other information with the Commissioner under section 11, any reference above to his return includes a reference to any such accounts and information.

(5) An assessment under this section for any year of assessment may not be made after the end of the period of 6 years immediately following that year.

*Assessments to corporation tax.*

134.—(1) The Commissioner may assess any company chargeable to corporation tax for a corporation tax year before the expiry of the period of 6 years immediately following that year.

(2) Where a company has delivered accounts for an accounting period and any other information which the Commissioner may require, the Commissioner may—

- (a) accept the accounts and other information and make an assessment accordingly; or
- (b) refuse to accept the accounts or other information and, to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly.

(3) Where a person has not delivered accounts for an accounting period within the time permitted and the Commissioner is of the opinion that he is chargeable to corporation tax for that period, he may, according to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly; but such an assessment shall not affect any

liability otherwise incurred by the company by reason of its failure or neglect to deliver a return.

(4) Where it appears to the Commissioner that the beginning or end of an accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding 12 months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either--

(a) the Commissioner on further facts coming to his knowledge sees fit to revise it; or

(b) on an appeal to the Tribunal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the accounting periods, and there shall be made such other assessments for any such periods or any of them as might have been made at the time the assessment appealed against was made.

(5) An assessment under this section for any corporation tax year may not be made after the end of the period of 6 years immediately following that year.

(6) This section has effect subject to any other provision of this Ordinance making provision with respect to assessments to corporation tax.

*Additional assessments.*

135.—(1) Where it appears to the Commissioner that any person chargeable to tax for any chargeable period has been assessed at a less amount than that which ought to have been charged, the Commissioner may, according to the best of his judgment, assess the additional amount of tax not charged by the earlier assessment and, in the case of income tax, interest shall be due as if the tax had been charged in the earlier assessment.

(2) The provisions of this Ordinance relating to notices of assessment, appeals and other proceedings under this Ordinance shall apply to any additional assessment under this section and to the tax charged under the assessment.

(3) An additional assessment under this section may not be made more than 2 years after the date on which the original assessment was made.

*Notices of assessment and objections to and amendments of assessments.*

136.—(1) Where an assessment is made on any person under section 133, 134 or 135, the Commissioner shall give notice of it to the person as soon as is reasonably practicable after it is made, stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under this section; and a notice under this subsection is referred to in this Ordinance as a notice of assessment.

(2) Any person who is given a notice of assessment may by notice to the Commissioner object to the assessment.

In this section "the person assessed" means the person or company to whom a notice of assessment is given.

(3) A notice under subsection (2) ("a notice of objection") shall state precisely the grounds on which the person assessed objects to the assessment.

(4) A notice of objection shall be made within two months from the date

of the service of the notice of assessment to which it relates but the Commissioner shall, if satisfied that owing to any reasonable cause (whether absence from the Falkland Islands or sickness or any other cause) the person assessed was prevented from making the application within the 2 months allowed, extend that period to such longer period as may be reasonable in the circumstances.

(5) On receipt of a notice of objection the Commissioner shall reconsider the assessment and may require the person assessed—

- (a) to furnish such particulars as the Commissioner may require with respect to that person's income, and
- (b) to produce all books or other documents in his custody or under his control relating to such income.

(6) The Commissioner may summon any person whom he has reasonable grounds for believing to be able to give evidence respecting the assessment to attend before him, and may examine such person on oath or otherwise, but a person shall not be required to give any evidence under this subsection which he could not be compelled to give in an action in the Supreme Court.

(7) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Commissioner the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon that person.

(8) The person assessed may not appeal against the assessment under section 139 unless—

- (a) he has given notice of objection to the assessment under this section, and
- (b) the Commissioner has completed his reconsideration of the assessment under this section.

*Burden of proof.*

137. The burden of proof of exemption from or abatement of the tax levied under this Ordinance shall lie on the party claiming the exemption or abatement.

*Appeals to the Tax Appeal Tribunal*

*Tax Appeal Tribunal.*

138.—(1) There shall continue to be a Tax Appeal Tribunal ("the Tribunal") constituted in accordance with this section to exercise functions conferred upon it by this Ordinance.

(2) The Tax Appeal Tribunal shall have at least 5 and not more than 7 members appointed by the Governor.

(3) A person who is—

- (a) an elected member of the Legislative Council; or
- (b) a public officer in any public office in the Finance Department,

is not qualified to be appointed as a member of the Tribunal and any person who, under this subsection, is not qualified to be appointed as a member of the Tribunal ceases, if he is already a member of the Tribunal, to hold office as such immediately he ceases to be qualified under this subsection to be appointed to be a member of the Tribunal.

(4) A member of the Tribunal who has, or whose partner, spouse or child has, any direct interest in any matter falling to be considered by the Tribunal shall

not take any part in the consideration of that matter by the Tribunal, and shall declare that interest if he is present at a meeting of the Tribunal at which the matter is considered and withdraw from such a meeting during the Tribunal's consideration of that matter.

(5) No business shall be transacted (except to adjourn) by the Tribunal unless at least 3 of its members are present, but the Tribunal may otherwise act notwithstanding a vacancy for the time being in its members.

A member of the Tribunal who has declared an interest shall not be counted as being present for the purposes of this subsection.

(6) The Governor shall appoint one of the members of the Tribunal to be the Chairman and, subject to subsection (7), the Chairman shall preside at all meetings of the Tribunal at which he is present.

(7) Where the Chairman is, by virtue of subsection (4), unable to take part in consideration of a matter or is absent from the meeting of the Tribunal, the members of the Tribunal present (where appropriate, after withdrawal of the Chairman) shall elect one of their members to preside at that meeting or for so much of it as the Chairman is absent.

*Appeals to the Tribunal.*

139.—(1) Any person aggrieved—

- (a) by an assessment of liability to tax or entitlement to repayment of tax already paid or of entitlement to repayment of any sum already paid on account of tax;
- (b) by a decision of the Commissioner with respect to person's entitlement to the benefit of a deduction, allowance or relief under this Ordinance or the Income Tax Ordinance;
- (c) by a decision that a person is or was at any time resident or ordinarily resident or not resident in the Falkland Islands for the purposes of this Ordinance or the Income Tax Ordinance ;
- (d) by a decision that any income of a person is, for the purposes of this Ordinance or the Income Tax Ordinance, unearned income or, as the case may be, earned income; or
- (e) by any other decision of the Commissioner under this Ordinance or the Income Tax Ordinance,

may, subject to section 136, appeal to the Tribunal in accordance with this section.

(2) An appeal may not be brought under subsection (1) against—

- (a) a requirement to file a return of income;
- (b) a requirement to produce any accounts or other information relating to a business;
- (c) a requirement to pay interest on any tax unpaid or paid late;
- (d) a decision to take proceedings for the recovery of any tax alleged to be due and unpaid; or
- (e) a decision to prosecute for any offence under this Ordinance or the Income Tax Ordinance;
- (f) a decision to require payment of a penalty under this Ordinance or the Income Tax Ordinance.

(3) For the purposes of subsection (1), "person aggrieved" means—

- (a) the person directly affected by the decision in question, or, where he is deceased, his personal representative;
- (b) in relation to a bankrupt, his trustee in bankruptcy or, where there is none, the Official Receiver or person acting as

- Official Receiver in relation to the bankrupt's estate;
- (c) in relation to the estate of a deceased person, the deceased person's personal representative;
  - (d) in relation to a settlement of property, the trustees for the time being of that settlement; and
  - (e) in relation to a person under an incapacity—
    - (i) if that person is a minor, his parents or either of them or any other person who is his guardian;
    - (ii) if that person suffers from a mental incapacity, the person who has been appointed by the Supreme Court as his receiver or, if there be none, any person appearing to the Tribunal to have a sufficient interest in his welfare; and
    - (iii) in relation to a company in the course of being wound up, the liquidator.

(4) Notice of appeal under this section must be sent or delivered to the Clerk to the Tribunal within 21 days of the date on which the decision of the Commissioner under section 136 relating to the assessment or decision in question is notified to the appellant or such longer period as the Commissioner, in his discretion, may allow.

In relation to an appeal against any assessment or decision under the Income Tax Ordinance this subsection shall have effect with the omission of the words from "the decision" to "relating to" and with the substitution of "42" for "21".

(5) Notice of appeal shall specify the decision or decisions the subject of the appeal, the appellant's grounds of appeal and whether the appellant requests an oral hearing of the appeal by the Tribunal or whether he is content for the appeal to be dealt with by written representations.

(6) Schedule 1 to this Ordinance shall have effect with respect to appeals under this section.

(7) On consideration of any written representations made in accordance with Schedule 1, or at the hearing if one is held, the Tribunal may allow the appellant to put forward any ground not specified in the notice of appeal, and take it into consideration.

(8) On receiving a notice of appeal under this section, the Clerk to the Tribunal shall transmit a copy of it to the Commissioner.

*Clerk to the Tribunal.*

140.--(1) The Governor shall appoint a public officer to be the Clerk to the Tribunal.

(2) The duties of the Clerk shall be—

- (a) to have custody of the records at the Tribunal;
- (b) to receive notices of appeal and written representations in connection with any appeal;
- (c) to keep minutes of all meetings of the Tribunal;
- (d) to notify the parties to any appeal to the Tribunal of the determination of the appeal by Tribunal and the reasons for that determination;
- (e) any other duty imposed on him by this Ordinance; and
- (f) any other duty, not inconsistent with this Ordinance, imposed

on him by the Chairman of the Tribunal.

*Postponement of tax on appeal.*

- 141.—(1) This section applies to an appeal to the Commissioner against—  
 (a) an assessment to income tax;  
 (b) an assessment to corporation tax.

(2) Except as otherwise provided by the following provisions of this section, the tax charged by the assessment shall be due and payable as if there had been no appeal.

(3) If the appellant has grounds for believing that he is overcharged to tax by the assessment, he may, by notice given to the Commissioner within 30 days after the date of the issue of the notice of assessment, apply to the Commissioner for a determination of the amount of tax the payment of which should be postponed pending the determination of the appeal.

A notice of application under this subsection shall state the amount by which the appellant believes that he is overcharged to tax and his grounds for that belief.

(4) An application under subsection (3) above may be made more than 30 days after the date of the issue of the notice of assessment if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the assessment.

(5) If, after any determination of the amount of tax the payment of which should be so postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, by notice given to the other party at any time before the determination of the appeal, apply to the Commissioner for a further determination of that amount.

A notice of application under this subsection shall state the amount by which the applicant believes that the amount previously determined has become excessive or, as the case may be, insufficient and his grounds for that belief.

(6) An application under subsection (3) or (5) above shall be heard and determined in the same way as the appeal; and where any such application is heard and determined by the Commissioner, that shall not preclude him from hearing and determining the appeal or any application or further application under subsection (5) above.

(7) The amount of tax the payment of which shall be postponed pending the determination of the appeal shall be the amount (if any) in which it appears to the Commissioner, having regard to the representations made and any lawful evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged to tax.

(8) In the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (4) above, or under subsection (5) above, any tax the payment of which is not postponed or which ceases to be postponed shall be due and payable—

(a) where the tax concerned is income tax for any year of assessment—

(i) 30 days after the date of the determination, or

(ii) 90 days after the date of the assessment, or

(iii) 1st August in that year,

whichever is the later;  
(b) where the tax concerned is corporation tax, 30 days after the date of the determination;  
and any tax overpaid shall be repaid.

(9) If the appellant and the Commissioner come to an agreement, whether in writing or otherwise, as to the amount of tax the payment of which should be postponed pending the determination of the appeal, the like consequences shall ensue under subsection (8) above as would have ensued if the Commissioner had made a determination to that effect under subsection (7) above on the date when the agreement was come to, but without prejudice to the making of a further agreement or of a further determination under that subsection.

(10) Where an agreement is not in writing—

- (a) subsection (9) above shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice given by the Commissioner to the appellant or by the appellant to the Commissioner, and
- (b) the reference in that subsection to the time when the agreement was come to shall be construed as a reference to the time of the giving of the notice of confirmation.

(11) On the determination of an appeal against an assessment, the date on which any income tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be shall be due and payable—

(a) where the tax concerned is income tax—

(i) 30 days after the date on which the Commissioner issues to the appellant a notice of the total amount payable in accordance with of that determination, or

(ii) 90 days after the date of the assessment,

whichever is the later;

(b) where the tax concerned is corporation tax, 30 days after the date of issue of the notice referred to in paragraph (a)(i);  
and any tax overpaid shall be repaid.

(12) Interest shall be due on any tax repaid in accordance with subsection (8)(b)(ii) or (11)(b) above at the rate of 2 per cent. per annum under base lending rate.

#### *Collection of tax and interest on late tax*

*Collection of tax and interest on tax.*

142.—(1) The Commissioner shall from time to time deliver to the collector lists of the names and addresses of persons assessed to tax, together with the amount payable by each person, and it shall be the duty of the collector to take all reasonable steps to ensure the payment of all assessed tax.

(2) In any case where notice of an objection or of an appeal has been given, collection of tax shall be subject to the provisions of sections 133 to 141.

(3) Without prejudice to any other provision of this Ordinance, tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or any collector in his official name with full costs of suit from the person charged therewith as a debt due to the Crown.

(4) In any case where tax which has been assessed remains unpaid after the date on which it was due, the Commissioner or any collector appointed under this Ordinance shall serve a demand note upon the person liable to pay the tax for the amount of the tax remaining unpaid together with the amount of interest due, and if payment is not made within 30 days from the date of the service of such demand note, the collector may proceed to enforce payment in accordance with Schedules 2 and 3 to this Ordinance.

(5) Where a demand note is served under subsection (4) above, the interest shall be recoverable in respect of the period after as well as before the service of the note and it is sufficient, in relation to a period falling after the date of the demand note, for it to state that interest is payable as specified in section 10(2) or 29(1), as the case may be.

(6) Any penalty under this Ordinance for which no other means of recovery is provided shall be treated as if it were an amount of assessed tax due at the time a notice issued by the Commissioner specifying the amount of the penalty is served on the person in default and—

(a) the Commissioner may not issue any such notice more than 6 years, or in the case of fraud more than 20 years, after the default in respect of which the penalty is due occurred or, if it occurred over a period of time, after the end of that time; and

(b) any person issued with a notice under this subsection may appeal to the Tribunal against the notice within 21 days of the date of service of the notice and section 139(5) to (8) and Schedule 1 shall apply.

#### *Repayment of tax*

##### *Repayment of income tax.*

143.—(1) If it is proved to the satisfaction of the Commissioner on a claim made by any person that he has paid income tax, by deduction or otherwise, for any year of assessment without the making of an assessment in excess of the amount with which he is properly chargeable, that person shall be entitled to have the excess refunded to him.

(2) Every claim for repayment under this section shall be made within 6 years from the end of the year of assessment to which the claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(4) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any chargeable period as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

##### *Refund of overpayments of corporation tax.*

144.—(1) If, with respect to any accounting period—

(a) a company has paid an amount of corporation tax without the making of an assessment; and

(b) the company has grounds for believing that the amount paid



exceeds the company's probable liability for corporation tax,

the company may by notice to the Commissioner make a claim for the repayment to the company of the amount of that excess; but a claim may not be made under this subsection after an assessment to corporation tax for the period becomes final or, if there is no assessment, after the expiry of the period of 6 years beginning with the end of the accounting period in question.

(2) A notice under subsection (1) above shall state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above, and the Commissioner shall repay the amount claimed if he is satisfied that the claim is justified.

(3) If, apart from this subsection, a claim would fall to be made under subsection (1) above at a time when the company concerned has appealed against an assessment to corporation tax for the period in question but that appeal has not been finally determined, that subsection shall have effect as if for the words from "make a claim" to "excess" there were substituted "apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending a determination of the company's liability for the accounting period in question"; and such an application shall be determined in the same way as the appeal.

(4) Where on an appeal against an assessment to corporation tax a company makes an application under section 136(3) or (5), that application may be combined with an application under subsection (1) above.

(5) Interest shall be due on any amount repaid under this section at the rate of 2 per cent. per annum under base lending rate.

#### *Offences and penalties*

*Penal provisions  
relating to fraud, etc.*

145.—(1) This section applies in any case where a person wilfully and with intent to evade or to assist any other person to evade tax—

- (a) omits from a return of income any income which should be included; or
  - (b) makes any false statement or entry in any return of income; or
  - (c) gives any false answer, whether orally or in writing to any question or request for information asked or made in accordance with this Ordinance; or
  - (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
  - (e) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance;
- and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding level 8 on the standard scale.

(3) In any case falling within subsection (1) above, the person concerned shall be liable to a penalty equal to treble the amount of tax for which he is liable under this Ordinance for the chargeable period in respect of or during which the offence was committed.

(4) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return of income by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

*Penalties for failure to make returns, making incorrect returns etc.*

146.—(1) The following provisions of this section shall apply where a person without reasonable excuse—

- (a) fails to make a return or to give any notice or information in accordance with the requirements of this Ordinance; or
- (b) makes an incorrect return by omitting or understating any income which he is required to include in a return of income; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership;

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

(3) In any case falling within subsection (1) above where no other civil penalty is provided, the person concerned shall be liable to a penalty equal to double the amount of tax which—

- (a) in a case falling within subsection (1)(a) above, is payable by that person for the accounting period to which the return or notice or information related, or
- (b) in any case, has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

*Penalties for offences.*

147. A person convicted of an offence under this Ordinance for which no other penalty is provided is liable on conviction to a fine not exceeding level 5 on the standard scale.

*Saving for other criminal proceedings.*

148. The provisions of this Ordinance shall not affect any criminal proceedings, except that a person shall not be prosecuted more than once for the same offence.

*Prosecutions etc. to commence within 6 years.*

149.—(1) Any prosecution against any person for the commission of any offence against the provisions of this Ordinance shall not be brought unless it is commenced in the chargeable period in which the offence is or is alleged to have been committed or before the expiry of the period of 6 years beginning with the end of that chargeable period.

(2) Subject to any contrary provision, proceedings for recovery of any penalty under this Ordinance for any act or omission shall not be commenced after the expiry of the period of 6 years beginning with the end of the chargeable period in which the act or omission is or is alleged to have been done or not to have been done.

## PART IX

## GENERAL AND SUPPLEMENTARY PROVISIONS

*Agents, trustees and others*

*Appointment and duties  
of agent.*

150.—(1) In this section—

- "agent" means a person appointed as such under subsection (2);
- "appointment notice" means a notice issued by the Commissioner under subsection (2) appointing an agent;
- "moneys" includes salary, wages and pensions payments and any other remuneration whatsoever;
- "principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, in his discretion, by notice addressed to any person—

- (a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from that other person; and
- (b) specify the amount of that tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the 12 months following the date of the notice, be held by him for, or due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, give notice to the Commissioner of that fact, and the notice must set out in full the reasons for his inability so to comply.

(5) The Commissioner may—

- (a) accept a notice under subsection (4) and cancel or amend the appointment notice accordingly; or
- (b) if he is not satisfied by the reasons set out in the notice, issue a notice to the agent rejecting the agent's notice.

(6) Unless and until notice is given by an agent under subsection (4)—

- (a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and
- (b) he may not assert the lack of such moneys as a defence in any proceedings for the collection or recovery of such tax.

(7) For the purposes of this section, the Commissioner may by notice at any time require any person to furnish him within a reasonable time, not being less than 30 days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or due by him to, any other person from whom tax is due.

(8) Where an agent fails to pay any amount of tax specified in his appointment notice within 30 days—

- (a) of the date of service of the notice on him; or
- (b) of the date on which any moneys come into his hands for, or become due by him to, his principal,

whichever is the later; and—

- (i) he has not given notice under subsection (4); or
- (ii) he has given notice under that subsection but the notice has been rejected by the Commissioner,

the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

(9) An agent who has made any payment of tax under this section shall for all purposes be deemed to have made the payment with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of such payment made against all proceedings, civil or criminal, and all process, judicial or extra-judicial, notwithstanding any provision to the contrary in any written law, contract or agreement.

*Appointment of agent in the United Kingdom.*

151.—(1) For the purpose of facilitating the assessment to income tax or corporation tax of the chargeable income of persons residing in the United Kingdom, the Governor may appoint an agent in the United Kingdom who—

- (a) shall make enquiries on behalf of the Commissioner in respect of any person who applies to be dealt with through such agent, and
- (b) shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Ordinance, and
- (c) shall forward to the Commissioner the accounts and computations upon which his report is based.

(2) If it appears to the Commissioner that any error has occurred in the accounts or computation referred to in subsection (1)(c), he may refer the report back for further consideration.

(3) Nothing in this section shall prevent an appeal in accordance with Part VIII of this Ordinance.

*Agent of person residing out of the Falkland Islands.*

152.—(1) A person not resident in the Falkland Islands ("a non-resident person"), whether a British subject or not, shall be assessable and chargeable in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as the non-resident person would be assessed and charged if he were resident in the Falkland Islands and in the actual receipt of such income.

(2) A non-resident person who—

- (a) is present in the Falkland Islands at any time during a year immediately preceding a year of assessment, and
  - (b) does not make a claim under subsection (3) below,
- shall be entitled, in computing his chargeable income for that year of assessment, to make a deduction under any of sections 14(1), 15(1) and 16(1) and (2), but not under any other provision of Chapter I of Part II or Chapter II of Part III.

(3) In the case of any non-resident person who makes a claim under this

subsection, the total amount of the deductions to be allowed to him under those Chapters shall not exceed an amount which would reduce the tax payable by him below the amount which bears the same proportion to the amount which would be payable by him if he were chargeable to tax on his total income from all sources, including income which is not subject to tax under this Ordinance, as the amount of his income subject to tax bears to such total income from all sources.

(4) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable or chargeable in the name of the attorney, factor, agent, receiver, branch, or manager.

(5) Where—

(a) a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to—

(i) the close connection between the resident person and the non-resident person, and

(ii) the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business,

then the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(6) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is so chargeable.

The amount of the percentage shall in each case be determined having regard to the nature of the business.

(7) In any case where an assessment is made under subsection (6) above, the provisions of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged.

(8) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker or general commission agent or other agent is not an authorized person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (5) to (7), in respect of gains or profits arising from sales or transactions carried through such a broker or agent.

(9) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him

chargeable in pursuance of subsections (5) to (7) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(10) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the Falkland Islands by the non-resident person—

- (a) the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner, or in the case of an appeal, to the Tribunal to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold who has bought from the manufacturer or producer direct, and
- (b) on proof to the satisfaction of the Commissioner (or Tribunal) of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

*Trustees etc. of  
incapacitated persons.*

153. A receiver appointed by the court, trustee, guardian, curator, or committee having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to income tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

*Managers of companies  
etc.*

154.—(1) Everything required to be done by a company under this Ordinance shall be done by the company through the proper officer of the company.

(2) Tax due and payable by a company under this Ordinance may (without prejudice to any other means of recovery) be recovered from the proper officer of the company who may retain out of any money coming into his hands on behalf of the company sufficient sums to pay that tax and so far as he does not have sufficient sums, shall be entitled to be indemnified by the company in respect of any liability imposed on him under this section.

(3) For the purposes of this section "the proper officer" means—

- (a) if a liquidator has been appointed for the company, the liquidator;
- (b) if a liquidator has not been appointed, the secretary or person acting as secretary of the company or such other person as is authorised to act as the proper officer of the company;
- (c) if neither paragraph (a) nor paragraph (b) applies, the treasurer or person acting as treasurer of the company.

*Responsibility of  
trustees and others.*

155.—(1) The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable on that income.

(2) Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance, or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the Falkland Islands and not an incapacitated person shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period specified in the notice a list signed by him containing—

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the income belongs, and
- (c) such other information as the notice may request being information which the Commissioner requires for the purposes of this Ordinance;

and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list.

*Indemnification of representatives.*

156. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

*Residence of companies and individuals*

*Residence of companies and individuals.*

157.—(1) In determining for the purposes of this Ordinance the place of residence of a company, its place of registration or incorporation, whether in the Falkland Islands or not, shall be regarded as immaterial and its place of residence shall be determined by relation to the abode of the central management and control of the company's business.

(2) In this Ordinance any reference to a person who is ordinarily resident in any place is a reference to a person who is habitually resident in that place except for such absence therefrom as seems to the Commissioner to be of a temporary nature.

(3) In this Ordinance any reference to an individual who is resident in the Falkland Islands in any year of assessment is a reference to a person—

- (a) who is actually in the Falkland Islands for 183 days or more in that year; or
- (b) who arrives in the Falkland Islands in that year with the intention of establishing his permanent residence in the Islands; or
- (c) who is permanently resident in the Falkland Islands in that year but who leaves the Islands before the end of that year.

*Disclosure of information*

*Official secrecy.*

158.—(1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information and returns relating to the income or items of income of any person as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Justice of the Peace.

(2) Every person having possession of or control over any documents,

information or returns relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

- (a) other than a person to whom he is authorized by the Governor to communicate it; or
- (b) otherwise than for the purpose of this Ordinance, commits an offence.

*Disclosure of information.*

159.—(1) Subject to subsection (2), the Commissioner may require any public officer or any officer in the employment of any public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer.

(2) A person shall not by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy, but section J9 shall be disregarded for the purposes of this subsection.

(3) The Commissioner may by notice require any employer, agent, contractor or other person within such time as may be specified in the notice, make a return for any chargeable period containing—

- (a) the names and addresses of all persons employed by that person for the whole or any part of that period; and
- (b) the payments and allowances made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the period does not (or is not expected to) exceed £800;
- (c) the names and addresses of all persons with whom he has entered into a contract for the performance of any work, or for delivery of any produce or goods, in the course of that chargeable period, and the amount advanced or paid in respect of such contract either in cash or in goods or merchandise; and
- (d) such other information as may be specified in the notice being information which is in the opinion of the Commissioner necessary for the purposes of this Ordinance.

(4) A return under subsection (3) above shall be made to the Commissioner and any person who fails to comply with a notice under that subsection shall be liable—

- (a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;
- (b) in any other case, to a penalty of £200.

(5) An employer, agent, contractor, or other person shall not be liable to any penalty for omitting from any such return the name or address of any person employed by him and not employed in any other employment if it appears to the Commissioner, on enquiry, that such person has no chargeable income.

(6) For the purposes of this section—

- (a) in any case where an employer, agent, contractor or other person is a body of persons, the manager or other principal officer of the body shall be deemed to be the employer, and



- (b) any director of a company, or person engaged in the management of a company, shall be deemed to be an employee of the company.

*Miscellaneous provisions*

*Rules.*

160.—(1) The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance, and rules made under this section may, in particular, make provision—

- (a) any such matters as are authorized by this Ordinance to be prescribed otherwise than by the Commissioner;  
 (b) as to the apportionment of deductions or allowances under this Ordinance—

(i) where an individual becomes resident or ordinarily resident or ceases to be so resident in the Falkland Islands during the year preceding the year of assessment, or

(ii) where an individual's personal circumstances change during such year (for example, on marriage, death or separation from his spouse), or

(iii) where it otherwise appears that apportionment of deductions or allowances would be appropriate;

- (c) for the method of calculating or estimating the deductions allowed or prescribed under section 14, 53 and 89.

(2) Rules made under this section shall be published in the Gazette and shall come into operation on such publication or at such other time as may be named in such rules.

(3) If any person fails to comply with or contravenes the provisions of any rule made under this Ordinance he commits an offence.

(4) All rules made under this Ordinance shall be judicially noticed.

*Time limit for making claims.*

161. Subject to any provision of this Ordinance prescribing a longer or a shorter period, a claim under this Ordinance shall not be allowed unless it is made within 6 years from the end of the chargeable period to which it relates.

*Earned income and unearned income.*

162.—(1) In this Ordinance references to earned income and to unearned income shall be construed in accordance with this section.

(2) In this Ordinance "earned income" means, in relation to any individual—

- (a) any income arising in respect of any remuneration from any office or employment held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office or employment, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such

pension, superannuation allowance or deferred pay or not; and

- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and
- (c) any income which is immediately derived by the individual from the carrying on or exercise by him of his business either as an individual or, in the case of a partnership, as a partner personally acting in the partnership; and
- (d) any voluntary pension of an individual,

and for the purposes of this subsection "remuneration" includes any payment in respect of any holidays or leave accrued due, overtime, or terminal bonus or gratuity or any other payment made by an employer to an employee or former employee or for or on account of employment.

(3) An annuity payable under approved personal pension arrangements (within the meaning of Part III) shall be treated as earned income of the annuitant.

(4) Subsection (4) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

(5) Any pension paid under any retirement benefit scheme which is approved or is being considered for approval under Part III shall, unless the Commissioner otherwise directs, be treated as earned income of the recipient.

(6) A daily allowance payable under the Elected Councillors' Allowances Ordinance 1990 shall be treated as earned income of the recipient.

(7) In cases where the income of a wife is deemed to be the income of the husband, any reference in subsection (2) to the individual includes either the husband or the wife.

(8) For the purposes of this Ordinance, "unearned income" means any income which is not by virtue of subsections (2) to (7) earned income and which is not, by virtue of any other provision of this Ordinance, to be treated as earned income.

(9) The provisions of this section are without prejudice to any other provision of this Ordinance directing income to be treated as earned income.

#### *Subsidiaries.*

163.—(1) For the purposes of this Ordinance a body corporate shall be deemed to be—

- (a) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
- (b) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.

(2) In subsection (1)(a) and (b) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references

to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section—

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series—

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any 2 bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where—

(a) each of 2 or more of the owners in a series owns a fraction,

and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or

- (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

- (a) directly, or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
- (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

(11) In this section "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

*Connected persons.*

164.—(1) For the purposes of this Ordinance, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor and with any person who is connected with such an individual, and for the purposes of this subsection—

"settlement" includes any disposition, trust, covenant, agreement or arrangement; and

"settlor", in relation to a settlement, means any person by whom the settlement is made (whether directly or indirectly).

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any

person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

- (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section—

- (a) "company" includes any body corporate or unincorporated association, but does not include a partnership;
- (b) "relative" means brother, sister, ancestor or lineal descendant.

*Meaning of "control".*

165. For the purposes of this Ordinance, "control", in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

*Errors etc. in assessments and notices.*

166.—(1) An assessment, warrant or other proceeding purporting to be made in accordance with this Ordinance shall not be quashed, or be declared void or voidable, for want of form, or be affected by reason of a mistake, defect or omission in it if it is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is identified by the name by which he is usually or generally known.

(2) An assessment shall not be impeached or affected—

- (a) by reason of a mistake therein as to—
  - (i) the name or surname of a person liable; or
  - (ii) the description of any income; or
  - (iii) the amount of tax charged; or
- (b) by reason of any variance between the assessment and the

notice of assessment,

unless the notice of assessment was not duly served on the person intended to be charged, or did not contain, in substance and effect, the particulars on which the assessment was made.

*Service of notices.*

167. Any notice given under this Ordinance by the Commissioner may be served on a person either personally or by being sent by registered post to his last known business or private address, and shall if sent by registered post be deemed to have been served not later than the tenth day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

*Signature of notices.*

168.—(1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by a person appointed by him for that purpose.

(2) Any notice under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by a person duly authorized by him.

(3) Any other notice given by the Commissioner under this Ordinance shall be valid if the signature of the Commissioner or of such person appears on it either printed or in manuscript.

(4) A signature appearing on any notice and purporting to be the signature of any person so appointed or authorized shall be taken to be the signature of that person unless and until the contrary is shown.

(5) The production of any document under the hand of the Commissioner or of any person appointed by him purporting to be a copy of or extract from any return or assessment shall in the Tribunal, all courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all courts shall in all proceedings take judicial notice of the signature of the Commissioner and of any person appointed by him.

*Repeals.*

169.—(1) The enactments specified in Part I of Schedule 4 to this Ordinance are hereby repealed to the extent specified in column 3 of that Schedule.

(2) The Rules specified in Part II of Schedule 4 are hereby revoked to the extent specified in column 3 of that Schedule.

## SCHEDULES

## Section 139

## SCHEDULE 1

## TAX APPEALS

*Interpretation*

## 1. In this Schedule—

- "the Chairman" means the Chairman of the Tax Appeal Tribunal;
- "the Clerk" means the Clerk to the Tax Appeal Tribunal;
- "the Tribunal" means the Tax Appeal Tribunal.

*Written representation appeals*

2.—(1) Where the Commissioner receives a copy of a notice of appeal under section 139 which does not request an oral hearing, the Commissioner shall, before the expiry of the period of 21 days beginning with the date of receipt of the copy notice, or such later period as the Chairman may permit, send to the Clerk his own written representations with respect to the appeal, supporting the decision or decisions appealed against in general and responding to the grounds of appeal in particular.

(2) The Clerk shall send a copy of any representations of the Commissioner made in accordance with sub-paragraph (1) above to the appellant together with a notice informing the appellant that he may submit his own representations to the Tribunal before the expiry of the period of 21 days beginning with the date of the notice, or such later period as the Chairman may permit.

(3) The Clerk shall send copies of any representation received in accordance with sub-paragraph (2) above to the Chairman and to the Commissioner.

## (4) If it appears to the Chairman that—

- (a) the written representations of the appellant raise any fresh ground of appeal (that is to say, which is not raised in the appellant's original notice of appeal),
- (b) the fresh ground has been anticipated in the Commissioner's own written representations, so that no injustice to the Commissioner is likely to result if he is not offered the opportunity of making further written representations,

the Chairman shall cause the Clerk to notify the Commissioner that the Commissioner may, in relation only to the fresh grounds of appeal specified in the notice, submit such further written representations to the Clerk before the expiry of the period of 14 days beginning with the date of the notice, or such later period as the Chairman may permit.

(5) On receiving any further written representations of the Commissioner submitted in accordance with sub-paragraph (4), the Clerk shall send copies of them to the Chairman and to the appellant but, unless the Chairman for special reason otherwise directs, the appellant shall not have the right to submit any further written representations on his own behalf.

(6) The Clerk shall ensure that the appeal is considered by the Tribunal as soon as reasonably possible after the expiry of the period or periods during which representations may be made under the preceding provisions of this paragraph.

## (7) The Clerk shall send to every member of the Tribunal—

- (a) a copy of the notice of appeal and of all written representations received in accordance with this paragraph relating to the appeal;
- (b) notice of the date on and time and place at which the appeal will be considered by the Tribunal.

(8) The Tribunal shall not, on consideration of an appeal under this section—  
 (a) consider any representations other than written representations submitted in accordance with this paragraph;

- (b) permit any person other than a member of the Tribunal or the Clerk to be present.

(9) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(10) As soon as reasonably convenient the Clerk shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

#### *Oral appeals*

3.—(1) Where the appellant's notice of appeal under section 139 requests an oral hearing, the Clerk shall give notice of the date on which and time and place at which the hearing will begin—

- (a) to every member of the Tribunal;
- (b) to the appellant; and
- (c) to the Commissioner.

(2) At the hearing, the appellant and the Commissioner may appear and be heard in person or by any other person appointed by or on behalf of the appellant or Commissioner to act in that behalf before the Tribunal; and in the following provisions of this paragraph any reference to the appellant or the Commissioner shall be construed accordingly.

(3) The following procedural rules shall apply for the conduct of the hearing—

- (a) the appellant shall be heard first and then the Commissioner shall be heard in reply;
- (b) the appellant and the Commissioner shall each have the right to call witnesses or to produce written evidence as part of their case, and any witness who gives oral evidence may be cross-examined by the other party;
- (c) the Commissioner may not call or produce any evidence or speak in reply to the appellant's case until the appellant's witnesses have completed their evidence and any written evidence he wishes to produce has been produced;
- (d) if the Commissioner calls witnesses or produces written evidence after the close of the case for the appellant, the appellant shall have the right (if he wishes) to address the Tribunal for a second time.

(4) After the Tribunal has heard the parties to the appeal, the Tribunal shall require the parties (and any witnesses they may have called) to withdraw, and shall then consider its decision in the appeal.

(5) The Clerk shall make a sufficient note of—

- (a) the address or addresses of the parties, and
- (b) any oral evidence given to the Tribunal.

(6) The Tribunal shall not require any evidence given to it during the hearing of an appeal to be given on oath or affirmation.

(7) The Tribunal shall not permit any person other than—

- (a) the members of the Tribunal hearing the appeal;
- (b) the parties, their representatives and their witnesses; and
- (c) the Clerk to the Tribunal,

to be present during the hearing of an appeal under this paragraph.

(8) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(9) As soon as reasonably convenient the Clerk to the Tribunal shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other



member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

*Notification of determination of appeal: further appeal on point of law*

4.—(1) As soon as possible after the determination of the appeal has been signed, the Clerk shall transmit a copy of it to the appellant and to the Commissioner.

(2) The appellant and the Commissioner may appeal against the determination of the Tribunal to the Supreme Court on a point of law.

(3) An appeal under this paragraph shall be lodged by the appellant or the Commissioner in triplicate with the Registrar of the Supreme Court within 28 days of the receipt by the appellant or the Commissioner (as the case may be) of the notice of the Tribunal's determination; and the notice of appeal shall—

- (a) specify the point of law in question;
- (b) the reasons for alleging that in relation to that point of law, that the Tribunal was in error.

(4) On determination of an appeal under this paragraph, the Supreme Court may—

- (a) correct any immaterial informality or error in the determination of the Tribunal which it is satisfied can be made without injustice to the parties;
- (b) quash or vary the determination of the Tribunal in such manner as it considers appropriate; and
- (c) make any other order it considers appropriate in the circumstances of the case (including, without prejudice to the generality of the foregoing, an order as to the costs of the appeal to the Supreme Court).

(5) The Chief Justice may make rules in relation to the procedure of the Supreme Court in appeals under this paragraph, but until such rules are first made, and subject to the foregoing provisions of this paragraph, the procedure on such appeals shall as nearly as possible be that on civil appeals to the Supreme Court.

*Commissioner to give effect to decisions on appeal*

5.—(1) Subject to sub-paragraph (2), the Commissioner shall take such steps and do such things as are necessary to give effect to the determination of the Tribunal on an appeal to it.

(2) Sub-paragraph (1) does not apply where the Commissioner has appealed or intends to appeal in accordance with this Schedule to the Supreme Court against the determination of the Tribunal, but in such a case the Commissioner shall not seek to enforce payment of any tax until or unless the determination of the Tribunal is quashed or varied to the relevant extent by the Supreme Court, if to so would be inconsistent with the determination of the Tribunal.

(3) The Commissioner shall, so far as it affects him, take all such steps and do all such things as are necessary to give effect to any order of the Supreme Court on an appeal under this Schedule.

*Supplementary provisions*

6.—(1) A member of the Tribunal is not personally liable in respect of anything done or omitted by him in good faith in the course of his functions as such a member.

(2) The Tribunal has no power to award to any person any costs of an appeal to it.

(3) For the avoidance of doubt, it is hereby declared that section 19 applies to all members of the Tribunal and to the Clerk in the performance of their functions as such.

(4) Neither the bringing of an appeal to the Tribunal nor the bringing of a further appeal from the Tribunal to the Supreme Court shall (otherwise than by reason of the manner

of determination of that appeal or further appeal) have effect—

- (a) to postpone any liability to pay any tax except in accordance with section 141;
- (b) to excuse any person from payment of interest on any tax overdue or abate that interest; or
- (c) to excuse any person from any penalty otherwise payable under this Ordinance.

Section 142.

## SCHEDULE 2

### PROCEEDINGS FOR THE RECOVERY OF TAX

#### *Notice to be given to tax defaulters*

1.—(1) The Commissioner shall on such days in each year as the Governor in Council may direct cause to be inserted in 3 consecutive issues of the Gazette a notice to the effect that warrants will be issued for the recovery of all tax together with interest, penalties and fines due thereon which remain unpaid after such day as may be specified in the notice.

(2) The specified day shall not be earlier than one month from the first publication of the notice and publication in accordance with this section shall be sufficient notice to all tax defaulters.

#### *Warrants against goods, power to sell lands, etc.*

2.—(1) The collector shall, on such day in each year as the Governor in Council may direct, issue to any person whom he may employ as bailiff for this purpose ("the bailiff") warrants directing and authorizing him to make a levy upon the goods of all defaulters for the payment of tax, interest, penalties and fines unpaid in the previous year.

(2) The collector may issue another warrant or warrants directed to any bailiff to recover any tax, interest, penalties or fines still outstanding and due from a defaulter named in a warrant previously issued by him.

(3) This paragraph is without prejudice to the power of the Financial Secretary under paragraph 10 below, to proceed to sell or issue a praecipe authorizing the sale of any land or house chargeable with the unpaid taxes, interest, penalties or fines together with any expenses of the collector in respect of anything done to recover the unpaid taxes, interest, penalties or fines at any time.

#### *Withdrawal of execution and institution of proceedings before magistrate*

3. Notwithstanding that the name of a person in default in the payment of any tax, interest, penalties or fines shall have been included in a list to any warrant or praecipe authorizing a levy, the Financial Secretary may, at his discretion, at any time that the tax, interest, penalty or fine remains unpaid, to cause the warrant or praecipe to be suspended as against the defaulter and instead to apply to the magistrate for a summons directing the defaulter to attend before the magistrate, at such time as may be specified in the summons, to show cause why he should not be ordered to pay the amount unpaid as a judgment debt, and the magistrate may in his discretion issue the summons and cause the same to be served.

#### *Order of magistrate for payment of unpaid sums*

4. If a summons is issued under paragraph 3 above, the magistrate may on the hearing of the summons order the defaulter to pay into court the amount of the unpaid tax, interest, penalties or fines, and such costs and expenses as may have been incurred, or to order him to pay into court any part of such amount which the magistrate may deem the defaulter able to pay or arrange for paying, within 7 days of the order or within such extended time as may be determined by the magistrate, either as a lump sum or by instalments.

*Imprisonment for failure to obey order*

5.—(1) If a person summoned under paragraph 3 above fails to comply with the summons without lawful excuse or if he fails to comply with an order under paragraph 4 above, the magistrate may commit him to prison for a term not exceeding 6 weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term).

(2) Committal shall not be ordered under this paragraph unless the magistrate is satisfied that the person in default either has, or has had since the date of the order, the means to pay the sum in respect of which he is in default, and has refused or neglected, or refuses or neglects, to pay that sum.

(3) Proof of the means of the person making default may be given in such manner as the magistrate thinks just and, for the purposes of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has summary jurisdiction in criminal matters, and such debtor and witnesses may be examined on oath.

(4) Every order of committal under this paragraph shall be issued, obeyed and executed in manner similar to commitments by the magistrate in the exercise of his summary jurisdiction in criminal cases.

(5) Imprisonment in pursuance of an order under this paragraph shall not satisfy or extinguish the judgment debt.

*Debtor paying whole of amount ordered to be paid*

6. In the event of the defaulter paying the whole of the amount ordered to be paid in pursuance of this Schedule the magistrate shall remit to the Treasury the amount so paid, deducting such part thereof as may represent the court costs.

*Proceedings by way of distress*

7.—(1) For the purpose of levying any distress the bailiff shall execute a warrant issued to him by the collector according to the tenor thereof, and such warrant shall be in the form set out in Part I of Schedule 3.

(2) On payment of the tax, interest and fines and expenses, the bailiff shall give acquittances under his hand to the persons who pay the same on numbered (counterfoil) receipt forms with which the bailiff shall be supplied by the collector, and shall pay over to the Treasury all money received by him under this Ordinance.

*Sale of goods levied on and disposal of proceeds*

8.—(1) When any goods or chattels are distrained on, they shall, after due notice given in the Gazette, be sold by the bailiff at public auction in such a manner as is usual in sales under executions issuing out of the Magistrate's Court.

(2) Until the sale, the goods shall remain in the custody of the bailiff by whom the levy is made.

(3) The money arising from the sale shall be paid over by the bailiff to the Treasury after deducting therefrom all reasonable and necessary charges and expenses attending the levy and sale which may be allowed by the Financial Secretary; and these proceeds of sale shall be applied by the Financial Secretary towards satisfaction of the unpaid tax, interest, penalties, fines and expenses and the surplus (if any) shall be restored on demand to the owner of the goods distrained.

(4) Sub-paragraphs (1), (2) and (3) above shall have effect subject to the following provisions—

- (a) tools of trade, bedding and wearing apparel amounting in all to the value of £250 shall be exempted from execution;

- (b) after a levy it shall be lawful for the owner of the goods seized to redeem the goods at any time before the time appointed for the sale by paying to the bailiff the full amount of the tax, interest, penalties and fines thereon, together with all costs and expenses incurred in relation thereto by the date of such payment;
- (c) if at such public auction there shall be no bids sufficient to cover the tax, interest, penalties, fines, costs and expenses, the unsold goods shall become the property of Her Majesty for the use of the Government of the Falkland Islands.

#### *Bailiff's fees*

9.—(1) The bailiff's fees which may be included in a claim of levy under a warrant may be in such sum and according to such scale as is fixed from time to time by the Governor in Council.

(2) All such fees shall be paid by the persons in default against whom warrants are issued, and the Governor in Council may award to any bailiff such proportion thereof as he shall think fit.

#### *Execution against land or houses*

10.—(1) If the amount of the tax and interest, penalties due and recoverable from a person in default and of the fines, costs and expenses relating to any unpaid tax, interest or penalties have not been, or in the opinion of the Financial Secretary cannot be, raised by the sale of that person's goods, the Financial Secretary may put up for sale either the whole of any lands or houses in the Falkland Islands to which that person is beneficially entitled, or such part thereof as in the discretion of the Financial Secretary may be selected and marked off as sufficient to realize the required amount.

(2) In default of satisfaction of the debt by any such sale, then if the lands or houses charged with the payment of unpaid tax or interest had passed out of the possession of the defaulter before the date of the said sale and consequently such last-mentioned lands or houses had not been levied as aforesaid, the Financial Secretary may in the last instance proceed to levy and sell the lands or houses last mentioned.

(3) The Financial Secretary may issue a praecipe to levy the tax by the sale of the lands or houses therein mentioned, which praecipe shall be in the form set out in Part II of Schedule 3.

#### *Notice to be served on defaulter before sale of realty*

11.—(1) Before proceeding with the sale of any land or house in accordance with this Schedule, the Financial Secretary or the officer conducting the sale shall serve or cause to be served on the person in default a notice in the form set out in Part III of Schedule 3, and unless the Financial Secretary or that officer specially sanctions service by post or by some other means, any such notice shall be served personally on the person in default.

(2) Whenever the Financial Secretary or the officer have reason to believe that the person in default is avoiding service of the notice, or that neither he nor his authorized agent can be found, the Financial Secretary or officer may order the notice to be affixed in some conspicuous manner to the property with respect to which the praecipe to levy has been issued.

(3) The server or bailiff serving any such notice personally shall endeavour to explain its purport fully to the person upon whom it is served.

(4) The bailiff or server of such notice shall write on it the date when it is served by him, and shall enter upon a counterfoil of the notice or on some other record the date and manner of service and the place where it was made.

(5) Any person duly served but failing to comply with the notice within the time and in the manner prescribed commits an offence and shall liable on summary conviction to a fine

not exceeding level 2 on the standard scale unless he prove either that, before the notice was served, he had paid the tax or fine, or that no tax or fine was or is due from him.

*Property vests in Crown on abortive sale*

12.—(1) When the whole of any land or any house in respect of which levy has been made, has been offered for sale and no bid made for it equal to or in excess of the tax, interest, penalties, fines, costs and charges thereon, that land or house shall be liable to forfeiture at the discretion of the Governor in Council.

(2) The Financial Secretary shall cause to be served on the person in default a notice that such land or house is liable to forfeiture within one month from the date of the service of the notice, if the amount due be not paid, and no land or house shall be forfeit in pursuance of this paragraph unless such a notice has been served.

(3) When any land or house has been declared by the Governor in Council to be forfeit, the same shall vest in Her Majesty, her heirs and successors for the use of the Government of the Falkland Islands.

(4) The Financial Secretary shall forward to the Registrar of the court for the purposes of registration a statement in such form as may be prescribed by the Commissioner for the purposes of this paragraph, which shall contain the particulars of the land or house, the name of the person in default, the amount due, the date of abortive sale, and the date of the service of the notice of liability to forfeiture.

(5) The registration of the statement shall constitute an indefeasible title.

*Conditions of sale*

13. In all cases of the sale of lands or houses under this Ordinance the following shall be the conditions of sale—

1. The purchaser buys at his own risk as to the provisions of the law necessary to authorize the sale having been complied with. Those who intend to purchase shall be allowed access to all documents which show that such provisions have been complied with.

2. The purchaser shall not require any proof (beyond a copy of the notice of assessment and the praecipe with the list of defaulters' notices with service) of the identity of the contents, dimensions, or other particulars of the property offered for sale with that advertised.

3. The highest bidder for each lot shall be the purchaser. Should any dispute arise as to any bidding, the property may again be put up for sale.

4. The reserve price shall be the amount of the tax, interest, penalties, fines, costs and charges remaining unpaid.

5. The advance on the bidding may be declared by the officer conducting the sale on putting up the specific lot. No bid shall be retracted without the consent of that officer.

6. Immediately after the sale, the purchaser shall pay to the Financial Secretary, or to the officer who conducts the sale, a deposit of his bid, and the balance within 7 days thereafter. In default of payment of the deposit, the property shall be offered for sale immediately and any subsequent bid by the person who has made default as aforesaid, shall be ignored or refused. If the purchaser fails to complete his purchase within 7 days, the deposit shall be forfeited and the property shall be re-offered for sale, when any deficiency on the first bid may be recovered from the first bidder as a debt.

7. Except in special cases to which the Governor may give his sanction, conveyances for lands, tenements and hereditaments will only be executed on the prescribed form.

8. Conveyances will not be executed until one month has elapsed from the date of sale, and during this period the right is reserved for the Governor to cancel the sale.

*Effect of execution sales with regard to title*

14.—(1) Any sale of any land or any house charged with the payment of unpaid tax, interest, penalties, fines or expenses shall, subject to the provisions of this paragraph and provided that the other provisions of this Ordinance have been duly complied with, operate to confer on the purchaser an indefeasible title thereto, free from all encumbrances, and that title shall be the right, title, and interest therein of the person in default in respect of that tax or other sum.

(2) A purchaser shall not have, nor be capable of granting, any title to any land, house or goods purchased in accordance with this Ordinance, if the purchase is made with the intention of defrauding any creditor, or as agent or trustee for the person in default, or for his wife or family.

(3) Any such sale to the person in default shall be void.

(4) Any person having a charge or debt by way of specialty or otherwise upon any property of the person in default may pay the tax, interest, penalties, fines, costs and expenses payable in accordance with this Ordinance by that person, and shall be entitled to add the moneys thus paid to such charge or debt, and thereupon the increased charge or debt shall bear the same interest and may be enforced and recovered in the same manner as the original charge or debt.

*Form of conveyance*

15. Where any land or house is sold in accordance with this Ordinance, the Chief Executive shall execute and deliver on completion a conveyance to the purchaser in the form set out in Part IV of Schedule 3.

*Disposal of surplus proceeds of sale*

16.—(1) Any surplus moneys arising on any sales under this Ordinance, after payment of the tax, interest, penalties, fines and costs, shall be paid by the Financial Secretary to the owner of the property sold, if known; and if not known, then they shall be at the disposal of the Governor in Council on the application of any person entitled, for 6 years from the day of sale, after which they shall be appropriated to the Consolidated Fund.

(2) If the Financial Secretary has notice that any person other than the owner of the property sold has a claim to the whole or any part of those surplus moneys, either by way of mortgage or other legal encumbrance, the Financial Secretary may give notice to the owner stating that the moneys or some specified part the moneys will be paid to the claimant, mortgagee, or encumbrancer, unless the owner informs the Financial Secretary within 10 days from the date of service of the notice that he does not admit the claim.

(3) If no reply is received from the owner to the notice within the time permitted, the surplus moneys, or so much of them as may have specified in the notice may be paid to the claimant by the Financial Secretary.

(4) If the owner denies the claim, then the Financial Secretary shall pay the surplus moneys to the Registrar of the Supreme Court, to be placed by the Registrar to the credit of an account in court to abide the settlement by the court of the question as to what person is entitled to them.

(5) The Financial Secretary shall not be held responsible for any payment made by him in accordance with this paragraph.

*Claims by third parties*

17.—(1) If any person (other than the person in default) claims that he is the owner of any goods or lands which are levied upon as belonging to a party in default he or any solicitor on his behalf may file an affidavit in the Supreme Court—

(a) specifying which of the goods or lands he claims as his property;

(b) stating full particulars of his title thereto; and  
(c) stating the value of the property,  
and a person making a claim under this paragraph is referred to as "the claimant".

(2) If the claimant either at the time of or subsequent to the filing of the affidavit, gives security by bond with two sureties (such bonds being hereby exempted from stamp duty) to the satisfaction of the Registrar of the Supreme Court in a sum of £1,000, conditioned to secure—

(a) first, either the total amount of taxes, interest, penalties, fines, costs, and expenses unpaid or such part thereof as may be equivalent to the value of the property claimed; and  
(b) secondly, all costs of the legal proceedings incidental to the determination of the claim,  
the Registrar shall notify the Financial Secretary to discontinue his levy upon such of the goods and lands as are specified in the affidavit until the determination of the claim.

#### *Abandonment of levy*

18. At any time within 7 days after receipt of the notification to discontinue the levy, the Financial Secretary may abandon the levy altogether, and if he does so, shall notify the Registrar and the claimant that the levy is wholly withdrawn and that no further legal proceedings will take place.

#### *Determination of claim*

19.—(1) If notice of abandonment is not given by the Financial Secretary under paragraph 12, the Registrar shall set the matter down for trial at the next sitting of the Supreme Court (Summary Jurisdiction) held not later than two weeks subsequent to security being so given.

(2) At the hearing, the issue shall be whether or not the claimant has made out his title to the goods or lands specified in the affidavit, and whether the value thereof has been correctly stated in the affidavit; and, upon the issues being determined, the court shall order the bond to be enforced or cancelled, as the case may be.

(3) In proceedings brought under this paragraph—

- (a) the defendant shall be, in the case of goods being claimed, the bailiff by whom the levy was made, and in the case of lands being claimed, the Financial Secretary, and  
(b) all steps may be taken and things done as in ordinary cases before the court, except that an order for costs shall not be made against the defendant unless the court is of the opinion that he has been guilty of wilful neglect or misconduct.

**SCHEDULE 3****WARRANTS AND OTHER FORMS****PART I****WARRANT TO LEVY**

Under the Taxes Ordinance of the Falkland Islands

By Financial Secretary of the Falkland Islands

To a bailiff appointed by the said Financial Secretary in this behalf.

WHEREAS the several persons named in the list attached to this Warrant are respectively liable in respect of tax, interest or fines to pay the several amounts set opposite their names respectively in such list;

AND WHEREAS default has been made in payment of the same;

YOU are therefore hereby enjoined and required to make demand of the several sums mentioned in the said list from the persons liable therefor or on the premises charged with the assessment, as the case may require, and upon payment thereof, to give acquittances under your hand unto the several persons who shall pay the same; and if any sum or sums remain unpaid after demand duly made by you then you are hereby enjoined and required to levy upon each and every of the persons named in the list such sums of money as shall be sufficient to pay the amount set opposite to the names of such persons in the said list together with the cost attending any levy and any sale thereon or any and all other proceedings consequent thereon. And of your proceedings herein you are forthwith to make your return to me.

Given under my hand at Stanley, Falkland Islands, the

day of 19

Financial Secretary

**PART II****PRAECIPE TO LEVY BY SALE OF LAND OR HOUSE**

Under the Taxes Ordinance of the Falkland Islands

By the Financial Secretary of the Falkland Islands

To

WHEREAS the lands or houses of the several persons named in the list to this Warrant attached are respectively liable under the Taxes Ordinance for the several amounts set opposite their respective names:

AND WHEREAS the lands or houses named in the said list are likewise respectively liable for the amount aforesaid whether or not the persons named are in possession thereof:

AND WHEREAS default has been made in payment of the said amounts,

YOU are therefore hereby enjoined and required to levy upon and sell the lands of which the several persons named in the said list are possessed, or a sufficient part thereof, to satisfy the amounts set opposite their respective names as aforesaid together with the costs attending any such levy and sale and all other proceedings consequent thereon.

AND in default of satisfaction thereby, then, if the persons named are not now in possession of the lands or houses named in the said list, you are hereby enjoined and required to levy upon the lands or houses last mentioned. And of your proceedings herein you are to make returns to me at the end of every calendar month commencing from the date hereof until your



## Taxes Ordinance

final return which you are to make to me on or before the thirtieth day of April next.

Given under my hand at Stanley, Falkland Islands, the

day of 19

Financial Secretary

## PART III

## NOTICE TO DEFAULTER

Under the Taxes Ordinance of the Falkland Islands

TAKE NOTICE that you are hereby required to fill in the following form with the statements and information thereby required, to sign the same and to deliver it within 7 days from the date of the service thereof to the Officer in charge of the Treasury.

AND FURTHER TAKE NOTICE that in default of your delivering such form duly filled in and signed as aforesaid, you will commit an offence and on conviction thereof be liable to a fine not exceeding level 2 on the standard scale.

## FORM

Do you admit that you owe £.....  
for tax and £..... for interest, fines or penalties in  
respect of .....

If the whole of the above-mentioned amount is not  
owing by you, state how much is owing by you.

If the above-mentioned amount or any part thereof  
is not owing by you, but is owing by some other  
person, state the name of that other person.

Have you any right, title or interest in the following  
properties? If you have, state the nature of your  
interest therein:

.....  
.....  
.....  
.....

State any reason you may have for claiming that  
your property may not be sold to satisfy the  
amount due by you.

Dated this day of

Financial Secretary

19

Served by me on the

day of

Bailiff or Server

## PART IV

## INDENTURE

THIS INDENTURE made the                      day of                      19                      between the Governor of the Falkland Islands of the one part ("the Governor") and ("the Grantee") of the other part

WITNESSETH that in consideration of the sum of  
paid by the Grantee to the Crown (the receipt whereof is hereby acknowledged) the Governor doth, pursuant to and in exercise of the powers in him vested by the laws of the said Falkland Islands relating to income tax and corporation tax, hereby grant to the Grantee ALL THAT

EXCEPTING AND RESERVING to the Crown, out of the grant hereby intended to be made, all the rights, liberties and benefits in respect of the said land and every portion thereof reserved to the Crown under and by virtue of section 28 of the Land Ordinance.

To hold the said hereditaments unto and to the use of the Grantee in fee simple.

IN WITNESS whereof the Governor hath hereunto set his hand and seal the day and year above written.

Signed sealed and delivered by the  
said (Governor) in L.S.  
the presence of

Section 169.

## SCHEDULE 4

## REPEALS

PART I  
ORDINANCES

Chapter	Short title	Extent
1939 c.32.	Income Tax Ordinance 1939	The whole Ordinance.
1990 c.2	Elected Councillors' Allowances Ordinance 1990	In section 3, in subsection (2) the words "shall not be chargeable to income tax in the hands of the recipient and" and in subsection (3) the words "the Income Tax Ordinance and".
1991 c.26.	Falkland Islands Defence Force Ordinance 1991	In section 53(1) the second sentence.

PART II  
RULES

Number	Title	Extent
	Income Tax Rules	Rules 1 to 7.
	Income Tax (Exemption) Order 1966	The whole Order.

Provision of 1939 Ordinance	Destination Provision of 1994 Bill
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(1B)	30(2),(3)
(1C)	22
(2)	162
(2A)-(2E)	24
(2F)	134(4)
(3)-(5)	162
3	4
3A	138
3B	140
3C	141
3D	Sch.1 §2
3E	Sch.1 §3
3F	Sch.1 §4
3G	Sch.1 §5
3H	Sch.1 §6
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5	7
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7	8
8	52
9	52(4)
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12B	95
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Provision of 1939 Ordinance	Destination Provision of 1994 Bill
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(3)	15(2),(4)
(4)	15(1)
16	17
17(a)	59,58
(b)	- (Not reproduced)
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21(1)	9
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(3)	-(Not reproduced)
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28	155(2)
29	154(1)
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32	- (Not reproduced)

Provision of 1939 Ordinance	Destination Provision of 1994 Bill
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(3)	-
(4)	80
(5)	2
(6)	81(2),(3)
(7)	53(1)(h)
32B(1)	162(2)
(2),(3)	80(3)
32C(1)	80(1)
(2)-(5)	81(4)-(7)
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32F	83
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33	11
34	158
35	54
36	168(1)-(4)
37	167
38	133(1)-(4)
39	135
40	- (Not reproduced)
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42	136
43	139(4)
44	166
45	168(5)

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50	128, 129
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51	- (Not reproduced)
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62	Sch.2 §3
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69	Sch.2 §10
70	Sch.2 §11
71	Sch.2 §12
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Provision of 1939 Ordinance	Destination Provision of 1994 Bill
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75	Sch.2 §16
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§5A-5D	101
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Provision of Bill	Derivation
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(2)	1939 s.2
(3)	New
(4)	1939 s.32A(5)
(5)	New
3	New
4	1939 s.2
5	1939 s.87
6	1939 s.90
7	1939 s.5
8	1939 s.6, 7, 23(4)
9	1939 s.21(1)
10	1939 s.54, 55(a)
11	1939 s.33
12	1939 s.24
13	1939 s.20
14	1939 s.10(1),(2),(3)(f)
15	1939 s.15(4),(3)
16	1939 s.15(1), 14(1),(2)
17	1939 s.16
18	1939 s.15A; 1993 s.5
19	1939 s.15B; 1993 s.5
20	1939 s.31
21-23	New
24	1939 s.2(2A)-(2E)
25	1939 s.21(2)
26,27,28,29	New
30(1)	New
(2)	1939 s.2(1A)
31-50	New
51	1939 s.22
52	1939 s.8
53	1939 s.10(3),(4)

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Provision of Bill	Derivation
54	1939 s.12
55	1939 s.35
56	1939 s.32I
57	New
58	1939 s.17
59	1939 s.17
60-79	New
80(1)	1939 s.32C(1)
(2)	1939 s.32A(2),(4)
(3)	1939 s.32B(2),(3)
(4)	1939 s.32A(4)
81(1)	1939 s.32A(3)
(2)	1939 s.32A(6)(a)
(3)	1939 s.32A(6)(b)
(4)-(7)	1939 s.32C(2)-(5)
82	1939 s.32D
83	1939 s.32F
84	1939 s.32G(1)
85	1939 s.32E
86	1939 s.32H
87,88	New
89	1939 s.10(3)(a),(b)-(e),(g)
90	1939 s.12A
91	1939 s.18(a),(b)
92	1939 s.18(c)-(f)
93	1939 s.32J
94	1939 s.19
95	1939 s.12B
96	New
97	1939 s.12C; 1993 s.4
98	1939 s.11, Sch.6 §1,2; Sch.7 §1
99	1939 Sch.6 §2,3(c),4(a); Sch.7 §2,3A(a)
100	1939 Sch.7 §5
101	1939 Sch.6 §6A-6D; Sch.7 §5A-5D

Provision of Bill	Derivation
102	New
103	1939 Sch.6 §7; Sch.7 §6
104	1939 Sch.6 §4,5; Sch.7 §3,4,5
105	New
106	1939 s.13
107,108,109, 110	New
111-119	New
120	1939 s.26A; 1993 s.6
121	1939 s.26B; 1993 s.6
122	1939 s.26C; 1993 s.6
123	1939 s.88
124	1939 s.59
125, 126	New
127	1939 s.49
128	1939 s.50(1),(2),(5),(7),(9),(10)
129	1939 s.50(3),(4),(6)
130	New
131	1939 s.50A
132	1939 s.49(3),52
133	1939 s.38
134	New
135	1939 s.39
136	1939 s.42
137	1939 s.82
138	1939 s.3A
139	1939 s.3C
140	1939 s.3B
141	New
142	1939 s.53, 57, 55(b),(c)
143	1939 s.58
144	New

## TABLE OF DERIVATIONS

Provision of Bill	Derivation
145	1939 s.85A
146	1939 s.85(1)
147	1939 s.84
148	1939 s.86
149	1939 s.83, 85(2)
150	1939 s.56A
151	1939 s.41
152	1939 s.26
153	1939 s.25
154	1939 s.29
155	1939 s.27, 28
156	1939 s.30
157	1939 s.2(1),(1A)
158	1939 s.4
159	1939 s.34
160	1939 s.89
161	New
162	1939 s.32B(1)
163	New
164	New
165	New
166	1939 s.44
167	1939 s.37
168	1939 s.36, 45
169	-
Schedule 1	1939 ss.3D-3H
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Part IV	1939 4th Schedule
Schedule 4	-



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*26th MAY 1994*

*No. 10*

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The following are published in this Supplement —

**Cruise Ships Bill 1994;**

**The Education (Amendment) Bill 1994;**

**Matrimonial Proceedings (Domestic Violence) Bill 1994;**

**Medical Practitioner (Qualification) Order 1994, (S.R. & O. No. 4 of 1994);**

**The Post Office (Amendment) Order 1994, (S.R. & O. No. 5 of 1994);**

**Administration of Justice (Crown Proceedings) Rules 1994, (S.R. & O. No. 6 of 1994).**

# Cruise Ships Bill 1994

(No.            of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title and commencement.
2. Interpretation.
3. Cruise ship levy.
4. Subsidiary legislation.

A Bill  
for  
An Ordinance

To make new provision in relation to cruise ships.

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

1. This Ordinance may be cited as the Cruise Ships Ordinance 1994 and shall come into force on such date as shall be appointed by the Governor by notice published in the Gazette. *Short title and commencement.*

2. In this Ordinance -

*Interpretation.*

"a cruise ship" is a vessel, however propelled, constructed or in fact used for the carriage of twelve or more tourist passengers;

"a tourist passenger" is a person carried for hire or reward on a vessel other than principally for the purpose of being conveyed from one point to another point;

"a visit", in relation to a cruise ship, means the time elapsed on any occasion between its entry into the territorial sea of the Falkland Islands (other than for the purpose of transit through the territorial sea at all reasonable speed by the shortest safe and convenient route) and its next ensuing departure from the territorial sea of the Falkland Islands;

"wild life site" means a site at which avia or fauna likely to be of interest to tourist passengers may be found.

3.(1) There shall be payable in respect of a visit by a cruise ship a levy of the prescribed amount. *Cruise ship levy.*

(2) The prescribed amount is the sum derived by multiplying by £10 the number of tourist passengers carried on board the cruise ship at the time of its entry into the territorial sea of the Falkland Islands at the commencement of a visit.

4.(1) The Governor may from time to time by Order amend section 3(2) by substituting another figure for that of £10 appearing therein. *Subsidiary legislation.*

(2) The Governor may make regulations -

(a) for the purpose of protecting wild life sites and other sites from environmental damage occasioned by visits of tourist passengers;

(b) without prejudice to the generality of (a) -

(i) requiring tourist passengers to be accompanied on visits to wild life sites by an approved guide or guides (and, if more than one, in accordance with the number of such passengers);

(ii) for the approval of guides to wild life sites;

(iii) approving a Code or Codes of Practice as to visits of tourist passengers to wild life sites;

(iv) requiring compliance with any Code of Practice approved by regulations under this section; and

(v) providing that a contravention of such provisions of any such regulations or Code of Practice as are specified for the purpose shall constitute a criminal offence, punishable on conviction by such fine, not exceeding £1000, as is specified in relation to the offence in question.



# The Education (Amendment) Bill 1994

(No:            of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1.      **Short title and commencement.**
2.      **Schedule.**

A Bill  
for  
An Ordinance

To amend the Education Ordinance 1989 so as to raise the school leaving age and to make consequential amendments to that Ordinance and to the Employment of Children Ordinance 1966 and the Employment of Women, Young Persons and Children Ordinance 1967.

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

1. This Ordinance may be cited as the Education (Amendment) Ordinance 1994 and shall come into force on 2nd February 1995. *Short title and commencement.*
2. The Schedule shall have effect. *Schedule.*

SCHEDULE

PART I

AMENDMENT OF EDUCATION ORDINANCE 1989

1. In this Part of this Schedule, "the Ordinance" means the Education Ordinance 1989.
2. Section 17(2) of the Ordinance is amended by replacing the words "fifteen years" with the words "sixteen years".
3. Section 17 of the Ordinance is further amended by the addition of the following subsection -
 

"(4) If the Director of Education so directs in writing in respect of any pupil or pupils specified in that direction, then in respect of that pupil or pupils subsection (2) shall have effect as if the words "ending with the day in the last term of the child's final year of compulsory education which is the day of completion of all external examinations for which the child has been entered" replaced the words "31st January in the following year" in respect of the child's final academic year."
4. Paragraph (b) of section 18(2) and section 18(3) of the Ordinance are repealed.

## **PART II**

### **AMENDMENT OF EMPLOYMENT OF CHILDREN ORDINANCE 1966**

5. Section 2(1)(a) of the Employment of Children Ordinance 1966 is replaced by the following -

"(a) until the end of the academic year (within the meaning given by section 17(2) of the Education Ordinance 1989) in which he attains the age of fourteen years".

## **PART III**

### **AMENDMENT OF EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN ORDINANCE 1967**

6. In section 2 of the Employment of Women Young Persons and Children Ordinance 1967 the definition of "child" is replaced with the following -

""child" means a person whose age does not exceed the upper limit of compulsory education age (within the meaning given under section 17(1) of the Education Ordinance 1989);"

## **OBJECTS AND REASONS**

As stated in the Long Title of the Bill.

## EXPLANATORY MEMORANDUM

### MATRIMONIAL PROCEEDINGS (DOMESTIC VIOLENCE) BILL 1994

#### *Introductory*

Under the present law, the Supreme Court in the exercise of its matrimonial jurisdiction as to divorce, judicial separation and nullity can grant injunctions restraining one party to the proceedings from being violent to the other or to a child of the family. It is doubtful as to whether it has power to exclude the party to a marriage who is an owner (whether jointly or solely) of the matrimonial home from that home because that (in the absence of statutory provision) would be inconsistent with rights at common law. Additionally, the Supreme Court could only grant such injunctions as have been mentioned in connection with other proceedings and cannot (in the absence of statutory provision) grant such injunctions where they are the only remedy sought in the proceedings.

The Magistrate's Court probably does not have any jurisdiction to grant the kinds of injunction mentioned above. This is believed to be an unsatisfactory situation because it means that the courts do not have adequate powers in the event of domestic violence (that is to say, violence by one spouse or quasi-spouse to the other spouse or quasi-spouse or the children living with them). The Matrimonial Proceedings (Domestic Violence) Bill 1994 seeks to amend the law so as to enable the courts satisfactorily to deal with such situations.

#### *Explanation of provisions of the Bill*

Clause 2 of the Bill would enable the Magistrate's Court (as well as the Supreme Court) to grant an injunction to restrain one party to a marriage from molesting the other party to the marriage or from molesting a child living with the other party to the marriage and to grant an injunction including a provision excluding a party from the marriage from the matrimonial home, a part of the matrimonial home or from a specified area in which the matrimonial home is included and will also enable the court to grant an injunction containing a provision requiring a spouse to permit the other spouse to enter and remain in a matrimonial home or a part of the matrimonial home and do any of those things even where an injunction containing such a provision is all the court is asked to grant.

While clause 2(1) refers to a marriage, clause 2(2) states that clause 2(1) shall apply to a man and a woman who are living with each other in the same household as husband and wife even if they are not married to each other.

While "molesting" is not defined, it is considered that "molesting" will include conduct which does not amount to violent behaviour and any conduct which intentionally causes such a degree of harassment as cause for the intervention of the courts.

In the nature of things, it may be expected that it would be more usual for the male partner to a relationship to be violent to a female partner and the children but clause 2 equally covers the situation where it is the female partner who is violent.

The intention of clause 3 is to enable the assistance of the police to be sought so as to prevent further violence where a Court Order has already been obtained restraining a party to a marriage or a relationship of husband and wife from molesting the other party or the children. Where the violence is repeated (contrary to the order that the court has made) the police would have a power of arrest. The person arrested would have to be brought before the relevant court. On the person being brought before the court he or she might be committed for contempt of court or released. But if the court saw fit the person concerned could be held for a longer period for evidence to be brought.

D G Lang QC  
Attorney General

March 1994

# Matrimonial Proceedings (Domestic Violence) Bill 1994

(No.            of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1.     Short title and commencement.
2.     Matrimonial injunctions in the Magistrate's Court.
3.     Arrest for breach of injunction.

A Bill  
for  
An Ordinance

To amend the law relating to matrimonial injunction; to provide the police with powers of arrest for breach of injunction in the case of domestic violence; and for purposes connected therewith.

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

1. This Ordinance may be cited as the Matrimonial Proceedings (Domestic Violence) Ordinance 1994 and shall come into force on such date as may be appointed by the Governor by notice published in the Gazette. *Short title and commencement.*
  
- 2.(1) Without prejudice to the jurisdiction of the Supreme Court, on an application by a party to a marriage the Magistrate's Court shall have jurisdiction to grant an injunction containing one or more of the following provisions, namely - *Matrimonial injunctions in the Magistrate's Court.*
  - (a) a provision restraining the other party to that marriage from molesting the applicant;
  - (b) a provision restraining the other party from molesting a child living with the applicant;
  - (c) a provision excluding the other party from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included;
  - (d) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or a part of the matrimonial home;

whether or not any other relief is sought in the proceedings.

(2) Subsection (1) above shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage and any reference to the matrimonial home shall be construed accordingly.

3.(1) Where, on an application by a party to a marriage, a judge grants an injunction containing a provision (in whatever terms) -

*Arrest for breach of injunction.*

(a) restraining the other party to that marriage from using violence against the applicant; or

(b) restraining the other party from using violence against a child living with the applicant; or

(c) excluding the other party from the matrimonial home or from a specified area in which the matrimonial home is included,

the judge may, if he is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned and considers that he is likely to do so again, attach a power of arrest to the injunction.

(2) References in subsection (1) to the parties to a marriage include references to a man and a woman who are living with each other in the same household as husband and wife and any reference in that subsection to the matrimonial home shall be construed accordingly.

(3) If, by virtue of subsection (2), a power of arrest is attached to an injunction, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such provision of that injunction as falls within paragraphs (a) to (c) of subsection (1) by reason of that person's use of violence or, as the case may be, of his entry into any premises or area.

(4) Where a power of arrest is attached to an injunction and a person to whom the injunction is addressed is arrested under subsection (3) -

(a) he shall be brought before a judge within the period of 24 hours beginning with his arrest; and

(b) he shall not be released within that period except on the direction of a judge,

but nothing in this section shall authorise his detention at any time after the expiry of that period.

In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(5) Where, by virtue of a power of arrest attached to an injunction, a police officer arrests any person under subsection (3), the police officer shall forthwith seek the direction -

(a) in a case where the injunction was granted by the Supreme Court, of that court; and

(b) in any other case of the Magistrate's Court,

as to the time and place at which that person is to be brought before a judge.

(6) In relation to the Magistrate's Court, in this section the words "a judge" means the Senior Magistrate or any person for the time being acting as the Senior Magistrate.



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## SUBSIDIARY LEGISLATION

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### MEDICINE

#### Medical Practitioner (Qualification) Order 1994

(S. R. & O. No. 4 of 1994)

*(Made: 18th May 1994)*

*(Coming into force: 18th May 1994)*

*(Published: 26th May 1994)*

IN EXERCISE of my powers under section 6(1) of the Medical Practitioners, Midwives and Dentists Ordinance (a) I make the following Order -

1. This Order may be cited as the Medical Practitioner (Qualification) Order 1994 and shall come into force on 18th May 1994. *Citation and commencement.*
2. The inscription in the Medical College of Chile under No. 4763-5 of Doctor Jose Luis Vasquez Fernandez is hereby declared to be a qualification for his registration as a medical practitioner under the Medical Practitioners, Midwives and Dentists Ordinance. *Recognised qualification.*

Made this 18th day of May 1994.

D. E. TATHAM,  
*Governor.*

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## SUBSIDIARY LEGISLATION

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### POST OFFICE

#### The Post Office (Amendment) Order 1994

(S.R. & O. No: 5 of 1994)

*(Made: 15th May 1994)*

*(Published: 26th May 1994)*

*(Coming into operation: 1st July 1994)*

IN EXERCISE of my powers under section 4 of the Post Office Ordinance (a), I make the following Order -

1. This Order may be cited as the Post Office (Amendment) Order 1994 and comes into operation on 1st July 1994. *Citation and commencement.*
2. In this Order, "the principal Order" means the Post Office Order 1981 (b). *"The principal Order."*
3. The Schedule to this Order shall have effect as the First, Second and Third Schedules to the principal Order and the Post Office (Amendment) Order 1993 (c) is revoked. *Replacement of Schedules to the principal Order.*

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(a) Cap. 52 Laws of the Falkland Islands 1950 Edition.

(b) No. 1 of 1981.

(c) No. 6 of 1993.

## SECOND SCHEDULE

## SURFACE MAIL RATES

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FIGAS FREIGHT RATES WILL BE APPLIED TO PARCELS ACCEPTED FOR INTERNAL AIR MAIL and as at the date of this Order are -

## MINIMUM CHARGE £1.00

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3	1.20	£1.80
4	1.60	£2.40
5	2.00	£3.00
EACH EXTRA KG	0.40	0.60

Made this day 15th May 1994.

D.E. TATHAM,  
*Governor.*

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## SUBSIDIARY LEGISLATION

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### CROWN PROCEEDINGS

#### Administration of Justice (Crown Proceedings) Rules 1994

(S.R. & O. No: 6 of 1994)

(Made: 13th May 1994)

(Published: 26th May 1994)

(Coming into operation: 1st June 1994)

IN EXERCISE of my powers under section 69 of the Administration of Justice Ordinance (a) I make the following Rules -

1. These Rules may be cited as the Administration of Justice (Crown Proceedings) Rules 1994 and apply in respect of civil proceedings brought by or against the Crown to which the Crown Proceedings Act 1947(b) in its application to the Falkland Islands under and by virtue of the Application of Enactments Ordinance 1954(c) applies.

*Citation and application.*

2. These Rules shall come into force on 1st June 1994.

*Commencement.*

3. In these Rules -

*Interpretation.*

(a) "civil proceedings" by or against the Crown includes proceedings in the Supreme Court or the Magistrate's Court for the recovery of fines or penalties but, except to the extent provided by section 25 of the 1947 Act, does not include proceedings which, in England, would be proceedings on the Crown side of the Queen's Bench Division of the High Court;

(b) "the 1947 Act" means the Crown Proceedings Act 1947 in its application to the Falkland Islands in the manner specified in rule 1 above;

(c) "the Rules of the Supreme Court" means the Rules of the Supreme Court 1949(d) as amended by the Rules of the Supreme Court (Amendment) Rules 1992(e).

4. The Rules of the Supreme Court shall apply, except in so far as they are inconsistent with these Rules, to civil proceedings by or against the Crown to which these Rules apply, but where the Rules of the Supreme Court are inconsistent with these Rules, the provisions of these Rules shall prevail.

*Application of Rules of the Supreme Court.*

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(a) Cap.3 Laws of the Falkland Islands, 1950 Edition.

(b) 10 & 11 Geo.6 c.44.

(c) No.13 of 1954.

(d) No.3 of 1949.

(e) S.R. & O No.15 of 1992.

5. Where civil proceedings by or against the Crown are brought in the Magistrate's Court pursuant to section 15 of the 1947 Act, the provisions of the county court rules for the time being in force and made pursuant to section 35 of the 1947 Act as it has effect in England shall, except in so far as they are inconsistent with -

*Civil proceedings by or against the Crown in the Magistrate's Court.*

(a) the Administration of Justice Ordinance; and

(b) these Rules,

have effect in relation to such proceedings in the Magistrate's Court subject to such modifications and adaptations as may be necessary in the circumstances of any particular case.

6.(1) Civil proceedings against the Crown shall not be commenced in the Summary Court.

*Civil proceedings against the Crown not to be instituted in the Summary Court.*

(2) Where any civil proceedings by the Crown are commenced against any person in the Summary Court and that person wishes to raise any counterclaim against the Crown he may apply to the Summary Court for those proceedings to be transferred to the Magistrate's Court or to the Supreme Court (according as to which of those courts would have had jurisdiction to entertain proceedings against the Crown in relation to a claim of the same amount or value as the amount of value of the counterclaim that person wishes to raise).

(3) On an application being made pursuant to paragraph (2) the Summary Court shall order that the proceedings be transferred to whichever of the Supreme Court or the Magistrate's Court is appropriate in the circumstances of the case whereupon -

(a) those proceedings shall continue in the court to which they are so ordered to be transferred as if they had been commenced in that court;

(b) that Court may give such consequential and other directions as may be necessary in the circumstances of the case.

7.(1) If, in any civil proceedings -

*Counterclaims against the Crown in the Magistrate's Court.*

(a) instituted by the Crown in the Magistrate's Court, a defendant counterclaims against the Crown in a sum greater than the statutory limit; or

(b) instituted by any person against any other person in circumstances where the Magistrate's Court only has jurisdiction by consent of the parties, and any party serves a Third Party notice upon the Crown,

the Magistrate's Court shall order that those proceedings shall be transferred to the Supreme Court whereupon -

(i) those proceedings shall continue in the Supreme Court as if they had been commenced in that Court; and

(ii) the Supreme Court may give such consequential and other directions as may be necessary in the circumstances of the case.

(2) This rule has effect without prejudice to section 20 of the 1947 Act.

8.(1) Any originating process in civil proceedings in any court required to be served on the Crown (and whether the Crown itself or the Attorney General on behalf of the Crown is named as the defendant) shall be served by leaving the same at the office for the time being of the Attorney General with some person at that office who appears to be employed therein, and it shall not be necessary to serve the Attorney General personally.

*Service of  
proceedings against the  
Crown.*

(2) For the purposes of rule 2A(2) of the Rules of the Supreme Court, an affidavit of service of originating process upon the Crown shall be insufficient if it does not specify -

(a) the date and time of the originating process being left at the office of the Attorney General; and

(b) the name of the person with whom it was left.

9.(1) Judgment shall not be entered against the Crown or the Attorney General in any proceedings in any court in default of the filing of an acknowledgment of service or in default of filing of a defence or any other pleading except with the leave of the court granted on an application of which at least seven days notice has been given to the Attorney General.

*Judgment in default  
of appearance defence  
or other pleading,  
summary judgment  
without trial.*

(2) Without prejudice to paragraph (1), summary judgment without trial shall not be granted against the Crown.

10.(1) Nothing in the Rules of the Supreme Court in England or in County Court rules in England shall have effect so as to prevent the Crown, in any proceedings brought against it from availing itself of any set-off or counterclaim, but the provisions of paragraph (2) shall apply.

*Set-offs and  
counterclaims.*

(2) The Crown and the Attorney General shall not avail itself of any set-off or counterclaim without the leave of the Court but the Court in considering whether or not such leave should be granted shall -

(a) disregard any division of the Government of the Falkland Islands for administrative convenience into departments;

(b) shall grant such leave in any case where, if the Crown were a private person, such a set-off or counterclaim could, of its nature, and in the circumstances, be availed of by a defendant to proceedings of the nature brought against the Crown.

(3) Where proceedings are brought by the Crown for the recovery of taxes, duties or penalties, a defendant to those proceedings shall not be entitled to avail himself of any set-off or counterclaim nor in proceedings of any other nature shall a defendant be permitted to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

11. Notwithstanding anything to the contrary in the Rules of the Supreme Court, no order shall be made or relief granted or remedy sought against the Crown in civil proceedings in any court which, by virtue of -

*Certain orders,  
relief etc. not available  
against the Crown.*

(a) the 1947 Act; or

(b) the common law; or

(c) the practice of the High Court in England could not be made,

granted or sought (as the case may be) in civil proceedings brought against Her Majesty in right of Her Government in the United Kingdom under the Crown Proceedings Act 1947 as it has effect in England.

12. For all purposes of the Rules of the Supreme Court relating to the residence of the Crown, the Crown shall be treated as if - *Locus of the Crown.*

(a) it were a body corporate; and

(b) had a principal place of business in Stanley at the offices of the Attorney General.

13.(1) Subject to paragraph (2), in all matters of practice and procedure -

*English practise  
to apply.*

(a) not repugnant to inconsistent with these Rules; and

(b) so far as they are not themselves repugnant to or inconsistent with these Rules, not repugnant to or inconsistent with the Rules of the Supreme Court (in relation to civil proceedings in the Supreme Court),

the Rules of the Supreme Court in England shall apply in relation to civil proceedings by or against the Crown in the Supreme Court and the County Court rules in England shall apply to civil proceedings by or against the Crown in the Magistrate's Court

(2) Paragraph (1) shall have effect subject to any exception modification or adaptation reasonably required and as if section 76 of the Interpretation and General Clauses Ordinance 1977 applied in relation to that paragraph and the Rules referred to therein. *No.14 of 1977.*

Made this 13th day of May 1994.

D. E. TATHAM,  
*Governor.*





# THE FALKLAND ISLANDS GAZETTE Supplement

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The following are published in this Supplement —

- The Application of Enactments (Amendment) Ordinance 1994 (No. 1 of 1994);
- The Statute Law Revision Ordinance 1994 (No. 2 of 1994);
- The Building Control Ordinance 1994 (No. 3 of 1994);
- The Finance and Audit (Amendment) Ordinance 1994 (No. 4 of 1994);
- The Race Relations Ordinance 1994 (No. 5 of 1994);
- The Education (Amendment) Ordinance 1994 (No. 6 of 1994);
- The Matrimonial Proceedings (Domestic Violence) Ordinance 1994 (No. 7 of 1994);
- The Affiliation Proceedings Ordinance 1994 (No. 8 of 1994);
- The Appropriation Ordinance 1994 (No. 9 of 1994);
- The Old Age Pensions (Amendment) Ordinance 1994 (No. 10 of 1994);
- The Non-Contributory Old Age Pensions (Amendment) Ordinance 1994 (No. 11 of 1994);
- The Supplementary Appropriation (1993-1994) Ordinance 1994 (No. 12 of 1994);
- The Finance Ordinance 1994 (No. 14 of 1994);
- The Family Law Reform Ordinance 1994 (No. 15 of 1994);
- The Philomel Street Waiting Regulations Order 1994 (S.R. & O. No. 7 of 1994);
- Resolution of the Legislative Council No. 1 of 1994.

**The Application of Enactments (Amendment) Ordinance 1994.**

(No: 1 of 1994)

**ARRANGEMENT OF PROVISIONS**

**Section**

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



## Colony of the Falkland Islands

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DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Application of Enactments (Amendment) Ordinance 1994

(No. 1 of 1994)

An Ordinance  
to amend the Application of Enactments Ordinance 1954.

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Application of Enactments (Amendment) Ordinance 1994. *Short title.*
2. The Application of Enactments Ordinance 1954 ("the principal Ordinance") is amended in the manner specified in the Schedule to this Ordinance. *Amendment of principal Ordinance.*

## SCHEDULE

The Schedule to the principal Ordinance is amended as follows -

- (a) in paragraph 16 (which applies certain provisions of the Bankruptcy Act 1914) the last sentence shall be replaced with -

"In section 7(1) the words "an official receiver shall be thereby constituted receiver" shall be replaced with the words -

"Section 7 of the Act is amended by the addition of the following subsection -

"(3) The Financial Secretary shall be the official receiver and shall have and may exercise either personally or through any public officer appointed by him for the purpose all the powers of an official receiver under this Act and in every other provisions of this Act the words "the official receiver," and "an official receiver" shall be construed accordingly."

- (b) in relation to the application by paragraph 38 of that Schedule (which applies certain provisions of the Children and Young Persons Act 1933) -

(i) by replacing the figures "44, 50" appearing therein with the figures and words "44 to 49" ( and so as to apply to the Falkland Islands certain provisions relating to youth courts); and

(ii) by inserting the following sentence immediately before the sentence beginning "Section 55" -

"In section 45 the words "constituted in accordance with the second Schedule to this Act" shall be omitted."

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Statute Law Revision Ordinance 1994

(No: 2 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title.
2. Repeal of obsolete Ordinances.

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Statute Law Revision Ordinance 1994

(No: 2 of 1994)

An Ordinance

to repeal a number of provisions of law and Ordinances which serve no useful purpose.

*(assented to: 7th June 1994)**(commencement: on publication)**(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Statute Law Revision Ordinance 1994.

*Short title.*

2. The Ordinances mentioned in the Schedule to this Ordinance are repealed to the extent there specified in relation to them.

*Repeal of obsolete Ordinances.*

## SCHEDULE

Exchange Control Ordinance 1958

*Extent of repeal*

The Whole Ordinance

Industrial Research Council (Vesting of Property) Ordinance 1958

*Extent of repeal*

The Whole Ordinance

Overseas Service Ordinance 1962

*Extent of repeal*

The Whole Ordinance

The Oaths Ordinance 1969

*Extent of repeal*

In section 3 all words following the words "Promissory Oaths Act 1868"

**The Stanley Town Services Ordinance 1971**

*Extent of repeal*

Part III

**The Coastguard Ordinance 1989**

*Extent of repeal*

The Whole Ordinance

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

---

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Building Control Ordinance 1994

(No: 3 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title.
2. Interpretation.
3. Power to make building regulations.
4. Continuing requirements.
5. Defence exemption.
6. Exemption of particular classes of buildings or of particular areas.
7. Penalty for contravening building regulations.
8. Removal or alteration of offending work.
9. Appeal against section 8 notice.
10. Further Appeal to Supreme Court.
11. Application to the Crown.
12. Regulations.
13. Repeal.
14. Transitional.

### SCHEDULE





## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Building Control Ordinance 1994

(No: 3 of 1994)

## An Ordinance

to make improved provision as to the control of the erection and construction drainage and other servicing of buildings and structures and alterations of and additions to buildings and structures and for connected purposes

*(assented to: 7th June 1994)**(commencement: on publication)**(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

*Introductory*

1. This Ordinance may be cited as the Building Control Ordinance 1994.

*Short title.*

2.(1) In this Ordinance, and unless the context otherwise requires -

*Interpretation.*

"building" means any permanent or temporary building and includes any other structure or erection whatsoever (whether permanent or temporary) and includes any part of, addition to or alteration of a building, structure or erection;

"Committee" means the Planning and Building Committee;

"continuing requirements" means requirements to which section 5 relates;

"Planning and Building Committee" means the Committee of that name established by the Planning and Building Ordinance 1991;

"services" includes the provision of drainage, whether foul drainage or surface water drainage, the provision of electricity and the provision of a supply of water.

(2) A reference in this Ordinance to the supply of services, fittings and equipment in or connected with buildings, or to services, fittings and equipment so provided includes a reference to the affixing of things to buildings or, as the case may be, to things so affixed.

(3) For the purposes of this Ordinance, except where specifically stated to the contrary, each of the following operations is deemed to be the erection of a building -

(a) the re-erection of a building or part of a building when an outer wall of that building or, as the case may be, that part of a building, has been pulled down, or burnt down, to within one metre of the surface of the ground adjoining the lowest storey of the building or of that part of the building;

(b) the re-erection of a framed building or part of a framed building when -

(i) that building or part of a framed building was previously more than one storey in height;

(ii) that building or part of a building has been so far pulled down, or burnt down, as to leave only the framework of the lowest storey of the building or of that part of the building; and

(c) the roofing over of an open space between walls or buildings,

and "erect" shall be construed accordingly.

3.(1) The Governor may, for any of the purposes of -

*Power to make  
building regulations.*

(a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings; and

(b) preventing waste, undue consumption, misuse or contamination of water,

make regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings.

(2) Regulations made under subsection (1) are known as building regulations.

(3) The Schedule to this Ordinance has effect with respect to the matters as to which building regulations may provide.

(4) Building regulations may confer powers and impose duties on the Planning and Building Committee and upon any public officer.

4.(1) Building regulations may impose on owners and occupiers of buildings to which building regulations are applicable such continuing requirements as the Governor considers appropriate for securing, with respect to any provision of building regulations designated in the regulations as a provision to which those requirements relate, that the purposes of that provision are not frustrated; but a continuing requirement imposed by virtue of this subsection does not apply in relation to a building unless a provision of building regulations so designated as one to which the requirement relates applies to that building.

*Continuing  
requirements.*

(2) Building regulations may impose on owners and occupiers of buildings of a prescribed class (whenever erected, and whether or not any building or regulations were applicable to them at the time of their erection) continuing requirements with respect to all or any of the following matters -

(a) the conditions subject to which any services, fittings or equipment provided in or in connection with a building may be used;

(b) the inspection and maintenance of any services, fittings or equipment so provided; and

(c) the making of reports to a prescribed authority on the condition of any services, fittings or equipment so provided.

(3) If a person contravenes a continuing requirement imposed by virtue of this section, the Crown, without prejudice to the bringing of criminal proceedings in respect of the contravention, may -

(a) execute any work or take any other action required to remedy the contravention;

(b) recover, if necessary by proceedings brought by the Attorney General in its name, the expenses reasonably incurred in so doing.

(4) Where the Crown has power under subsection (3) to execute any work it may, instead of exercising that power, by notice require the owner or the occupier of the building to which the contravention referred to in that subsection relates to execute that work or take that action.

(5) A notice under subsection (4) shall indicate the nature of the works or take any action to be executed and state the time within which they are to be executed.

(6) Subject to any right of appeal conferred by subsequent provisions of this section, if the person required by such a notice to execute works or take any action fails to execute them within the time limited by the notice -

(a) the Crown may itself execute the works or take any action required by the notice and paragraph (b) of subsection (3) shall apply in respect of the expenses reasonably incurred by it in so doing;

(b) without prejudice to paragraph (a), he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale and to a further fine not exceeding £10 for each day on which the default continues after he is convicted.

(7) Where a person is given a notice under subsection (4), he may appeal to the Magistrate's Court on any of the following grounds that are appropriate in the circumstances of the particular case -

(a) that the notice or requirement is not justified by the terms of the provision of building regulations in relation to which the notice has been given;

(b) that there has been some informality, defect or error in, or in connection with the notice;

(c) that the Committee have refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;

(e) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served; and

(f) where the works for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expenses of executing any works required.

(8) The appellant -

(a) shall, where the grounds upon which the appeal is brought include a ground specified in subsection (7)(e) or (f) above, serve a copy of his notice of appeal on each other person referred to; and

(b) may, in the case of any appeal under this section, serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal the court may make such order as it thinks fit with respect to -

(i) the person by whom any works are to be executed and the contribution to be made by any other person towards the cost of the works; or

(ii) the proportions in which any expenses that may become recoverable by the Crown are to be borne by the appellant and such other person.

(9) In exercising its powers under subsection (8), the court shall have regard -

(a) as between an owner and an occupier, to the terms and conditions of the tenancy and to the nature of the works required; and

(b) in any case, to the degree of benefit to be derived by the different person concerned.

*Exemptions from building regulations*

5. Nothing in building regulations shall apply to any building required for the purposes of Her Majesty's Armed Forces in the Falkland Islands or to any building upon land for the time being owned by or in the occupation of the Ministry of Defence of Her Majesty's Government in the United Kingdom.

*Defence exemption.*

6.(1) Building regulations may exempt a prescribed class of building, services, fittings or equipment from all or any of the provisions of the building regulations.

*Exemption of particular classes of buildings or of particular areas.*

(2) Building regulations may exempt from all or any of the provisions of the building regulations-

(a) a particular class of building;

(b) buildings in a prescribed area of the Falkland Islands; or

(c) a particular class of building in a prescribed area of the Falkland Islands,

either unconditionally or subject to compliance with any conditions specified in building regulations.

*Breach of building regulations*

7. A person who contravenes any provision contained in building regulations, other than a provision designated in the regulations as one to which this section does not apply, commits an offence and is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale and to a further fine not exceeding £50 for each day on which the default continues after he is convicted. *Penalty for contravening building regulations.*

8.(1) If any work to which building regulations are applicable contravenes any of those regulations, the Committee, without prejudice to any power under section 7 or any other provision of law to bring criminal proceedings, may by notice require the owner - *Removal or alteration of offending work.*

(a) to pull down or remove the work; or

(b) if he so elects, to effect such alterations in it as may be necessary to make it comply with the regulations.

(2) If, in a case where the Committee are by any provision of building regulations expressly required or authorised to reject plans, any work to which building regulations are applicable is executed -

(a) without plans having been deposited;

(b) notwithstanding the rejection of plans; or

(c) otherwise than in accordance with any requirements subject to which the Committee passed the plans,

the Committee may by notice to the owner -

(i) require him to pull down or remove the work; or

(ii) require him either to pull down or, if he so elects, to comply with any other requirements specified in the notice, being requirements that they might have made under building regulations as a condition of passing plans.

(3) If a person to whom a notice has been given under subsection (1) or (2) fails to comply with the notice before the expiration of 28 days, or such longer period as the Governor may on his application allow, the Crown may -

(a) pull down or remove the work in question; or

(b) effect such alterations in it as the Committee deem necessary,

and the Attorney General in the name of and on behalf of the Crown may recover from him the expenses reasonably incurred in so doing.

(4) A notice under subsection (1) or (2) (a "section 8 notice") shall not be given after the expiration of 12 months from the date of the completion of the work in question.

(5) A section 8 notice shall not be given, in a case where plans were deposited and the work was shown on them, on the ground that the work contravenes any building regulations or, as the case may be, does not comply with the Committee's requirements if -

(a) the plans were passed by the Committee; or

(b) notice of their rejection was not given within two months from their deposit,

and if the work has been executed in accordance with the plans and any requirement made by the Committee as a condition of passing the plans.

(6) This section does not affect the right of the Attorney General (in the name of and on behalf of the Committee or in the name of and on behalf of the Crown) or the right of any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or provision of this or any other Ordinance; but if -

(a) the work is one in respect of which plans were deposited;

(b) the plans were passed by the Committee, or notice of their rejection was not given within two months from their deposit,

the court on granting the injunction may order the Crown to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall, if the Attorney General is not already a party to the proceedings, cause the Attorney General to be joined as a party to them in the name of and on behalf of the Crown.

9.(1) A person aggrieved by the giving of a section 8 notice may appeal to the Governor by notice in writing.

*Appeal against  
section 8 notice.*

(2) Subject to subsection (3), on an appeal under this section the Governor shall -

(a) if he is advised by the Attorney General that the Committee were entitled to give the notice, confirm the notice; and

(b) in any other case, give the Committee a direction to withdraw the notice.

(3) If, in a case where the appeal is against a notice under section 8(2), the Governor -

(a) is advised by the Attorney General that the Committee were entitled to give the notice; but

(b) is satisfied that in all the circumstances of the case the purpose for which the regulation contravened was made has been substantially achieved,

the Governor may direct the Committee to withdraw the notice.

(4) An appeal under this section shall be brought within 28 days of the giving of the section 8 notice, and the notice of appeal shall -

(a) state whether it is alleged that the Committee had no power to give the section 8 notice and, if so alleged, the grounds on which it is so alleged; and

(b) if it is not alleged that the Committee had no power to give the section 8 notice, and the notice was given under section 8(2), the reasons on the basis of which the appellant asks the Governor to be satisfied that in all the circumstances of the case the purpose of the regulation contravened has been substantially achieved so that he may, if he sees fit, direct the Committee under subsection (3) of this section to withdraw the notice.

(5) Where an appeal is brought under this section -

(a) the section 8 notice is of no effect pending the final determination or withdrawal of the appeal; and

(b) section 8(3) has effect in relation to that notice as if after the words "28 days" there were inserted the words "(beginning, in a case where an appeal is brought under section 9, on the date when the appeal is finally determined or, as the case may be, withdrawn)".

10.(1) Subject to subsection (2), where a person is aggrieved by a decision of the Governor under section 9, he may, within 28 days of the notification of that decision to him, appeal to the Supreme Court.

*Further Appeal to Supreme Court.*

(2) The Committee has no right of appeal to the Supreme Court against a direction of the Governor that it shall withdraw a section 8 notice.

(3) The Supreme Court may order that the operation of a section 8 notice which was the subject of the appeal to the Governor under section 9 and is the subject of an appeal to it shall be stayed pending the final determination or, as the case may be, withdrawal of the appeal to it under subsection (1) of this section, but unless it so orders the operation of the section 8 order is not stayed.

(4) Where the Supreme Court makes an order of the kind to which subsection (3) relates, section 9(5) has effect as if -

(a) the reference in it to an appeal under section 9 were a reference to an appeal under this section; and

(b) the reference in paragraph (b) of that subsection (modification of section 8(3)) to section 9 were a reference to this section.

#### *Application to the Crown*

11.(1) Except as provided by section 5 and by building regulations, the requirements of building regulations and continuing requirements apply to the Crown in the same way as they apply to other persons -

*Application to the Crown.*

(a) whether or not the work carried out by or on behalf of the Crown is to or in relation to a building owned or occupied or intended to be owned or occupied by the Crown;

(b) in the case of continuing requirements, if the building is owned or occupied by the Crown.

(2) Where a section 8 notice has been given by the Committee in respect of work carried out by or on behalf of the Crown, the Director of Public Works may within 28 days of the giving of the notice request the Governor to direct the Committee to withdraw the notice, but the Governor shall not give any such direction unless he is satisfied -

(a) that the Committee had no power to give the notice; or

(b) in the case of a notice served under section 8(2), that in all the circumstances of the case the purpose for which the regulation contravened was made has been substantially achieved.

(3) The Crown shall have no right of appeal under section 9 and no appeal shall lie from the decision of the Governor on request under subsection (2) of this section.

(4) Where a request has been made under subsection (2) of this section, section 9(5) shall have effect as if the request were an appeal under section

#### *Further powers to make regulations*

12.(1) The Governor may make regulations -

*Regulations.*

(a) requiring the keeping by or on behalf of the Committee registers as to notices and certificates given to or by or on behalf of the Committee;

(b) the inspection of any such register by members of the public;

(c) prescribing the form of any notice, certificate or other document which it is necessary or convenient to prescribe for the purposes of this Ordinance or of building regulations.

(2) The Governor may by regulations revoke all or any of the by-laws 5 to 44 of the Board of Health By-laws ("the Building By-laws").

#### *Repeal and Transitional Provisions*

13. Section 18(1)(ii) of the Public Health Ordinance shall continue to have effect until the date upon which building regulations first made under section 3 of this Ordinance came into operation and on that date the said section 18(1)(ii) is repealed by this section.

*Repeal.*

14. Notwithstanding the prospective repeal of section 18(1)(ii) of the Public Health Ordinance by section 13 of this Ordinance -

*Transitional.*

(a) any approval of any plans of a building deposited pursuant to Building By-laws given or made within the four years immediately preceding that repeal shall for all purposes have effect as if the same had been approved on the date of commencement of the building regulations first made under this Ordinance, pursuant to those regulations; and

(b) any works which -

~~(i) would not have required any such approval or consent under the Building By-law; and which are reasonably necessary properly to complete any building substantially commenced prior to such repeal; and~~



(ii) which are also wholly carried out within a period of two years from that date of commencement, or such greater period as the Governor may allow,

may lawfully be carried out and completed, and no section 8 notice may be given in respect of those works.

**SCHEDULE (section 3(3))**  
Permitted contents of Building Regulations

1. Building regulations may provide for particular requirements of the regulations to be deemed to be complied with where prescribed methods of construction prescribed types of materials or other prescribed types of materials or other prescribed means are used in or in connection with buildings.

2. Building regulations may include provision as to -

- (a) the giving of notices,
- (b) the deposit of plans of proposed work or work already executed (including provision as to the number of copies to be deposited),
- (c) the retention by the Committee of copies of plans deposited with them in accordance with the regulations,
- (d) the inspection and testing of work,
- (e) the taking of samples.

3. Without prejudice to the generality of section 3(1) of this Ordinance, building regulations may -

(a) for any of the purposes mentioned in section 3(1) of this Ordinance make provision with respect to any of the following matters -

- (i) preparation of sites,
- (ii) suitability, durability and use of materials and components (including surface finishes),
- (iii) structural strength and stability, including -
  - (a) precautions against overloading, impact and explosion,
  - (b) measures to safeguard adjacent buildings and services,
  - (c) underpinning,
- (iv) fire precautions, including -
  - (a) structural measures to resist the outbreak and spread of fire and to mitigate its effects,

- (b) services, fittings and equipment designed to mitigate the effects of fire or to facilitate fire-fighting,
- (c) means of escape in case of fire and means for securing that such means of escape can be safely and effectively used at all material times,
- (v) resistance to moisture and decay,
- (vi) measures affecting the transmission of heat,
- (vii) measures affecting the transmission of sound,
- (viii) measures to prevent infestation,
- (ix) measures affecting the emission of smoke, gases, fumes, grit or dust or other noxious or offensive substances,
- (x) drainage (including waste disposal units),
- (xi) cesspools and other means for the reception, treatment or disposal of foul water,
- (xii) storage, treatment and removal of waste,
- (xiii) installations utilising solid fuel, oil, gas, electricity or any other fuel or power (including appliances, storage tanks, heat exchangers, ducts, fans, and other equipment),
- (xiv) water services (including wells and bore-holes for the supply of water) and fittings and fixed equipment associated therewith,
- (xv) telecommunications services (including telephones),
- (xvi) lifts, escalators, hoists, conveyors and moving footways,
- (xvii) plant providing air under pressure,
- (xviii) standards of heating, artificial lighting, mechanical ventilation and air-conditioning and provision of power outlets,
- (xix) open space about buildings and the natural lighting and ventilation of buildings,
- (xx) accommodation for specific purposes in or in connection with buildings, and the dimensions of rooms and other spaces within buildings,
- (xxi) means of access to and egress from buildings and parts of buildings,
- (xxii) prevention of danger and obstruction to persons in and about buildings (including passers-by),
- (xxiii) matters connected with or ancillary to any of the foregoing matters.

(b) require things to be provided or done in connection with buildings (as well as regulating the provision or doing of things in or in connection with buildings),

(c) prescribe the manner in which work is to be carried out.

4.(1) Building regulations may be made with respect to -

(a) alterations and extensions of buildings and of services, fittings and equipment in or in connection with buildings,

(b) new services, fittings or equipment provided in or in connection with buildings,

(c) buildings and services, fittings and equipment in or in connection with buildings, so far as affected by -

(i) alterations or extensions of buildings, or

(ii) new, altered or extended services, fittings or equipment in or in connection with buildings,

(d) the whole of a building, together with any services, fittings or equipment provided in or in connection with it,

(e) buildings or parts of buildings, together with any services, fittings or equipment provided in or in connection with them, in cases where the purposes for which or the manner or circumstances in which a building or part of a building is used change or changes in a way that constitutes a material change of use of the building or part within the meaning of the expression "material change of use" as defined for the purposes of this paragraph by building regulations.

(2) So far as they relate to matters mentioned in sub-paragraph (1) of this paragraph building regulations may be made to apply to or in connection with buildings erected before the date on which the regulations came into force but, except as aforesaid (and subject to section 4(2) of this Ordinance, shall not apply to buildings erected before that date.

5. Building regulations may prescribe the form of any notice or certificate to be given under the provisions of building regulations.

6. Building regulations may provide for any notice or certificate to be given to or by any person or to or by the Committee to be given to or by any public officer named or described therein for and on behalf of the Committee.

7. Building regulations may provide for the composition of the Committee when exercising functions as to the approval or rejection of plans thereunder.

8. Building regulations may revoke amend or replace any building regulations previously made under the provisions of section 3 of this Ordinance and may contain such transitional provisions related to any such revocation, amendment or replacement as the Governor thinks expedient.

9. Building regulations may provide for such incidental or supplementary matters as the Governor thinks expedient.

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Finance and Audit (Amendment) Ordinance 1994

(No: 4 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title.
2. Amendment of the Finance and Audit Ordinance 1988.



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Finance and Audit (Amendment) Ordinance 1994

(No: 4 of 1994)

#### An Ordinance

to amend the Finance and Audit Ordinance 1988 so as to enable Government funds to be invested in wider categories of investments.

*(assented to: 7th June 1994)*  
*(commencement: on publication)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Finance and Audit (Amendment) Ordinance 1994. *Short title.*
2. Section 24(1) of the Finance and Audit Ordinance 1988 is amended by replacing the words "or in a manner authorised for the investment of property by trustees by any law for the time being in force in United Kingdom" by the words "or in any manner authorised in writing by the Governor acting in his discretion after having consulted the Secretary of State." *Amendment of the Finance and Audit Ordinance 1988.*

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## **The Race Relations Ordinance 1994**

(No: 5 of 1994)

### **ARRANGEMENT OF PROVISIONS**

#### **Section**

1. Short title and commencement.
2. Application of Race Relations Act 1976.
3. Exclusion of s.78 of Interpretation and General Clauses Ordinance 1977.

#### **SCHEDULE**



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Race Relations Ordinance 1994

(No: 5 of 1994)

#### An Ordinance

to make provision with respect to discrimination on racial grounds and relations between people of different racial groups.

*(assented to: 7th June 1994)*  
*(commencement: on publication)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

- |   |   |
|---|---|
| <p>1. This Ordinance may be cited as the Race Relations Ordinance 1994 and shall come into force on such date as is appointed by the Governor by notice published in the Gazette.</p>   | <p><i>Short title and commencement.</i></p>   |
| <p>2. The Race Relations Act 1976 is adopted as law of the Falkland Islands to the extent, and subject to the modifications and exceptions, specified in the Schedule to this Ordinance.</p>  | <p><i>Application of Race Relations Act 1976.</i></p>                                 |
| <p>3. The reference in section 2 of this Ordinance to the Race Relations Act 1976 is a reference to that Act in the form it was in force in England at the date of enactment of this Ordinance, and section 78 of the Interpretation and General Clauses Ordinance 1977 shall not have effect in relation to the Act.</p> | <p><i>Exclusion of s.78 of Interpretation and General Clauses Ordinance 1977.</i></p> |

### THE SCHEDULE

#### Part I *Introductory*

1. In this Schedule, and except where the context otherwise requires, "the Act" means the Race Relations Act 1976 in its application to the Falkland Islands by virtue of this Ordinance.

#### Part II *General modifications*

- 2.(1) Every reference in the Act -



(a) except in section 65(7), which is added by paragraph 16 of this Schedule, to "Great Britain", "England and Wales" or "the United Kingdom" shall be replaced by a reference to the Falkland Islands; and

(b) to an industrial tribunal, shall be replaced by a reference to the Summary Court.

(2) There shall be omitted every provision or part of a provision of the Act that has reference only to Scotland.

### Part III

#### *Provisions of the Act excepted from application to the Falkland Islands*

3.(1) Sections 8(6) and (7), 14(2), 15, 16, 19(2) to 19(5), 43 to 52, 56(3), 58 to 64, 66 and 67, 68(3) to (6), 69(2) to 71, 73 and 74, 75(3) and (7) to (9), 76 and 77, 79 and 80(2) of and Schedules 1 and 2 to the Act shall not apply to the Falkland Islands.

(2) Without prejudice to the application to and in respect of them of provisions of the Race Relations Act 1976 under and by virtue of the law of the United Kingdom, none of the provisions of the said Act shall by virtue of this Ordinance apply to or in respect of Her Majesty's armed forces or to or in respect of service under the Crown in right of the United Kingdom or service under the Crown otherwise than in right of the Falkland Islands.

### Part IV

#### *Modifications of particular provisions of the Act*

4. Section 8(5) of the Act is replaced by the following subsection -

"(5) In relation to employment concerned with the exploration of the sea bed or subsoil or the exploitation of their natural resources, the Governor may with the consent of the Secretary of State by Order provide that the application of the foregoing provisions of this section shall extend in respect of employment within areas which are designated areas for the purposes of [the Offshore Minerals Ordinance 1994] as if those designated areas were part of the Falkland Islands and an Order under this subsection may provide that, in relation to employment to which the Order applies, this Part is to have effect with such modifications as are specified in the Order."

5. Section 9(3) of the Act is replaced by the following subsection -

"(3) Subsections (1) and (2) do not apply to employment or work concerned with exploration of the sea bed or subsoil or the exploitation of their natural resources in any area which for the time being is a designated area for the purposes of the [Offshore Minerals Ordinance 1994]."

6. Section 13(2) of the Act is modified -

(a) by the omission of paragraphs (a) and (b); and

(b) by replacing the words "Secretary of State" in paragraph (d) by the word "Governor".

7. The Table which forms part of section 17 of the Act is replaced by the following Table -

## "TABLE

*Establishment*

1. Educational establishment  
maintained by the Crown

*Responsible body*

The Director of Education, the  
Board of Education or the school  
managers, according to which of  
them has the function in question.

2. Independent school

Proprietor"

8. Section 18 is replaced by the following section -

"18. It is unlawful for the Director of Education, the Board of Education or the Scholarship and Training Awards Committee, in carrying out any of their respective functions under the Education Ordinance 1989 as do not fall under section 17, to do any act which constitutes racial discrimination."

9. Section 19(1) of the Act is replaced by the following subsection -

"(1) Without prejudice to their obligations to comply with any other provision of this Act, the Director of Education and the Board of Education shall be under a general duty to secure that the facilities for education provided by the Crown, and any ancillary benefits and services, are provided without racial discrimination."

10. Section 28(3) of the Act is replaced by the following subsection -

"(3) Proceedings in respect of a contravention of this section shall be brought only by the Attorney General or by a person acting under his direction."

11. In section 37(3)(b) of the Act the words "Secretary of State" are replaced by the word "Governor".

12. Section 41 of the Act is amended by the insertion of the words "or the Governor" after the words "Minister of the Crown" wherever the latter words appear in that section.

13. Section 55 of the Act is modified by the addition of the following subsection -

"(5) In this section "conciliation officer" means the Government Secretary or any other person designated by the Governor under this subsection to be a conciliation officer for the purposes of this section."

14. Section 56(2) of the Act is replaced by the following subsection -

"(2) The amount of the compensation awarded to a person under subsection (1)(b) shall not exceed £10,000 or such higher sum as from time to time is fixed for the purposes of that provision by an Order of the Governor under this subsection."

15. Section 57(2) of the Act is replaced by the following subsection -

"(2) Proceedings under subsection (1) shall be brought only in the Magistrate's Court, but all such remedies shall be obtainable in such proceedings as, apart from this section and section 53(1) would be obtainable in the Supreme Court."

16. The words "Secretary of State", wherever they appear in section 57(5) and 65 of the Act are replaced by the word "Governor".

17. Section 65 of the Act is further modified -

(a) by replacing paragraph (a) of section 65(6) with the following paragraph -

"(a) in relation to proceedings in the Magistrate's Court, means rules relating to civil proceedings in the Magistrate's Court and made or having effect under any provision of the Administration of Justice Ordinance," and

(b) by the addition of the following subsection -

"(7) The Governor may, if he sees fit, exercise his powers to make an Order under subsection (1) or (3) by Order applying, with or without modifications, any Order made by the Secretary of State under the corresponding provision of the Act as it has effect in the United Kingdom."

18. The words "A country court or the sheriff court" in section 68(2) are replaced by the words "The Magistrate's Court".

19. Section 69(1) of the Act is replaced by the following subsection -

"(1) Any finding by a court under this Act, in respect of any act shall, if it becomes final, be treated as conclusive in any proceedings under this Act."

20. In section 72(5) of the Act the words "a designated county court or a sheriff court" are replaced by the words "the Magistrate's Court".

21. Section 75 of the Act is modified -

(a) in subsections (1) and (2), by omitting the words "of a Minister";

(b) in subsection (4), by replacing the words "Government of the United Kingdom" with the words "Government of the Falkland Islands";

(c) in subsection (5)(a), by omitting the words "prescribed for the purposes of this section by regulations made by the Minister for the Civil Service";

(d) in subsection (6) -

(i) by inserting, after the words "Crown Proceedings Act 1947", the words "in its application to the Falkland Islands by virtue of the Application of Enactments Ordinance 1954";

(ii) by replacing the words "England and Wales" with the words "Falkland Islands"; and

(iii) by omitting all words from and including the words "except that" to the end of the subsection; and

(e) in subsection (10), by omitting paragraphs (a) and (c).

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Education (Amendment) Ordinance 1994

(No: 6 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title and commencement.
2. Schedule.



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

The Education (Amendment) Ordinance 1994

(No: 6 of 1994)

An Ordinance

to amend the Education Ordinance 1989 so as to raise the school leaving age and to make consequential amendments to that Ordinance and to the Employment of Children Ordinance 1966 and the Employment of Women, Young Persons and Children Ordinance 1967.

(assented to: 7th June 1994)  
(commencement: 2nd February 1995)  
(published: 17th June 1994)

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Education (Amendment) Ordinance 1994 and shall come into force on 2nd February 1995. *Short title and commencement.*
2. The Schedule shall have effect. *Schedule.*

SCHEDULE

PART I

AMENDMENT OF EDUCATION ORDINANCE 1989

1. In this Part of this Schedule, "the Ordinance" means the Education Ordinance 1989.
2. Section 17(2) of the Ordinance is amended by replacing the words "fifteen years" with the words "sixteen years".
3. Section 17 of the Ordinance is further amended by the addition of the following subsection -

"(4) If the Director of Education so directs in writing in respect of any pupil or pupils specified in that direction, then in respect of that pupil or pupils subsection (2) shall have effect as if the words "ending with the day in the last term of the child's final year of compulsory education which is the day of completion of all external examinations for which the child has been entered" replaced the words "31st January in the following year" in respect of the child's final academic year."

4. Paragraph (b) of section 18(2) and section 18(3) of the Ordinance are repealed.

## **PART II**

### **AMENDMENT OF EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN ORDINANCE 1967**

5. In section 2 of the Employment of Women Young Persons and Children Ordinance 1967 the definition of "child" is replaced with the following -

"child" means a person whose age does not exceed the upper limit of compulsory education age (within the meaning given under section 17(1) of the Education Ordinance 1989);"

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Matrimonial Proceedings (Domestic Violence) Ordinance 1994

(No: 7 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title and commencement.
2. Matrimonial injunctions in the Magistrate's Court.
3. Arrest for breach of injunction.





Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

The Matrimonial Proceedings (Domestic Violence) Ordinance 1994

(No: 7 of 1994)

An Ordinance

to amend the law relating to matrimonial injunction; to provide the police with powers of arrest for breach of injunction in the case of domestic violence; and for purposes connected therewith.

(assented to: 7th June 1994)

(commencement: in accordance with section 1)

(published: 17th June 1994)

ENACTED by the Legislature of the Falkland Islands as follows:

1. This Ordinance may be cited as the Matrimonial Proceedings (Domestic Violence) Ordinance 1994 and shall come into force on such date as may be appointed by the Governor by notice published in the Gazette. *Short title and commencement.*

2.(1) Without prejudice to the jurisdiction of the Supreme Court, on an application by a party to a marriage the Magistrate's Court shall have jurisdiction to grant an injunction containing one or more of the following provisions, namely - *Matrimonial injunctions in the Magistrate's Court.*

- (a) a provision restraining the other party to that marriage from molesting the applicant;
- (b) a provision restraining the other party from molesting a child living with the applicant;
- (c) a provision excluding the other party from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included;
- (d) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or a part of the matrimonial home;

whether or not any other relief is sought in the proceedings.

(2) Subsection (1) above shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage and any reference to the matrimonial home shall be construed accordingly.

3.(1) Where, on an application by a party to a marriage, a judge grants an injunction containing a provision (in whatever terms) - *Arrest for breach of injunction.*

- (a) restraining the other party to that marriage from using violence against the applicant; or
- (b) restraining the other party from using violence against a child living with the applicant; or
- (c) excluding the other party from the matrimonial home or from a specified area in which the matrimonial home is included,

the judge may, if he is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned and considers that he is likely to do so again, attach a power of arrest to the injunction.

(2) References in subsection (1) to the parties to a marriage include references to a man and a woman who are living with each other in the same household as husband and wife and any reference in that subsection to the matrimonial home shall be construed accordingly.

(3) If, by virtue of subsection (2), a power of arrest is attached to an injunction, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such provision of that injunction as falls within paragraphs (a) to (c) of subsection (1) by reason of that person's use of violence or, as the case may be, of his entry into any premises or area.

(4) Where a power of arrest is attached to an injunction and a person to whom the injunction is addressed is arrested under subsection (3) -

- (a) he shall be brought before a judge within the period of 24 hours beginning with his arrest; and

- (b) he shall not be released within that period except on the direction of a judge,

but nothing in this section shall authorise his detention at any time after the expiry of that period.

In reckoning for the purposes of this subsection any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(5) Where, by virtue of a power of arrest attached to an injunction, a police officer arrests any person under subsection (3), the police officer shall forthwith seek the direction -

- (a) in a case where the injunction was granted by the Supreme Court, of that court; and

- (b) in any other case of the Magistrate's Court,

as to the time and place at which that person is to be brought before a judge.

(6) In relation to the Magistrate's Court, in this section the words "a judge" means the Senior Magistrate or any person for the time being acting as the Senior Magistrate.

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Affiliation Proceedings Ordinance 1994

(No: 8 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Application of law in relation to affiliation proceedings.



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Affiliation Proceedings Ordinance 1994

(No: 8 of 1994)

## An Ordinance

to remove any doubt as to the jurisdiction of the Magistrate's Court and the Summary Court to entertain affiliation proceedings and to make orders therein during the period between 1st April 1989 and the coming into force of this Ordinance.

*(assented to: 7th June 1994)*  
*(commencement: on publication)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Affiliation Proceedings Ordinance 1994.

*Short title.*

2.(1) Those provisions of the Family Law Reform Act 1987 which had reference to affiliation proceedings shall be deemed to have had effect as law of the Falkland Islands from 1st April 1989 (being the date on which the Affiliation Proceedings Act 1957 ("the 1957 Act") was repealed by the said Act) and as if they had on that date been adopted by Ordinance as law of the Falkland Islands so far only as they related to affiliation proceedings and subject matter which was previously dealt with by the 1957 Act.

*Application of law in relation to affiliation proceedings.*

(2) Subsection (1) has effect notwithstanding the repeal of the Family Law Reform Act 1987 by the Children Act 1989.

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# **The Appropriation Ordinance 1994**

(No: 9 of 1994)

## **ARRANGEMENT OF PROVISIONS**

### **Section**

1. Short title.
2. Appropriation of £33,614,190 for the service of the year 1994-1995.

### **SCHEDULE**



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Appropriation Ordinance 1994

(No: 9 of 1994)

#### An Ordinance

to provide for the service of the Financial Year commencing on 1 July 1994 and ending on 30 June 1995.

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows:

1. This Ordinance may be cited as the Appropriation Ordinance 1994.

*Short title.*

2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 1994 and ending on 30 June 1995 ("the financial year"), sums not exceeding in aggregate the sum of thirty three million six hundred and fourteen thousand one hundred and ninety pounds (£33,614,190), which sum is granted and shall be appropriated for the purposes and to defray the charges of the several services expressed and particularly mentioned in the Schedule hereto and which will come in course of payment during the financial year.

*Appropriation of  
£33,614,190 for the  
service of the year 1994-1995.*



## SCHEDULE

Number	Head of Service	£
<b>PART I OPERATING BUDGET</b>		
100	Aviation	1,399,220
150	Posts and Telecommunications	319,290
200	Medical and Dental	2,092,490
250	Education and Training	2,041,440
300	Customs and Immigration	134,080
320	Fisheries	4,629,760
350	Public Works	4,531,540
390	Fox Bay Village	60,790
400	Agriculture	544,010
450	Justice	390,000
500	Falkland Islands Defence Force	199,740
550	Police and Fire & Rescue	560,520
600	Secretariat, Treasury, Central Store, Broadcasting etc	2,233,500
650	Pensions and Gratuities	370,400
700	Social Welfare	428,800
750	Governor	140,730
800	Legislature	233,340
850	Falkland Islands Government Office	<u>321,140</u>
TOTAL OPERATING BUDGET		20,630,790
<b>PART II CAPITAL BUDGET</b>		
950	Expenditure	<u>12,983,400</u>
TOTAL EXPENDITURE		<u>33,614,190</u>

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
Clerk of Councils.

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

C. de CEBALLOS,  
Clerk of Councils.

# The Old Age Pensions (Amendment) Ordinance 1994

(No: 10 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title and commencement.
2. The principal Ordinance.
3. Repeal and replacement of section 6(2) of the principal Ordinance.
4. Replacement of the Schedule.

### SCHEDULE



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Old Age Pensions (Amendment) Ordinance 1994

(No: 10 of 1994)

An Ordinance  
to amend the Old Age Pensions Ordinance 1952.

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Old Age Pensions (Amendment) Ordinance 1994 and shall come into force on 1st July 1994. *Short title and commencement.*
2. In this Ordinance, "the principal Ordinance" means The Old Age Pensions Ordinance 1952. *The principal Ordinance.*
3. Section 6(2) of the principal Ordinance is repealed and replaced by the following new section 6(2) - *Repeal and replacement of section 6(2) of the principal Ordinance.*

"(2) Subject to the provisions of this Ordinance -

  - (a) Every employed male person and every employed female contributor other than the widow of a contributor shall be liable to pay weekly contributions at the rate of £5.40 per week if between the ages of 17 and 64 years;
  - (b) every employer of an employed person or a female contributor other than the widow of a contributor shall be liable to pay weekly contributions at the rate of £8.00 per week if the employed male person or female contributor is between the age of 17 and 64 years;
  - (c) every self-employed male person and every self-employed female contributor shall be liable to pay weekly contributions at the rate of £13.40 per week if between the ages of 17 and 64 years".
4. The Schedule to the principal Ordinance is replaced by the following Schedule - *Replacement of the Schedule.*

## SCHEDULE

### Section 4(2)

#### RATES OF PENSION

Married man.. . . . £93.00 per week.

Unmarried man, or widower, or man whose marriage has been dissolved by decree of a competent court, or man separate or living apart from his wife who cannot prove that he is contributing to her support.. . . . £59.50 per week.

Widow of pensioner during widowhood.. . . . £59.50 per week.

Unmarried female contributor or a married female contributor not living with or being maintained by her husband.. . . . £59.50 per week.

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# Ordinance 1994

(No: 11 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title and commencement.
2. The principal Ordinance.
3. Replacement of Schedule.

### SCHEDULE



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

The Non-Contributory Old Age Pensions (Amendment)  
Ordinance 1994

(No: 11 of 1994)

An Ordinance  
to amend the Non-Contributory Old Age Pensions Ordinance 1961

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows:

- |  |                                      |
|--|--------------------------------------|
| 1. This Ordinance may be cited as the Non-Contributory Old Age Pensions (Amendment) Ordinance 1994 and shall come into force on 1st July 1994. | <i>Short title and commencement.</i> |
| 2. In this Ordinance, "the principal Ordinance" means the Non-Contributory Old Age Pensions Ordinance 1961.                                    | <i>The principal Ordinance.</i>      |
| 3. The Schedule to the principal Ordinance is replaced by the following Schedule -   | <i>Replacement of Schedule.</i>      |

SCHEDULE

Married man.....	£89.00
Unmarried person.....	£57.00
Man or women separate or living apart from his or her wife.....	£57.00

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Supplementary Appropriation (1993-1994) Ordinance 1994

(No: 12 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Appropriation of £106,770 for the services of the year 1993-1994.
3. Appropriation of £2,000,000 for the services of the year 1993-1994.

#### SCHEDULE





## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Supplementary Appropriation (1993-1994) Ordinance 1994

(No: 12 of 1994)

#### An Ordinance

to appropriate and authorise the withdrawal from the Consolidated Fund of additional sums totalling £106,770 for the service of the financial year ending on 30 June 1994.

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994) –*

ENACTED by the Legislature of the Falkland Islands as follows:

1. This Ordinance may be cited as the Supplementary Appropriation (1993-1994) Ordinance 1994. *Short title.*
  
2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 1993 and ending on 30 June 1994 ("the financial year"), sums not exceeding in aggregate the sum of one hundred and six thousand seven hundred and seventy pounds, which sum is granted and shall be appropriated for replenishing the Contingencies Fund in respect of advances authorised to be issued therefrom for the purposes of the Heads of Service mentioned in the Schedule hereto and which will come in course of payment during the Financial Year. *Appropriation of £106,770 for the services of the year 1993-1994.*
  
3. In addition to the sum mentioned in section (2) the Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the financial year the sum of two million pounds which sum is granted and shall be appropriated for the purposes of Head of Service 950 Capital Expenditure for payment to the Sinking Fund during the financial year. *Appropriation of £2,000,000 for the services of the year 1993-1994.*

# **SCHEDULE**

Number	Head of Service	£
<b>PART I OPERATING BUDGET</b>		
100	Aviation	14,900
200	Medical and Dental	14,000
250	Education and Training	2,300
300	Customs and Immigration	4,500
350	Public Works	12,000
390	Fox Bay Village	4,400
450	Justice	400
550	Police, Fire and Rescue	3,400
600	Secretariat, Treasury, Central Store, Broadcasting etc	42,740
700	Social Welfare	230
800	Legislature	<u>5,900</u>
<b>TOTAL OPERATING BUDGET</b>		<b>104,770</b>
<b>PART II CAPITAL BUDGET</b>		
950	Capital Expenditure	<u>2,000</u>
<b>TOTAL SUPPLEMENTARY EXPENDITURE</b>		<b><u>106,770</u></b>

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Finance Ordinance 1994

(No: 14 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Sections 5 to 29 of the Stanley Rates Ordinance 1973 to cease to have effect.
3. Amendment of section 30 of the Stanley Rates Ordinance 1973.
4. Amendment of section 31 of Stanley Rates Ordinance 1973.
5. Amendment of sections 32 and 33 of Stanley Rates Ordinance 1973.
6. New section 33A of Stanley Rates Ordinance.
7. Repeal of the Medical Services Levy Ordinance 1979.



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

### The Finance Ordinance 1994

(No: 14 of 1994)

#### An Ordinance

to abolish general rates in Stanley, to substitute water charges for water rates, both with effect from 1st July 1994, and to repeal the Medical Services Levy Ordinance 1979 with effect from 1st January 1995 and for the purposes connected with the foregoing purposes.

*(assented to: 7th June 1994)*  
*(commencement: 1st July 1994)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Finance Ordinance 1994.

*Short title.*

2.(1) Subject to subsection (2) of this section, and except in so far as by virtue of section 32 of this Ordinance they relate to water charges made under Part II of the Ordinance, sections 5 to 29 (Part I) of the Stanley Rates Ordinance 1973 shall cease to have effect on 1st July 1994.

*Sections 5 to 29 of the Stanley Rates Ordinance 1973 to cease to have effect.*

(2) The said sections shall continue to have effect so as to enable payment of any general rate made and levied before 1st July 1994 and remaining unpaid on that date to be collected and payment thereof to be enforced in the same manner as the same could have been collected and enforced if subsection (1) of this section had not been enacted.

3.(1) Section 30(1) of the Stanley Rates Ordinance 1973 is amended -

*Amendment of section 30 of the Stanley Rates Ordinance 1973.*

(a) by replacing the words "A water rate" with the words "A water charge"; and

(b) by omitting all words appearing in the subsection after the words "for domestic purposes".

(2) Section 30(2) of the Stanley Rates Ordinance 1973 is amended -

(a) by replacing the words "a fixed rate of £2.00 per ton" with the words "such price in relation to such unit of measure as may, with the approval of the Standing Finance Committee be prescribed by the Financial Secretary by notice published in the Gazette"; and

(b) by omitting the proviso.

4.(1) Section 31(1) of the Stanley Rates Ordinance 1973 is replaced by the following -

*Amendment of section  
31 of Stanley Rates  
Ordinance 1973.*

"(1) The Financial Secretary may, with the approval of the Standing Finance Committee of the Legislative Council, by notice published in the Gazette require water supplied to such premises or class or classes of premises specified in that notice to be charged and paid for at such price or prices in relation to such unit measure as may be prescribed in that notice, and any sum payable by virtue of a notice under this subsection shall be recoverable as a water charge to which section 32 relates."

(2) Section 31(2) of the Stanley Rates Ordinance 1973 is amended by replacing the words "£5" with the words "£100".

5.(1) Sections 32 and 33 of the Stanley Rates Ordinance 1973 are amended by replacing the words "water rate" wherever they appear in those sections with the words "water charge".

*Amendment of sections 32  
and 33 of Stanley Rates  
Ordinance 1973.*

(2) The proviso to section 33 is amended by inserting the words "where the premises are not occupied by the owner but he is liable under section 33A(1)(a) to pay the water charge" before the words "the Financial Secretary."

6. The following section is added to Part II of the Stanley Rates Ordinance 1973 -

*New section 33A of  
Stanley Rates Ordinance.*

"33A.(1) Any water charge payable in respect of any premises under the provisions of this section is recoverable -

*Liability for payments  
of water charge.*

(a) where the water is supplied at a fixed charge (that is to say, without reference to the amount of water consumed), from the owner for the time being of those premises and whether or not he was in occupation of the premises in respect of the period to which the charge relates;

(b) where the water is supplied by measured unit of quantity, from the occupier for the time being of the premises.

(2) Where, by virtue of subsection (1) of this section a water charge is recoverable from the owner of premises in relation to a period of time when those premises were not in his occupation, the owner may recover the amount of the water charge or such proportion thereof as is appropriate from the person or persons who were in occupation of those premises, but shall not be entitled to recover more from any one occupier than is proportionate to that occupier's period of occupation.

(3) In respect of any period of time for which premises were let, the tenant alone shall be deemed for the purposes of subsection (2) to be the occupier of those premises and the water charge or the proportionate part thereof shall be recoverable from him by the owner of the premises as if it were rent payable by him to the owner.

(4) This section binds the Crown but only in respect of domestic premises it has let to any person and water charges shall not be payable by the Crown in respect of any other premises."

7.(1) The Medical Services Levy Ordinance 1979 ("the repealed Ordinance") is repealed with effect from 1st January 1995.

*Repeal of the Medical  
Services Levy Ordinance 1979.*

(2) Notwithstanding the repeal effected by subsection (1) of this section, any sum which, but for such repeal, would be payable on or after 1st January 1995 in respect of medical services levy in relation -

(a) to the gross emoluments of any employed person in respect of any period in respect of a period falling before 1st January 1995; or

(b) the net profits before tax of any self-employed person in respect of any period falling before 1st January 1995,

shall continue to be payable under the provisions of the repealed Ordinance notwithstanding such repeal and payment of that sum may be enforced as if the repealed Ordinance had not been repealed.

(3) For the purposes of subsection (2) of this section where, in relation to a self-employed person, his net profits before tax are calculated in relation to a period of trade, profession or business falling partly before and partly after the repeal of the Medical Services Levy Ordinance 1979, his net profits in respect of the part of that period falling before 1st January 1995 shall be calculated by apportionment on a daily basis of his net profits for the whole of that period.

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Family Law Reform Ordinance 1994

(No: 15 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

#### **Part I Introductory**

1. Short title.

#### **Part II General principle**

2. General principle.
3. Orders applying section 2 to other enactments.

#### **Part III Miscellaneous**

4. Maintenance for wards of court.

#### **Part IV Property rights**

5. Succession on intestacy.
6. Dispositions of property.
7. No special protection for trustees or personal representatives.
8. Entitlement to grant of probate etc.

#### **Part V Determination of Status**

9. Declarations of parentage, legitimacy or legitimation.
10. Declarations as to adoptions effected overseas.
11. General provisions as to the making and effect of declarations.
12. Provisions relating to the Attorney General.
13. Supplementary provisions as to declarations.
14. Artificial insemination.

**Part VI****Provisions for use of scientific tests in determining parentage**

15. Interpretation of Part VI.
16. Power of court to require use of scientific tests and taking of bodily samples.
17. Consents etc required for taking of bodily samples.
18. Power to provide for manner of giving effect to direction for bodily samples.
19. Failure to comply with direction for scientific tests.

**Part VII****Amendments etc**

20. Amendment of various Ordinances, transitional provisions and repeals.

**SCHEDULE 1: Amendments to Ordinances**

**SCHEDULE 2: Transitional Provisions and Savings**





Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

The Family Law Reform Ordinance 1994

(No: 15 of 1994)

An Ordinance

to reform the law relating to the consequences of birth outside marriage; to make further provision with respect to the rights and duties of parents and the determination of parentage; to make amendments to the Maintenance Orders (Reciprocal Enforcement) Ordinance 1979 and the Matrimonial Causes Ordinance 1979 and for purposes connected with the foregoing purposes.

*(assented to: 7th June 1994)*  
*(commencement: on publication)*  
*(published: 17th June 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

Part I

*Introductory*

1. This Ordinance may be cited as the Family Law Reform Ordinance 1994.

*Short title.*

Part II

*General Principle*

2.(1) In this Ordinance and enactments passed and instruments made after the coming into force of this Ordinance, reference (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time.

*General principle.*

(2) In this Ordinance and enactments passed after the coming into force of this Ordinance, unless the contrary intention appears -

(a) references to a person whose father and mother were married to each other at the time of his birth include; and

(b) references to a person whose father and mother were not married to each other at the time of his birth do not include,

references to any person to whom subsection (3) of this section applies, and cognate references shall be construed accordingly.

(3) This subsection applies to any person who -

(a) is treated as legitimate by virtue of section 1 of the Legitimacy Act 1976 in its application to the Falkland Islands;

(b) is a legitimated person within the meaning of section 10 of that Act;

(c) is an adopted child within the meaning of Part IV of the Adoption Act 1976 in its application to the Falkland Islands; or

(d) is otherwise treated in law as legitimate.

(4) For the purpose of construing references falling within subsection (2) of this section, the time of a person's birth shall be taken to include any time during the time beginning with -

(a) the insemination resulting in his birth; or

(b) where there was no such insemination, his conception,

and (in either case) ending with his birth.

3.(1) The Governor may by Order make provision for the construction in accordance with section 2 of this Ordinance of such enactments passed before the coming into force of this Ordinance as may be specified in the Order.

*Orders applying  
section 2 to other  
enactments.*

(2) An Order under this section shall so amend the enactments to which it relates as to secure that (so far as is practicable) they continue to have the same effect notwithstanding the making of the order.

### **Part III**

#### ***Miscellaneous***

4.(1) In this section "the court" means the Supreme Court in the exercise of its jurisdiction in relation to the wardship of children and "ward of court" means a ward of the Supreme Court.

*Maintenance for  
wards of court.*

(2) Subject to the provisions of this section, the court may make an order -

(a) requiring either parent of a ward of court to pay to the other parent; or

(b) requiring either parent or both parents of a ward of court to pay to any other person having actual custody of the ward or to the ward, such weekly or other periodical sums towards the maintenance and education of the ward as the court thinks reasonable having regard to the means of the person or persons on whom the requirement is imposed.

(3) An order under subsection (2) of this section may require such sums as are mentioned in that subsection to continue to be paid in respect of any period after the date on which the person for whose benefit the payments are to be made ceases to be a minor but not beyond the date on which he attains the age of twenty-one, and any order made as aforesaid may provide that any sum which is payable thereunder for the benefit of that person after he ceases to be a minor shall be paid to that person himself.

(4) Subject to the provisions of this section, where a person who has ceased to be a minor but has not attained the age of twenty-one has at any time been the subject of an order making him a ward of court, the court may, on the application of either parent of that person or that person himself, make an order requiring either parent to pay to the other parent, to anyone else for the benefit of that person or to that person himself, in respect of any period not extending beyond the date when he attains the said age, such weekly or other periodical sums towards his maintenance or education as the court thinks reasonable having regard to the means of the person on whom the requirement in question is imposed.

(5) No order shall be made under this section, and no liability under such an order shall accrue, at a time when the parents of the ward or former ward, as the case may be, are residing together, and if they so reside for a period of three months after such an order is made it shall cease to have effect; but the foregoing provisions of this subsection shall not apply to any order made by virtue of subsection (2)(b) of this section.

(6) The court shall have power from time to time by an order under this section to vary or discharge any previous order thereunder.

#### Part IV

##### *Property rights*

5.(1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of an estate of an intestate), in its application to the Falkland Islands, references (however expressed) to any relationship between two persons shall be construed in accordance with section 2 of this Ordinance.

*Succession on  
intestacy.*

(2) For the purposes of subsection (1) of this section and that Part of that Act in its application to the Falkland Islands, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

(3) In section 50(1) of that Act (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in addition to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of the section (but in relation to instruments inter vivos made or will or codicils coming into operation earlier) be construed as including references to this section.

(4) The foregoing provisions of this section do not affect any rights under the intestacy of a person dying before the coming into force of this Ordinance.

(5) This section has effect without prejudice to the application and operation, under section 78 of the Interpretation and General Clauses Ordinance 1977, before the coming into force of this Ordinance, of section 18 of the Family Law Reform Act 1987 which made provision identical in effect, but the said section 18 shall cease to have effect on the coming into force of this Ordinance.

6.(1) In the following dispositions namely -

*Dispositions of property.*

(a) dispositions inter vivos made on or after the date on which this Ordinance comes into force; and

(b) dispositions by will or codicil where the codicil/or will is made after that date,

(references whether express or implied) to any relationship between two persons shall be construed in accordance with section 2 of this Ordinance.

(2) It is hereby declared that the use, without more, of the word "heir" or heirs" or any expression which is used to create an entailed interest in real or personal property does not show a contrary intention for the purposes of section 2 as applied by subsection (1) of this section.

(3) In relation to the dispositions mentioned in subsection (1) of this section, section 33 of the Trustee Act 1925 in its application to the Falkland Islands (which specifies the trust implied by a direction that the income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 2 of this Ordinance.

(4) This section is without prejudice to section 42 of the Adoption Act 1976 (construction of dispositions in the case of adoption) in its application to the Falkland Islands.

(5) In this section "disposition" means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.

(6) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this Ordinance comes into force shall not be treated for the purposes of this section as having been made after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

7.(1) Subject to subsection (2) of this section, on the commencement of this Ordinance there shall cease to have effect any enactment or rule of law which enables trustees and personal representatives to distribute property without having ascertained that no person whose parents were not married to each other at the time of his birth, or who claims through such a person, is or may be entitled to an interest in the property.

*No special protection for trustees or personal representatives.*

(2) Subsection (1) is without prejudice to the effect of sections 27 (advertisement for claims) and 61 (grant by court of relief to personal representative who has acted honestly and reasonably and who ought fairly to be excused) of the Trustee Act 1925 in its application to the Falkland Islands.

8.(1) For the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived - *Entitlement to grant of probate etc.*

(a) by any person related to him whose father and mother were not married to each other at the time of the birth of that person; or

(b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) of this subsection.

(2) In this section "probate rules" means rules made or having effect under the Administration of Estates Ordinance or the Administration of Justice Ordinance.

(3) This section does not apply in relation to the estate of a person dying before the coming into effect of this Ordinance.

## Part V

### *Determination of Status*

9.(1) Any person may apply to the Supreme Court for a declaration -

*Declarations of parentage, legitimacy or legitimation.*

(a) that a person named in the application is or was his parent; or

(b) that he is the legitimate child of his parents.

(2) Any person may apply to the Supreme Court for one (or for one or, in the alternative, the other) of the following declarations, that is to say -

(a) a declaration that he has become a legitimated person;

(b) a declaration that he has not become a legitimated person.

(3) The Supreme Court shall have jurisdiction to entertain an application under this section if, and only if -

(a) the applicant is domiciled in the Falkland Islands on the date of the application; or

(b) he has been habitually resident in the Falkland Islands throughout a period of one year ending with that date.

(4) Where a declaration is made on an application under subsection (1) of this section, a copy of the order of the court incorporating the declaration shall be transmitted by the court to the Registrar General.

(5) In this section "legitimated person" means a person legitimated or recognised as legitimated -

(a) under section 2 or 3 of the Legitimacy Act 1976 in its application to the Falkland Islands;

(b) under section 1 or 8 of the Legitimacy Act 1926 in its application to the Falkland Islands;

(c) by a legitimation (whether or not by the subsequent marriage of his parents) recognised by the law of the Falkland Islands and effected under the law of another country.

10.(1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either -

*Declarations as to adoptions effected overseas.*

(a) an overseas adoption as defined by section 72(2) of the Adoption Act 1976 in its application to the Falkland Islands; or

(b) an adoption recognised by the law of the Falkland Islands and effected under the law of any country outside the United Kingdom,

may apply to the Supreme Court for one (or for one, or in the alternative, the other) of the declarations mentioned in subsection (2) of this section.

The said declarations are -

(a) a declaration that the applicant is for the purposes of section 39 of the Adoption Act 1976 the adopted child of that person;

(b) a declaration that the applicant is not for the purposes of that section the adopted child of that person.

(3) The Supreme Court shall have jurisdiction to entertain an application under subsection (1) of this section if, and only if, the applicant -

(a) is domiciled in the Falkland Islands on the date of the application;

(b) has been habitually resident in the Falkland Islands throughout the period of one year ending with that date.

11.(1) Where on an application for a declaration under this Part the truth of the proposition is declared to be proved to the satisfaction of the Supreme Court, the Supreme Court shall make the declaration unless to do so would manifestly be contrary to public policy.

*General provisions as to the making and effect of declarations.*

(2) A declaration under this Part shall be binding on Her Majesty in right of Her Government of the Falkland Islands and on all other persons.

(3) The court, on dismissal of an application for a declaration under this Part shall not have any power to make any declaration for which an application has not been made.

(4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.

(5) No declaration may be made by any court, whether under this Part or otherwise -

(a) that a marriage was at its inception void;

(b) that any person is, or was, illegitimate.

(6) Nothing in this section shall affect the powers of any court to grant a decree of nullity of marriage.

12.(1) On an application for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all the necessary papers in the matter be sent to the Attorney General.

*Provisions relating to the Attorney General.*

(2) The Attorney General, whether or not he is sent papers in relation to an application for a declaration under this Part, may -

(a) intervene in the proceedings on that application as he thinks necessary or expedient;

(b) argue before the court any question in relation to the application which the court thinks necessary to have fully argued.

(3) Where any costs are incurred by the Attorney General in connection with an application under this Part, the Supreme Court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

13.(1) Any declaration under this Part, and any application for such a declaration, shall be in the form prescribed by rules of court.

*Supplementary provisions as to declarations.*

(2) Rules of court may make provision -

(a) as to the information required to be given by any applicant for a declaration under this Part;

(b) as to the persons who are to be parties to proceedings on an application under this Part;

(c) requiring notice of an application under this Part to be served on the Attorney General and on persons who may be affected by any declaration applied for.

(3) No proceedings under this Part shall affect any final judgment or decree already made or pronounced in any court of competent jurisdiction.

(4) The Supreme Court may direct that the whole or any part of proceedings under this Part shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

(5) In this section "rules of court" means rules made by the Chief Executive under this subsection for the purposes of this section.

(6) Until rules under subsection (5) are made and come into effect, the rules of court having effect in relation to the corresponding provisions of the Family Law Act 1986 shall have effect with such modifications only as are necessary (for example the substitution of references to proceedings in the Supreme Court for references to proceedings in the Family Division of the High Court or in a county court).

14.(1) Where after the commencement of this Ordinance a child is born in the Falkland Islands as the result of the artificial insemination of a woman who - *Artificial insemination.*

(a) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled); and

(b) was artificially inseminated with the semen of some person other than the other party to that marriage,

then, unless it is proved to the satisfaction of the court by which the matter has to be determined that the other party to that marriage did not consent to the insemination, the child shall be treated in law as the child of the parties to that marriage and shall not be treated as the child of any person other than the parties to that marriage.

(2) Any reference in this section to a marriage includes a reference to a void marriage if at the time of the insemination resulting in the birth of the child both or either of the parties reasonably believed that the marriage was valid; and for the purposes of this section it shall be presumed, unless the contrary is shown, and one of the parties so believed at that time that the marriage was valid.

## Part VI

### *Provisions for use of scientific tests in determining parentage*

15. In this Part of this Ordinance -

*Interpretation of Part VI.*

"bodily sample" means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

"scientific tests" means scientific tests carried out under this Part of this Ordinance and made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.

16.(1) In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on the application of any party to the proceedings, give a direction -

*Power of court to require use of scientific tests and taking of bodily samples.*

(a) for the use of scientific tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person; and

(b) for the taking, within a period specified in the direction, of bodily samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings,



and the court may at any time revoke or vary a direction previously given by it under this subsection.

(2) Where -

- (a) an application is made for a direction under this section; and
- (b) the person whose paternity is in issue is under the age of eighteen when the application is made,

the application shall specify who is to carry out the tests.

(3) In the case of a direction made on an application to which subsection (2) applies the court shall -

- (a) specify, as the person who is to carry out the tests, the person specified in the application; or
- (b) where the court considers it would be inappropriate to specify that person (whether because to specify him would be incompatible with any provision made by or under regulations made or having effect under section 20 of this Ordinance or for any other reason),

decline to give the direction applied for.

(4) The person responsible for carrying out scientific tests in pursuance of a direction under subsection (1) of this section shall make to the court a report in which he shall state -

- (a) the results of the tests;
- (b) whether any party to whom the report relates is or is not excluded by the results from being the father or mother of the person whose parentage is to be determined; and
- (c) in relation to any party who is not so excluded, the value, if any of the results in determining whether that party is the father or mother of that person;

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.

(5) Where the proceedings in which the parentage of any person falls to be determined are proceedings on an application under section 11 of this Ordinance, any references in subsections (1) or (2) of this section to any party to the proceedings shall include a reference to any person named in the application.

(6) Where a report has been made to a court under subsection (2) of this section, any party may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed for the purposes of this section to form part of the report made to the court.

(7) Where a direction under this section has been given in any proceedings, a party to the proceedings, unless the court otherwise directs, shall not be entitled to call as a witness the person responsible for carrying out the tests for the purpose of giving effect to the direction, or any person by whom any thing necessary for the purpose of enabling those tests to be carried out was done, unless within fourteen days after receiving a copy of the report he serves notice on the other parties to the proceedings, or such of them as the court may direct, of his intention to call that person; and where any such person is called as a witness the party who called him shall be entitled to cross-examine him.

(8) Where a direction is given under this section the party on whose application the direction is given shall pay the costs of taking and testing bodily samples for the purpose of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for the purpose), and of making a report to the court under this section, but the amount paid shall be treated as costs incurred by him in the proceedings.

17.(1) Subject to the provisions of subsections (3) and (4) of this section, a bodily sample which is required to be taken from any person for the purpose of giving effect to a direction under section 16 of this Ordinance shall not be taken from a person except with his consent.

*Consents etc.  
required for taking  
of bodily samples.*

(2) The consent of a child who has attained the age of sixteen years to the taking from himself of a bodily sample shall be as effective as it would be if he were of full age; and where a child has by virtue of this subsection given an effective consent to the taking of a bodily sample it shall not be necessary to obtain any consent for it from any other person.

(3) A bodily sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in subsection (4) of this section, if the person who has actual custody of him consents.

(4) A bodily sample may be taken from a person who is suffering from mental disorder and who is incapable of understanding the nature and purpose of bodily samples if the person who has the care and control of him consents and the medical practitioner in whose care he has certified that the taking of a bodily sample from him will not be prejudicial to his proper care and treatment.

(5) This section has effect without prejudice to the provisions of section 18 of this Ordinance.

18.(1) The Governor may by regulations make provision as to the manner of giving effect to directions under section 18 of this Ordinance, but unless the Governor has exercised his power under this section to make such regulations, the regulations made by the Secretary of State under section 22 of the Family Law Reform Act 1969 (which corresponds with this section) in relation to directions under section 20 of that Act (which corresponds with section 18 of this Ordinance) and for the time being in force shall have effect as if they had been made under this section, and with such modifications only as are required under section 76 of the Interpretation and General Clauses Ordinance 1977.

*Power to provide for  
manner of giving effect to  
direction for bodily samples.*

(2) Regulations made by the Governor under subsection (1) of this section may -

(a) provide that bodily samples shall not be taken except by such medical practitioners as may be appointed or approved by the Governor;

(b) regulate the taking, identification and transport of bodily samples;

(c) require the production at the time when a bodily sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;

(d) require any person from whom a bodily sample is to be taken, or in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness or condition or undergone any such treatment as may be so prescribed or received a transfusion of blood;

(e) provide that scientific tests shall not be carried out except by such persons, and at such places, as may be appointed by the Governor;

(f) prescribe the scientific tests to be carried out and the manner in which they are to be carried out;

(g) regulate the charges that may be made for the taking and testing of scientific samples and for the making of a report to the court under section 18 of this Ordinance;

(h) make provision for securing that so far as practicable the bodily samples to be tested for the purpose of giving to a direction under section 18 of this Ordinance are tested by the same person;

(i) prescribe the form of report to be made to a court under section 18 of this Ordinance.

19.(1) Where a court gives direction under section 18 of this Ordinance and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

*Failure to comply with direction for scientific tests.*

(2) Where in any proceedings in which the parentage of any person falls to be determined by the court hearing the proceedings there is a presumption of law that the person is legitimate, then if -

(a) a direction is given under section 18 of this Ordinance in those proceedings, and

(b) any party who is claiming relief in those proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period at it thinks fit to enable the party to take that step, and if at the end of that period he has failed without reasonable cause to take it, the court may, without prejudice to subsection (1) of this section, dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 18 of this Ordinance fails to consent to the taking of a bodily sample from himself or any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take the step required of him for the purpose of giving effect to the direction.

## Part VII

### *Amendments etc*

20.(1) The Ordinances mentioned in Schedule 1 to this Ordinance are amended in the manner there specified.

*Amendment of various Ordinances, transitional provisions and repeals.*

(2) The transitional provisions and savings set out in Schedule 2 to this Ordinance shall have effect.

(3) The Affiliation Proceedings Ordinance 1994 (the provisions of which are superseded by the provisions of this Ordinance) shall cease to have effect.

### SCHEDULE 1

Section 20(1)

#### **AMENDMENTS TO ORDINANCES**

The Ordinances mentioned in this Schedule are amended in the manner specified in this Schedule in relation to them.

#### ***The Maintenance Orders (Reciprocal Enforcement) Ordinance 1979***

1. Section 9(3) is replaced by the following subsection -

"(3) An order which by virtue of this section is enforceable by the Magistrate's Court or the Summary Court shall be enforceable as if it were a maintenance order made by that court, and for the purposes of this section "maintenance order" means an order of the Magistrate's Court or of the Summary Court corresponding to an order of a magistrate's court in England of a kind specified in Schedule 8 to the Administration of Justice Act 1970 and includes such an order which has been discharged if any arrears are recoverable thereunder."

#### ***The Matrimonial Causes Ordinance 1979***

1. Section 26 is amended by the addition of the following subsection -

"(6) Where the court -

(a) makes an order under this section for the payment of a lump sum; and

(b) directs -

(i) that payment of that sum or any part of it shall be deferred; or

(ii) that that sum or any part of it shall be paid by instalments;

the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due."

2. The following new section is inserted immediately after section 27 -

"27A.(1) Where the court makes an order under section 26 or 27 of this Ordinance a secured periodical payments order, an order for payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion. *Order for sale of property.*

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include -

(a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates;

(b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

(3) Where an order is made under subsection (1) on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.

(4) Where an order is made under subsection (1), the court may direct that the order, or such provision thereof as the court may specify, shall not take place until the occurrence of an event specified by the court or the expiration of a period so specified.

(5) Where an order under subsection (1) contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or remarriage of that person.

(6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations in relation to that order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 28(1) of this Ordinance."

3. Section 28 is replaced by the following section -

"28.(1) It shall be the duty of the court in deciding whether to exercise its powers under section 26, 27 or 27A and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 26(1)(a), (b) or (c), 27 or 27A in relation to a party to the marriage, the court shall in particular have regard to the following matters -

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the parties be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under section 26(1)(d), (e) or (f), (2) or (4), 27 or 27A above against a party to the marriage in favour of a child of the family who is not a child of that party, the court shall also have regard -

(a) to whether that party assumed any responsibility or the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.

#### 4. The following section is inserted immediately after section 28 -

28A.(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 26(1)(a), (b) or (c), 27 or 27A in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

*Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.*

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any future application in relation to that marriage for an order under section 26(1)(a) or (b) above."

5. In section 30(1) paragraphs (a) and (b) are replaced by the following -

"(a) has failed to provide reasonable maintenance for the applicant; or

(b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family."

6. The existing section 30(3) and (4) are repealed and the following new subsections are inserted in their place -

"(3) Where an application under this section is made on the ground mentioned in subsection (1)(a) of this section, then, in deciding -

(a) whether the respondent has failed to provide reasonable maintenance for the applicant, and

(b) what order, if any to make under this section in favour of the applicant,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 28(2), and where an application is also made under this section in respect of a child of the family who has not attained the age of eighteen, first consideration shall be given to the welfare of the child while under the age of eighteen.

(4) Where an application is made on the ground mentioned in subsection (1)(b) of this section then, in deciding -

(a) whether the respondent has failed to provide, or make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates, and

(b) what order, if any, to make under this section in favour of the child,

the court shall have regard to all the circumstances of the case including the matters mentioned in section 28(2)(a) to (e), and where the child of the family to whom the application relates is not the child of the respondent, including the matters mentioned in section 28(3)."

7. The following new subsection is inserted immediately after section 30(4) -

"(4A) In relation to an application under this section on the ground mentioned in subsection (1)(a) of this section, section 28(2)(c) shall have effect as if for the reference therein to the breakdown of the marriage there were substituted a reference to the failure to provide reasonable maintenance for the applicant, and in relation to an application under this section on the ground mentioned in subsection (1)(b) of this section, section 28(2)(c) (as it applies by virtue of section 28(3)(e)) shall have effect as if for the reference therein to the breakdown of the marriage there was substituted a reference to the failure to provide, or to make a proper contribution towards, reasonable maintenance for the child of the family to whom the application relates."

8. The following subsections are inserted immediately after section 30(6) -

"(6A) An application for a variation under section 34 of this Ordinance of a periodical payments order or secured periodical payments order made under this section in favour of a child may, if the child has attained the age of sixteen, be made by the child himself.

(6B) Where a periodical payments order made in favour of a child under this section ceases to have effect on the date when the child attains the age of sixteen or at any time after that date but before or on the date on which he attains the age of eighteen, then if, on an application made to the court for an order under this subsection, it appears to the court that -

(a) the child is, will be or, (if an order were made under this subsection) would be receiving education at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he also is, will be or would be in gainful employment; or

(b) there are special circumstances which justify the making of an order under this subsection,

the court shall have power to revive the first mentioned order from such date as the court may specify, not being earlier than the date of the making of the application, and to exercise its powers under section 34 of this Ordinance in relation to any order so revived."

## SCHEDULE 2

### Section 22(2)

#### **TRANSITIONAL PROVISIONS AND SAVINGS**

##### ***Applications pending under amended or repealed enactments***

1. This Ordinance (including the repeals amendments and modifications made by it) shall not have effect in relation to any application made under any enactment repealed, amended or modified by this Ordinance if that application is pending at the time that this Ordinance comes into force.

##### ***Affiliation orders***

2. Neither section 20(3) of this Ordinance nor any associated amendment or repeal shall affect, or affect the operation of any enactment in relation to -



(a) any affiliation order made under the Affiliation Proceedings Act 1957 in its application to the Falkland Islands or the Affiliation Proceedings Ordinance 1994 which is in force immediately before the commencement of this Ordinance; or

(b) any affiliation order made under that Act or the Affiliation Proceedings Ordinance 1994 by virtue of paragraph 1 of this Schedule.

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

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Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

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## SUBSIDIARY LEGISLATION

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### ROAD TRAFFIC

#### The Philomel Street Waiting Regulations Order 1994

(S. R. & O. No: 7 of 1994)

*(Made: 7th June 1994)*

*(Coming into force: 1st July 1994)*

*(Published: 17th June 1994)*

IN EXERCISE of my powers under section 18 of the Road Traffic Ordinance (a), I make the following Order -

1. This Order may be cited as the Philomel Street Waiting Regulations Order 1994 and shall come into force on 1st July 1994. Each numbered article of this Order may be referred to and described for all purposes as a regulation of the same number. *Citation and commencement.*

2. In this Order, "the relevant length of road" means Philomel Street, Stanley, from its junction with the eastern end of Ross Road to its junction with Davis Street. *The relevant length of road.*

3.(1) A person commits an offence who, other than as is permitted under regulation 4, causes or permits a motor vehicle to wait on either side of the carriageway in the relevant length of road. *Prohibition of waiting.*

(2) A person who is convicted of an offence under this regulation is liable on conviction to a fine not exceeding £100.

(3) An offence under this regulation can only be committed by the driver of, or other person for the time being in charge of, the motor vehicle in question.

4. It is not an offence under regulation 3(1) to cause a motor vehicle to wait in the relevant length of road - *Exceptions.*

(a) where the driver or other person for the time being in charge of the motor vehicle is -

(i) required by law to stop it;

(ii) obliged to stop it in order to avoid an accident; or

(iii) prevented from proceeding in it by reason of circumstances beyond his control,

if in any of the foregoing cases the driver or other person in charge of the motor vehicle drives it or causes it to be moved to a place not within the relevant length of road as soon as is reasonably practicable; or

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(a) Cap. 60 Laws of the Falkland Islands 1950 Edition.

(b) so long as is reasonably necessary to enable it to be used to remove another vehicle or an obstruction; or

(c) for so long only as is reasonably necessary to effect from the motor vehicle a delivery of goods or materials of any kind to premises adjoining or nearby to Philomel Street, where the goods and materials are of a kind or quantity and the other circumstances are such that the delivery cannot reasonably be effected other than from a motor vehicle which is waiting in the relevant length of road; or

(d) for so long as is reasonably necessary in or in connection with the repair and maintenance of the relevant length of road or any other public highway; or

(e) with the permission of a police officer in uniform; or

(f) for police, fire service or ambulance purposes.

5. The Chief Police Officer may cause such signs and notices to be erected as may, in his opinion, be convenient to draw attention to the effect of this Order or of any provision of it, but the absence of any such sign, or the removal of any sign erected or placed in position pursuant to this regulation shall not afford a defence in a prosecution for an offence under paragraph (1) of regulation 3. *Signs.*

Made this 7th day of June 1994.

D. E. TATHAM,  
*Governor.*



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*20th JUNE 1994*

*No. 12*

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## Errata

Customs Resolution No. 1 of 1994 (Accidentally omitted from Supplement No. 11 of 1994) is printed in this supplement.

## LEGISLATIVE COUNCIL OF THE FALKLAND ISLANDS

Customs Ordinance (Cap. 16)  
(Section 5)

### RESOLUTION OF THE LEGISLATIVE COUNCIL

No. 1 of 1994

RESOLVED by the Legislative Council, under section 5 of the Customs Ordinance (Cap. 16), on the 2nd day of June 1994, as follows -

1. That the Customs Order No.6 of 1948 is amended by the substitution for item 6 under paragraph 2 thereof the following -

Item	Article	Rate of Duty
"6.	Tobacco per kilo -	
	(a) Cigars	£71.64
	(b) Cigarettes	£51.82
	(c) Tobacco	£47.09"

2. This Resolution may be cited as the Customs (Amendment of Import Duties) Resolution 1994 and shall come into force on the 2nd day of June 1994.

Ref: CUS/10/2

C. de CEBALLOS,  
*Clerk of Councils.*



# THE FALKLAND ISLANDS GAZETTE (Supplement)

PUBLISHED BY AUTHORITY

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*Vol. 5*

*28th July 1994*

*No. 13*

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The following are published in this Supplement —

The South Africa (United Nations Arms Embargo) (Prohibited Transactions) Revocations Order 1994, S.I. 1994 No.1636.

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STATUTORY INSTRUMENTS

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**1994 No. 1636**

**UNITED NATIONS**

**The South Africa (United Nations Arms Embargo)  
(Prohibited Transactions) Revocations Order 1994**

*Made - - - - - 22nd June 1994*

*Laid before Parliament 23rd June 1994*

*Coming into force 22nd June 1994*

At the Court at Buckingham Palace, the 22nd day of June 1994

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation and extent**

1.—(1) This Order may be cited as the South Africa (United Nations Arms Embargo) (Prohibited Transactions) Revocations Order 1994.

(2) This Order shall, to the extent that it makes provision in relation to any Order of Her Majesty in Council in force in each of the Channel Islands, in the Isle of Man or in any territory specified in Schedule 1 to this Order, have effect as part of the law of that one of the Channel Islands, of the Isle of Man or that territory.

**Revocations**

2. The Orders specified in Schedule 2 to this Order are revoked.

*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULE 1

Article 1(2)

## TERRITORIES IN WHICH THIS ORDER HAS EFFECT

Anguilla  
 Bermuda  
 British Antarctic Territory  
 British Indian Ocean Territory  
 British Virgin Islands  
 Cayman Islands  
 Falkland Islands  
 Gibraltar  
 Hong Kong  
 Montserrat  
 Pitcairn, Henderson, Ducie and Oeno Islands  
 St Helena and its dependencies  
 South Georgia and South Sandwich Islands  
 Sovereign Base Areas of Akrotiri and Dhekelia  
 Turks and Caicos Islands

## SCHEDULE 2

Article 2

## ORDERS REVOKED BY THIS ORDER

The South Africa (United Nations Arms Embargo) (Prohibited Transactions) Order 1978(a)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Amendment) Order 1978(b)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Amendment No. 2) Order 1978(c)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Guernsey) Order 1978(d)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Jersey) Order 1978(e)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Isle of Man) Order 1978(f)  
 The South Africa (Prohibited Exports and Transactions) (Overseas Territories) Order 1978(g)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Guernsey) (Amendment) Order 1978(h)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Jersey) (Amendment) Order 1978(i)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Isle of Man) (Amendment) Order 1978(j)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Amendment) Order 1981(k)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Guernsey) (Amendment) Order 1982(l)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Jersey) (Amendment) Order 1982(m)  
 The South Africa (United Nations Arms Embargo) (Prohibited Transactions) (Isle of Man) (Amendment) Order 1982(n)

(a) S.I. 1978/277.  
 (d) S.I. 1978/1052.  
 (g) S.I. 1978/1624.  
 (j) S.I. 1978/1897.  
 (m) S.I. 1982/154.

(b) S.I. 1978/1034.  
 (e) S.I. 1978/1054.  
 (h) S.I. 1978/1896.  
 (k) S.I. 1981/1671.  
 (n) S.I. 1982/153.

(c) S.I. 1978/1895.  
 (f) S.I. 1978/1053.  
 (i) S.I. 1978/1898.  
 (l) S.I. 1982/1531.



## EXPLANATORY NOTE

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

This Order revokes fourteen Orders made to give effect to United Nations sanctions on South Africa. The Order implements the decision of the Security Council of the United Nations, in a resolution adopted on 25th May 1994, to end the sanctions.



# THE FALKLAND ISLANDS GAZETTE (Supplement)

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The following is published in this Supplement—

Livestock (Amendment) Regulations 1994 (S.R. & O. No. 9 of 1994),

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## SUBSIDIARY LEGISLATION

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### ANIMALS

#### Livestock (Amendment) Regulations 1994

(S. R. & O. No: 9 of 1994)

*(Made: 27th July 1994)*

*(Published: 28th July 1994)*

*(Coming into force: 1st August 1994)*

IN EXERCISE of my powers under section 43 of the Livestock Ordinance (a) I make the following Regulations -

1. These Regulations may be cited as the Livestock (Amendment) Regulations 1994 and shall come into force on 1st August 1994. *Citation and commencement.*
2. Regulation 2 of the Livestock Regulations (b) is amended by replacing the words "twenty pounds" with the words "twenty five pounds". *Amendment of Livestock Regulations.*

Made this 27th day of July 1994.

R. SAMPSON,  
*Acting Governor.*

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#### EXPLANATORY NOTE

(not forming part of the above Regulations)

The effect of these Regulations is to increase the fee payable to the Chief Inspector on giving notice of intention to import any animal.

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(a) Cap. 40 Laws of the Falkland Islands 1950 Edition.

(b) Pages 205 to 209 Vol. II Laws of the Falkland Islands 1950 Edition.



# THE FALKLAND ISLANDS GAZETTE Supplement

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*8th August 1994*

*No. 15*

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The following are published in this Supplement —

**Offshore Petroleum (Licensing) Regulations 1994;**  
**Offshore Minerals Bill 1994.**

## **DRAFT OFFSHORE MINERALS LEGISLATION**

The draft Offshore Minerals Legislation published in this issue of the Gazette (the Offshore Minerals Bill 1994 and the Offshore Minerals (Licensing) Regulations 1994) is published for public information and comment. The Bill is likely to be submitted to the Legislative Council (probably in September 1994, although no date has yet been fixed). The Regulations cannot, of course, be made until the Bill, or some other provision enabling them to be made, has been enacted, and the draft Regulations may well be amended as a result of consultations with experts and others before they are made.

**D G Lang QC**  
**Attorney General**

OFFSHORE PETROLEUM (LICENSING)  
REGULATIONS 1994

OFFSHORE MINERALS BILL 1994

ERRATA

Pages 32 and 105 of the Gazette supplement issued on 8 August (Volume 5 No 15) were unfortunately transposed in printing (i.e page 31 should be followed by page 105 then 33, 34 etc; page 104 should be followed by page 32 then 106, 107 etc).

D G Lang QC  
Attorney General



(2) If any of the matters stated in an application or any further information supplied by the applicant shall change after the application is made or after the information is given but before a licence is granted or the Governor informs the applicant that the application is refused, the applicant shall forthwith give notice in writing to the Governor giving particulars of the change.

(3) The footnotes to Schedule 1 form part of that Schedule and shall have effect accordingly.

6.(1) An application for a production licence in accordance with the provisions of this Regulation (in these Regulations called a "non-invited application") may, subject to paragraph (2), be made in respect of any part of the controlled waters.

*Non-invited applications.*

(2) No non-invited application may be made unless -

(a) every part of the area to which the application relates was comprised in a production licence (in this paragraph referred to as "the lapsed licence") which has been surrendered or revoked either in whole or in relation to the area to which the application relates;

(b) at the time the lapsed licence was surrendered or revoked, it was held by two or more persons; and

(c) the application is made by one of those persons, or by a group including at least one of those persons.

7.(1) Every application for a production licence pursuant to these Regulations, not being a non-invited application made pursuant to the last foregoing Regulation (in these Regulations referred to as an "invited application"), shall be -

*Invited applications.*

(a) in respect of one or more blocks described or specified by a Gazette notice published in accordance with the next following paragraph;

(b) lodged within the period specified by such a notice as the period within which the Governor is prepared to receive applications in respect of the blocks so specified;

and shall not comprise any part of a block.

(2) The Gazette notice referred to in the last foregoing paragraph is a Gazette notice describing or specifying by reference to a map deposited at The Secretariat, Thatcher Drive, Stanley, Falkland Islands and at such other places (if any) as may be specified in the notice areas (in these Regulations referred to as "blocks") to which reference numbers shall be assigned, in respect of which he is prepared to receive applications for production licences and specifying the dates within which applications in respect of the blocks so specified are to be made.

8.(1) Every licence shall incorporate model clauses respectively prescribed by the next following paragraph for the kind of licence to which that licence belongs unless the Governor thinks fit to modify, or exclude, in any particular case, the clauses so prescribed.

*Forms of licences.*

(2) The clauses prescribed -

(a) for incorporation in production licences are those set out in Schedule 2;



(b) for incorporation in exploration licences not permitting drilling are those set out in the Schedule to the Petroleum Survey (Model Clauses) Regulations 1992 (b); and

(c) for incorporation in exploration licences which do permit drilling, are the clauses set out in the said Schedule to the said Regulations, with the omission of clause 8 and 12 thereof and the substitution in their place of the clauses set out in Schedule 3 to these Regulations.

9.(1) With every application for an exploration licence shall be paid a fee of £1,000 and, if the licence is granted, an annual fee of £5,000 shall be paid on each anniversary of the grant of the licence while it continues in force. *Fees.*

(2) With every application for a production licence shall be paid a fee of £5,000, but if the application is a non-invited application for a production licence and the application is refused on grounds -

(a) that the Governor proposes to publish a Gazette notice pursuant to Regulation 7 inviting applications for production licences in respect of blocks comprising the whole or any part of the area for a licence in respect of which that application is made; or

(b) that the Governor proposes to grant a licence in respect of the whole or part of the area in respect of which the application is made to an applicant whose application in respect thereof was made before receipt of the application which is so refused,

the Governor shall repay the fee in respect of the application so refused.

10. Nothing in these Regulations shall prevent more than one application being made by the same person or more than one licence being granted to him. *Plurality of licences.*

## SCHEDULE 1

### Regulation 5(1)

#### FORM OF APPLICATION FOR A LICENCE

##### PART I

1. Type of licence applied for.

##### PART II

2. Name of each applicant in full.

3. If the application is made by more than one person and the applicants have agreed on the manner in which benefits resulting from the exploitation of the licence should be shared between them, the share which each applicant would be entitled to take.

4. Name of proposed operator.

## PART III

5. In the case of an application for a production licence, reference number(s) of the block(s) in respect of which the application is made and, if the application is made by tender, the consideration which the applicant is prepared to offer for each such block.<sup>1</sup>

PART IV<sup>2</sup>

6. In respect of each applicant who is an individual -

- (a) Name of applicant in full
- (b) Usual residential address
- (c) Nationality

7. In respect of each applicant who is a body corporate -

- (a) Name of applicant in full
- (b) Place of incorporation
- (c) Principal place of business
- (d) In the case of a company, its registered office
- (e) Place of central management and control
- (f) Particulars of each member of the board of directors or other governing body of the body corporate, as follows -

(1)	(2)	(3)
Full name	Usual residential address	Nationality

<sup>1</sup>If the application specifies more than one block it may indicate an order of preference for some or all of the blocks and it may indicate that blocks are applied for as alternatives.

<sup>2</sup>If there is more than one applicant or proposed operator all the information relating to each operator which is required in this Part should be grouped together. The groups should appear in the order in which the applicants or proposed operator are named in Part II.

8. In respect of each applicant which is a body corporate<sup>3</sup> -

(a) Particulars of the capital authorised and issued as follows -

(1)	(2)	(3)	(4) <sup>4</sup>
Class of capital	Amount authorised	Amount issued	Voting rights of each class

(b) Particulars of all holdings of not less than 5 per cent. in number or value of any class of capital which has been issued by the body corporate as follows -

(1)	(2)	(3)	(4)
Name of holder or names of joint holders, in full	Nationality of holders	Class of holding	Amount

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<sup>3</sup>If a body corporate does not possess a capital structure, any comparable information concerning the items listed should be furnished.

<sup>4</sup>Column 4 of sub-paragraph (a) need not be completed if a copy of the memorandum and articles of association, or other document setting out or defining the constitution, of the body corporate accompanies the application.

(c) Particulars of all capital issued to bearer, as follows -

(1)	(2)	(3)
Class of capital	Total amount issued	Amount issued to bearer

9.(1) In the case of an application for a production licence, for each applicant which is a body corporate there shall accompany the application three copies of the most recent audited accounts of each such applicant and three copies of the audited accounts of any body corporate having control of such applicant. Subsection (2) and (4) of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply<sup>5</sup>, for the purposes of determining whether for the purposes of this paragraph a body corporate has control of another body corporate, with the following modifications -

(a) for the words "greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more",

(b) in the said subsection (6), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted, and in the other provisions of that subsection any reference to the associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary.

(2) There shall accompany the application a list of the bodies corporate whose accounts are submitted pursuant to sub-paragraph (1) of this paragraph.

10. Where the proposed operator is not an applicant, the proposed operator shall comply with paragraphs 6 to 9 above as if he were an applicant.

<sup>5</sup> The provisions are applied only for the purpose of determination, for the purposes of these Regulations, of the question as to whether a body corporate has control of another body corporate. The Income and Corporation Taxes Act 1988 of the United Kingdom does not form part of the law of the Falkland Islands, which have their own laws on taxation of personal and corporate income.

## PART V

11. Details of the fees which accompany the application (cheques should be crossed "not negotiable A/C Payee only" and made payable to "Falkland Islands Government".

## PART VI

I/We hereby declare that the information given in Parts I, II, III and IV or annexed to or accompanying this application is correct.

Date

Signature of each applicant or proposed operator or, in the case of each applicant or proposed applicant which is a body corporate, of a duly authorised officer whose capacity is stated.<sup>6</sup>

To: Oil Licensing Administration,  
Falkland Islands Government,  
Falkland House,  
14 Broadway  
London SW1H 0BH

## SCHEDULE 2

## Regulation 8(2)(a)

## MODEL CLAUSES FOR PRODUCTION LICENCES IN CONTROLLED WATERS

1.(1) In the following clauses, the following expressions have meanings hereby respectively assigned to them, that is to say - *Interpretation.*

"approved development programme" means a development programme in respect of which the Governor's approval has been notified to the Licensee pursuant to clause 15;

"approved well" means a well specified in Schedule 5 to this Licence or after the date of this Licence approved in writing by or on behalf of the Governor;

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<sup>6</sup> Where there is more than one signature, the applicant or proposed operator to which each signature relates should be identified.

"block" means an area comprised in this licence which is delineated on the reference map deposited at The Secretariat, Thatcher Drive, Stanley, Falkland Islands and to which a reference number was assigned at the date of this licence;

"chargeable period" has the meaning assigned thereto by clause 11(1);

"clause" means a clause of this Licence;

"crude", where the reference is to petroleum being disposed of or appropriated crude, refers to its being so dealt with without having been refined (whether or not it has previously undergone initial treatment);

"development programme" means a programme prepared for the purposes of clause 15;

"development scheme" has the meaning assigned thereto by clause 25(2);

"exploit" and "explore", in relation to petroleum, have the same meanings as they have under section 2(1) of the Ordinance;

"exploitation term" has the meaning assigned by clause 5(7);

"field" means a part of the licensed area which the Licensee believes to be an oil field or part of an oil field;

"half year" means the period from 1st January to 30th June in any year and the period from 1st July to 31st December in any year;

"initial term", "second exploration term" and "third exploitation term" have the meanings respectively assigned to them by clause 3;

"initial treatment", in relation to petroleum from a field, means the doing, at any place, of any of the following things -

(a) subjecting oil won from the field to any process of which the sole purpose is to enable the petroleum to be safely stored, safely loaded into a tanker or safely accepted by an oil refinery; or

(b) separating petroleum so won and consisting of gas from other petroleum so won; or

(c) separating petroleum so won and consisting of gas of a kind that is transported and sold in normal commercial practice from other petroleum so won and consisting of gas; or

(d) liquefying petroleum so won and consisting of gas of such a kind as aforesaid for the purpose of transporting it; or

(e) subjecting petroleum so won to any process of which the purpose is to secure that petroleum disposed of crude has the quality that is normal for petroleum so disposed of from the field,

but does not include -

- (i) the storing of petroleum even where this involves the doing to the oil of things within any of the paragraphs (a) to (e) of this definition; or
- (ii) any activity carried on as part of, or in association with, the refining of petroleum not consisting of gas or any activity the sole or main purpose of which is to achieve a chemical reaction in respect of petroleum consisting of gas; or
- (iii) deballasting;

"the licensed area" means the area for the time being in which the Licensee may exercise the rights granted by this Licence;

"the Licensee" means the person or person to whom this licence is granted, his personal representatives and any person or person to whom the rights granted by this licence may lawfully have been assigned;

"notice" means a notice in writing;

"the Ordinance" means the Offshore Minerals Ordinance 1994;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"production purposes", in relation to a field, means any of the following purposes -

- (a) carrying on drilling or production operations within the field;
- (b) pumping petroleum won from the field to the place where it is first landed in the Falkland Islands or another country or to the place in the Falkland Islands or another country in which the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one place at which the seller could reasonably be expected to deliver it, the one nearest to the place of extraction; or
- (c) the initial treatment of oil won from the field;

"relevantly appropriated", in relation to petroleum won from a field, means appropriated to refining or to any use except for production purposes in relation to that field;

"section" means a part of a block comprising an area bounded by minute lines of latitude and longitude one minute apart respectively;

"\$" means dollars of the United States of America;

"well" includes borehole.

(2) Any obligations which are to be observed and performed by the Licensee shall at any time when the Licensee is more than one person be joint and several obligations.

2. In consideration of the payments and royalties hereinafter provided and the performance and observance by the Licensee of all the terms and conditions hereof, the Governor in exercise of the powers conferred on him by the Offshore Minerals Ordinance 1994 hereby grants to the Licensee **EXCLUSIVE LICENCE AND LIBERTY** during the continuance of this Licence and subject to the provisions hereof to search and bore for, and get, petroleum in the sea bed and sub soil under the part of the controlled waters comprising an area of [number of square kilometres to be inserted here] square kilometres more particularly described in Schedule 1 to this Licence being the area comprising block(s) No. [to be inserted in Licence granted] on the reference map deposited at The Secretariat, Thatcher Drive, Stanley, Falkland Islands AND IT IS HEREBY DECLARED for the purpose of section 5(2) of the Ordinance that this Licence permits in accordance with its terms and conditions the drilling of wells and taking of samples in the course of exploration for petroleum.

*Grant of Licence.*

3. This Licence unless sooner determined under any of the provisions hereof shall be and continue in force for the term of five years after [date of commencement of licence term to be inserted here] (hereinafter called "the initial term"); but if the terms and conditions of this Licence are duly performed and observed and, in particular, if the work programme described in Part I of Schedule 5 to this Licence has been duly performed, this Licence may be continued for a further term of seven years (hereinafter called "the second exploration term") as provided by clause 4 of this Licence and if the terms and conditions of this Licence and, in particular, the work programme described in Part II of Schedule 5 to this Licence, are duly performed and observed during the second exploration term, this Licence may be continued for a further term of ten years as provided by clauses 5 and 6 (hereinafter called "the third exploration term") or, as the case may be and as further provided by clauses 5 and 6 of this of this Licence, as to a field for a further term of thirty-five years (hereinafter called "the exploitation term") and, in the event that this Licence is continued for the third exploration term as hereinbefore mentioned and the terms and conditions of this Licence are duly performed and observed, and in particular if the further work programmed contemplated in relation to the third exploration term by clause 5 of this Licence is duly performed, then this Licence may be continued after the third exploration term for the exploitation term as provided by clause 7 of this Licence.

*Term of Licence.*

4.(1) At any time not later than three months before the expiry of the initial term the Licensee paying the payments by way of acreage rent and, if appropriate, royalties hereinafter in this Licence provided and observing and performing the terms and conditions in this Licence contained may give notice in writing to the Governor that the Licensee desires the Licence to continue as to part of the licensed area (hereinafter called "the initial continuing part") in the manner hereinafter provided and (unless paragraph (4) of this clause applies and the Licensee does not desire to determine the licence in respect of any part of the licence area) to determine the residue thereof (hereinafter called "the initial compulsorily surrendered part").

*Option to continue licence for second exploration term as to part of licensed area.*

(2) Such notice shall describe the initial continuing part which shall be an area which, if the number of approved wells drilled by the Licensee during the initial term did not exceed four, shall not be greater than the relevant fraction.

(3) For the purposes of paragraph (2), the relevant fraction is the fraction determined by the result of the equation  $A \text{ plus } B$  where -

A equals one half of the area originally comprised in this Licence, and

B equals one tenth of the area originally comprised in this Licence multiplied by the appropriate number, and



"the appropriate number" is the number, if three or less, of approved wells drilled by the Licensee during the initial term.

(4) If the Licensee has drilled four or more approved wells during the initial term, paragraph (1) of this clause shall not have effect so as to require the Licensee to surrender any part of the Licence area at the expiration of that term.

(5) If the Licensee, whether the Licensee is required by that paragraph to do so or does so voluntarily, states in a notice given pursuant to that paragraph (1) of this clause that the Licensee intends to surrender part of the area initially comprised in this Licence, the Licensee shall specify in that notice a date (hereinafter called "the surrender date"), not later than the expiry of the initial term, on which the surrendered part is to be surrendered.

(6) The Licensee may at any time not less than one month before the surrender date give a further notice to the Governor varying the part of the licensed area to be surrendered and in the event of such further notice being given the previous paragraphs of this clause shall apply *mutatis mutandis* to such notice but so that the surrender date specified in such notice shall be the surrender date specified in the first notice.

5.(1) Subject to paragraph (2) of this clause, at any time not later than three months before the expiry of the second exploration term the Licensee paying the acreage rents and, if appropriate, royalties hereinafter provided and observing and performing the terms and conditions in this Licence contained may give notice to the Governor that he desires the licence to continue as to part of the licensed area (hereinafter called "the subsequent continuing part") in the manner hereinafter provided and to determine in relation to the residue of the area licensed in respect of the second exploration term (hereinafter called "the subsequent compulsorily surrendered part").

*Option to continue  
Licence as to part of  
licensed area after second  
exploration term.*

(2) The Licensee shall not be entitled to give such notice unless the Licensee at the same time sends or delivers to the Governor for approval -

(a) a development programme complying with the requirements of clause 15(2) and as if the Licensee had been directed by the Governor pursuant to that provision to prepare and submit the same; or

(b) a work programme as to the subsequent continuing part (which must incorporate proposals as to further exploration or appraisal wells) and as if the Licensee had been required to submit the same pursuant to clause 14(2); or

(c) both such a development programme, in relation to such portion of the subsequent continuing part as the Licensee identifies as the immediate area of a potential petroleum field, and a work programme as to the remainder of the subsequent continuing part,

and the notice shall -

(i) describe the subsequent continuing part (the maximum permitted area of which is governed by the provisions of paragraph (3) of this clause as to the minimum permitted area of the subsequent compulsorily surrendered part);

(ii) if the Licensee submits at the same time both a development programme and a work programme, describe the portions of the subsequent continuing part to which each of them respectively relate, and

(iii) specify a date (hereinafter called "the second surrender date") not later than the expiry of the second exploration term upon which the subsequent compulsorily surrendered part is to be surrendered.

(3) The subsequent compulsorily surrendered part shall -

(a) not be less than one half of the area in respect of which, by virtue of clause 4, this Licence continued for the second exploration term; and

(b) if the Licensee submits a development programme but does not submit a work programme, shall be the whole of the area for which this Licence continued for the second exploration term excepting only the part of that area to which the development programme submitted by the Licensee relates.

(4) The Licensee may at any time before the second surrender date give further notice to the Governor varying the part of the licensed area to be surrendered and in the event of such further notice being given the provisions of the previous paragraphs of this clause shall apply *mutatis mutandis* to such notice but so that the second surrender date specified in such notice shall be the same as that specified in the first notice.

(5) If the Licensee gives a notice in pursuance of paragraph (1) of this clause (where appropriate, varied in accordance with paragraph (4)) complying with the preceding provisions of this clause, this Licence shall continue in force after the expiry of the second exploration term -

(a) if before that time the Governor has given a consent in pursuance of clause 15(1) of this Licence, and such consent is still in force as to that date, in relation to the part of the licensed area to which that consent relates;

(b) if before that time the Governor has in pursuance of clause 15(4) of this Licence approved a development programme and such approval is still in force at that date, in relation to the part of the licensed area to which that approval relates;

(c) if before that time the Governor has served a programme on the Licensee in pursuance of clause 15(6) of this Licence, in relation to the part of the licensed area to which that programme relates;

(d) if before that time the Governor has approved a work programme submitted by the Licensee pursuant to this clause, and such approval is still in force at that date, in relation to the part of the licensed area to which that approved work programme (and, if appropriate, as amended by the Governor) relates;

(e) if before that time the Governor has in his discretion so directed in writing,

and the Licence may continue in respect of different parts of the licensed area by virtue of different subparagraphs of this paragraph.

(6) Where the Governor has given a direction in pursuance of paragraph (5)(e) of this clause he may in his discretion, on notice being given to him by the Licensee not later than three months before the expiry of any extension or further extension having effect by virtue of such a direction that the Licensee desires the licence to continue in force thereafter, give a further direction that this Licence shall so continue in force.

(7) Where this licence continues in force in respect of a part of the licensed area by virtue of paragraph (5)(a), (b) or (c) of this clause it shall, subject to the provisions of clause 3 of this Licence, so continue in force for a further period of thirty-five years ("the exploitation term") after the expiry of the second exploration term.

(8) Where this licence continues in force in respect of a part of the licensed area by virtue of paragraph (5)(d) of this clause it shall, subject to the provisions of clause 3 of this Licence, continue in force for a further period of ten years ("the third exploration term") after the expiry of the second exploration term, and clause 6 of this Licence applies in relation to the possible further continuation of this Licence in respect of a portion of that part after the expiry of the third exploration term.

(9) A direction given by the Governor in pursuance of paragraph (5)(e) of this clause or further direction given by the Governor in pursuance of paragraph (6) of this clause may be given subject to such conditions as he may specify and (without prejudice to the generality of the foregoing) such conditions may include conditions as to the duration of the extension or further extension (as the case may be) and shall have effect only to extend the second exploration term.

6.(1) This Clause applies where this Licence has been continued as to part of the Licensed area under clause 5(5)(d) and (8) for the third exploration term.

*Continuation of Licence  
as to part of Licensed  
area on expiry of third  
exploration term.*

(2) Subject to paragraph (3), at any time not later than three months before the expiry of the third exploration term the Licensee paying the payments and acreage rents and (if appropriate) royalties hereinafter provided and observing and performing the terms and conditions herein contained may give notice in writing to the Governor that he desires the licence to continue as to a part of the licensed area ("the potential field") and to determine as to the residue of the area in respect of which the licence continued for the third term (such residue being hereinafter called "the thirdly surrendered part").

(3) The Licensee shall not be entitled to such a notice unless at the same time he sends or delivers to the Governor for his approval a development programme as to the potential field.

(4) A notice pursuant to paragraph (2) shall -

(a) describe the boundaries of the potential field; and

(b) specify a date (hereinafter called "the third surrender date") not later than the expiry of the third exploration term on which the thirdly surrendered part is to be surrendered.

(5) The Licensee may at any time not less than one month before the third surrender date give further notice to the Governor varying the boundaries of the potential field (and hence the area of the residue of the licence area to be surrendered) and in the event of such further notice being given the provisions of previous paragraphs of this clause shall apply *mutatis mutandis* to such notice but so that the third surrender date specified in such notice shall be the same as that specified in the first notice.

(6) If a notice pursuant to paragraph (2), varied as may be by a further notice pursuant to paragraph (5), is given this Licence shall continue in force after the expiry of the third exploration term -

(a) if before that time the Governor has given a consent in pursuance of clause of 15(1) this Licence and that consent is still in force at that time, in relation to the part of the licensed area to which that consent relates;

(b) if the Governor has before that time in pursuance of clause 15(4) of this Licence approved a development programme and such approval is still in force at that time, in relation to the part of the licensed area to which that approval relates;

(c) if the Governor has before that time served a programme on the Licensee in pursuance of clause 15(6) of this Licence and such programme is still in force at that ie, in relation to that part of the licensed area to which that programme relates, or

(d) the Governor has before that time in his direction so directed in writing, in relation to the part of the licensed area to which that direction relates.

(7) Where this Licence continues in respect of a part of the licensed area pursuant to clause 5(5)(a), (b) or (c) and was also continued under clause 5(5)(d) in respect of another part of the licensed area for a third exploration term, the continuation of this Licence in respect of another part of the Licensed area pursuant to any sub-paragraph of paragraph (6) of this clause shall not derogate from the continuation of this Licence as to part of the licensed area by virtue of the earlier operation of clause 5(5)(a), (b) or (c).

(8) Where the Governor has given a direction in pursuance of paragraph (6)(d) of this clause he may in his direction, on notice being given to him by the Licensee not later than three months before the expiry of any extension or further extension having effect by virtue of such a direction that the Licensee desires the licence to continue in force thereafter, give a further direction that this Licence shall so continue in force.

(9) Where this Licence continues in force in respect of a part of the licensed area by virtue of paragraph (6)(a), (b) or (c) of this clause it shall, subject to the provisions of clause 3 of this Licence so continue in force for a further period of thirty-five years ("the exploitation term") reckoned from the expiry of the third exploration term.

(10) A direction given by the Governor in pursuance of paragraph (6)(d) of this clause or a further direction given by the Governor in pursuance of paragraph (8) of this clause may be given subject to such conditions as he may specify and (without prejudice to the generality of the foregoing) such conditions may include conditions as to the duration of the extension or further extension (as the case may be) and shall have effect only to extend the third exploration term.

7. Where this Licence has, by virtue of clause 5 or 6 (or both clause 5 or 6), continued in force as to a part or parts of the area in respect of which it was originally granted for a period of thirty-five years after the expiry of the second term, the Governor, on application being made to him in writing not later than three months before the expiry of such period, may in his discretion agree with the Licensee that this Licence shall continue in force thereafter for such further period as the Governor and the Licensee may agree and subject to such modification of the terms and conditions of this Licence (which modification may include making provision for any further extension of the Licence) as the Governor and the Licensee may then agree is appropriate.

*Power further to  
extend term of licence.*

8.(1) Without prejudice to any obligation or liability imposed by or incurred under the terms of this Licence the Licensee may at any time by giving to the Governor not less than six months' notice to that effect to expire on an anniversary of the date of the commencement of the initial term, determine this licence or surrender any part of the licensed area being a part which complies with clause 9 of this Licence.

*Right to Licensee to determine licence or surrender part of licensed area.*

(2) A notice given to the Governor pursuant to paragraph (1) of this clause may be cancelled by a further notice given to the Governor not less than one month before the expiration of the notice.

9.(1) Within a block any area surrendered by the Licensee pursuant to any preceding clause of this Licence and any area accordingly retained by the Licensee, or where the surrendered or retained area comprises separate parts, each part of each area, shall unless the Governor has otherwise agreed in writing before the date on which the appropriate notice is given by the Licensee to the Governor -

*Areas surrendered.*

(a) be bounded by minute lines of latitude extending not less than two minutes of longitude and minute lines of longitude extending not less than two minutes of latitude;

(b) consist of not less than thirty sections; and

(c) have boundaries which, whether they run north and south or east and west, either coincide with the corresponding boundaries of the block or are not less than two sections distant from those boundaries;

and where the surrendered or retained area comprises separate parts, each part of that area shall be not less than two sections distant from any other part of that area.

(2) Upon the date upon which any determination of this Licence or any surrender of part of the licensed area in the manner provided by any preceding clause of this Licence is to take effect the rights granted by this Licence shall cease in respect of the licensed area or of the part thereof so surrendered as the case may be but without prejudice to any obligation or liability imposed upon the Licensee or incurred by the Licensee under the terms of this Licence prior to that date.

10.(1) The Licensee shall make to the Governor as consideration for the grant of this Licence -

*Payment of consideration for licence.*

(a) payments of acreage rent in accordance with Schedule 2 to this Licence; and

(b) payments of royalty in accordance with clauses 11 and 12 of this Licence.

(2) The Licensee shall not by reason of determination of this Licence or surrender of any part of the licensed area be entitled to be repaid or allowed any sum payable to the Governor pursuant to this Licence before the date of determination or surrender.

11.(1) Subject to paragraph (2) of this clause, the Licensee shall pay to the Governor in respect of each half year in which this Licence is in force (hereinafter and in clauses 12 and 13 of this Licence called a "chargeable period"), a royalty of an amount equal to the percentage specified in Schedule 3 to this Licence (hereinafter referred to as "the appropriate percentage") of the value of the petroleum relating to that period.

*Royalty payments.*

(2) For the purposes of this clause and clauses 12 and 13 of this Licence the value of the petroleum relating to a chargeable period is to be determined in accordance with paragraphs (3) and (4) of this clause.

(3) The value on which royalty is to be paid is the difference (if any) between -

(a) the aggregate of the amounts mentioned in paragraph (4); and

(b) the market value at the end of the last calendar month of the preceding chargeable period of so much of the petroleum won from the field as the Licensee had at the end of that period either -

(i) not disposed of and not relevantly appropriated; or

(ii) disposed of but not delivered.

(4) Subject to paragraph (5), the amounts referred to in paragraph (3)(a) of this clause are -

(a) the price received or receivable for so much of any petroleum won from the field and disposed of by the Licensee crude in sales at arm's length as was delivered by the Licensee in the period;

(b) the aggregate market value, ascertained in accordance with Schedule 4 to this Licence, of so much of any petroleum so won and disposed of by the Licensee crude otherwise than in sales at arm's length as was delivered by the Licensee in the period;

(c) the aggregate market value, ascertained in accordance with Schedule 4 to this Licence, of so much of any petroleum so won as was relevantly appropriated by him in the period without being disposed of; and

(d) the market value, at the end of the last calendar month of the period, of so much of the petroleum won by the Licensee as the Licensee had at the end of that period either -

(i) not disposed of and not relevantly appropriated; or

(ii) disposed of but not delivered.

(5) In any case where petroleum consisting of gas is disposed of in a sale at arm's length and the terms of the contract are such that the seller is required to transport the gas from a place on land in the Falkland Islands for delivery at a place outside the Falkland Islands or to meet some or all of the costs of or incidental to its transportation from and to such places then, for the purposes of this clause -

(a) the price received or receivable for the gas shall be deemed to be that for which it would have been sold, and

(b) the gas shall be deemed to be delivered at the time it would have been delivered,

if the terms of the contract did not require the seller to meet any such costs as are mentioned above but did require the gas to be delivered at the place in the Falkland Islands at which the seller could reasonably be expected to deliver it, or if there is more than one such place, the one nearest to the place of extraction.

12.(1) The Licensee shall measure or weigh by a method or methods customarily used in good oilfield practice and from time to time approved by the Governor all petroleum won and saved from the licensed area. *Measurement of petroleum obtained from licensed area.*

(2) If and to the extent that the Governor so directs, the duty imposed by paragraph (1) of this clause shall be discharged separately in relation to petroleum won and saved -

(a) from each part of the licensed area which is a field;

(b) from each part of the licensed area which forms part of a field extending beyond the licensed area; and

(c) from each well producing petroleum from a part of the licensed area which is not within such an oil field.

(3) If and to the extent that the Governor so directs, the preceding provisions of this clause shall apply as if the duty to measure or weigh petroleum included a duty to ascertain its quality or composition or both; and where a direction under this paragraph is in force, the following provisions of this clause have effect as if references to measuring or weighing included references to ascertaining quality or composition.

(4) The Licensee shall not make any alteration in the method or methods of measuring or weighing used by him or any appliance used for that purpose without the consent in writing of the Governor and the Governor may in any case require that no alteration be made save in the presence of a person authorised by the Governor.

(5) The Governor may from time to time direct that any weighing or measuring appliance shall be tested and examined in such manner, upon such occasions or at such intervals and by such persons as may be specified by the Governor's direction and the Licensee shall pay to any such person or to the Governor such fees and expenses for test and examination as the Governor may specify.

(6) If any measuring or weighing appliance shall upon any such test or examination as is mentioned in paragraph (5) of this clause be found to be false or unjust the same shall if the Governor so determines after considering any representations in writing by the Licensee be deemed to have existed in that condition during the period since the last occasion upon which the same was tested or examined pursuant to paragraph (5).

13.(1) The Licensee shall keep in the Falkland Islands full and correct accounts in a form from time to time approved by the Governor of - *Keeping of accounts.*

(a) the quantity of petroleum in the form of gas won and saved;

(b) the quantity of petroleum in any other form won and saved;

(c) the name and address of any person to whom any petroleum has been supplied by the Licensee, the quantity so supplied, the price or other consideration therefore and the place to which the petroleum was conveyed pursuant to the agreement for such supply; and

(d) such other particulars as the Governor may from time to time direct.

(2) The quantities of petroleum stated in such accounts may exclude any water separated from the petroleum and shall be expressed as volumes in cubic metres measured at, or calculated as if measured at, a temperature of fifteen degrees Celsius and a pressure of 1.0132 bar but if the Governor serves notice on the Licensee determining any other manner in which any quantity of petroleum is to be expressed that quantity shall be so expressed.

(3) Such accounts shall state separately the quantities used for the purposes of carrying on drilling and production operations and pumping to field storage, and quantities not so used, and in the case of petroleum not in the form of gas shall state the specific gravity of the petroleum and, if petroleum of different specific gravities has been won and saved, the respective quantities of petroleum of each specific gravity.

(4) The Licensee shall within two months after the end of each half year in which this Licence is in force and within two months after the expiration [or determination of this Licence] deliver to the Governor an abstract in a form from time to time approved by the Governor of the accounts for that half year or for the period prior to such expiration or determination as the case may be.

14.(1) The Licensee shall before the expiration of the initial term of this Licence carry out such scheme of prospecting including any geological survey by any physical or chemical means [*if appropriate add the words and test drilling*] as is set out in Part I of Schedule 5 to this Licence and the Licensee shall before the expiration of the second exploration term of this Licence carry out such scheme of prospecting including any geological survey by any physical or chemical means and test drilling as is set out in Part II of Schedule 5 to this Licence (all of which obligations are hereinafter collectively referred to as a "work programme"); provided that nothing in this paragraph shall be construed as preventing the Licensee from carrying out before the expiration of the initial term any of the part of the work programme set out in Part II of Schedule 5.

*Working obligations.*

(2) If the Licence continues pursuant to clause 5(8) as to part of the licensed area for the third exploration term, the Licensee shall before the expiration of that term carry out the work programme approved by the Governor and to which clause 5(5)(d) refers.

(3) If at any time the Governor serves a notice in writing on the Licensee requiring the Licensee to submit to the Governor, before a date specified in the notice, an appropriate programme for exploring for petroleum in the licensed area during a period so specified, the Licensee shall comply with the notice; and for the purposes of this paragraph an appropriate programme is one which any person who, if that person -

(a) were entitled to exploit the rights granted by this Licence; and

(b) had the competence and resources needed to exploit those rights to the best commercial advantage; and

(c) were seeking to exploit those rights to the best commercial advantage could reasonably be expected to carry out during the period specified in the notice, and that period must be within the term of this Licence.

(4) If a programme is submitted to the Governor in consequence of a notice served by him in pursuance of paragraph (3) of this clause, then -

(a) he shall not be entitled to revoke this Licence on the ground that the programme does not satisfy the requirements of that paragraph (hereinafter in this clause referred to as "the relevant requirements") but;



(b) if he is of opinion that the programme does not satisfy the relevant requirements he may serve a notice in writing on the Licensee stating his opinion and the reasons for it.

(5) Where notice in respect of a programme is served on the Licensee pursuant to paragraph (4) of this clause the Licensee shall either -

(a) within 28 days beginning with the date of service of the notice refer to arbitration, in the manner provided by clause 39 of this Licence, the question of whether the programme satisfies the relevant requirements; or

(b) within a reasonable period beginning with that date submit to the Governor a further programme which satisfies the relevant requirements;

and where it is determined in consequence of any reference to arbitration in pursuance of sub-paragraph (a) of this paragraph that the programme in question does not satisfy the relevant requirements the Licensee shall submit to the Governor, as soon as possible after the date of the determination, a further programme which satisfies the relevant requirements.

(6) The Licensee shall carry out any programme submitted by the Licensee in pursuance of this clause as to which either -

(a) the Governor serves notice on the Licensee stating that the Governor approves the programme; or

(b) it is determined in consequence of any reference to arbitration in pursuance of this Licence that the programme satisfies the relevant requirements.

(7) Where, in consequence of any breach or non-observance by the Licensee of any provision of paragraph (3), (5) or (6) of this clause, the Governor has power by virtue of paragraph (1) of clause 38 of this Licence to determine this Licence, he may if he thinks fit exercise that power in relation to such part only of the licensed area as he may specify; and where he does so the rights granted by this Licence shall cease in respect of the specified part of that area without prejudice to any obligation or liability imposed upon the Licensee or incurred by the Licensee under the terms of this Licence.

(8) Where the Licensee has a duty by virtue of this clause to carry out a programme during a part of the term of this Licence, the Governor may serve notice in pursuance of paragraph (3) of this clause in respect of another part of that term.

15.(1) The Licensee shall not -

*Development and production programmes.*

(a) erect or carry out any relevant works, either in the licensed area or elsewhere, for the purpose of getting petroleum from that area or for the purpose of conveying to a place on land petroleum got from that area;

(b) get petroleum from that area otherwise in the course of searching for petroleum or drilling wells,

except with the consent in writing of the Governor or in accordance with a programme which the Governor has approved or served on the Licensee in pursuance of the following provisions of this clause.

(2) The Licensee shall prepare and submit to the Governor, in such form and by such time and in respect of such period during the term of this Licence as the Governor may direct, a programme specifying -

(a) the relevant works which the Licence proposes to erect or carry out during that period for either of the purposes mentioned in paragraph (1)(a) of this clause;

(b) the proposed location of the works, the purposes for which it is proposed to use the works and the times at which it is proposed to begin and complete the erection or carrying out of the works;

(c) the maximum and minimum quantities of petroleum in the form of gas and the maximum and minimum quantities of petroleum in other forms, which, in each calendar year during the period aforesaid or in such other periods during that period as the Governor may specify, the Licensee proposes to get as mentioned in paragraph (1)(b) of this clause.

(3) If the Governor directs the Licensee -

(a) to prepare different programmes in pursuance of paragraph (2) of this clause in respect of petroleum from such different parts of the licensed area as are specified in the direction; or

(b) where a programme approved or served in pursuance of this clause relate to a particular period during the term of this Licence, to prepare a programme or programmes in pursuance of paragraph (2) of this clause in respect of a further period or further periods during that term,

the Licensee shall comply with that direction.

(4) The Governor shall expeditiously consider any programme submitted to him in pursuance of paragraph (2) of this clause and when he has done so he shall give notice to the Licensee stating -

(a) that the Governor approves the programme; or

(b) that the Governor approves the programme subject to the condition that such of the relevant works as are specified in the notice shall not be used before the expiration of the period so specified in relation to the works or shall not be used without the consent in writing of the Governor; or

(c) that the Governor rejects the programme on one or both of the following grounds, namely -

(i) that the carrying out of any proposals included in the programme in pursuance of paragraph (2) of this clause would be contrary to good oilfield practice;

(ii) that the proposals included in the programme in pursuance of paragraph (2)(c) are, in the opinion of the Governor not in the national interest of the Falkland Islands;

and a notice in pursuance of sub-paragraph (b) of this paragraph may contain different conditions in respect of different works.

(5) Where the Governor gives notice of rejection of a programme in pursuance of paragraph (4)(c) of this clause, then -

(a) if the grounds of rejection consist of or include the ground that the carrying out of any proposals included in the programme in pursuance of paragraph (2) of this clause would be contrary to good oilfield practice, he shall include in the notice a statement of the matters in consequence of which he rejected the programme on that ground; and

(b) if the grounds of rejection consist of or include the ground that the proposals included in the programme are not in the national interest of the Falkland Islands he shall include in the notice a statement of the rates at which he considers that, in the national interest, petroleum should be got from the area to which the programme relates;

(c) the Licensee shall prepare and submit to the Governor, before the time specified in that behalf in the notice -

(i) where the notice contains such a statement as is mentioned in paragraph (5)(a) of this clause, modifications of the programme which ensure that the carrying out of the programme would not be contrary to good oilfield practice;

(ii) where the notice contains such a statement as is mentioned in paragraph (5)(b), modifications of the programme which ensure the getting of petroleum from the area there mentioned at the rates specified in the statement and which (except so far as may be necessary in order to get petroleum at those rates) are not such that the carrying out of the programme with those modifications would be contrary to good oilfield practice;

but the Licensee shall not be required by virtue of paragraph (i) of this sub-paragraph to submit modifications if the carrying out of the programme without modifications would not be contrary to good oilfield practice.

(6) If the Governor gives notice to the Licensee that the Governor approves the modifications of a programme which have been submitted to the Governor in pursuance of paragraph (5)(c) of this clause, the programme with those modifications shall be deemed to be approved by the Governor; but if the Licensee fails to perform the duty imposed on the Licensee by that paragraph the Governor may if he thinks fit, instead of revoking this licence in consequence of the failure, serve on the Licensee such a programme as the Governor considers that the Licensee should have submitted to him in respect of the area and period to which the rejected programme related.

(7) Where the Governor proposes to approve a programme subject to a condition in pursuance of paragraph (4)(b) of this clause or to reject a programme in pursuance of paragraph (4)(c) of this clause or to serve a programme on the Licensee in pursuance of paragraph (6) of this clause he shall before doing so -

(a) give the Licensee particulars of the proposal and an opportunity of making representations to the Governor about the technical and financial factors which the Licensee considers are relevant in connection with the proposal; and

(b) consider any such representations then made to him by the Licensee; and the Governor shall not approve a programme subject to such a condition unless he is satisfied that such a condition is required in the national interest of the Falkland Islands.

(8) The Licensee shall carry out any programme approved or served on him by the Governor in pursuance of this clause or, if such a programme is varied in pursuance of clause 16 of this licence, the programme as so varied except so far as the Licensee is authorised in writing by the Governor to do otherwise or is required to do otherwise by such a condition as is mentioned in paragraph (4)(b) of this clause; but if it is necessary to carry out certain works in order to comply with provisions included in a programme by virtue of paragraph (5)(c) of this clause or provisions of a programme served on the Licensee in pursuance of paragraph (6) of this clause or provisions of a programme as varied in pursuance of clause 16 of this Licence, then notwithstanding anything in the programme as to the time when those provisions are to be complied with, the Licensee shall not be treated as having failed to comply with those provisions before the expiration of the period reasonably required for carrying out the works.

(9) In this clause "relevant works" means any structures and any other works whatsoever which are intended by the Licensee to be permanent and are neither designed to be moved from place to place without major dismantling nor intended by the Licensee to be used openly for searching for petroleum.

16.(1) A consent given by the Governor in pursuance of clause 15(1) of this Licence may be given subject to such conditions as are specified in the document signifying the consent and may in particular, without prejudice to the generality of the preceding provisions of this paragraph, be limited to a period so specified.

*Provisions supplementary  
to clause 15.*

(2) Where -

(a) The Governor gives notice in respect of a programme in pursuance of paragraph (4)(a) or (b) or paragraph (6) of clause 15 of this Licence or serves a programme in pursuance of the said paragraph (6); or

(b) it is determined by arbitration that the Licensee is not required by virtue of paragraph (i) of clause 15(5)(c) of this Licence to submit modifications of a programme in respect of which notice of rejection containing such a statement as is mentioned in the said paragraph (i) was given by the Governor in pursuance of clause 15(4)(c) of this Licence,

the Governor may give to the Licensee, with the notice given or the programme served as mentioned in sub-paragraph (a) of this paragraph or, in a case falling within sub-paragraph (b) of this paragraph, within the period of three months beginning with the arbitrator's determination, a notice (hereafter in this clause referred to as a "limitation notice") authorising the Governor, by a further notice given to the Licensee from time to time after the expiration of the period specified in that behalf in the limitation notice, to provide that the programme to which the limitation notice relates shall have effect while the further notice is in force with the substitution for any quantity of petroleum or any period specified in the programme in pursuance of clause 15(2)(c) of this Licence of a different quantity of petroleum or a different period specified in the further notice.

(3) A quantity or period specified in such a further notice as that to be substituted for a quantity or period which is specified in the programme in question shall be within the limits specified in the limitation notice as those applicable to that quantity or period specified in the programme; and those limits shall be such as to secure that the expenditure to be incurred by the Licensee in complying with the further notice, in a case where an effect of the notice is to increase the quantity of petroleum which the Licensee is required to get from the licensed area in any period, is less than the cost of drilling a new well in the licensed area at the time when the further notice is given.

(4) Where the Governor proposes to give a limitation notice or any such further notice as aforesaid he shall before doing so -

(a) give the Licensee particulars of the proposal and an opportunity of making representations to the Governor about the technical and financial factors which the Licensee considers are relevant in connection with the proposal; and

(b) consider any such representations then made to him by the Licensee;

and the Governor shall not give such a further notice of which an effect is to increase the quantity of petroleum which the Licensee is required to get from the licensed area during any period unless the Governor is satisfied that the notice is required in the national interest of the Falkland Islands.

(5) A limitation notice or such a further notice as aforesaid may -

(a) specify any quantity or period by reference to such factors as the Governor thinks fit; and

(b) in the case of such a further notice, contain provisions as to -

(i) the date upon which the notice is to come into force,

(ii) the date upon which the notice is to cease to be in force,

and specify different periods in pursuance of this sub-paragraph for different provisions of the notice;

and the Governor may revoke such a further notice at a particular time by serving on the Licensee a notice in writing stating that the further notice is revoked at that time.

(6) Any question arising under clause 15 of this Licence or this clause as to what is, is not or is required in the national interest of the Falkland Islands shall be determined by the Governor.

(7) The Licensee shall ensure that any conditions to which an approval is subject in pursuance to clause 15(4)(b) of this Licence or a consent is subject in pursuance of paragraph (1) of this clause are complied with.

(8) If in respect of a part of the licensed area -

(a) a consent has been given in pursuance of clause 15(1) of this Licence; or

(b) the Licensee has submitted to the Governor, in accordance with a direction given by virtue of paragraph (3)(a) of that clause, a programme in pursuance of paragraph (2) of that clause -

(i) as respects which the Governor has served in pursuance of paragraph (4)(a) or (b) or paragraph (6) of that clause; or

(ii) in consequence of which the Governor has served a programme on the Licensee in pursuance of the said paragraph (6); or

(iii) in respect of which it has been determined by arbitration that the Licensee is not required by virtue of paragraph (5)(c)(i) of that clause to submit modifications,

paragraph (1) of clause 38 of this Licence shall not authorise the Governor to revoke this licence in relation to that part of the licensed area in consequence of any breach or non-observance, while the consent is in force or during the period to which the programme relates, of any provisions of the said clause 15 in connection with a different part of the licensed area.

(9) Where in consequence of any breach of non-observance by the Licensee of any provision of clause 15 of this Licence the Governor has power by virtue of clause 38(1) to revoke this Licence or, in consequence of paragraph (8) of this clause to revoke it in respect of part only of the licensed area, he may if he thinks fit -

(a) in a case where he has power to revoke this Licence, exercise the power in relation to such part only of the Licensed area as he may specify;

(b) in a case where by virtue of paragraph (8) of this clause he has power to revoke it in respect of part only of the licensed area, exercise the power in relation to such portion only of that part as he may specify;

and where in consequence of the said paragraph (8) or by virtue of the preceding provisions of this paragraph the Governor revokes this licence in respect of a part or portion of the licensed area, the rights granted by this Licence shall cease in respect of that part or portion without prejudice to any obligation or liability imposed upon the Licensee or incurred by him under the terms of this licence.

17.(1) The Licensee shall not commence or, after abandoning in manner hereinafter provided, shall not recommence the drilling of any well without the consent in writing of the Governor.

*Commencement and  
abandonment and  
plugging of wells.*

(2) The Licensee shall not abandon any well without the consent in writing of the Governor.

(3) The Licensee shall ensure compliance with any conditions subject to which any consent under either of the foregoing paragraphs is given.

(4) If any such condition under paragraph (1) of this clause relates to the position, depth or direction of the well, or to any casing of the well or if any conditions under either paragraph (1) or paragraph (2) of this clause relates any plugging or sealing of well, the Governor may from time to time direct that the well and all records relating thereto shall be examined in such manner upon such occasions or at such intervals and by such person as may be specified by the Governor's direction and the Licensee shall pay to any such person or to the Governor such fees and expenses for such examination as the Governor may specify.

(5) The plugging of any well shall be done in accordance with a specification approved by the Governor applicable to that well or to wells generally or to a class of wells to which that well belongs and shall be carried out in an efficient and workmanlike manner.

(6) Any well drilled by the Licensee pursuant to this licence, which, at the expiry or determination of the Licensee's rights in respect of the area or part of the part of the area in which the well is drilled, has not with the consent of the Governor been abandoned, shall be left in good order and fit for further working together with all casings and any well head fixtures the removal whereof would cause damage to such well or if the Governor so directs in manner provided by paragraph (8) of this clause be plugged and sealed in accordance with the Governor's direction.

(7) All casings and fixtures left in position pursuant to paragraph (6) of this clause shall be the property of the Crown.

(8) In any case to which paragraph (6) of this clause applies, a direction by the Governor may be given by notice to the Licensee not less than one month before the Licensee's rights in respect of the area or part thereof in which the well is situate expire or determine, specifying the manner in which the well is to be plugged and sealed and the time within which such work is to be done.

18. No well shall except with the consent in writing of the Governor be drilled or made so that any part thereof is less than one hundred and twenty-five metres from any of the boundaries of the licensed area.

*Distance of wells  
from boundaries of  
licensed area.*

19.(1) The Licensee shall not suspend work on the drilling of a development well, or having suspended it in accordance with this paragraph shall not begin it again, except with the consent in writing of the Governor and in accordance with the conditions, if any, subject to which the consent is given.

*Control of development  
wells.*

(2) When work on the drilling of a development well is suspended in accordance with paragraph (1) of this clause, the Licensee shall forthwith furnish the Governor with such information relating to the well as the Governor may specify.

(3) The Licensee -

(a) shall not do any completion work in respect of a well in the licensed area except in accordance with a programme of completion work approved by the Governor in respect of the well;

(b) shall furnish to the Governor, in accordance with the provisions of such a programme, particulars of any completion work done by him in respect of a well in the licensed area; and

(c) shall not remove or alter any casing or equipment installed by way of completion work in respect of a well except with the consent in writing of the Governor and in accordance with the conditions, if any, subject to which the consent is given.

(4) In this clause -

"completion work", in relation to a well, means work, by way of the installation of a casing or equipment or otherwise after the well has been drilled, for the purpose of bringing the well into use as a development well;

"development well" means a well which the Licensee uses or intends to use in connection with the getting of petroleum in the licensed area, other than a well which for the time being he uses or intends to use only for searching for petroleum.

20. The Licensee shall use methods and practices customarily used in good oilfield practice for confining the petroleum obtained from the licensed area in tanks, gasholders, pipes, pipe-lines or other receptacles constructed for that purpose.

*Provision of storage tanks, pipes, pipelines or other receptacles.*

21.(1) The Licensee shall maintain all apparatus and appliances and all wells in the licensed area which have not been abandoned and plugged as provided by clause 17 of this Licence in good repair and condition and shall execute all operations in or in connection with the licensed area in a proper and workmanlike manner in accordance with methods and practices customarily used in good oilfield practice and without prejudice to the generality of the foregoing provision the Licensee shall take all steps practicable in order -

*Avoidance of harmful methods of working.*

(a) to control the flow and prevent the escape or waste of petroleum discovered in or obtained in the licensed area;

(b) to conserve the licensed area for productive operations;

(c) to prevent damage to adjoining petroleum bearing strata;

(d) to prevent the entrance of water through wells to petroleum bearing strata except for the purposes of secondary recovery; and

(e) to prevent the escape of petroleum into waters in or in the vicinity of the licensed area.

(2) The Licensee shall comply with any instructions from time to time given by the Governor in writing relating to any of the matters set out in the foregoing paragraph. If the Licensee objects to any such instruction on the ground that it is unreasonable he may, within fourteen days from the date upon which the same was given, refer the matter to arbitration in the manner provided by clause 39 of this licence.

(3) Notwithstanding anything in the previous provisions of this clause, the Licensee shall not -

(a) flare any gas from the licensed area;

(b) use gas for the purpose of creating or increasing the pressure by means of which petroleum is obtained from that area,

except with the consent in writing of the Governor and in accordance with the conditions, if any, of the consent.

(4) An application for consent in pursuance of paragraph (3) of this clause must be made in writing to the Governor and must specify the date on which the Licensee proposes to begin the flaring or use in question; and subject to paragraph (5) of this clause that date must not be before the expiration of the period of two years beginning with the date when the Governor receives the application.



(5) If the Governor gives notice to the Licensee stating that, in consequence of plans made by the Licensee which the Governor considers are reasonable, the Governor will entertain an application for consent in pursuance of paragraph (3) of this clause which specifies a date after the expiration of a period mentioned in the notice which is shorter than the period mentioned in paragraph (4) of this clause, an application made in consequence of the notice may specify, as the date on which the applicant proposes to begin the flaring or use in question, a date after the expiration of the shorter period.

(6) Before deciding to withhold consent or to grant it subject to conditions in pursuance of paragraph (3) of this clause, the Governor shall give to the Licensee an opportunity of making representations in writing to the Governor about the technical and financial factors which the Licensee considers are relevant in connection with the case and shall consider any representations then made to him by the Licensee.

(7) Consent in pursuance of paragraph (3) of this clause shall not be required for any flaring which, in consequence of an event which the Licensee did not foresee in time to deal with it otherwise than by flaring, is necessary in order -

(a) to remove or reduce the risk of injury to persons in the vicinity of the well in question; or

(b) to maintain a flow of petroleum from that or any other well;

but when the Licensee does any flaring which is necessary as aforesaid he shall forthwith inform the Governor that he has done it and shall, in the case of flaring to maintain a flow of petroleum, stop the flaring upon being directed by the Governor to stop it.

(8) The Licensee shall give notice to the Governor of any event causing escape or waste of petroleum, damage to petroleum bearing strata or entrance of water through wells to petroleum bearing strata except for the purposes of secondary recovery forthwith after the occurrence of that event and shall, forthwith after the occurrence of any event causing escape of petroleum into the sea, give notice to such person or authority as the Governor may have notified him that notice in that behalf shall be given.

(9) The Licensee shall comply with any reasonable instructions from time to time given by the Governor with a view to ensuring that funds are available to discharge any liability for damage attributable to the release or escape of petroleum in the course of activities connected with the exercise of rights granted by this Licence; but where the Governor proposes to give such instructions he shall before giving them -

(a) give the Licensee particulars of the proposal and an opportunity of making representations to the Governor about the proposal; and

(b) consider any representations then made to him by the Licensee about the proposal.

22.(1) The Licensee shall ensure that another person (including, in the case where the Licensee is two or more persons, any of those persons) does not exercise any function of organising or supervising all or any of the operations of searching or boring for or getting petroleum in pursuance of this Licence unless that other person is a person approved in writing by the Governor and the function in question is one to which that approval relates. *Appointment of operators.*

(2) The Governor shall not unreasonably refuse to give his approval of a person in pursuance of paragraph (1) of this clause if that person is competent to exercise the function in question, but where an approved person is no longer competent to exercise that function, the Governor may by notice to the Licensee revoke that approval.

23. The Licensee shall not carry out any operations authorised by this Licence in or about the licensed area in such manner as to interfere unjustifiably with navigation or fishing in the waters of the licensed area or with the conservation of the living resources of the sea.

*Fishing and navigation.*

24.(1) The Governor may from time to time give to the Licensee instructions in writing as to the training of persons employed or to be employed whether by the Licensee or any other person, in any activity which is related to the exercise of the rights granted by this Licence and the Licensee shall ensure that any instructions so given are complied with.

*Training.*

(2) The Licensee shall furnish the Governor with such information relating to the training of persons referred to in paragraph (1) of this clause as the Governor may from time to time require.

25.(1) If at any time in which this Licence is in force the Governor shall be satisfied that the strata in the licensed area or any part thereof form part of a single geological structure or petroleum field (hereinafter referred to as an "oil field") other parts whereof are formed by strata in areas in respect of which other licences granted in pursuance of the Ordinance are then in force and the Governor shall consider that it is in the national interest of the Falkland Islands in order to secure the maximum ultimate recovery of petroleum and in order to avoid unnecessary competitive drilling that the oil field should be worked and developed as a unit in co-operation by all persons including the Licensee whose licences extend to or include any part thereof the following provisions of this clause shall apply.

*Unit development.*

(2) Upon being so required by notice by the Governor the Licensee shall co-operate with such other persons, being persons holding licences under the Ordinance in respect of any part or parts of the oil field (hereinafter referred to as "the other licensees") as may be prescribed in the said notice in the preparation of a scheme (hereinafter referred to as a "development scheme") for the working and development of the oil field as a unit by the Licensee and the other licensees in co-operation, and shall, jointly with the other licensees, submit such scheme for approval by the Governor in writing.

(3) The said notice shall also contain or refer to a description of the area or areas in respect of which the Governor requires a development scheme to be submitted for approval by the Governor.

(4) If a development scheme is not submitted to the Governor within the period so stated or if a development scheme so submitted is not approved by the Governor, the Governor may himself prepare a development scheme which shall be fair and equitable to the Licensee and all other Licensees, and the Licensee shall observe and perform the terms and conditions thereof.

(5) If the Licensee objects to any such development scheme prepared by the Governor the Licensee may within 28 days from the date on which notice in writing of the said scheme was given to the Licensee refer the matter to arbitration in the manner provided by clause 39 of this Licence.

(6) Any such development scheme or the award of any arbitrator in relation thereto shall have regard to any direction pursuant to clause 26 of this Licence in force at the date of such a scheme.

26.(1) Where the Governor is satisfied that any strata in the licensed area or any part thereof form part of an oil field, other parts whereof are in an area to which the Governor's powers to grant licences pursuant to the Ordinance do not apply and the Governor is satisfied that it is expedient that the oil field should be worked and developed as a unit in co-operation by the Licensee and all other persons having an interest in any part of the oil field, the Governor may from time to time by notice give to the Licensee such directions as the Governor may think fit, as to the manner in which the rights conferred by this Licence may be exercised.

*Directions as to oil fields across boundaries.*

(2) The Licensee shall observe and perform all such requirements in relation to the licensed area as may be specified in any such direction.

(3) Any such direction may add to, vary or revoke the provisions of a development scheme.

27.(1) The Licensee shall keep accurate records in a form from time to time approved by the Governor of the drilling, deepening, plugging or abandonment of all wells and of any alterations in the casing thereof. Such records shall contain particulars of the following matters -

*Licensee to keep records.*

- (a) the site of and number assigned to every well;
- (b) the subsoil and strata through which the well was drilled;
- (c) the casing inserted in any well and any alteration to such casing;
- (d) any petroleum, water, or workable seems of any minerals other than petroleum encountered; and
- (e) such other matters as the Governor may from time to time direct.

(2) The Licensee shall keep in the Falkland Islands accurate geological plans and maps relating to the licensed area and such other records in relation thereto as may be necessary to preserve all information which the Licensee obtains about the geology of the licensed area.

(3) The Licensee shall as and when required deliver to the Governor copies of the said records, plans and maps referred to in the two foregoing paragraphs.

28.(1) The Licensee shall furnish to the Governor three months from the date of this Licence and at intervals of three months thereafter during the period in which this Licence is in force a return in a form from time to time approved by the Governor of the progress of the Licensee's operations in the licensed area. Such return shall contain -

*Returns.*

- (a) a statement of all geological work, including surveys and tests, which has been carried out and the areas in which and the persons by whom the work has been carried out and the results thereof;
- (b) the number assigned to each well, and in the case of any well the drilling of which was begun or the number of which has been changed during such period of three months, the site thereof;
- (c) a statement of the depth drilled in each well;

(a) shall contain an estimate of the cost of the measures proposed in it;

(b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;

(c) if it proposes that an installation or pipe-line be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.

(5) A person who submits an abandonment programme to the Governor under this section shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(6) The Governor may exercise his powers under this section notwithstanding that an abandonment programme has previously been submitted for the installation or pipe-line in question, but only if he rejected that programme under section 51 or has withdrawn his approval of it under section 54.

49.(1) A notice under section 48(1) shall not be given to a person in relation to the abandonment of an offshore installation unless at the time when the notice is given he is within any of the following paragraphs -

*Persons who may  
be required to submit  
programmes.*

(a) the person who has registered the installation pursuant to section 23 of this Ordinance (or, if appropriate, that section modified, amended or replaced as may be under section 36) or, if there is no such person, the person having the management of the installation or of its main structure;

*(1987, c.12, s.2).*

(b) a person who is a concession owner in relation to the installation for the purposes of this Ordinance, or who was a concession owner for those purposes when a relevant offshore activity was last carried on from, by means of or on the installation;

(c) a person outside paragraphs (a) and (b) who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within paragraph (b);

(d) a person outside paragraphs (a) and (c) who owns any interest in the installation otherwise than as security for a loan;

(e) a company which is outside paragraph (a) to (d) but is associated with a company within any of those paragraphs.

(2) A notice under section 49(1) shall not be given to a person in relation to the abandonment of a submarine pipe-line unless at the time when the notice is given he is within any of the following paragraphs -

(a) a person designated as the owner of the pipe-line by an Order made by the Governor in pursuance of section 38(3) of this Ordinance;

(b) a person outside paragraph (a) who owns any interest in the whole or substantially the whole of the pipe-line, otherwise than as security for a loan;

(c) a company which is outside paragraphs (a) and (b) but is associated with a company within one of those paragraphs.

(i) the Governor shall be entitled at any time to make use of any of the specified data for the purpose of preparing and publishing such returns and reports as may be required of the Governor by law;

(ii) the Governor shall be entitled at any time to furnish any of the specified data to the Secretary of State, Members of the Executive Council of the Falkland Islands under suitable conditions as to confidentiality and to the Natural Environment Research Council of the United Kingdom and to any body in the Falkland Islands or the United Kingdom carrying on activities of a substantially similar kind to the geological activities at present carried on by the said Council;

(iii) the Governor, the Natural Environment Research Council and any such other body shall be entitled at any time to prepare and publish reports and surveys of a general nature using information derived from any of the specified data;

(iv) the Governor, the said Council and any such body shall be entitled to publish any of the specified data of a geological, scientific or technical kind after the expiration of the period of five years beginning with the date on which the Governor received the data or after the expiration of such longer period as the Governor may determine after considering any representations made to him by the Licensee about the publication of data in pursuance of this sub-paragraph.

(2) For the purposes of this clause and of clause 31 -

(a) "the Crown" means Her Majesty in right of Her government in the United Kingdom or in right of Her government in the Falkland Islands; and

(b) a person engaged by, or in the employment of a person or body engaged by, the Crown to advise it in matters related to exploration for or exploitation of petroleum in the controlled waters is deemed to be in the service or employment of the Crown.

31. The Licensee shall -

*Inspection of records etc.*

(a) permit any person in the service or employment of the Crown who is appointed by the Governor for the purpose to inspect, and to take copies of and make notes from, all books, papers, maps and other records of any kind kept by the Licensee in pursuance of this Licence or in connection with activities about which the Governor is entitled to obtain information in pursuance of clauses 24(2) and 28(3) of this Licence; and

(b) furnish that person at reasonable times with such information and provide him at reasonable times with such reasonable assistance as he may request in connection with or arising out of an inspection in pursuance of this clause.

32. Any person or persons authorised by the Governor shall be entitled at all reasonable times to enter into and upon any of the Licensee's installations or equipment used or to be used in connection with searching, boring for or getting petroleum in the licensed area for the purposes hereinafter mentioned -

*Rights of access.*

(a) to examine the installations, wells, plant, appliances and works made or executed by the Licensee in pursuance of the Licence and the state of repair and condition thereof; and

(b) to execute any works or to provide and install any equipment which the Governor may be entitled to execute or provide and install in accordance with the provisions of this Licence.

33. If the Licensee shall at any time fail to perform the obligations arising under the terms and conditions of any of clauses 12, 17, 20 or 21 of this Licence, the Governor shall be entitled, after giving to the Licensee reasonable notice in writing of such his intention, to execute any works and to install and provide any equipment which in the opinion of the Governor may be necessary to secure the performance of the said obligations or any of them and to recover the costs and expenses of so doing from the Licensee.

*Power to execute works.*

34. If and whenever any of the payments mentioned in clause 10(1) of this Licence or any part thereof shall be in arrear or unpaid for 28 days next after any of the days whereon the same ought to be paid (whether the same shall have been legally demanded or not) then and so often as the same may happen the Governor may (as an additional remedy and without prejudice to the power of distress and any other rights and remedies to which he would be entitled) enter into and upon any of the Licensee's installations and equipment used or to be used in connection with searching, boring for or getting petroleum in the licensed area and may seize and distrain and sell as a landlord may do for rent in arrear all or any of the stocks of petroleum, engines, machinery, tools, implements, chattels and effects belonging to the Licensee which shall be found in or upon or about the installations and equipment so entered upon and out of the moneys arising from the sale of such distress may retain and pay all the arrears of the said payments and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Licensee.

*Right of distress.*

35. The Licensee shall at all times keep the Governor, the Secretary of State, the Crown and all servants, employees or agents of the Crown effectually indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever which may be brought by any third party in relation to or in connection with this Licence or any matter or thing done or purported to be done in pursuance thereof.

*Indemnity against third party claims.*

36. No statement shall be made in any notice, advertisement, prospectus or other documents issued by or to the knowledge of the Licensee or in any other manner claiming or suggesting whether expressly or by implication that Her Majesty (whether in right of Her government of the Falkland Islands or in right of Her government of the United Kingdom), the Secretary of State or the Governor, any Government Department in the Falkland Islands or in the United Kingdom or any person acting or body acting on behalf of Her Majesty has or have formed or expressed any opinion that the licensed area is from its geological formation or otherwise one in which petroleum is likely to be obtainable.

*Advertisements, prospectuses etc.*

37.(1) The Licensee shall not, except with the consent in writing of the Governor and in accordance with the conditions (if any) of the consent do anything whereby, under the law (including the rules of equity) of the Falkland Islands or of any other place, any right granted by this Licence or derived from a right so granted becomes exercisable by or for the benefit of or in accordance with the directions of another person.

*Restrictions on assignment etc.*

(2) An agreement permitting the carrying out of geological surveys by physical or chemical means in the licensed area otherwise than by drilling is not prohibited by paragraph (1) of this clause if the person by whom such surveys are to be carried out is -

(a) the holder of a licence granted by the Governor of the right, in common with all other persons to whom the like right may have been granted, to search for petroleum in respect of an area which would include the licensed area, but for a proviso therein excluding the exercise of such rights in the licensed area without the consent of the Licensee; or

(b) the holder of a licence granted by the Governor to search and bore for, and get petroleum in an area adjacent to the licensed area,

and if the information intended to be obtained by such survey is reasonably necessary to enable that holder more efficiently to exercise the rights granted by the licence which he holds from the Governor.

(3) The Licensee shall not enter into any agreement providing for a person other than the Licensee to become entitled to, or to any proceeds of sale of, any petroleum which, at the time when the agreement is made, has not been but may be won and saved from the licensed area unless the terms of the agreement have been approved in writing by the Governor either unconditionally or subject to conditions, but the preceding provisions of this paragraph do not apply to -

(a) an agreement for the sale of such petroleum under which the price is payable after the petroleum is won and saved; and

(b) an agreement in so far as it provides that, after any petroleum has been won and saved from the licensed area, it shall be exchanged for other petroleum.

(4) The Licensee shall not, without the consent of the Governor, dispose of any petroleum won and saved in the licensed area in such a manner that the disposal does, to the knowledge of the Licensee or without the Licensee knowing it, fulfil or enable another person to fulfil obligations which a person who controls the Licensee, or a person who is controlled by a person who controls the Licensee, is required to fulfil by an agreement which, if the person required to fulfil the obligations were the Licensee, would be an agreement of which the terms require approval by virtue of paragraph (3) of this clause; and subsections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply, for the purposes of determining whether for the purposes of this paragraph a person has control of another person, with the following modifications, namely -

(a) for the words "greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more"; and

(b) in the said subsection (6), for the word "may" there shall be substituted the word "shall", and the words "from such attributions" onwards shall be omitted and in the other provisions of that subsection any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary.

(5) Where the Licensee is two or more persons, then without prejudice to the preceding provisions of this clause, none of those persons shall enter into an agreement with respect to the entitlement of any of them to -

(a) the benefit of any rights granted by this Licence; or

(b) any petroleum won and saved from the licensed area; or

(c) any proceeds of sale of such petroleum,

unless the terms of the agreement have been approved in writing by the Governor, but the preceding provisions of this paragraph do not apply to an agreement for the sale of such petroleum under which the price is payable after the petroleum is won and saved and an agreement in so far as it provides that, after any petroleum has been won and saved from the licensed area, it shall be exchanged for other petroleum.

38.(1) If any of the events specified in the following paragraph shall occur then and in any such case the Governor may revoke this Licence and thereupon the same and the rights hereby granted shall cease and determine but without prejudice to any obligation or liability incurred by the Licensee or imposed upon the Licensee by or under the terms and conditions of this Licence. *Power of revocation.*

(2) The events referred to in paragraph (1) of this clause are -

(a) any payments mentioned in clause 10(1) of this Licence or any part of such payments being in arrear or unpaid for two months next after any of the days whereon the same ought to have been paid;

(b) any breach or non-observance by the Licensee of any of the terms and conditions of this Licence;

(c) the bankruptcy of the Licensee;

(d) the making by the Licensee of any arrangement or composition with his creditors;

(e) if the Licensee is a company, the appointment of a receiver or any liquidation whether compulsory or voluntary;

(f) any breach or non-observance by the Licensee of the terms and conditions of a development scheme;

(g) in the case of a Licensee which is a company which is not incorporated under the laws of the Falkland Islands, in the event of the Licensee failing within six months of the date of this Licence to establish a place of business in the Falkland Islands and register itself as an overseas company in accordance with the company law of the Falkland Islands and thereafter to do all things necessary to maintain a place of business in the Falkland Islands and in connection with its registration;

(h) any breach of a condition subject to which the Governor gave his approval in pursuance of clause 37(3) of this Licence;

(i) any breach of clause 41(5) of this Licence,

and where two or more persons are the Licensee and reference to the Licensee in sub-paragraphs (c) to (g) of this paragraph is a reference to each or either of those persons as may be requisite to enable the Governor to revoke this Licence if an event mentioned in those paragraphs has arisen in relation to one (but not necessarily all) of those persons.



(3) The Governor may revoke this Licence, with the like consequences as are mentioned in paragraph (1) of this clause, if -

- (a) the Licensee is a company;
- (b) there is a change in the control of the Licensee; and
- (c) the Governor serves notice in writing on the Licensee stating that the Minister proposes to revoke this Licence in pursuance of this paragraph unless such a further change in the control of the Licensee as is specified in the notice takes place in the period of three months beginning with the date of service of the notice; and
- (d) that further change does not take place within that period.

(4) There is a change of control of the Licensee for the purposes of paragraph (3)(b) of this clause whenever a person has control of the Licensee who did not have control of the Licensee when this licence was granted and subsections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply, for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, with the modifications stated in clause 37(4) of this Licence.

(5) Where two or more persons are the Licensee and any of them is a company, paragraphs (3) and (4) of this clause shall have effect as if -

- (a) sub-paragraph (a) of paragraph (3) were omitted;
- (b) in sub-paragraph (b) of that paragraph, after the word "of" there were inserted the words "any company included among the persons who together constitute"; and
- (c) for the word "Licensee" in any other provision of those paragraphs there were substituted the word "company".

39.(1) If at any time any dispute, difference or question shall arise between the Governor and the Licensee as to any matter arising under or by virtue of this Licence or as to their respective rights and liabilities in respect thereof then the same shall, except where it is expressly provided by this Licence that the matter or thing to which the same relates is to be determined, decided, directed, approved or consented to by the Governor, be referred to arbitration as provided by the following paragraph.

*Arbitration.*

(2) The arbitration referred to in the foregoing paragraph shall be in accordance with the Arbitration Act 1950 of England by a single arbitrator who, in default of agreement between the Governor and the Licensee and, in the case of arbitration in relation to a development scheme, other licensees, shall be appointed by the Chief Justice of the Falkland Islands for the time being.

(3) Unless otherwise agreed between the Governor and the Licensee, any arbitration under this clause shall take place in London.

(4) In the case of any such arbitration which relates to a development scheme the Licensee shall unless the arbitrator otherwise determines perform and observe the terms and conditions of the development scheme pending the decision of the arbitrator.

40.(1) The Licensee appoints the person specified in paragraph 1 of Schedule 5 to this Licence as the Licensee's agent (hereinafter called "the Agent") for the purpose of service and receipt of service of all notices, notifications and proceedings whatsoever required to be or authorised to be served upon the Licensee under or in connection with this Licence, the Ordinance or any of the provisions of this Licence but nothing in this paragraph shall preclude the same being served additionally or instead upon the Licensee in the manner provided by clause 41 of this Licence.

*Appointment of Agent  
of Licensee.*

(2) The Licensee shall not while any of the terms and conditions of this Licence remain in force revoke the appointment of the Agent nor shall any such revocation be effective unless at the same time the Licensee appoints another person resident in the Falkland Islands as the Licensee's agent in place of the Agent and forthwith notifies that appointment to the Governor in writing whereupon the provisions of this paragraph and of paragraph (1) of this clause shall apply in relation to the person so appointed as if that person had been appointed under paragraph (1) of this clause.

41.(1) Notices and notifications to the Governor under the provisions of this Licence shall be sent or delivered to him at the address specified in relation to such notices and notifications in Schedule 6 to this Licence and shall additionally be sent or delivered in the like manner to the Attorney General, Falkland Islands Government, at the address specified in relation to him in that Schedule.

*Notices.*

(2) Notices or notifications to the Agent under the provisions of this Licence shall be sent addressed to the Agent at the address specified in relation to the Agent in the said Schedule 6.

(3) Notices to or notifications to the Licensee under the provisions of this Licence to the Licensee shall be sent addressed to the Licensee at the address specified in relation to the Licensee in the said Schedule 6.

(4) Where any notice or notification is sent by telephonic facsimile transmission to any person under any of the foregoing paragraphs of this clause, a copy of it shall be sent on the same day to the same addressee by the quickest available postal means and the notice shall be deemed to have been received by the addressee on the day on which, in the ordinary course of post, the notice would ordinarily have been received if sent by that postal means to the addressee on the day and at the time the copy of it was posted as hereinbefore provided.

42.(1) This Licence is governed by the law of the Falkland Islands.

*Governing law and  
jurisdiction.*

(2) Save as is provided by paragraph (3) of this clause and clause 39(1) (arbitration), the Supreme Court of the Falkland Islands has sole and exclusive jurisdiction in relation to any dispute, difference or question arising between the Governor and the Licensee under and by virtue of this Licence.

(3) In respect of any sum or sums owed by the Licensee under any provision of this Licence, the Governor or Her Majesty in right of Her government in the Falkland Islands may bring proceedings in any court of competent jurisdiction in the country of the Licensee's incorporation or, in the case of an individual, his place of residence as well or instead of the Supreme Court of the Falkland Islands and similarly may seek to enforce any judgment of the Supreme Court of the Falkland Islands against the Licensee for any such sum or sums in any such court.

43.(1) This Licence represents the entire agreement of the parties thereto as to its subject matter as at the date of this Licence.

*Entire agreement.*

(2) No variation in the provisions of this Licence shall have effect unless it is in writing and signed by the Governor.

44. The six Schedules immediately following form part of this Licence and shall have effect for the purposes of this Licence. *Schedules.*

#### **Schedule 1**

*(clause 2)*

#### **DESCRIPTION OF BLOCKS TO WHICH THIS LICENCE RELATES**

*[These will be blocks numbered on the reference map referred to in clause 2 of the Licence and this Schedule must be appropriately completed in the Licence as granted]*

#### **Schedule 2**

*(clause 10(1))*

#### **ACREAGE RENTS**

1. The Licensee shall in respect of the initial term pay to the Governor without any deduction whatsoever an annual rent of \$30 for every square kilometre or part thereof for the time being comprised in this Licence. *As to initial term.*

## 2. The said annual rent shall -

*Annual rents.*

(a) be paid annually in advance, the first payment being due and payable on the grant of this Licence and subsequent payments being due and payable on each anniversary of this Licence falling within the initial term;

(b) be paid to such account in the name of the Falkland Islands Government of such branch of such bank in the Falkland Islands or in London as the Financial Secretary of the Falkland Islands may from time to time notify in writing to the Licensee.

3. Where the Licence continues for the second exploration term as to any part of the area for which this Licence was originally granted, the Licensee shall in respect of every square kilometre or part thereof for which this Licence for the time being continues for the second exploration term pay rent as follows -

*As to second exploration term.*

(a) on the commencement of the second exploration term, \$300 (but reduced to \$150 if two or more approved wells have been drilled before that time);

(b) on the first anniversary of the commencement of the second exploration term, \$375 (but reduced to \$225 if three or more approved wells have been drilled before that time);

(c) on the second anniversary of the commencement of the second exploration term, \$525 (but reduced to \$300 if four or more approved wells have been drilled before that time);

(d) on the third anniversary of the commencement of the second exploration term \$600 (but reduced to \$300 if four or more approved wells have been drilled before that time);  
and

(e) on the fourth anniversary and subsequent anniversaries of the commencement of the second exploration term \$675 (but reduced to \$300 if four or more approved wells have been drilled before that time);

and such rent shall be payable to a bank account as provided in paragraph 2(b) of this Schedule and without any deduction whatsoever.

4. Where this licence continues for the third exploration term as to any part of the area for which it was originally granted, the Licensee shall in respect of every square kilometre or part thereof for which the Licence for the time being continues for the third exploration term pay rent as follows -

*As to third exploration term.*

(a) on the commencement of the third exploration term \$1500;

(b) on the first anniversary of such commencement \$2250;

(c) on the second anniversary of such commencement \$3000;

(d) on the third anniversary of such commencement \$3750;

(e) on the fourth anniversary of such commencement \$4500;

(f) on the fifth anniversary of such commencement \$5250;

(g) on the sixth anniversary of such commencement \$6000;

(h) on the seventh anniversary of such commencement \$6750;

(i) on the eighth anniversary of such commencement \$7500;

(j) on the ninth anniversary of such commencement \$8250;

and such rent shall be payable to a bank account as provided by paragraph 2(b) of this Schedule and shall be paid without any deduction whatsoever.

5. In the event that this Licence continues as to part of the area for which it was originally granted for a second exploration term or a third exploration term and as to another part thereof for the exploitation term, rent in accordance with the foregoing paragraphs shall be paid as to the part of that area for which it continues for a second exploration term or for a third exploration term. *Overlapping terms.*

6. Where the Licensee continues in respect of any part of the licensed area for an exploitation term, acreage rent shall be payable in respect of that part of the licensed area at the rate of \$375,000 a year until such time as royalty is first paid in respect thereof under clause 11(1). *Exploitation terms: acreage rent obligations.*

### Schedule 3

(clause 11(1))

#### ROYALTY PAYMENTS

1. The appropriate percentage referred to in clause 11(1) is two and one half per cent.

2. Royalties payable under this Licence shall be paid by the Licensee without any deduction whatsoever to such account of the Falkland Islands Government at such branch of bank in the Falkland Islands or in London as the Financial Secretary of the Falkland Islands may from time to time notify in writing to the Licensee.

### Schedule 4

#### PROVISIONS AS TO VALUE OF PETROLEUM FOR ROYALTY PURPOSES

1.(1) For the purposes of this Licence, a sale of any petroleum is a sale at arm's length if, but only if, the following conditions are satisfied with respect to the contract of sale, that is to say - *Definition of sale of oil at arm's length.*

(a) the contract price is the sole consideration for the sale;

(b) the terms of the sale are not affected by any commercial relationship (other than that created by the contract itself) between the seller or any person connected with the seller and the buyer or any person connected with the buyer; and

(c) neither the seller nor any person connected with him has, directly or indirectly, any interest in the subsequent resale or disposal of the petroleum or any product derived therefrom.

(2) For the purposes of sub-paragraph (1), a person is to be treated as connected with another person if he would be so treated under the terms of section 839 of the Income and Corporation Taxes Act 1988 of the United Kingdom if that provision applied in relation to the transaction in question.

2.(1) The market value of any petroleum in any calendar month shall for the purposes of this Licence be determined in accordance with this paragraph.

*Definition of market value of petroleum.*

(2) Subject to the following provisions of this paragraph, the market value of any petroleum in a calendar month (in this paragraph referred to as "the relevant month") is the price at which petroleum of that kind might reasonably be expected to be sold under a contract of sale satisfying the following conditions -

- (a) the contract is for the sale of petroleum at arm's length to a willing buyer;
- (b) the contract is for the delivery of the petroleum at a time in the relevant month;
- (c) the contract is entered into within the period beginning at the beginning of the month preceding the relevant month and ending on the middle day of the relevant month;
- (d) the contract requires the petroleum to have been subjected to appropriate initial treatment before delivery;
- (e) the contract requires the petroleum to be delivered at the place in the Falkland Islands or another country at which the seller could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction;
- (f) in the case of petroleum whose market value falls to be ascertained as a particular month for the purposes of clause 11(3)(b) or clause 11(4)(d) of this Licence or, subject to paragraph 2(3) of this Schedule for the purposes of clause 11(4)(b) or (c) of this Licence, the contract is for the sale of the whole quantity of petroleum whose market value falls to be ascertained as in that month for the purposes of the paragraph in question, and of no other petroleum and, for the avoidance of doubt, it is hereby declared that the terms as to payment which are to be implied in the contract shall be those which are customarily contained in contracts for sale at arm's length of petroleum of the kind in question.

(3) For the purposes of sub-paragraph (2) of this paragraph, the price of any petroleum in any calendar month shall be determined, subject to sub-paragraphs (4) and (5) of this paragraph, by taking the average of the prices under the actual contracts for the sale of petroleum of that kind -

- (a) which are contracts for the sale of petroleum by a participator in an oil field or by a company which if the Finance Act 1984 of the United Kingdom applied would be treated as being associated with such a participator for the purposes of section 115(2) of that Act; and
- (b) which, subject to sub-paragraph (4) of this paragraph, satisfy the conditions in paragraphs (a) to (e) of sub-paragraph (2) of this paragraph; and
- (c) which do not contain terms as to payment which differ from those customarily contained in contracts for sale at arm's length of petroleum of the kind in question.

(4) For the purposes of sub-paragraph (3)(b) of this paragraph, a contract shall be treated as fulfilling the condition in paragraph (c) of sub-paragraph (2) of this paragraph if it contains provisions under which the price for petroleum to be delivered in the relevant month is determined or subject to review in the period relevant for the purposes of that paragraph or is determined by reference to other prices which are themselves determined in that period, being prices for petroleum to be delivered in the relevant month.

(5) The average referred to in sub-paragraph (3) shall be determined -

(a) by establishing an average price for petroleum of the kind in question for each business day within the period relevant for the purposes of sub-paragraph (2)(c) of this paragraph; and

(b) by taking the arithmetic mean of the prices so established,

and in this sub-paragraph "business day" has the same meaning as is in the Bills of Exchange Act 1882 of the United Kingdom in its application to England.

(6) If and so far as the Financial Secretary of the Falkland Islands is satisfied that it is impracticable or inappropriate to determine for the purposes of sub-paragraph (2) of this paragraph the price of any petroleum in a calendar month as mentioned in sub-paragraph (3) (whether by virtue of insufficiency of contracts satisfying the conditions or of information relating to such contracts or by virtue of the nature of the market for petroleum of the kind in question or for any other reason) that price shall be determined -

(a) so far as it is practicable and appropriate to do so by reference to such other contracts (whether or not relating to petroleum of the same kind) and in accordance with the principles in sub-paragraph (5) of this paragraph; and

(b) in so far as it is not practicable or appropriate to determine it as mentioned in paragraph (a), in such other manner as appears to the Financial Secretary to be appropriate in the circumstances.

(7) If petroleum whose market value falls to be ascertained as in a particular month under paragraph 4 of this Schedule for the purposes of clause 11(4)(d) of this Licence was not disposed of to the same person, then the market value of so much of that petroleum as was disposed of in that month to any one person shall be determined as if that were the only petroleum whose market value fell to be ascertained as in that month for those purposes.

(8) Where all or any of the petroleum whose market value falls to be ascertained in accordance with sub-paragraphs (1) and (2) of this paragraph has been subjected to initial treatment before being disposed of or relevantly appropriated, the appropriate initial treatment referred to in sub-paragraph (2)(d) of this paragraph shall, as respects that petroleum, include the whole of the treatment.

3.(1) Paragraph 2 of this Schedule shall have effect in accordance with this paragraph where the petroleum whose market value falls to be ascertained at any time in accordance with sub-paragraphs (1) to (5) of that paragraph, or as modified by paragraph (7) of that paragraph, consists of or includes gas.

(2) Sub-paragraph (2)(a) of paragraph 2 of this Schedule shall not apply to so much of the petroleum as consists of gas unless -

(a) it has been subjected to initial treatment before being disposed of or relevantly appropriated;

(b) it has, after being disposed of or relevantly appropriated, been subjected to initial treatment by or on behalf of the Licensee or by a person who is connected with him within the meaning of the said section 839 of the Income and Corporation Taxes Act 1988;

and where petroleum consisting of gas has, whether before or after being disposed of or relevantly appropriated, been subjected to initial treatment by or on behalf of the Licensee or by a person who is connected with him as aforesaid the appropriate initial treatment referred to in sub-paragraph (2)(d) of paragraph (2) shall include the treatment to which it has been so subjected.

(3) Where the initial treatment referred to in sub-paragraph (2) of this paragraph includes treatment to separate gas of one or more kinds which are transported and sold in normal commercial practice, the market value of gas of each such kind which is separated shall be ascertained in accordance with sub-paragraphs (1) to (5) of paragraph 2 as if that were the only petroleum whose value fell to be ascertained at the time in question (with sub-paragraph (2)(e) of paragraph (2) applying accordingly).

4.(1) For the purposes of clause 11(4) of this Licence the aggregate market value of any petroleum falling within paragraph (b) or (c) of that clause shall be arrived at by ascertaining, for each calendar month in the chargeable period in question, the market value of so much, if any, of that petroleum as was -

*Aggregate market  
value of petroleum.*

(a) in the case of petroleum falling within the said paragraph (b), delivered as there mentioned in that month;

(b) in the case of petroleum falling within the said paragraph (c), appropriated as there mentioned in that month,

and, in either case, aggregating the market value so ascertained.

(2) In this paragraph, and elsewhere in this Licence, "calendar month" (where those words are used) means a month of the calendar year.



### Schedule 5

#### WORK PROGRAMME FOR INITIAL TERM AND SECOND EXPLORATION TERM

(clause 3)

##### Part 1

##### Work Programme for Initial Term

*[Here set out the work programme for the initial term agreed between the Licensee and the Governor before the grant of the licence]*

##### Part 2

##### Work Programme for Second Exploration Term

The Licensee shall in the second exploration term, if any, carry out the following work programme in so far as it may not have been carried out by the Licensee during the initial term.

*[Here set out the work programme for the second exploration term agreed between the Licensee and the Governor before the grant of the Licence]*

### Schedule 6

#### PARTICULARS OF AGENT OF LICENSEE AND ADDRESSES FOR NOTICES

(clauses 40 and 41)

##### 1. Agent appointed by the Licensee -

(a)	(b)
Name	Address

*[To be completed appropriately in the Licence]*

##### 2. Address for notices and notifications to the Governor -

*[To be completed appropriately in the Licence]*

(and, if sent by telephonic facsimile transmission, to be sent to [International Access Code + 500 where applicable 27434])

3. Address for notices and notifications to the Attorney General, Falkland Islands -

*[To be completed appropriately in the Licence]*

(and, if sent by telephonic facsimile transmission, to be sent to [International Access Code + 500 where applicable 27276])

4. Address for notices and notifications to the Licensee -

*[To be completed appropriately in the Licence]*

(there will then follow the execution of the Licence as a Deed by the Governor and the Licensee)

### SCHEDULE 3\*

#### Regulation 8(2)(c)

#### SUBSTITUTED CLAUSES IN EXPLORATION LICENCES WHICH PERMIT DRILLING

1. The following clauses (hereinafter called "the substituted clause") are prescribed in relation to every exploration licence which permits drilling (hereinafter called "a relevant licence") and in respect of which regulation 8(2)(c) of these Regulations excludes clauses 8 and 12 as set out in the Schedule to the Petroleum Survey Licences (Model Clauses) Regulations 1992.

2. Unless expressly excluded by a relevant licence the following clauses shall have effect as clauses thereof in place of the said clause 8 -

"8. The right to search for petroleum conferred by this Licence shall include prospecting and carrying out geological surveys by physical or chemical means and drilling for the purpose of obtaining geological information about strata in the areas defined in Schedule 1 to this Licence but shall not include any right to get petroleum or any right to drill wells for production of petroleum or any other well of a depth exceeding three hundred and fifty metres below the surface of the sea bed or such greater depth as the Governor may from time to time approve either generally or in relation to a particular well or in relation to a class of wells to which that well belongs.

*Prospecting methods.*

8A. No well shall without the consent in writing of the Governor be drilled or made so that any part thereof is less than one hundred and twenty-five metres from any of the boundaries of the exploration area.

*Distance of wells from boundary of exploration area.*

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\* This Schedule is the Schedule provided for by regulation 8(2)(c) and is NOT a Schedule to the Licence (the model clauses for which, as above set out, form Schedule 2 to the Regulations).

**8B.(1)** The Licensee shall not commence, or after abandoning in manner hereinafter provided, shall not recommence the drilling of a well without the consent in writing of the Governor.

*Commencement,  
abandonment and  
plugging of wells.*

(2) Except as provided in paragraphs (5) and (6) of this clause, the Licensee shall not abandon any well without the consent in writing of the Governor.

(3) The Licensee shall ensure compliance with any conditions subject to which any consent under either of the foregoing paragraphs is given.

(4) If any such condition under paragraph (1) of this clause relates to the position, depth or direction of the well or to any casing of the well or any condition under either paragraph (1) or paragraph (2) of this clause relates to any plugging or sealing of the well, the Governor may from time to time direct that the well and all records relating thereto shall be examined in such manner and upon such occasions or at such intervals and by such persons as may be specified in the Governor's direction and the Licensee shall pay to any such person or to the Governor such fees and expenses for such examination as the Governor may specify.

(5) In the event that the Licensee's rights in any part of the areas defined in Schedule 1 of this Licence or cease to be, exercisable for the time being because this Licence was granted subject to a proviso that, except with the agreement of the holder of the licence hereinafter mentioned, such rights should not be or should cease to be exercisable in the relevant part of those areas if a licence to search and bore for and get petroleum has been or is granted in relation thereto, the Licensee shall unless the Governor otherwise determines within one month after the date on which the Licensee's rights cease to be exercisable (whether by the granting of such a licence as is hereinbefore mentioned or by termination of the agreement of the holder of that licence) plug all of the Licensee's wells in any part of the areas defined in Schedule 1 in which the Licensee's rights are for the time being not exercisable.

(6) All of the Licensee's wells in the areas defined in Schedule 1 (other than wells to which paragraph (5) of this clause applies) shall, unless the Governor otherwise determines, be plugged by the Licensee not less than one month and not more than three months before the expiry or determination of the Licensee's rights under this Licence.

(7) The plugging of any well shall be done in accordance with a specification approved by the Governor applicable to that well or to wells generally or to a class of wells to which that well belongs and shall be carried out in an efficient and workmanlike manner.

**8C.(1)** The Licensee shall maintain all apparatus and appliances and all wells which have not been abandoned and plugged as provided by clause 8B of this Licence in good repair and condition and shall execute all operations in or in connection with the exploration area in a proper and workmanlike manner in accordance with methods and practice or exploration customarily used in good oilfield practice and without prejudice to the generality of the foregoing provision the Licensee shall take all steps practicable in order -

*Avoidance of harmful  
methods of working.*

(a) to prevent the escape or waste of petroleum discovered in the exploration area;

(b) to conserve the exploration area for production purposes;

(c) to prevent damage to petroleum bearing strata;

(d) to prevent the entrance of water through wells to petroleum bearing strata; and

(e) to prevent the escape of petroleum into any waters in or in the vicinity of the exploration area.

(2) The Licensee shall comply with any instructions from time to time given by the Governor in writing relating to the matters set out in paragraph (1) of this clause. If the Licensee objects to any such instruction he may, within 14 days from the date upon which the same was given, refer the matter to arbitration in the manner provided by clause 21 of this Licence.

(3) The Licensee shall give notice to the Governor of any event causing escape or waste of petroleum, damage to petroleum bearing strata or entrance of water through wells to petroleum bearing strata forthwith after the occurrence of that event and shall, forthwith after the occurrence of any event causing escape of petroleum into the sea, give notice of the event to the Chief Executive of the Falkland Islands Government."

3. Unless expressly excluded by a relevant licence, the following clauses shall have effect in place of the said clause 12 -

"12.(1) The Licensee shall furnish to the Governor and to the Secretary of State on or before the fifteenth day of each month in which this Licence is in force, reckoned by reference to the date of this Licence, a return in a form from time to time approved by the Governor of the progress of the Licensee's operations in the exploration area. Such return shall contain -

*Returns and information.*

(a) a statement of the areas in any geological work, including surveys by any physical or chemical means, has been carried out;

(b) the numbers assigned to each well, and in the case of any well the drilling of which was begun or the number of which was changed in that month, the site thereof;

(c) a statement of the depth drilled in each well; and

(d) a statement of any petroleum, water, mines or workable seams or any mineral encountered in the course of the said operations.

(2) Within two months of the end of each calendar year in which this Licence is in force and within two months of the expiration or determination of this Licence the Licensee shall furnish to the Governor and the Secretary of State an annual return in a form from time to time approved by the Governor of the operations conducted by the Licensee in the exploration area during that year or the period prior to such expiration or determination as the case may be together with a plan on a scale approved by the Governor showing the situation of all wells. The Licensee shall also indicate on the said plan all works executed by the Licensee in connection with searching for petroleum.

12A.(1) As far as reasonably practicable the Licensee shall correctly label and preserve for reference for a period of five years samples of the sea bed and of the strata encountered in any of the Licensee's wells in the exploration area and samples of any petroleum or water discovered in any such wells.

*Licensee to keep samples.*

(2) The Licensee shall not dispose of any sample after the expiry of the said period of five years unless -

(a) he has at least six months before the date of the disposal given notice in writing to the Governor of his intention to dispose of the sample; and

(b) the Governor or any person authorised by him has not within the said period of six months informed the Licensee in writing that he wishes the sample to be delivered to him.

(3) The Governor or any person authorised by him shall be entitled at any time -

(a) to inform the Licensee in writing that he wishes part of any sample preserved by the Licensee to be delivered to him; or

(b) to inspect and analyse any sample preserved by the Licensee.

(4) The Licensee shall forthwith comply with any request for the delivery of the whole or any part of any sample which is made in accordance with the preceding provisions of this clause.

**12B.** Any person or persons authorised by the Governor shall be entitled at all reasonable times to enter into and upon any of the Licensee's installations and equipment used or to be used in connection with searching for petroleum in the exploration area for the purposes - *Rights of access.*

(a) of examining the installations, wells, plant, appliances and works made or executed by the Licensee in pursuance of this Licence and the state of repair and condition thereof; and

(b) of executing any works or of providing and installing any equipment which the Governor may be entitled to execute or provide and install in accordance with the provisions hereof.

**12C.** If the Licensee shall at any time fail to perform the obligations arising under the terms and conditions of any of clauses 8B or 8C of this Licence then and in any such case the Governor shall be entitled, after giving to the Licensee reasonable notice in writing of such his intention, to execute any works and to provide and install any equipment which in the opinion of the Governor may be necessary to secure the performance of the said obligations or any of them and to recover the costs and expenses of so doing from the Licensee." *Power to execute works.*

Made this                      day of                      1994.

D. E. TATHAM,  
*Governor.*

## EXPLANATORY MEMORANDUM

### THE OFFSHORE MINERALS BILL 1994

#### *Introductory*

The purposes of this Bill are to provide the basic legal framework for the exploration for and exploitation of offshore minerals and to confer control by the Falkland Islands Government over these activities. The Bill contains 81 clauses, divided into six Parts and four Schedules.

#### *Part I of the Bill*

By clause 1(2) and (3) it is, if enacted, to come into force on such day or days as may be appointed by the Governor in the Gazette. The Governor will have power to bring different provisions of the Bill, if enacted, into force on different dates.

Clause 2 of the Bill is a "dictionary clause" in relation to the following provisions of the Bill : that is to say various words and expressions used in the following provisions have the meaning given to them in clause 2.

#### *Part II of the Bill*

Part II of the Bill is entitled "Exploration for and Exploitation of Minerals". It is this part of the Bill which contains the provisions enabling licences to be granted for exploration or exploitation of minerals in the "controlled waters" of the Falkland Islands. "Controlled waters" is one of the expressions defined in clause 2(1) of the Bill.

Clause 3(1) provides that it will be unlawful for any person to explore for, or exploit, any mineral in the controlled waters or in the seabed or subsoil of the controlled waters unless he has a licence granted under the Ordinance, but by clause 3(2) that prohibition will not "bind the Crown" : this simply means that the Falkland Islands Government itself can commission a survey or exploit the minerals in the controlled waters without having to obtain a licence. Under clause 4 a licence granted under the Continental Shelf Ordinance 1991 (which would be repealed by clause 81(1) of the Bill) would have effect as if granted under the new law. Clause 5(1) provides that there would be two kinds of licences : exploration licences and production licences and clause 5(2) and (3) state the broad effect of each kind of licence. Under clause 6, the Governor may grant licences with the consent of the Secretary of State for such "consideration" (licence fees and other financial payments) and upon such other terms and conditions as are approved by the Secretary of State. Notice of the grant of any licence would under clause 6(3) have to be published in the Gazette.

Under clause 7 it would be compulsory for Model Clauses Regulations to be made and the Model Clauses Regulations would have to provide for the matters mentioned in clause 7(1). Model Clauses Regulations, when made, could not be revoked, amended or replaced without the consent of the Secretary of State. The reason for this and other provisions of the Bill stipulating that the consent of the Secretary of State (that is to say, for Foreign and Commonwealth Affairs) being required is simply that of course minerals exploitation in the controlled waters of the Falkland Islands is a very important subject in respect of which the Secretary of State is answerable, because the Falkland Islands are a Colony, to Parliament in London and to which the Government of the United Kingdom is answerable in the United Nations.

Clause 8 makes it clear that "petroleum" (which for some purposes can be regarded as a number of minerals) shall be treated as one mineral for licence purposes. Clause 9 casts a general duty upon the Governor in the exercise of his powers under the Ordinance (without placing upon him any obligation to grant any licence to any person) to secure the effective and co-ordinated development of petroleum and other minerals in the sea bed and subsoil of the controlled waters.

A number of criminal offences would be created by clause 10 of the Bill. It would be an offence to explore for or exploit any mineral in the controlled waters without the authority of a licence or for a person, for the purpose of obtaining a licence for himself or anybody else knowingly or recklessly to make a statement which is "false in a material particular" : but it would be a defence under clause 10(2) for the accused to prove that he took all reasonable precautions to avoid the commission of the offence.

Clause 11 of the Bill contains a number of provisions related to consents required so as to safeguard navigation. Clause 12 contains supplementary provision and clause 13 making provision as to offences related to clause 11.

Clauses 14 to 16 are a group of clauses dealing with environmental damage. Clause 14 would impose strict liability (liability without proof of negligence) upon operators for certain loss or damage caused by exploration or exploitation of minerals. By clause 14(1) Schedule 1 to the Bill (if enacted) is to have effect for the purpose. These provisions are modelled on provisions of the Antarctic Minerals Act 1989 and appear not to have an equivalent in legislation relating to the United Kingdom Continental Shelf. The provisions of the Antarctic Minerals Act 1989 were themselves necessary to give effect in law to the Convention on the Regulation of Antarctic Mineral Resource Activities of 1988 which came into being to protect the very special environment in Antarctica.

The Prevention of Oil Pollution Act (Overseas Territories) Order 1982 applied, with modifications and adaptations, much of the provisions of the Prevention of Oil Pollution Act 1971 to the Falkland Islands. It did not, however, apply section 3 of the 1971 Act to the Falkland Islands or its Continental Shelf. Section 3 of the 1971 Act relates to the discharge of oil from a pipe-line or (otherwise than from a ship) as a result of any operation for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area of the United Kingdom Continental Shelf. The effect of clause 16 of the Bill will be to make similar provision in relation to the Falkland Islands Continental Shelf (but with a higher penalty for breach of the provision).

Clause 17 of the Bill would enable the Governor by Order made with the consent of the Secretary of State to provide that "in such cases and subject to such exceptions as may be prescribed by the Order" the criminal law of the Falkland Islands would apply to installations on the Continental Shelf in waters within 500 metres of any such installations. It would also enable the Governor by such an Order to confer powers upon Falkland Islands' police officers on such installations or in such waters. Similarly, clause 18 would enable the Governor made by Order with the consent of the Secretary of State to apply the civil law of the Falkland Islands in certain circumstances in relation to activities connected with the exploration of, or the exploitation of the natural resources of the controlled waters and activities carried on from, by means of, or on, or for purposes connected with, offshore installations. The reason for sections 17 and 18 is that the criminal law and civil law of the Falkland Islands might not otherwise apply.

Clauses 19 to 21 of the Bill contain a number of miscellaneous provisions. Clause 19 enables the Wireless Telegraphy Act 1949 and regulations made under it to be applied to offshore installations in waters within 500 metres of such an installation, clause 20 enables the Radioactive Substances Act 1960 similarly to be applied and clause 21 applies section 3 of the Submarine Telegraph Act 1885 (and various provisions of the Convention to which that Act applies) to oil and gas pipe-lines as if they were submarine cables. The purpose of that is to make it a criminal offence to damage such gas pipe-lines or oil pipe-lines and provide for compensation for damage to them in just the same way as if they had been submarine cables.

### ***Part III of the Bill***

This Part of the Bill deals with the important subject of health and safety at work etc in relation to exploration and exploitation of offshore minerals. It is divided into chapters. The first relates to offshore installations, the second chapter relates to pipe-lines, the third chapter deals with safety zones, the fourth chapter contains provisions as to civil and criminal liability for breach of statutory duty related to safety and chapter five enables the provisions of the preceding four chapters to be replaced or modified by an Order under that chapter.

The provisions of chapters 1 to 4 of Part III represent equivalent provisions of United Kingdom legislation which is being replaced by new legislation made under the Offshore Safety Act 1992. This Act applies provisions of the Health and Safety at Work Etc Act 1974 to offshore operations and provides for new regulations under the 1974 Act to be made in relation to offshore operations and installations. The 1992 Act resulted from the United Kingdom Government's consideration of the Cullen Report on the "Piper Alpha disaster" in the North Sea and the recognition that tighter and more effective legislation was necessary.

Chapter 1 (clauses 22 to 26) is wholly modelled on provisions of sections 1 to 5 of the Mineral Workings (Offshore Installations) Act 1971. They deal with matters related to the safety of offshore installations. Clause 22 is an introductory clause and corresponds to section 1 of the 1971 Act. Clause 23 corresponds to section 2 of the 1971 Act. That section has now been repealed by the Offshore Safety (Repeals and Modifications) Regulations 1993 (SI 1993 No: 1823 Regulation 3(1)(a)). However any regulation made under that section remains in force until otherwise revoked. A provision equivalent to the section would appear to be necessary so as to enable the Governor to make regulations covering the same field (he could if wished apply the United Kingdom regulations if still in force).

Similarly, section 3(1) and (3) of the 1971 Act to which clause 24(1) and (2) of the Bill correspond have been repealed in the United Kingdom and clause 24(1) and (2) are necessary for similar reasons ie: The relevant regulations are the Offshore Installations (Construction and Survey) Regulations 1974 (which are still in force) and which were made under section 3(1) of the 1971 Act. Clause 24(3) corresponds with section 3(4) of the 1971 Act which remains in force.

Clauses 25 and 26 of the Bill correspond with sections 4 and 5 of the Mineral Workings (Offshore Installations) Act 1971 most of which are still in force.

Clause 27 corresponds with section 6 of that Act which has been repealed (but the regulations under it remain in force).



Clause 28 corresponds section 26 of the Petroleum and Submarine Pipe-lines Act 1975. This section, again, has been repealed but any regulations made under it remain in force. The corresponding provision is at the moment necessary so as to enable the Governor either to apply the Submarine Pipe-lines (Diving Operations) Regulations 1976 and the Submarine Pipe-lines Safety Regulations 1982 or to make similar regulations.

Clause 29 corresponds to section 27 of the Petroleum and Submarine Pipe-lines Act 1975 which, for the most part, remains in force. Clauses 28 and 29 together make necessary provision in relation to the safety and inspection of pipe-lines.

Chapter 3 (clauses 30 to 33 of the Bill) make provisions in relation to the establishment of safety zones around offshore installations. They equate to sections 21, 22, 23 and part of section 24 of the Petroleum Act 1987. These provisions of the 1987 Act remain in force. If an Order were made under clause 30(1) there would be an automatic safety zone, by virtue of the clause, for offshore installations which are on station. A five hundred metre limit for the safety zone complies with that established by the Geneva Convention on the Continental Shelf and retained in the United Nations Convention on the Law of the Sea 1982 (although with the possibility of a revision in accordance with changing international standards). By clause 30(7) an automatic safety zone may extend to waters outside Falkland Islands' jurisdiction : this is intended to cope with the situations in which an installation is operating at the outer edge of waters subject to Falkland Islands' jurisdiction.

It should be noted that to qualify for an automatic safety zone the installation must be on station for the purpose of carrying out specified activities, or being assembled or dismantled with a view to or after having carried out such activities. The specified activities are the exploitation or exploration of mineral resources, the sub-sea storage of gas, the conveyance of things by submarine pipe-line or the provision of accommodation in connection with any of those activities. Mobile offshore drilling units qualify for an automatic safety zone as it is specifically provided in clause 33(1)(a) that, for the purposes of Chapter 3, any floating structure or device maintained on a station by whatever means shall be taken to be an installation. A pipe-line however would not qualify unless it is apparatus or works treated as associated with a pipe or system of pipes. There would specifically be excluded from the application of clause 30 any installation which is connected with dry land by a permanent structure providing access at all times and for all purposes or which does not project above the sea at any state of the tide. Therefore, under-water manifold systems or seabed well installations would not qualify for an automatic safety zone and would require an ad hoc safety zone to be established by Order under clause 31. It should be further noted that the Governor could by Order made with the consent of the Secretary of State exclude an installation or any description of installation from the operation of an automatic safety zone. He could do so generally or by reference to specified activities or locations or in any other way.

Clause 31 would empower the Governor by Order made with the consent of the Secretary of State to establish an ad hoc safety zone around any installation which, or part of which, is stationed in the controlled waters or which is being assembled or dismantled in the controlled waters. It would therefore be possible to establish safety zones ad hoc around installations which do not qualify for an automatic safety zone under clause 30. The area of a safety zone established by Order under clause 31 would have to be defined in the Order. It could extend outside controlled waters but not to any point outside five hundred metres from the installation.

Clause 32(1) would prohibit any vessel (which includes a hovercraft or submersible apparatus and an installation in transit) from entering or remaining in a safety zone established under clause 30 or 31 (except that in the case of an ad hoc safety zone, it could do so in accordance with that Order or, in that or in any other case in accordance with Regulations made or a consent given by the Governor). Regulations made under the United Kingdom equivalent to clause 32(1)(b) provide that prohibition from a vessel entering or remaining in a safety zone do not apply to a vessel entering or remaining in the zone -

- (a) in connection with the laying, inspection, testing, repair, alteration, renewal or removal of any submarine cable or pipeline in or near that safety zone;
- (b) provide services for, to transport persons or goods to or from or under the authority of a Government department to inspect any installation in that safety zone;
- (c) to perform duties in the case of a vessel belonging to a general lighthouse authority, relating to the safety of navigation;
- (d) in connection with a saving or attempted saving of life or property;
- (e) owing to stress of weather, and
- (f) when in distress.

It is likely that regulations made for the purpose of clause 32(1)(b) of the Bill would make similar provision. It should be noted, however, that a safety zone would preclude fishing vessels from proceeding to within five hundred metres of an offshore installation and this is relevant because experience elsewhere has been that fish sometimes congregate around such an installation.

Contravention of clause 32(1) would be an offence both by the owner and master of the vessel, but it would be a defence under clause 32(3) for them to prove that the presence of the installation or the existence of the safety zone was not, and would on reasonable enquiry have become, known to the master.

It should be noted that the Bill would not create a power to create safety zones around pipe-lines. This is because such a safety zone might act as a major barrier to navigation, unless the zone in question were made subject to numerous self-defeating exceptions. It is for that reason, in part, that clause 21 of the Bill makes certain provisions of the Submarine Telegraph Act 1885 applicable to pipe-lines under the high seas so as to have the effect of applying criminal penalties for damaging pipe-lines.

Chapter 4 of Part III of the Bill (clauses 34 to 35) contain provisions as to civil and criminal liability. Clause 34(2) provides that breach of any duty imposed by any previous provision of Part III would be actionable so far, and only so far, as it causes personal injury (which is defined in clause 2(1) of the Bill as including any disease and any impairment of a person's physical or mental condition and any fatal injury). However, clause 34(2) would be without prejudice to any action which would lie apart from any earlier provision of Part III of the Bill. Under clause 35(1) it would be a defence for a person accused of an offence under clause 24, 25 or 26 that he used all due diligence to enforce the execution of Chapter 1, and of any relevant regulation made under Chapter 1 and that any relevant contravention was committed without his consent, connivance or default.

Chapter 5 of Part III (clauses 36 and 37 as mentioned above) enable earlier Chapters of Part III to be replaced or modified.

Clause 36(1) enables the Governor with the consent of the Secretary of State by Order to apply the provisions of the Offshore Safety Act 1992 to the Falkland Islands, with such modifications and exceptions as the Governor with the consent of the Secretary of State thinks fit. The effect of doing so would be that Part I of the Health and Safety at Work Etc Act 1974 would apply to the things and matters to which, by virtue of its provisions, the Offshore Safety Act 1992 applies Part I of the 1974 Act. Subsequent provisions of clause 36 are consequential and related provisions.

The whole purpose of clause 36 is to enable up to date and comprehensive health and safety at work provision to be made in relation to operations in the Falkland Islands controlled waters.

Clause 37 would enable the Governor, if an Order had been made under clause 36, with the consent of the Secretary of State to arrange for the Health and Safety at Work legislation to be administered by the United Kingdom Health and Safety Executive under an agreement with the Falkland Islands Government. The reason for making such a provision is that the Falkland Islands do not have complex health and safety at work legislation, the health and safety at work legislation relating to offshore mineral activities is highly complex and requires persons experienced in its administration so that it may be that the most satisfactory and economic way of dealing with health and safety at work aspects of offshore installations and offshore operations would be to arrange with the United Kingdom Health and Safety Executive that they would do so. Clause 37 would, however, enable and not require that to be done.

#### ***Part IV of the Bill***

Part IV of the Bill deals with submarine pipe-lines. Clause 38 is a "dictionary provision" in relation to Part IV.

Clause 39 provides that nobody could carry out under or over any controlled waters any works for the construction of a pipe-line unless he is authorised by the Governor in writing to do so.

The provisions of Part IV of the Bill are modelled on sections 20 to 25, 28, 30 and 33 of the Petroleum and Submarine Pipe-lines Act 1975.

Clause 40 contains detailed provisions in relation to authorisations and would provide that such an authorisation might contain such terms as the Governor thinks appropriate. It will be noted that clause 40(3)(i) would enable the Governor to impose terms as to "the information to be furnished in respect of the pipe-line". Under the equivalent power (section 21 of the Petroleum and Submarine Pipe-lines Act 1975) the Department of Trade and Industry requires information in the nature of an environmental impact assessment. The Falkland Islands provision could be used in the same way : however the Bill contains in clauses 64 and 65 much more specific powers in relation to environmental impact statements and environmental impact assessments. A joint report prepared by the Worldwide Fund for Nature and the Marine Conservation Society in relation to the United Kingdom called for the extension of local planning authority jurisdiction beyond the low water mark to the twelve nautical mile limit of territorial waters (a Report titled "A Future for the

Coast"). In the United Kingdom there is also pressure for designations for estuaries and for coastal Sites of Special Scientific Interest to be extended seawards. The Planning Ordinance 1991 of the Falkland Islands already extends to the outer limit of the territorial sea of the Falkland Islands. The Falkland Islands do not yet have any sites designated as (or equivalent to) Sites of Special Scientific Interest and the conservation legislation of the Falkland Islands is under review. There are obvious possible environmental effects from pipe-lines which may need to be taken into account. The provisions of the Bill contain mechanisms which can be used for those purposes.

For environmental and other reasons, it is sensible to avoid a multiplicity pipe-lines where this can be done by increasing the capacity of a pipe-line about to be constructed so that it may carry gas or oil from other wells or fields. Provisions in relation to that form an important feature of the provisions of Part IV of the Bill. An authorisation for a pipe-line can contain a term under clause 40(3)(c) as to the capacity of the pipe-line or part of the pipe-line and require it to be greater than that proposed by the applicant for the authorisation. It can also require that the route of the pipe-line shall be different from that proposed. When either of those things are the case the Governor may under clause 40(5), if enacted, serve on the holder of the authorisation and on any other person who made representations to the Governor that the capacity proposed should be greater or that any of the routes proposed should be different notice under the sub-clause in relation to contributions for the cost of pipe-line, so that in effect those costs are shared.

Similarly, in relation to pipe-lines already constructed a person other than the owner of the pipe-line (ie: a person who wants to use it) can under clause 41(1) ask the Governor to require that the capacity of the pipe-line shall be increased by modifying apparatus and works associated with the pipe-line or that the pipe-line should be modified by installing in it a junction through which another pipe-line may be connected to it. The Governor may then require the necessary modifications and authorise the owner of the pipe-line, if he satisfies the Governor that he has carried out or will carry out the modifications, to recover the sums from the person who asked the Governor to require the modifications.

Clause 42 provides for the Governor to be able to require the owner of a pipe-line to allow somebody else to use the pipe-line. In such a case the Governor may, if he thinks fit, require the owner of the pipe-line to allow it to be used by somebody else and may regulate the charges which the owner of the pipe-line may make for its use. Under the clause the Governor would have to consider the possible prejudice to the owner of the pipe-line of making a requirement under the clause. He would have to consider the quantities of the substances which the owner of the pipe-line himself will wish to convey through it and in that connection could properly have regard to the future requirements of an owner who might wish to keep capacity free for production from other fields. He would also have to have regard to whether the owner of the pipe-line would be prejudice by the quality of the substance the applicant wishes to have transmitted through the pipe-line. The charges the Governor would authorise would have to be fair to the owner of the pipe-line.

Clause 43 makes provision in relation to the termination of authorisations and clause 44(2) makes provision for the vesting in the Crown of the pipe-lines the authorisation for the use of which has ceased. Clause 44(2) enables the Crown to vest a pipe-line which has vested in it pursuant to clause 44(1) to vest in a person to whom a subsequent authorisation for the use of that pipe-line has been given. Clause 45 makes provision for enforcement of the provisions of the preceding provisions of Part IV of the Bill and clause 46 makes provision in relation to civil liability or a breach of regulations.

### *Part V of the Bill*

This Part of the Bill makes provision in relation to the abandonment of inshore installations. "Decommissioning" would be a more precise term. The question of what must be done with offshore installations and pipe-lines after the fields which they serve have been fully depleted will be a matter of concern both to oil companies and to the Falkland Islands Government. Removal of installations can be desirable in the interests of safety of navigation, environmental protection and fisheries. However, the removal operations themselves could cause damage to the environment and fish stocks and involve serious injury to the personnel engaged in removing structures, particularly since in Falklands' waters the operations may have to be carried out at great water depths. The first step will be to plug and abandon the wells themselves to ensure that there is no possibility of any seepage of petroleum or other fluids into the sea and then the processing and other facilities on the platform would have to be shut down and any hazardous or contaminated parts purged and made safe and pollution free. Offshore installations might possibly be completely removed above the seabed or might possibly be left after having been made safe. Between those two extremes, the platforms could be partially removed to a specified depth, or possibly toppled on site to a specified depth, to allow a minimum water clearance to ensure safety of surface navigation. The removed parts could be towed ashore for disposal there or, if of sufficient size to be stable and not moved, could be placed close around the platform stump in an orderly pile.

The cost of decommissioning operations can be heavy if they involve extensive removal.

In exercising its powers the Falkland Islands Government will need to institute an effective abandonment regime which takes account of the requirements of international law, the safety of navigation and fishing and environmental concerns. Against that background, it should be understood that provisions of Part V of the Bill do not impose mandatory requirements to remove disused offshore installations of pipe-lines and do not contain specific provisions with regard to the disposal of dismantled parts of platforms. They do, however, contain powers enabling the Falkland Islands Government to require removal of particular installations or pipe-lines after they have been abandoned for production purposes. There are no specific powers conferred as to the disposal of parts of offshore installations.

Clause 48(1) would enable the Governor by written notice to call for an abandonment programme for each offshore installation or submarine pipe-line. The notice would have either to specify the date by which the programme is to be submitted or provide for it to be submitted on or before such date as might be directed by the Governor. The abandonment programme would have to contain an estimate of the cost of the measures proposed in it to be taken. Additionally it would have either to specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined. In the event that the abandonment programme proposed that an installation or pipe-line be left in position or not wholly removed, it would have to contain provision as to any continuing maintenance that might be necessary. These requirements as to an abandonment programme are set out in clause 48(4) of the Bill. It would be possible under clause 58(1)(e) to provide for fees on the submission of abandonment programmes and it is envisaged that such fees would be payable. Clause 51(1) of the Bill would provide that an abandonment programme when submitted might be either approved or rejected by the Governor and clause 51(2) would provide that if the Governor approved it he might do so with or without

modifications and either subject to conditions or unconditionally. Under clause 51(3), before requiring modifications or imposing conditions the Governor would have to give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions. Under clause 51(4), if he rejected a programme, the Governor would have to inform the persons who submitted it of his reasons for rejecting it : additionally under clause 51(5) he would be obliged to act without unreasonable delay in making a decision as to whether to approve or reject a programme.

If the Governor had required the submission of an abandonment programme, or if rejected an abandonment programme which had been submitted, he would have power under clause 52(1) himself to prepare an abandonment programme for the installation or pipe-line concerned. The expense of preparing such a programme could under clause 52(4) be recovered from any of the persons whom the Governor had required to submit an abandonment programme.

Clause 53 of the Bill would provide a measure of flexibility on abandonment programmes in that it would empower the Governor to determine changes to be made to an approved programme or to any conditions to which it is subject. Such changes could be proposed either by the Governor or by the persons who submitted the programme, acting together (clause 53(1)). To take account of possible assignments of interest, the clause also provides that persons who have a duty to carry out a programme can be released from their duty and that a person who did not previously have such a duty shall have it, either in addition to or in substitution for another person. The Governor would also have power, at the request of one or more of the parties who submitted a programme, to withdraw his approval (and if he does so he would have the power to call for another programme to be submitted under clause 48(1)).

Under clause 55, where an abandonment programme has been approved by the Governor, it would be duty of each of the persons who submitted it to secure that it is carried out and that any of the conditions to which the approval is subject are complied with. If an approved abandonment programme were not carried out or a condition complied with, the Governor would be empowered by clause 56(1) to call upon any of the persons who submitted the abandonment programme to take such remedial action as might be specified within such time as might be specified. If they failed to do so, the Governor would be empowered by clause 56(3) to carry out the remedial action himself and recover any expenditure incurred in doing so from the persons to whom the notice was given. Interest at a commercial rate would, so long as the amount is unpaid, also be recoverable by virtue of clause 56(4) and (5).

Clause 57 of the Bill contains certain provisions with regard to the provision of financial resources. The Governor would be given power to require information and documents about the financial affairs of any person to whom a notice requiring the submission of an abandonment programme had been given, both before and after the programme had been approved. Additionally, if the Governor were not satisfied that a person would be capable of discharging the duty imposed on him by clause 55 to carry out an abandonment programme, he would be empowered by written notice to require that person to take such action as might be specified in the notice within such time as that notice might specify. This wording is wide enough to enable the Governor to require the provision of security in whatever form the Governor thinks appropriate.

Many of the duties under the provisions of Part V as to the abandonment of offshore installations are enforceable by criminal penalties. The Part gives no right for a person to arbitrate on the merits of an abandonment programme. Clause 60, however, would provide that if a person is aggrieved by any of the acts of the Governor in relation to the giving of a notice to submit a programme, the approval or the rejection of a programme, the determination of a change to be made to a programme, the withdrawal of a programme or a notice to take action with regard to the provision of financial resources he could within 42 days of the act complained about challenge its validity by making application to the Supreme Court of the Falkland Islands.

### ***Part VI of the Bill***

This Part of the Bill deals with a number of matters. Clause 61 relates to the liquefaction of natural gas. Clause 61(1) contains a number of definitions for the purposes of the section and clause 61(2) states that the Governor's consent is required for offshore natural gas to be subjected in the Falkland Islands to any process of liquefaction which results in the production of liquid methane or ethane. Clause 61 equates section 9 of the Energy Act 1976. The principal reason for the provision in the Falkland Islands are environmental and safety reasons. Clause 61(6) contains wide provision enabling safety, health and safety at work and the health and safety of persons living or working the vicinity of any installation and the environment generally to be protected.

Clause 62 of the Bill contains provision as to the flaring of offshore natural gas.

Flaring of offshore natural gas can be objectionable for a number of reasons. If done on an offshore platform it can act as attraction to fish or sea birds, both of which may be undesirable. Further it can lead to production of "green house gases".

Clause 63 would make it clear that nothing in the Bill would override any requirement under the Planning Ordinance 1991 and that the requirements to obtain consents and approval under the Bill are additional to any requirements under the Planning Ordinance 1991.

Under section 33 of the Planning Ordinance 1991, environmental impact statements can be required. But the provisions of that Ordinance would not apply outside the territorial sea of the Falkland Islands and partly for that reason, clauses 64 and 65 of the Bill contain provisions in relation to environmental impact assessments and environmental impact statements. For the purposes of these clauses an "environmental impact statement" means a statement prepared by or on behalf an applicant pursuant to a requirement made by the Governor under clause 64(3) and an "environmental impact assessment" is an assessment commissioned by the Governor in relation to the likely adverse and beneficial affects upon the environment if an application to the Governor for any authority, dispensation, exemption, licence or permission for or in relation to anything which the Governor has power to grant under the Ordinance were to be granted by the Governor.

"Environment" is given a wide meaning by clause 64(1)(b) of the Bill. Equally the matters with which an environmental impact assessment or statement may be required to deal (and set out in Schedule 4 to the Bill) are wide.



Clause 64(4) requires the Governor when he has commissioned an environmental impact assessment under clause 64(2) or required the applicant under clause 64(3) to prepare an environmental impact statement to defer consideration of the application in question in accordance with clause 65(4), that is to say until he has considered the environmental impact assessment or environmental impact statement with any written representations he has received in relation to them pursuant to clause 66.

Clause 65 deals with notifications and publicity as to environmental impact assessments. This includes publicity in the Gazette. Where the Governor receives an environmental impact statement from an applicant he will have power under clause 66(2) to publish it and invite written representations in relation to it.

Clause 67 enables the Governor to obtain further information from the applicant which can be treated as forming part of the applicant's environmental impact statement.

Clause 68 contains provision enabling the Governor to make Regulations to diving operations. Clause 69 confers power on the Magistrate's Court and the Summary Court to try all offences under the Ordinance but limits the Summary Court's power in relation of fines. Under clause 70 all offences under the Ordinance would be triable summarily. Clause 71 would provide a limitation period of three years for the commencement of proceedings in relation to offences under the Ordinance. Clause 72 would require the courts, in relation to offences which attract a fine without limit to take into account the means of the offender.

Clause 73 makes provision in relation to offences by bodies corporate.

Clause 74 requires consents for the bringing of prosecutions under the Ordinance.

Clauses 75 and 77 make provision in relation to the powers to make subsidiary legislation.

Clause 78 deals with payments under the Ordinance, clauses 79 and 80 deal with notices. Clause 81 repeals the Continental Shelf Ordinance 1991 and saves the Model Clauses as to exploration licences which were made under that Ordinance so that they continue in force as if they had been made under clause 7 of the Bill.

D G Lang QC  
Attorney General

15 June 1994



# Offshore Minerals Bill 1994

(No: of 1994)

## ARRANGEMENT OF PROVISIONS

### PART I

#### INTRODUCTORY

##### *Short Title, Commencement and Interpretation*

#### Clause

1. Short title and commencement.
2. Interpretation.

### PART II

#### EXPLORATION FOR AND EXPLOITATION OF MINERALS

##### *Exploration for and exploitation of minerals*

3. Prohibition of exploration for and exploitation of minerals in the controlled waters.
4. Licences granted under repealed Ordinance to have effect as if granted under this Ordinance.

##### *Application for and grant of licences*

5. Kinds of licences.
6. Grant of licences.
7. Model clauses regulations to be made.
8. Petroleum to be a single mineral for the purposes of sections 6 and 8.
9. General duty of the Governor in relation to licensing powers. Power to alter conditions of licence.
10. Offences in relation to licences for exploration for or exploitation of minerals.
11. Requirement of consent for certain works in controlled waters.
12. Supplementary to section 11.
13. Offences.

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- 14. Strict liability for certain loss or damage etc.
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- 17. Application of criminal law.
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- 19. Wireless telegraphy.
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**PART III****SAFETY, HEALTH AND SAFETY AT WORK ETC****CHAPTER 1: OFFSHORE INSTALLATIONS**

- 22. Application of this Part.

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- 24. Construction and survey regulations for offshore installations.

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- 25. Managers of offshore installations.
- 26. Managers of offshore installations: further provisions.

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- 27. Safety regulations as to offshore installations.

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- 28. Safety etc. of pipe-lines.

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34. Civil liability for breach of statutory duty.  
35. Special defence in criminal proceedings under sections 24, 25 or 26.

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36. Application for certain purposes of Part I of the Health and Safety at Work Act 1974.  
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*Subsidiary legislation*

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- 79. Notices.
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**SCHEDULES:**

Schedule 1 - Strict liability for certain loss or damage etc.

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Schedule 3 - Authorisation in pursuance of section 40(1).

Schedule 4 - Environmental impact assessments and environmental impact statements.

A Bill  
for  
An Ordinance

To repeal the Continental Shelf Ordinance 1991; to replace it so as to make further and better provision for the exploration and exploitation of minerals in the Continental Shelf and other controlled waters of the Falkland Islands and for matters connected with or relating to the foregoing matters.

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

PART I  
INTRODUCTORY

*Short title, Commencement and Interpretation*

1.(1) This Ordinance may be cited as the Offshore Minerals Ordinance 1994.

*Short title and  
commencement.*

(2) This Ordinance shall come into force on such day as the Governor may appoint by notice published in the Gazette.

(3) The Governor may exercise his powers under subsection (2) so as to appoint, by one or more notices so published, differing days for the coming into force of different provisions of this Ordinance.

(4) Any reference in any provision of this Ordinance to the coming into force of this Ordinance shall be construed as a reference to the day appointed under this section for the coming into force of that provision.

2.(1) In this Ordinance, unless the context otherwise requires -

*Interpretation.*

"clauses of the licence" has the meaning given by section 7(3);

"company" includes any body corporate;

"concession owner" has the meaning given by subsection (2) of this section;

"the continental shelf" has the meaning ascribed to that phrase for the purposes of international law in the first recital to Proclamation No.1 of 1991;

"contravene" includes a failure to comply;

"controlled pipe-line" has the meaning given by section 38(1);

"controlled waters" means any or all of the following -

(a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limits of the territorial sea;

(b) any designated area of the continental shelf; and

(c) such inland waters as may be prescribed for the purposes of this paragraph by Order made by the Governor;

"designated area" has the same meaning as it has in Proclamation No. 1 of 1991;

"director" includes -

(a) any person who occupies in relation to a company the position of director, by whatever name called;

(b) a shadow director;

(c) in the case of a body corporate incorporated other than in the Falkland Islands or under the laws of the Falkland Islands, any person, including a member of a managing board or committee, (however the managing board or committee is described) who occupies in relation to the body corporate a position analogous to that of a director of a company incorporated under the laws of the Falkland Islands; and

(d) where the affairs of a body corporate, whether incorporated in the Falkland Islands or under the laws of the Falkland Islands or not, are managed by the members of the body corporate, in relation to such management (but not otherwise) any of its members engaged in managing its affairs;

and "shadow director", for the purposes of paragraph (b) of this definition means any person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act;



"document" includes information recorded in any form and, in relation to any information recorded otherwise than in legible form, any reference in this Ordinance to its production includes reference to producing a copy of the document in legible form;

"enactment" -

(a) in relation to any Act or statutory instrument of the United Kingdom, includes every provision of such an Act or such statutory instrument; and

(b) in relation to any Ordinance or subsidiary legislation of the Falkland Islands, includes every provision of such an Ordinance or such subsidiary legislation;

"exploit", in relation to any mineral, means to do anything which, by virtue of this Ordinance, can only lawfully be done under the authority of, and in accordance with the conditions of, a production licence, and "exploitation" has a corresponding meaning;

"exploration licence" means a licence granted under section 6 authorising the holder to search for a mineral or minerals;

"explore", in relation to any mineral, means to search or explore for any mineral and without prejudice to the generality of the foregoing, includes -

(a) field observations, geological and geophysical investigations and the use of remote sensing techniques;

(b) the obtaining of any sample; and

(c) any other operation which may be authorised by an exploration licence and which is not, in relation to any mineral, the exploitation of that mineral;

"international law" means international law as construed and applied by English law;

"the inland waters" means waters within the Falkland Islands other than tidal waters and parts of the sea;

"inspector" means an inspector appointed under section 29 of this Ordinance;

"installation" includes -

(a) any floating structure or device maintained on a station by whatever means; and

(b) in such cases and subject to such exceptions as may be prescribed by Order, any apparatus or works which are by virtue of section 38(1) to be treated as associated with a pipe or a system of pipes for the purposes of Part IV of this Ordinance,

but subject to paragraph (b) of this definition, does not include any part of a pipe-line within the meaning of that definition;

"installation manager" has the meaning given by section 25(3);

"licensee" means any person -

(a) to whom a licence under this Ordinance has been granted; or

(b) to whom a licence was granted under section 4 of the repealed Ordinance where that licence continues to have effect as if it had been granted under section 6 of this Ordinance;

"mineral" means any substance, other than water, and whether that substance is in solid, liquid or gaseous form, formed by or subject to geological process and being in or on the seabed of or in the subsoil of the controlled waters;

"offshore installation" means any installation which is or has been maintained, or is intended to be established, for the carrying on of a relevant offshore activity;

"Order" means any Order made under any provision of this Ordinance;

"model clauses" and "the model clauses" mean a model clause or model clauses prescribed by regulations made under section 7;

"this Ordinance" means this ordinance as from time to time amended and includes a reference to any subsidiary legislation made under this Ordinance;

"notice" means notice in writing;

"owner", in relation to an offshore installation means the person who has registered the installation pursuant to regulations requiring such registration, or if there is no such person, or if no such regulations have for the time being been made or have effect, the person for the time being having the management of the installation, or of its main structure;

"person" includes a body corporate, an unincorporated body of persons and a partnership;

"personal injury" includes any disease and any impairment of a person's physical or mental condition and any fatal injury;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in any strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"pipe-line" and "pipe-line works" have the meaning given by section 38(1);

"prescribed" means prescribed by regulations under this Ordinance;

"regulations" means regulations made under any provision of this Ordinance;

"relevant offshore activity" means any of the following activities which is carried on from, by means of or on an installation which is maintained in the water -

(a) the exploration for or exploitation of minerals in the bed of or in the subsoil of the controlled waters;

(b) the storage of gas in the bed or subsoil of the controlled waters or in any structure affixed to the bed or subsoil of the controlled water or in the subsoil of the controlled waters;

(c) the conveyance of things by means of a pipe or system of pipes, constructed or placed on, in or under the bed of or in the subsoil of the controlled waters;

(d) the provision of accommodation for persons who work in on or from an installation which is or has been maintained or is intended to be established for the purpose of the carrying on an activity falling within paragraph (a), (b) or (c) or this paragraph;

except that an activity which would otherwise be a "relevant offshore activity" by reason of paragraphs (a), (b), (c), or (d) of this definition is not such an activity to the extent that it is an activity carried on from an installation which is connected with dry land by a permanent structure providing access at all times and for all purposes and that the provisions of subsection (3) shall have effect for the purpose of the application of this definition;

"the repealed Ordinance" means the Continental Shelf Ordinance 1991;

"Secretary of State" means Her Majesty's Secretary of State for Foreign and Commonwealth Affairs;

"statutory instrument" has the same meaning as it has for the purposes of the Statutory Instruments Act 1946; and

"subsidiary legislation" means any Order or regulation made under this or any other Ordinance

(2) Subject to subsection (3), a person who whether as a licensee or otherwise, has the right to exploit any mineral in any area, or to store gas in any area and to recover gas so stored, shall be a "concession owner" for the purposes of this Ordinance in relation to any offshore installation if, at that time, he carries on any relevant offshore activity on, by means of or from that installation.

(3) The fact that an installation has been maintained for the carrying on of an activity falling within the definition of "relevant offshore activity" in subsection (1) shall be disregarded if, since it was last so maintained the installation -

(a) has been outside controlled waters; or

(b) has been maintained for the carrying on of any activity which does not fall within that definition:

(4) Except where the context otherwise requires, any reference in this Ordinance to an enactment, whether of the Falkland Islands or of the United Kingdom, shall include a reference to -

(a) any enactment for the time being replacing that enactment, and whether by way of re-enactment or otherwise; and

(b) any enactment for the time being amending or modifying that enactment

(5) Subject to this Ordinance, Part XI of the Interpretation and General Clauses Ordinance 1977 ("the 1977 Ordinance") shall, subject to the provisions of subsection (1), apply in relation to enactments of the United Kingdom applied as law of the Falkland Islands by any provision of this Ordinance as it does in relation to imperial enactments (within the meaning given to "imperial enactments" by section 3(1) of the 1977 Ordinance) which have been applied or adopted as law of the Falkland Islands.

(6) Where any word or expression is defined in subsection (1), that definition shall extend to the grammatical variations and cognate expressions of that word or expression.

(7) In this Ordinance

(a) words and expressions used in the masculine gender include the female gender and the neuter gender;

(b) words and expressions used in the neuter gender include the masculine gender and the female gender; and

(c) words and expressions used in the singular include the plural and vice versa.

(8) Subject to this Ordinance, the Interpretation and General Clauses Ordinance 1977 applies in relation to this Ordinance and to expressions used in this Ordinance.

## PART II

### EXPLORATION FOR AND EXPLOITATION OF MINERALS

#### *Prohibition of exploration for or exploitation of minerals*

3.(1) It is unlawful for any person to explore for or exploit any mineral in the controlled waters or in the sea-bed or subsoil thereof unless he does so under and in accordance with the terms and conditions of a licence granted under this Ordinance or having effect as if granted under this Ordinance

*Prohibition of exploration for and exploitation of minerals in the controlled waters.*

(2) This section does not bind the Crown.

4.(1) A licence granted under section 4 of the repealed Ordinance shall with effect from the commencement of this Ordinance have effect as if it were as an exploration licence granted under section 6 of this Ordinance upon the same terms and conditions as it was granted.

*Licences granted under repealed Ordinance to have effect as if granted under this Ordinance.*

(2) In subsection (1), the reference to the terms and conditions of a licence includes a reference to any model clauses incorporated in that licence by virtue of the provisions of the Petroleum Survey (Model Clauses) Regulations 1992.

*S.R. & O. No.25 of 1992.*

#### *Application for and grant of licences*

5.(1) For the purposes of this Ordinance there shall in relation to the exploration for and exploitation of minerals be the following kinds of licences -

*Kinds of licences.*

(a) exploration licences; and

(b) production licences.

(2) An exploration licence shall authorise the licensee in accordance with its terms, to search for the mineral or minerals specified therein in the sea-bed and subsoil of or under the area or areas of the controlled waters specified in the licence but shall not authorise the licensee, unless the contrary is stated in the licence -

(a) to bore for any mineral in the course of exploration; or

(b) to get any mineral in the course of exploration,

and, in any case, an exploration licence shall not authorise the licensee to get any mineral in any greater quantity or for any purpose other than is incidental to exploration for that mineral.

(3) A production licence shall authorise the licensee in accordance with its terms to search and bore for, and get, the mineral or minerals specified in the licence in the sea-bed and subsoil under the area or areas of the controlled waters specified in the licence.

6.(1) Subject to this Ordinance, and with the consent of the Secretary of State, the Governor may on behalf of Her Majesty, grant to any person a licence of a kind provided for by section 5(1) of this Part in respect of the whole or part of the area to which that person's application for that kind of licence relates. *Grant of licences.*

(2) Any such licence shall be granted for such consideration as the Governor with the consent of the Secretary of State may determine, and upon such other terms and conditions as the Governor, with the approval of the Secretary of State, sees fit to grant the licence.

(3) The Governor shall, as soon as may be after granting a licence under this section, publish notice of the fact in the Gazette stating the name of the licensee and the situation of the area in respect of which the licence has been granted.

7.(1) The Governor shall, before granting any licence under section 6 in respect of any mineral, under this section make regulations approved by the Secretary of State in relation to that mineral prescribing - *Model clauses regulations to be made.*

(a) the manner in which and the persons by whom applications for licences under that section may be made; *(24 & 25 Geo 5, c.36 s.6).*

(b) the fees to be paid on such application;

(c) the conditions as to the size and shape of areas in respect of which licences may be granted;

(d) model clauses which shall, unless he, with the approval of the Secretary of State sees fit to exclude them in any particular case, be incorporated in any such licence,

and different regulations may be made under this section -

(i) for different kinds of licence, or

(ii) different kinds of mineral.

(2) Regulations made under this section shall not be revoked amended or replaced without the consent of the Secretary of State.

(3) A reference in this Ordinance to "the clauses of the licence" is a reference to the model clauses incorporated in a licence pursuant to regulations made under this section together with any conditions imposed, in addition to any such model clauses, on the grant of the licence or otherwise in accordance with this Ordinance.

8. Notwithstanding the definition of "mineral" in section 2(1), all minerals falling within the definition of "petroleum" in section 2(1) shall for all purposes of sections 6, and 7 be treated as if they were a single mineral.

*Petroleum to be a single mineral for the purposes of sections 6 and 7.*

9.(1) It shall be the general duty of the Governor in the exercise of his powers -

*General duty of the Governor in relation to licensing powers. Power to alter conditions of licence.*

(a) under section 6, to grant licences;

(b) under section 7, to make regulations prescribing model clauses; and

(c) otherwise under this Ordinance,

*(cf 1964, c.29, s.1(6) applying 8 & 9 Geo.6, c.19, s.1(1)).*

to secure the effective and co-ordinated development of petroleum and other minerals in the seabed and subsoil of the controlled waters, but nothing in this subsection shall be construed as placing upon the Governor any obligation to grant any licence under section 6 to any person.

(2) The Governor may, with the approval of the Secretary of State and with the consent of the licensee, amend, vary, add to or augment the conditions of a licence he has granted under section 6.

10. Any person who -

*Offences in relation to licences for exploration for or exploitation of minerals.*

(a) explores for or exploits any mineral in the controlled waters when he is not authorised by a licence issued under, or having effect as if issued under section 6 of this Ordinance to do so;

(b) for the purpose of obtaining such a licence (for himself or for another) knowingly or recklessly makes a statement which is false in a material particular; or

(c) fails to comply with such provisions of any regulations as may be prescribed for the purposes of this section;

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) In any proceedings for an offence under paragraph (a) or (c) of subsection (1), it shall be a defence for the accused to prove that he took all reasonable precautions to avoid the commission of the offence.

11.(1) Subject to this section no person shall, without the consent in writing of the Governor -

*Requirement of consent for certain works in controlled waters.*

(a) deposit any object or material on the sea-bed of the controlled waters;

(b) construct, alter or improve any works on, under or over any part of the controlled waters; or

(c) remove any object or materials from the sea-bed or subsoil of the controlled waters,

*(cf 1964 c.29 s.4 applying provisions of Geo.6, 12, 13 & 14).*

if the operation (whether while being carried out or subsequently) causes or is likely to result in an obstruction or danger to navigation.

(2) Subsection (1) -

(a) does not apply where the person carries out the operation pursuant to a consent granted by or pursuant to the clauses of a licence granted under section 6;

(b) does not apply to the construction, alteration or improvement of any works more than fifty feet below the surface of the sea in connection with the getting of minerals; and

(c) has effect without prejudice to the provisions of this Ordinance relating to submarine pipe-lines or the abandonment of installations (but no consent under subsection (1) is required where the consent in writing of the Governor has been obtained pursuant to any such provisions).

(3) The Governor may, as a condition of considering an application for consent under this section, require to be furnished with such plans and particulars of the proposed operation as he considers necessary; and on receipt of any such application he may -

(a) cause notice of the application to be published, and of the time within which and the manner in which objections thereto may be made, to be published in such manner as he may consider appropriate for informing persons affected thereby, and

(b) before granting his consent, may, if he thinks fit, appoint a Commission of Inquiry to enquire into the matter under the provisions of the Commissions of Inquiry Ordinance and report to him thereon and shall take such report into account in determining whether or not to consent to the proposed operation and, if he decides to consent to it, upon what conditions, if any.

*(Cap. 12 Laws of  
the Falkland Islands  
(1950 Edition)).*

(4) If the Governor (and, if appropriate, after taking into account any report made to him pursuant to subsection (3)), considers that any operation in respect of which his consent is required under this section will cause or is likely to result in obstruction or danger to navigation he shall either -

(a) refuse his consent; or

(b) grant his consent subject to such conditions as he thinks fit, having regard to the nature and extent of the obstruction or danger which appears to him would otherwise be caused or be likely to result.

(5) A consent of the Governor under this section may be given so as to continue in force, unless renewed, only if the operation for which consent is given is begun or completed within such period as may be specified in the consent, and any renewal of such consent may be limited in a similar manner, and any condition subject to which the Governor has given his consent -



(a) shall subject to paragraph (d), either remain in force for a specified period or remain in force without limit of time;

(b) shall (in addition to binding the person to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies or enjoys any works to which the consent relates;

(c) may, if the condition related -

(i) to the provision of lights, signals or other aids to navigation, or

(ii) to the stationing of guard ships in the vicinity of the works in question or the taking of any other measures for the purpose of, or in connection with, controlling the movement of ships in the vicinity of those works,

be varied by the Governor in the interests of the safety of navigation (whether or not the operation has been completed) in such manner as he thinks fit for the purpose of enhancing the effectiveness of any such aids or measures as are mentioned in subparagraph (i) or (ii) of this paragraph; and

(d) may, if the Governor thinks fit, be varied or discharged by him.

12.(1) Where at any time after the Governor has given his consent for an operation falling within section 11(1) ("the relevant consent"), it appears to him -

*Supplementary  
to section 11.*

(a) that any danger to navigation has arisen by reason of -

*(12, 13 & 14 Geo 6,  
c.74 s.36A).*

(i) any substantial damage to any works to which that consent relates; or

(ii) any other substantial and unforeseen change in the state or position of any such works, and

(b) that it is urgently necessary to do so in the interests of safety or navigation,

he may, by notice served on the person to whom the consent was given, impose on that person such requirements as he thinks fit with respect to any of the matters referred to in subsection (2) of this section.

(2) Those matters are -

(a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and

(b) the stationing of guard ships in the vicinity of those works.

(3) Where the person on whom a notice is served under subsection (1) of this section fails to comply with any requirements of the notice within 24 hours beginning with the time when it is served on him or as soon after that period as is reasonably practicable, the Governor may make such arrangements as he thinks fit for the purpose of securing that those requirements are implemented.

(4) Where under subsection (3) of this section the Governor makes any such arrangements, he shall be entitled to recover the cost, as certified by the Financial Secretary, of making those arrangements from such one or more of -

- (a) the person to whom the relevant consent was given, and
- (b) any other person who is, in accordance with section 11 (5) (b), bound by any condition subject to which that consent was given,

as he thinks fit.

(5) Once the requirements of a notice under subsection (1) of this section have been complied with by the person on whom it was served, or implemented in accordance with arrangements made by the Governor under subsection (3) of this section, those requirements shall, subject to subsection (6) of this section, be treated as conditions subject to which the relevant consent was given.

(6) Paragraphs (a) and (d) of section 11(5) shall not apply to such requirements; but if it appears to the Governor (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, he shall revoke them by notice served on the person to whom the relevant consent was given.

(7) Where the Governor has served a notice under subsection (1) of this section in respect of any particular circumstances, subsection (5) of this section shall not preclude him from serving a further notice under subsection (1) of this section in respect of those circumstances.

(8) A notice may be served by the Governor under subsection (1) of this section whether or not -

- (a) the operation in question has been completed, or
- (b) any condition was imposed by him, on giving the relevant consent, with respect to any of the matters referred to in subsection (2) of this section.

*Offences.*

13.(1) Any person who -

- (a) carries out any operation in contravention of section 11(1), or
- (b) fails to comply with any condition subject to which any consent of the Governor has been given under that section,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) Where a person is bound by any condition subject to which any such consent has been given under that section but is not the person to whom the consent was given, then, for the purposes of subsection (1) of this section, he shall not be taken to have failed to comply with the conditions unless -

(a) he has been served by the Governor with a notice requiring him to comply with the condition within such period (not being less than thirty days) as may be specified in the notice; and

(b) he has failed to comply with the conditions within that period.

(3) Without prejudice to any proceeding under subsection (1) or (2), where any person has, in contravention of section 11 -

(a) deposited any object or material on the sea-bed of the controlled waters, or

(b) constructed, altered or improved any works in the controlled waters; or

(c) failed to comply with any condition subject to which any consent of the Governor has been given under section 11,

the Governor may serve a notice on that person requiring him, within such period (not being less than thirty days) as may be specified in the notice, to remove the works or to make such alterations therein as may be so specified or to remove the object or materials, as the case may be, or, if it appears to the Governor urgently necessary to do so, may himself remove or alter the works or remove the object or materials.

(4) If within the period specified in any notice under subsection (3) the person served fails to comply with it, the Governor may himself remove or alter the works or remove the object or materials specified in the notice.

(5) Where under either subsection (3) or (4) the Governor removes or alters any works or removes any object or materials, he shall be entitled to recover the cost, as certified by the Financial Secretary, from the person by whom the works were constructed, altered or improved, or the object or materials was or were deposited.

#### *Environmental protection*

14.(1) Schedule 1 to this Ordinance shall have effect so as to impose upon operations strict liability for loss or damage in the circumstances and in the events provided for by that Schedule.

*Strict liability  
for certain loss or  
damage etc.*

(2) In this section and in Schedule 1 to this Ordinance, "Operator" means any licensee and any concession owner.

*(1989 c.21, s.12  
and Schedule)*

15.(1) Without prejudice to the generality of his powers under -

*Orderly payment for  
environmental damage.*

(a) section 6(2), to impose terms and conditions on the grant of a licence; and

(b) section 7, to make regulations prescribing model clauses, it is declared that the Governor may exercise those powers so as to require a licensee to effect and maintain in being throughout the term of the licence such policy or policies of insurance approved by the Governor or be party to such an arrangement in respect of the licensee's obligations, in the events provided for by Schedule 1 of this Ordinance or otherwise arising to pay damages or compensation or make re-imbursement to any person as the Governor sees fit.

(2) In subsection (1) and (3) "such an arrangement" means an arrangement having an effect similar so far as is reasonably practicable, to the application of the arrangements afforded by the Offshore Pollution Liability Agreement as amended from time to time by the parties thereto or such other arrangement of a similar kind to that the arrangements afforded by that Agreement as the Governor may approve.

(3) Where a licensee is party to such an arrangement but the provisions of that arrangement do not provide for payment in relation to all of the obligations referred to in subsection (1) of this section, the Governor may exercise either of the powers referred to in that subsection so as to require the licensee to effect and maintain in being a policy or policies of insurance approved by the Governor in relation to the remainder of those obligations.

(4) In subsection (2), "the Offshore Pollution Liability Agreement" means the agreement of that name applying in relation to the Offshore Pollution Liability Association Limited (a company incorporated under the laws of England with liability limited by guarantee and members of which are companies engaged in offshore petroleum exploration and exploitation operations and activities).

16.(1) In this section, "the 1971 Act" means the Prevention of Oil Pollution Act 1971 in the manner and so far as it applies to the Falkland Islands by virtue of the Prevention of Oil Pollution Act (Overseas Territories) Order 1982, but as if section 3 of the 1971 Act (which was not applied to the Falkland Islands by the said Order) had been so applied in terms corresponding to those of subsections (2) and (3) of this section.

*Oil pollution from certain operations.*

(2) If any oil to which section 1 of the 1971 Act applies, or any mixture containing such oil, is discharged into any part of the sea -

(a) from a pipe-line; or

(b) (otherwise than from a ship) as the result of any operation for the exploration of the sea-bed and subsoil or the exploitation of their natural resources in a designated area,

then, subject to the provisions of the 1971 Act, the owner of the pipe-line or, as the case may be, the person carrying on the operations commits an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(3) A person convicted of an offence under subsection (2) is liable on conviction of that offence to a fine without limit.

*Application of criminal and civil law*

17.(1) The Governor may by Order made with the consent of the Secretary of State provide that, in such cases and subject to such exceptions as may be prescribed by the Order, any act or omission which - *Application of criminal law.*

(a) takes place on, under, or above an installation to which this section applies or any waters within 500 metres of any such installation; and

(b) would, if taking place in the Falkland Islands constitute an offence under the law of the Falkland Islands,

shall be treated for the purposes of that law as taking place in the Falkland Islands.

(2) The Governor may by Order made with the consent of the Secretary of State provide that in such cases and subject to such exceptions as may be prescribed by the Order, a police officer shall on, under or above any installation in waters to which this section applies or any waters within 500 metres of such an installation have all the powers, protection and privileges which he has under the law of the Falkland Islands.

(3) Subsection (2) has effect without prejudice to any other enactment or rule of law affording any power, protection or privilege to police officers or constables.

(4) Proceedings for anything that is an offence by virtue of an Order under this section may be taken, and the offence may be treated as having been committed, in the Falkland Islands.

(5) The waters to which this section applies are -

(a) the territorial sea; and

(b) waters in the designated area.

(6) This section applies to installations notwithstanding that they are for the time being in transit.

18.(1) The Governor may by Order made with the consent of the Secretary of State -

*Application of civil law (1982 c.23 s.23).*

(a) provide that in such cases and subject to such exceptions as may be prescribed by the Order, questions arising out of acts or omissions taking place on, under or above waters to which this section applies in connection with any activity mentioned in subsection (2) shall be determined in accordance with the law of the Falkland Islands; and

(b) make provision for conferring jurisdiction with respect to such questions on courts in the Falkland Islands.

(2) The activities referred to in subsection (1) are -

(a) activities connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of waters to which this section applies or the subsoil beneath it; and

(b) without prejudice to the generality of paragraph (a) of this subsection, activities carried on from, by means of or on, or for the purposes connected with, installations to which subsection (3) applies.

(3) This subsection applies to offshore installations (as defined in section 2(1) of this Ordinance by reference to the carrying on of a relevant offshore activity (as defined in section 2(1)) and as section 2(3) has effect in relation to that definition).

(4) Any jurisdiction conferred on any court under this section is without prejudice to any jurisdiction exercisable apart from this section by that or any other court.

(5) The waters to which this section applies are -

(a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limit of the territorial sea; and

(b) waters in the designated area.

(6) This section applies to installations notwithstanding that they are for the time being in transit.

#### *Miscellaneous matters*

19. The Governor may by Order in Council made with the consent of the Secretary of State apply the Wireless Telegraphy Act 1949 and any regulations made thereunder (with such modifications and exceptions as may be specified in such Order) to any installation in waters to which an Order under section 18 applies and any waters within 500 metres of an installation.

*Wireless  
telegraphy.*

*(cf 1964 c.29 s.6)*

20. The Governor may by Order in Council made with the consent of the Secretary of State apply the Radioactive Substances Act 1960 to any installation in an area or part to which an Order under section 18 applies and waters within 500 metres of such an installation and may by an Order under this section modify the provisions of that Act in their application to such an installation or waters.

*Radioactive  
substances.*

21.(1) Section 3 (punishment for damaging cables) of the Submarine Telegraph Act 1885 in its application to the Falkland Islands and Article IV and paragraph 1 of Article VII (liability to pay compensation for damage to cables and for loss of gear sacrificed to avoid such damage) of the Convention set out in the Schedule to that Act (which by virtue of section 2 of that Act has the force of law) shall apply in relation to all submarine cables under the high seas (and not only to those to which that Convention applies) and to pipe-lines under the high seas; and the said section 3 shall be construed as referring to telephonic as well as telegraphic communication, and, in relation to high-voltage power cables and to pipe-lines, as if the words "in such manner" to the end of subsection (1) were omitted.

*Submarine cables  
and pipelines.*

*(1964 c.29, 2.8(1)).*

### PART III

## SAFETY, HEALTH AND SAFETY AT WORK ETC

### CHAPTER 1: OFFSHORE INSTALLATIONS

22.(1) This section and sections 23 to 29 apply to offshore installations in the controlled waters and the definitions of - *Application of this Part.*

(a) "installation";

*(cf. 1971 c.61 s.1).*

(b) "offshore installation";

(c) "relevant offshore activity" (in relation to offshore installations),

(all of which are contained in section 2(1)) and

(d) the provisions of section 2(3) (which excepts in certain circumstances installations which would otherwise be offshore installations by reason of the definitions referred to in paragraphs (a) (b) and (c) of this section from the operation of those definitions)

shall have effect for the purpose of determining which installations are offshore installations for the purposes of this Part.

(2) Section 38(1) has effect for the purpose of bringing apparatus or works associated with a pipe or system of pipes within the definition of "installation" in section 2(1) (and thus, by virtue of subsection (1) of this section, within the operation of this Chapter).

(3) In this Chapter, any reference to the manager of an offshore installation is to be construed except in so far as the context otherwise requires as a reference to the person for the time being in charge of the installation and appointed as required by paragraph (a) or (b) of section 25(1).

#### *Matters as to which regulations may be made*

23.(1) The Governor may with the consent of the Secretary of State make regulations for the registration of offshore installations. *Registration of offshore installations. (1971, c.61 s.2).*

(2) Regulations under this section may make provision -

(a) for all matters relevant to the maintenance of a register of offshore installations;

(b) without prejudice to paragraph (a) of this subsection, for the cases in which an installation is to be or may be exempted from registration, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemptions or of any conditions attached thereto, the persons by whom and manner in which applications in connection with any registration or exemption are to be made, and the information and evidence to be furnished in connection with any such application;

(c) for the marking or other means of identification of any installation, whether registrable or exempted from registration;

(d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;

(e) for requiring the payment of fees in connection with the making of applications under the regulations, the issue of certificates or other matters;

(f) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto; and

(g) for other incidental matters.

24.(1) The Governor may with the consent of the Secretary of State make regulations -

*Construction and  
survey regulations  
for offshore  
installations.*

(a) requiring offshore installations to be certified by such persons and in such manner as may be provided by the regulations to be, in respect of such matters affecting safety as may be so provided, fit for the purpose or purposes specified by the regulations;

*(1971, c.61 s.3)*

(b) imposing requirements as to the survey, testing and inspection of installations or parts of installations or parts of installations in respect of matters covered or required to be covered by a certificate of fitness;

(c) imposing any prohibition or restriction as respects installations or parts of installations which, in any respect, fail to comply with any provisions of the regulations.

(2) Regulations under this section may make provision -

(a) for the issue of certificates of fitness, and the custody, surrender, production or display of the certificates or copies of them;

(b) for requiring the payment of fees in connection with the making of applications under the regulations, the carrying out of surveys or tests, the issue of certificates or other matters;

(c) for matters arising out of the termination or modification of any certificate of fitness;

(d) for any other incidental matters.

(3) It shall be the duty of the owner of the offshore installation, and of the installation manager and of every person who, in relation to the installation is a concession owner to ensure that the provisions of regulations under this section are complied with, and, if regulations under this section are contravened in any respect in relation to an installation when it is within controlled waters, the owner of the offshore installation, the installation manager and every person who, in relation to the installation, is a concession owner commits an offence and is liable on conviction of that offence to a fine without limit.



*Managers of offshore installations*

25.(1) Every offshore installation, so long as it is in controlled waters shall be under the charge of a person appointed to be or act as manager, and the owner of the installation shall appoint to be installation manager - *Managers of offshore installations.*

*(1971 c.61, s.4)*

(a) a person who, to the best of the knowledge and belief of the owner, has the skills and competence suitable for the appointment, and

(b) another or others to act where necessary in place of the installation manager,

and shall inform the Governor of any appointment under this subsection by giving notice in the prescribed form and containing the prescribed particulars.

(2) The Governor may, with the consent of the Secretary of State, make regulations prescribing requirements to be fulfilled as respects an installation manger appointed under paragraph (a) or paragraph (b) of subsection (1) of this section, including requirements as to qualifications, experience, health or age; and the regulations may make different provision for managers of different types of installations or mangers whose responsibilities differ in other respects, and different provision for managers appointed under the said paragraphs (a) and (b) respectively.

(3) The owner may, under paragraph (a) of subsection (1) of this section, appoint two or more persons to be managers in rotation, and the persons appointed under paragraph (b) of that subsection shall act where necessary in place of any of them.

(4) If at any time the owner is satisfied that an installation manager appointed in pursuance of subsection (1) of this section does not have the requisite skills and competence, he shall terminate the appointment as soon as practicable, and shall give the Governor notice in the prescribed form of the action taken by him.

(5) It shall be the duty of the owner, in order to ensure that the installation manager appointed under paragraph (a) of subsection (1) of this section is on the installation when it is manned, from time to time to place a person so appointed on the installation, and to ensure that he remains there until relieved, or so long as it is manned.

(6) If the owner fails to comply, or to ensure compliance, with the provisions of this section, he commits an offence and is liable on conviction to a fine not exceeding £100,000.

(7) The operation of the foregoing provisions of this section may be excluded in whole or in part by regulations made by the Governor under this subsection, with the approval of the Secretary of State, or in relation to any particular installation by direction given by the Governor, with the approval of the Secretary of State, in such manner and to such persons as the Governor considers appropriate.

26.(1) The manager of an offshore installation shall not be absent from the installation at any time when it is manned, except in the case of sudden sickness or other cause beyond his control, or for other sufficient reason, and a person failing to comply with this subsection commits an offence and is liable on conviction of that offence to a fine not exceeding £10,000.

*Managers of offshore installations: further provisions.*

*(1971. c.61, s.5).*

(2) Except as otherwise provided by this Part, the manager of an offshore installation shall have in relation to it general responsibility for matters affecting safety, health or welfare, the maintenance of order and discipline, and for the discharge of that responsibility shall exercise authority over all persons in or about the installation, except that his authority does not extend to any matter for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(3) If a person subject to the authority of the manager of an offshore installation wilfully disobeys a lawful command given to him by the manager in the exercise of that authority, he commits an offence and is liable on conviction of that offence to a fine not exceeding £1,000.

(4) The manager of any offshore installation shall not permit the installation to be used in any manner, or permit any operation to be carried out on or from the installation, if the seaworthiness or stability of the installation is likely to be endangered by its use in that manner or by the carrying out of that operation or by its being carried out in the manner proposed, and it shall be the duty of the owner of the installation to ensure that the provisions of this subsection are complied with by the installation manager.

(5) If an installation manager or owner fails to comply, or ensure compliance, with subsection (4) he commits an offence and is liable on conviction of that offence to a fine without limit.

(6) Where at an offshore installation there is an emergency or apprehended emergency endangering the seaworthiness or stability of the installation or otherwise involving a risk of death or serious personal injury, the installation manager may take or require to be taken any such measures as are necessary or expedient to meet or avoid the emergency, and no regulation or condition having effect by virtue of this Part shall apply to prohibit or restrict the taking of any such measures by virtue of this subsection.

(7) If the installation manager has reasonable cause to believe that it is necessary or expedient for the purpose of securing the safety of any offshore installation or persons in or about it, or maintaining order and discipline among those persons, the installation manager may cause those persons to be put ashore in the Falkland Islands; and where any of those persons has done or is about to do any act endangering or likely to endanger the safety of the persons in or about it or the maintenance of order and discipline among those persons, or the installation manager with reasonable cause suspects him of having done or being about to do any such act, the installation manager may take or cause to be taken such other reasonable measures against him, by restraint of his person or otherwise, as the installation manager thinks necessary or expedient, except that this subsection does not extend to any matters for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(8) A person shall not be kept under restraint by virtue of subsection (7) for longer than 24 hours unless -

(a) the intention is that he shall be put ashore in the Falkland Islands in accordance with that subsection at the earliest possible opportunity; and

(b) within those twenty-four hours or as soon as practicable afterwards notice of his having been kept under restraint and of the reasons for it is sent to the prescribed authority in the Falkland Islands.

(9) The manager of an offshore installation shall notify the owner as soon as practicable of any event which occurs at the installation and which the owner is by any regulation or condition having effect by virtue of this Part required to notify to the Governor, and if a person fails to comply with this subsection he commits an offence and is liable on conviction of that offence to a fine not exceeding £5,000.

(10) The operation of the foregoing provisions of this section may be excluded in whole or in part in relation to any class or description of installation by regulations made by the Governor under this subsection with the approval of the Secretary of State, or in relation to any particular installation by directions given by the Governor, with the approval of the Secretary of State, in such manner and to such persons as the Governor considers appropriate.

*Safety regulations as to offshore installations*

27.(1) The Governor may with the consent of the Secretary of State, make regulations for the safety, health and welfare of persons on offshore installations in controlled waters, and generally, and whether or not by supplementing the preceding sections of this Part, for the safety of such installations and the prevention of accidents on or near them.

*Safety regulations  
as to offshore installations.*

*(1971 c.61, s.6).*

(2) The regulations may have effect as respect -

- (a) persons whether or not present in the course of their employment;
- (b) the transport of persons and things to and from an installation;
- (c) vessels, aircraft or hovercraft in the neighbourhood of an installation;
- (d) vessels on which accommodation is provided for persons who work on or from installations; and
- (e) any operation or work whether on or near an installation, or in the water, or on or below the shore or bed of the sea or other waters.

(3) Without prejudice to the generality of the preceding provisions of this section, the regulations may provide for any of the matters set out in Schedule 2 to this Ordinance, and may contain such supplemental or incidental provisions as appear to the Governor to be expedient.

(4) The Governor may appoint as inspectors to discharge the functions conferred by regulations, and generally to assist the Governor in the execution of the foregoing provisions of this Part, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient.

## CHAPTER 2: PIPE-LINES

*Safety and inspection of pipelines*

28.(1) The Governor may by regulations make such provision as he considers appropriate for the purpose of securing the proper construction and safe operation of pipe-lines, preventing damage to pipe-lines, preventing damage to pipe-line works; and, without prejudice to the generality of the preceding provisions of this subsection, regulations in pursuance of this subsection may include provision with respect to the use of any aircraft, vessel, vehicle, structure, plant, equipment or other thing for the purposes of any pipe-line works and with respect to the movement of and the precautions to be taken on or in connection with any of those things which are used for the purposes of any pipe-line works or are in the vicinity of a pipe-line or pipe-line works.

*Safety etc. of  
pipe-lines (1975, c.74,  
s.26).*

(2) In subsection (1) of this section "pipe-line works" means works of any of the following kinds, namely -

- (a) assembling or placing a pipe-line or length of pipe-line;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipe-line or length of pipe-line;
- (c) changing the position of or dismantling or removing a pipe-line or length of pipe-line;
- (d) opening the bed of the sea for the purposes of works mentioned in the preceding paragraphs, tunnelling or boring for those purposes and other works needed for or incidental to those purposes;
- (e) works for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line, and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line.

(3) References in subsection (1) and (2) are to a controlled pipe-line but shall be construed as excluding -

- (a) the equipment of a vessel or vehicle; and
- (b) any apparatus and works associated with a pipe or system of pipes and prescribed for the purposes of this paragraph.

29.(1) The Governor may appoint, as inspectors to assist him in the execution of this Chapter of this Part ("the relevant provisions") such number of persons appearing to him to be qualified for the purpose as he considers appropriate from time to time.

*Inspectors etc.  
(1975, c.74, s.27).*

(2) Provision may be made by regulations with respect to the powers and duties of inspectors appointed in pursuance of the preceding subsection and of any other persons acting on the directions of the Governor in connection with the execution of the relevant provisions and with respect to the facilities to be accorded to such inspectors and other persons; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in exercise of that power may include provisions as to -

- (a) powers to inspect pipe-lines;
- (b) powers to enter upon premises, vessels and installations used or intended to be used in connection with a pipe-line or with activities relating to a pipe-line or a proposed pipe-line;
- (c) powers to inspect and test equipment and, in special circumstances, to dismantle, test to destruction or take possession of articles of equipment;
- (d) powers to require, in connection with the inspection of a pipe-line, the carrying out of procedures and the conduct of tests and, in special circumstances, the shutting down of the pipe-line or the discontinuance of the conveyance of things through the pipe-line;
- (e) powers exercisable in case of immediate or apprehended danger;
- (f) powers to require the conveyance of persons and things to and from, and the provision for persons of reasonable accommodation and means of subsistence while they are on or in transit to or from, any vessel or installation;
- (g) duties of persons to keep and produce records and to furnish information.

(3) Provision may also be made by regulations with respect to the notification of and the holding of public inquiries into accidents connected with pipe-lines; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in the exercise of that power may include provisions as to -

- (a) powers of entry and inspection for the purposes of an inquiry;
- (b) powers for such purposes of summoning witnesses to give evidence or produce documents, of taking evidence on oath and of administering oaths or requiring the making of declarations;
- (c) the making by the Governor of payments to a person holding an inquiry, to any assessor appointed to assist him and to any witness at an inquiry;
- (d) the persons by whom and the manner in which the costs of an inquiry, including the remuneration of a person holding the inquiry, are to be defrayed.

(4) The provision as to costs in pursuance of paragraph (d) of the preceding subsection may include -

- (a) provision for the payment of any costs out of money appropriated by the Legislative Council;
- (b) provision requiring any costs to be defrayed by any person who appears to the person holding the inquiry to be responsible in any degree for the accident in question by reason of any act or default of the first-mentioned person or of any servant or agent of his.

(5) References to a pipe-line in the preceding provisions of this section are to a controlled pipe-line.

## CHAPTER 3: SAFETY ZONES

*Establishment of safety zones*

30.(1) The Governor may, by Order made with the consent of the Secretary of State, provide that the following provisions of this section shall have effect, but otherwise they shall not have effect.

*Automatic  
establishment of  
safety zones.*

(2) Subject to subsection (1) and to subsections (4) and (5), there shall be a safety zone around any installation which, or part of which, is in the controlled waters if -

*(1987, c.12, s.21).*

(a) it is stationed there so that any of the activities mentioned in subsection (3) may be carried out on, from or by means of it, or

(b) it is being assembled at a station where it is to be used for such a purpose, or

(c) it remains or is being dismantled at a station where it has been used for such a purpose.

(3) The activities referred to in subsection (2) are -

(a) the exploitation or exploration of mineral resources in or under the shore or bed of the controlled waters;

(b) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored;

(c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters;

(d) the provision of accommodation for persons who work on or from an installation satisfying the condition in paragraph (a), (b) or (c) of subsection (2).

(4) Subsection (2) shall not apply to an installation in respect of which an order under section 31 has effect, or to one which -

(a) is connected with dry land by a permanent structure providing access at all times and for all purposes, or

(b) does not project above the sea at any state of the tide.

(5) The Governor may by Order made with the consent of the Secretary of State exclude any installation of any description from the operation of subsection (2), and may do so generally or by reference to specified activities or locations or in any other way.

(6) A safety zone established by subsection (2) shall extend to every point within 500 metres of any part of the installation (ignoring any moorings) and to every point in the water which is vertically above or below such a point.

(7) A safety zone established by subsection (2) may extend to waters outside the controlled waters.

31.(1) The Governor may by order made with the consent of the Secretary of State establish a safety zone around any installation which, or part of which, is stationed in the controlled waters, or is being assembled or dismantled in such waters. *Special orders.*  
(1987, c.12, s.22).

(2) The area of a safety zone established by an Order under this section shall be defined in the Order and may extend outside the controlled waters, but shall not extend to any point which would be outside a zone defined in accordance with subsection (6) of that section.

(3) An order under this section may be made in anticipation of an installation's arriving at its station, so as to come into force when it does so.

#### *Offences in relation to safety zones*

32.(1) Where by virtue of an Order under section 30 or 31 there is a safety zone around an installation, no vessel shall enter or remain in the zone except - *Safety zones: offences.*

(a) in the case of a safety zone established by an Order under section 31, in accordance with that Order; or *(1987, c.12, s.23).*

(b) in that or in any other case, in accordance with regulations made by the Governor.

(2) If a vessel enters or remains in a safety zone in contravention of subsection (1) then, subject to subsection (3), its owner and its master each commit an offence and are liable on conviction of that offence to a fine without limit.

(3) It is a defence for a person charged with an offence under this section to prove that the presence of the installation or the existence of the safety zone was not, and would not on reasonable enquiry have become, known to the master.

(4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person has also committed that offence and is liable to be proceeded against and punished accordingly.

(5) In this section, "vessel" includes a hovercraft, submersible apparatus (within the meaning of section 16(2) of the Merchant Shipping Act 1974) and an installation in transit; and "master" -

(a) in relation to a hovercraft, means the captain;

(b) in relation to submersible apparatus, means the person in charge of the apparatus;

(c) in relation to an installation in transit, means the person in charge of the transit operation.

33.(1) For the purposes of this Chapter -

*Safety zones: supplementary.*

(a) any floating structure or device maintained on a station by whatever means, and

(b) any apparatus or works treated as associated with a pipe or system of pipes by section 38 of this Ordinance (but not anything else within the definition of pipe-line in that section),

*(1987, c.12, s.24(1) and (3)).*

shall be taken to be an installation.

## (2) Sections 30 to 32 -

(a) so far as they apply to individuals apply to them whether or not they are British citizens or British dependent territories citizens; and

(b) so far as they apply to bodies corporate apply to them whether or not they are incorporated in the Falkland Islands.

## CHAPTER 4: GENERAL

*Provisions as to civil and criminal liability*

## 34.(1) This section has effect as respects -

*Civil liability  
for breach of statutory  
duty.*

(a) a duty imposed by any foregoing provision of this Part;

(b) a duty imposed on any person by any provision of regulations or other subsidiary legislation made under any or for the purpose of any preceding provision of this Part which expressly applies the provisions of this section.

*(1971, c.61, s.11).*

(2) Breach of any such duty shall be actionable so far, and only so far, as it causes personal injury, and references in section 1 of the Fatal Accidents Act 1846, as it applies in the Falkland Islands, to a wrongful act, neglect or default shall include references to any breach of a duty which is so actionable.

(3) Subsection (2) is without prejudice to any action which lies apart from the foregoing provision of this Part.

(4) Neither section 35, nor any defences afforded by regulations which afford, in respect of any description of offence created by those regulations, such defence as may be specified by those regulations, shall afford a defence in any civil proceedings, whether brought by virtue of this section or not.

(5) So far as the provisions of this section impose a liability on a concession owner, those provisions and the other provisions of this Part to which they relate shall bind the Crown, and accordingly, for the purposes of those provisions, and of any regulations or conditions having effect under those provisions, persons in the service of the Crown shall be taken to be employed whether or not they would be apart from this section, except that this subsection shall not give any right of action to a person as being a member of the armed forces of the Crown.

(6) Nothing in subsection (5) shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Ordinance.



35.(1) In proceedings for an offence under section 24, 25 or 26, it shall be a defence for the accused to prove -

*Special defence  
in criminal proceedings  
under sections 24, 25  
or 26.*

(a) that he used all due diligence to enforce the execution of Chapter 1, and of any relevant regulation made under Chapter 1; and

*(1971, c.61, s.9(3)).*

(b) that any relevant contravention was committed without his consent, connivance or default.

(2) Proceedings for any offence under Chapter 1 may be taken and the offence may for all incidental purposes be treated as having been committed in the Falkland Islands.

## CHAPTER 5: REPLACEMENT OR MODIFICATION OF FOREGOING

### *Provisions of this part*

36.(1) The Governor may, with the consent of the Secretary of State, by Order apply the provisions of the Offshore Safety Act 1992 to the Falkland Islands, with such modifications and exceptions as the Governor, with the consent of the Secretary of State, thinks fit, so that Part I of the Health and Safety at Work etc. Act 1974 applies to things and matters to which Chapters 1 to 4 of this Part relates as they do to the matters and things which, by virtue of its provisions, the Offshore Safety Act 1992 applies the said Part I of the Health and Safety at Work etc. Act 1974, but with such modifications and exceptions, in relation to the provisions of the said Part I of the Health and Safety at Work etc. Act 1974, as may be stated in such an Order.

*Application for  
certain purposes of  
Part I of the Health  
and Safety at work  
Act 1974.*

(2) The Governor may by an Order under this subsection -

(a) repeal or modify some or all of the provisions of Chapters 1 to 4 of this Part and any other provision of this Ordinance so far only as it relates to those provisions in such manner and to such extent as may appear to the Governor to be necessary or expedient; and

(b) apply all or any regulations made under section 15(1) of the Health and Safety at Work etc. Act 1974 (with such modifications and exceptions as may be stated in the Order) which apply to such things and matters as the Offshore Safety Act 1992 relates to the corresponding things or matters to which Chapters 1 to 4 of this Part relate (and, in particular, but without prejudice to the generality of the foregoing, the Governor may by such an Order apply with such modifications and exceptions as he thinks fit, the provisions of the Offshore Installations (Safety Case) Regulations 1992).

(3) For the purposes of this section and any Order under this section Chapters 1 to 4 of this Part, together with the provisions of Part VI of this Ordinance so far as they relate to powers to make regulations and or to offences under those Chapters shall be taken to correspond with the United Kingdom legislation mentioned in section 1(3) of the Offshore Safety Act 1992.

(4) Without prejudice to subsection (1), the Governor may by an Order under this subsection made with the consent of the Secretary of State apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 and any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in relation to -

- (a) oil refineries
- (b) pipe-lines within the wider definition given in subsection (5); and
- (c) gas (as defined in subsection (5));

and, if they are within the Falkland Islands, notwithstanding that they are not within the controlled waters and notwithstanding that (even if they are within the controlled waters) in the circumstances of the case, they would not fall within the provisions of Chapters 1 to 4 of this Part.

(5) For the purposes of subsection (4) and this subsection -

(a) "oil refinery" includes any installation for processing petroleum products (and for the purposes of this paragraph "petroleum products" means the following substances produced from or indirectly from crude, that is to say fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point));

(b) "pipe-line" (in substitution for the meaning referred to in section 2(1) of this Ordinance) means any pipe (together with any apparatus or works associated therewith) or a system of pipes designed or constructed or in fact used -

(i) for or in connection with the conveyance of any mineral or gas from or to or over upon in or under an offshore installation for from to an oil refinery or within an oil refinery

(ii) for or in connection with any offshore installation (and whether or not in connection with the conveyance of any mineral or gas);

(iii) for or in connection with the refining of petroleum products at any oil refinery or otherwise in an oil refinery (regardless of the purpose for which the pipe is designed or constructed or in fact used);

(but apparatus and works are, for the purposes of this paragraph to be treated as associated with a pipe, or system of pipes if and only if -

(aa) they are apparatus for inducing or facilitating the flow of any thing through the pipe or, as the case may be, through the system or any part thereof;

(bb) they are valves, value chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the pipe or system;

(cc) they are apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (aa) or of any such works as are mentioned in paragraph (bb);

(dd) they are apparatus for affording protection to the pipe or system; or

(ee) they are a structure for the exclusive support of a pipe or system); and

(c) "gas" means any gas derived from natural strata (including gas originating outside the Falkland Islands and the controlled waters), but does not include such gas in the course of supply (whether by pipes or otherwise) by a public utility or in containers in which it is intended to be supplied to members of the public or other retail consumers.

37.(1) If an Order has been or is about to be made under section 36, the Governor, with the consent of the Secretary of State, may -

*Supplementary  
to section 36.*

(a) enter into an agreement or arrangement with the Health and Safety Executive established by the Health and Safety at Work etc. Act 1974 for and relating to the exercise by the Executive on behalf the Crown in the Falkland Islands of the like functions in the application of Part I of that Act under section 36 as it has under that Part in the United Kingdom and the United Kingdom's continental shelf;

(b) make such Order as it appears necessary to him or expedient to make to give effect in the law of the Falkland Islands to any agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Health and Safety Executive in the performance of any functions under and by virtue of such an agreement or arrangement as is referred to in subsection (1), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except in so far as may be permitted by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

#### PART IV

#### SUBMARINE PIPE-LINES

##### *Interpretation*

38.(1) Except where the context otherwise requires, in this Part of this Ordinance "pipe-line" means a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system; and for the purposes of this Part of this Ordinance the following apparatus and works and no other shall be treated as associated with such a pipe or system -

*Interpretation  
of Part IV.*

*(1975, c. 74, s. 33).*

(a) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;

(b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;

(c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;

(d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding paragraphs;

(e) apparatus for the transmission of information for the operation of the pipe or system;

(f) apparatus for the cathodic protection of the pipe or system; and

(g) a structure used or to be used solely for the support of a part of the pipe or system.

and "controlled pipe-line" means so much of any pipe-line as is in, over or under controlled waters.

(2) The Governor may by Order under this subsection provide that a part of a pipe-line, specified in the Order shall be treated for the purposes of this Part of this Act, except this subsection, as a pipe-line.

(3) For the purposes of this Part of this Ordinance, "owner" in relation to a pipe-line and "proposed owner" in relation to a proposed pipe-line, mean the person designated for the time being as the owner of the pipe-line, or as the case may be as the proposed owner of the proposed pipe-line, by an Order made by the Governor, and an Order designating a person as the proposed owner of a proposed pipe-line may also contain provision for him to be designated as the owner of the pipe-line in question at a time designated by or under the Order, but the Governor -

(a) shall, before designating a person in pursuance of this subsection, give him an opportunity of being heard in respect of the matter; and

(b) shall, if a person designated in pursuance of this subsection requests the Governor in writing to cancel the designation, consider the request and, if the Governor considers it appropriate to do so, give that person an opportunity of being heard by a person appointed by the Governor in connection with the request.

(4) The Governor may by order revoke any order made in pursuance of subsection (2) or (3) of this section.

(5) Except where the context otherwise requires, in this Part of this Ordinance the following expressions have the following meanings -

"authorisation" means an authorisation required by section 39 of this Ordinance;

"construction", in relation to a pipe-line, includes placing and cognate expressions shall be construed accordingly;

"heard" means heard on behalf of the Governor by a person appointed by him for the purpose;

"holder", in relation to an authorisation, means the person to whom the authorisation was issued;

"pipe-line", in relation to an application for a works authorisation means the proposed pipe-line in respect of which the application is made; and

"works authorisation" means an authorisation for works for the construction of a pipe-line or for such works and for the use of the pipe-line.

(6) For the purposes of this Part of this Ordinance, works at any place in, under or over controlled waters for the purpose of determining whether the place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line are not works for the construction of a pipe-line.

(7) Any reference in this Part of this Ordinance to a contravention of a provision of that Part or of regulations made or directions given by virtue of the Part includes a reference to a failure to comply with that provision.

(8) Any reference in this Part of this Act, except this subsection, to that Part includes a reference to Schedule 3 to this Ordinance.

(9) This Part of this Ordinance, so far as it applies to individuals or bodies corporate, applies to them notwithstanding that they are not British citizens or British dependent territories citizens or, as the case may be, are not incorporated under the law of the Falkland Islands.

#### *Construction and use of pipe-lines*

39. No person shall execute in, under or over any controlled waters any works for the construction of a pipe-line, unless he is authorised by the Governor in writing to do so.

*Control of construction and use of pipe-lines in controlled waters.*  
(1975, c.74, s.20).

40.(1) The provisions of Part I of Schedule 3 to this Ordinance shall have effect with respect to applications for and notices of works authorisations, and the provisions of Part II of that Schedule shall have effect with respect to notice of other authorisations.

*Authorisations for pipe-lines.* (1975, c.74, s.21).

(2) The Governor shall not issue an authorisation except to a body corporate.

(3) An authorisation in respect of a controlled pipe-line may contain such terms as the Governor thinks appropriate including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms as to -

(a) the duration of the authorisation, including the method of ascertaining its duration;

(b) the persons or kinds of persons who are authorised to execute the works in question or to use the pipe-line or are so authorised if the Governor consents to the execution of the works or the use of the pipe-line by them;

(c) in the case of a works authorisation, the route of the pipe-line, the boundaries within which any works may be executed in pursuance of the authorisation, the design and capacity of the pipe-line or of part of it and the steps to be taken to avoid or reduce interference by the pipe-line with fishing or with other activities connected with the sea or the sea-bed and subsoil;

(d) the things authorised to be conveyed by the pipe-line;

(e) the steps to be taken for the purpose of ensuring that funds are available to discharge any liability for damage attributable to the release or escape of any thing from the pipe-line;

(f) the transactions relating to the pipe-line which are not to be entered into, and the other things relating to the pipe-line which are not to be done, without the consent of the Governor;

(g) the persons who may be permitted to acquire an interest in the pipe-line and who may not be permitted to retain such an interest;

(h) the operation of the pipe-line, including the methods by which it is to be operated and the person by whom it may be operated;

(i) the information to be furnished in respect of the pipe-line; and

(j) the giving by the Governor, with respect to the matters specified by the authorisation, of directions which shall have effect as terms of the authorisation.

(4) Except in a case where the Governor considers that there are special circumstances by reason of which the duration of an authorisation should be limited, the terms as to its duration which are included in an authorisation shall provide for its duration to be unlimited unless the authorisation ceases to be in force by virtue of the following provisions of this Part of this Ordinance.

(5) Where a works authorisation contains a term requiring that the capacity of the controlled pipe-line to which it relates or of any part of the pipe-line shall be greater than that proposed in the application for the authorisation or requiring that any of the route of the pipe-line shall be different from that so proposed then, subject to section 42(4) of this Ordinance, the Governor may serve on the holder of the authorisation, and on any other person who made representations to the Governor that the capacity proposed as aforesaid should be greater or that any of the route so proposed should be different, a notice -

(a) specifying the sums or the method of determining the sums which the Governor considers should be paid to the holder by the other person for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the term;

(b) requiring the other person to make, within the period specified in that behalf in the notice, arrangements which the Governor considers are appropriate for the purpose of securing that those sums will be paid to the holder if he constructs the pipe-line or a relevant part of it in accordance with the term or satisfies the Governor that he will so construct it;

(c) providing that the holder may, if such arrangements are not made by the other person within that period, elect in the manner specified in the notice that -

(i) the term shall have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the other person, and

(ii) the provisions included in the notice by virtue of the following paragraph shall cease to have effect; and

(d) authorising the holder, if he satisfies the Governor that the pipe-line or a relevant part of it has been or will be constructed in accordance with the term, to recover those sums from the other person.

41.(1) If in the case of a controlled pipe-line it appears to the Governor, on the application of a person other than the owner of the pipe-line -

*Compulsory increase in the capacity of pipe-lines.*

(a) that the capacity of the pipe-line can and should be increased by modifying apparatus and works associated with the pipe-line; or

*(1975, c.74, s.22).*

(b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line;

then, subject to section 42(5) of this Ordinance, the Governor may, after giving to the owner of the pipe-line an opportunity of being heard about the matter, serve on the owner and the applicant a notice -

(i) specifying the modification which the Governor considers should be made in consequence of the application;

(ii) specifying the sums or the method of determining the sums which the Governor considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modification;

(iii) requiring the applicant to make, within a period specified in that behalf in the notice, arrangements which the Governor considers appropriate for the purpose of securing that those sums will be paid to the owner if he carries out the modifications of satisfies the Governor that he will carry them out;

(iv) requiring the owner, if the applicant makes those arrangements within the period aforesaid, to carry out the modifications within a period specified in that behalf in the notice; and

(v) authorising the owner, if he satisfies the Governor that he has carried out or will carry out the modifications, to recover those sums from the applicant.

(2) References in the preceding subsection to modifications include, in the case of modification of any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.

(3) It is hereby declared that for the purposes of section 39 of this Ordinance a notice in pursuance of this section requiring a person to carry out modifications authorises him to carry out the modifications; but nothing in Schedule 3 to this Ordinance shall apply to such a notice.

42.(1) If a person applies to the Governor for a notice in pursuance of this section which secures to the applicant a right to have conveyed by a controlled pipe-line of which he is not the owner, quantities specified in the application of things which are of a kind so specified and which the pipe-line is designed to convey, the Governor shall consider the application and, before he considers it, to give to the owner of the pipe-line and the applicant -

*Acquisition by persons of rights to use pipe-lines belonging to others.*

*(1975 c.74, s.23).*

(a) notice that he proposes to consider it; and

(b) an opportunity, after the expiration of the period of twenty-one days beginning with the date of service of the notice, of being heard with respect to the application.

(2) Where after considering an application in pursuance of the preceding subsection the Governor is satisfied that, if he served notice in accordance with the following subsection in consequence of the application, the pipe-line in question could be operated in accordance with the notice without prejudicing the efficient operation of it for the purpose of conveying, on behalf of its owner, the quantities and qualities which the owner requires or may reasonably be expected to require of the things which may be conveyed by it in pursuance of an authorisation (or, if no authorisation for the use of the pipe-line is required by section 39 of this Ordinance, of the things which the pipe-line is designed to convey), the Governor may serve such a notice on the owner and the applicant.

(3) A notice served in pursuance of the preceding subsection may contain such provisions as the Governor considers appropriate for all or any of the following purposes, namely -

(a) for securing to the applicant, without prejudicing the efficient operation of the pipe-line for the purpose mentioned in subsection (2), the right to have conveyed by the pipe-line the quantities specified in the application of the things so specified;

(b) for securing that the exercise of the right is not prevented or impeded;

(c) for regulating the charges which may be made for the conveyance of things by virtue of the right;

(d) for securing to the applicant the right to have a pipe-line of his connected to the pipe-line by the applicant or the owner;

and such a notice may also authorise the owner to recover from the applicant payments by way of consideration for any such right of such amounts as may be specified in the notice or determined in accordance with provisions in that behalf contained in the notice.

(4) Where the Governor proposes to serve a notice in pursuance of subsection (5) of section 40 of this Ordinance on a person other than the holder of the relevant authorisation, he shall before doing so give that person an opportunity of making an application in pursuance of subsection (1) of this section in respect of the proposed pipe-line to which the authorisation relates; and subsections (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line and the owner of it there were substituted references to the proposed pipe-line and the proposed owner of it.

(5) Where the Governor proposes to serve a notice in pursuance of subsection (1) of the preceding section on a person other than the owner of the relevant pipe-line, it shall be his duty before doing so to give that person particulars of the modifications which he proposes to specify in the notice and an opportunity of making an application in pursuance of subsection (1) of this section in respect of the pipe-line; and subsection (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line there were substituted references to the pipe-line as it would be with those modifications.

(6) The use of a pipe-line by any person in accordance with a right secured to him by virtue of this section is not a contravention of section 39 of this Ordinance; but a person to whom a right is so secured shall not be entitled to assign the right to any other person.



43.(1) An authorisation shall cease to be in force -

*Termination  
of authorisations.*

(a) in the case of an authorisation which does not contain terms providing for its duration to be unlimited, on the expiration of the period of its duration as specified by or ascertained under the terms of the authorisation unless it has previously ceased to be in force by virtue of the following provisions of this subsection; or

*(1975, c.74, s.24).*

(b) if the holder and the Governor agree in writing that the authorisation, is to cease to be in force at a particular time during its currency, at that time; or

(c) if the Governor serves a notice on the holder in pursuance of -

(i) the duty imposed on the Governor by the following subsection, or

(ii) the provisions of subsection (4) of this section,

at the time specified in the notice.

(2) If it appears to the Governor that the execution of works authorised by a works authorisation (disregarding the execution of any of the works which he considers should be disregarded for the purposes of this subsection) has not been begun at the expiration of -

(a) the period of three years beginning with the date when the authorisation is expressed to come into force; or

(b) such longer period beginning with that date as the Governor has, on the application of the holder, specified in a notice served for the purposes of this paragraph on the holder during the said period of three years,

the Governor shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

(3) The Governor shall not serve notice in pursuance of an application made by virtue of paragraph (b) of the preceding subsection unless -

(a) he is satisfied that notice of the application has been served on -

(i) the persons on whom, in pursuance of Schedule 3 to this Ordinance, notice was served of the application in consequence of which the relevant authorisation was issued or on such of those persons as the Governor considers appropriate in the circumstances, and

(ii) such other persons, if any, as he considers appropriate in the circumstances; and

(b) he has considered any representations about the application made by virtue of the said paragraph (b) which were made to him in writing, during such a period as he considers reasonable, by any of the persons as to whom he is satisfied as mentioned in the preceding paragraph.

(4) If the Governor is of opinion, after giving the holder of an authorisation an opportunity of making representations in writing to him about the matter and considering any such representations then made by the holder, that the holder -

(a) has contravened a term of the authorisation; or

(b) has contravened any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance, was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the authorisation relates,

the Governor may serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice; but the Governor shall not serve such a notice on the holder in consequence of a contravention if the Governor considers that, having regard to the nature and consequences of the contravention and to any previous contravention, it would be unreasonable to terminate the authorisation in consequence of the contravention and that the holder has taken adequate steps to prevent similar contraventions in future.

44.(1) When an authorisation ceases to be in force the controlled pipe-line to which it relates shall, by virtue of this subsection, be transferred to and vest in the Crown free from encumbrances, except that nothing in this subsection prejudices any right conferred by a notice served in respect of the pipe-line in pursuance of section 42 of this Ordinance.

*Vesting of pipe-lines on termination or subsequent issue of authorisation.*

(2) Where the Governor proposes to issue an authorisation to any person in respect of a pipe-line vested in the Crown by virtue of subsection (1) he may agree with that person, on terms which may include provision for the making of payments by that person to the Governor, that the authorisation is to include a statement that this subsection applies to the authorisation; and where an authorisation includes such a statement the pipe-line to which the authorisation relates shall, by virtue of this subsection and at the time specified in that behalf in the authorisation, be transferred to and vest in the holder of the authorisation subject to any interest or right then subsisting in respect of the pipe-line by virtue of subsection (1).

*(1975, c.74, s.25).*

45.(1) Any person who -

(a) contravenes any provision of section 39 of this Ordinance; or

(b) contravenes any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the notice relates in a case where no authorisation for the use of the pipe-line is required by section 39 of this Ordinance; or

(c) makes a statement which he knows is false in a material particular, or recklessly makes a statement which is false in a material particular, for the purpose of inducing the Governor -

*Enforcement.*

*(1975, c.74, s.28).*

(i) to issue any authorisation; or

(ii) to agree in pursuance of section 43(1)(b) of this Ordinance that an authorisation is to cease to be in force; or

(iii) to specify a period in pursuance of section 43(2)(b) of this Ordinance; or

(iv) not to serve a notice in pursuance of section 43(4) of this Ordinance,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) If a person executes any works in contravention of section 39 of this Ordinance the Governor may at any time serve on him a notice requiring him to comply with one or both of the following requirements, namely -

(a) to remove such of the works as are specified in the notice as works to be removed;

(b) to take, in respect of such of the works as are specified in the notice as works which the Governor considers are unsafe, such steps as are specified in the notice as steps which the Governor considers are needed in order to make the works safe.

(3) It shall be the duty of the recipient of a notice in pursuance of the preceding subsection to comply with the notice within the period specified in that behalf in the notice; and if he fails to perform that duty the Governor may comply with the notice on his behalf and recover from him any expenses reasonably incurred in doing so.

(4) If a person executes any works in contravention of section 39 of this Ordinance and the Governor considers that it is urgently necessary to do such things in relation to the works as he could have required that person to do by a notice in pursuance of subsection (2) of this section, the Governor may do those things and recover from that person any expenses reasonably incurred in doing so.

(5) The fact that any thing is done or omitted -

(a) by the recipient of a notice served in pursuance of subsection (2) of this section for the purpose of complying with the notice; or

(b) by the Governor in pursuance of subsection (3) or (4) of this section,

shall not relieve him from liability for any damage which is attributable to the act or omission and for which he would have been liable had the act or omission not been authorised by this section; but the Governor shall be entitled to recover from the person who executed the works in question the amount of any damages which, in consequence of the works, are paid by the Governor by virtue of this subsection.

46.(1) Breach of a duty imposed on any person by a provision of regulations which are made in pursuance of this Part of this Ordinance and which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury; and references in section 1 of the Fatal Accidents Act 1846 to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

*Civil liability  
for breach of  
statutory duty.  
(1975, c. 74, s. 30).*

(2) Nothing in the preceding subsection prejudices any action which lies apart from the provisions of that subsection.

(3) A defence to a charge which is available by virtue of regulations made under this Ordinance in relation to any provision of this Part creating the offence charged shall not be a defence in any civil proceedings which are brought either in pursuance of this section or otherwise.

(4) For the purposes of subsection (1) of this section any such regulations as are mentioned in that subsection shall bind the Crown, and references in those regulations to employees shall for those purposes include persons in the service of the Crown.

## PART V

### ABANDONMENT OF OFFSHORE INSTALLATIONS

#### 47.(1) In this Part

*Interpretation  
of Part V.*

(a) "abandonment programme" has the meaning given by section 48;

*(1987, c.12, s.16)*

(b) "offshore installation" has the meaning given by section 2(1); and

(c) "submarine pipe-line" means a pipe-line within the meaning given by section 38(1) which is in, under or over the controlled waters.

#### (2) This Part applies -

(a) so far as it applies to individuals, applies to them whether or not they are British citizens or British dependent territories citizens.

(b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of the Falkland Islands.

(3) Any reference in any provision of this Part to a provision of this Ordinance includes a reference to any provision which, by virtue of any Order or regulation made or having effect by virtue of section 36, for the time being replaces that provision and where a provision of this Ordinance referred to in a subsequent provision of this Part has been modified by such or any such regulation the reference to it includes a reference to that provision as so modified.

#### 48.(1) The Governor may by written notice require -

*Preparation of  
programmes.*

(a) the person to whom the notice is given, or

*(1987, c.12, s.1)*

(b) where notices are given to more than one person, those persons jointly,

to submit to the Governor a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or submarine pipe-line (an "abandonment programme").

(2) A notice under subsection (1) shall either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Governor may direct.

(3) A notice under subsection (1) may require the person to whom it is given to carry out such consultations as may be specified in the notice before submitting an abandonment programme.

#### (4) An abandonment programme -

(d) a statement of any petroleum, water or workable seams of other minerals encountered in the course of the said operations; and

(e) a statement of all petroleum won and saved.

(2) Within two months of the end of each calendar year in which this Licence is in force and within two months after the expiration or determination of this Licence or any renewal thereof the Licensee shall furnish to the Governor an annual return in a form from time to time approved by the Governor of the operations conducted in the licensed area during that year or the period prior to such expiration or determination as the case may be together with a plan on a scale approved by the Governor showing the situation of all wells. The Licensee shall also indicate on the said plan all development and other works executed by him in connection with searching for, boring for or getting petroleum.

(3) The Licensee shall furnish the Governor with such information as the Governor may from time to time request about any aspect of activities of the Licensee which are attributable directly or indirectly to the grant of this Licence, except that the Licensee shall not by virtue of this paragraph be required to furnish information in respect of his activities in connection with any crude oil after he has appropriated it for refining by him.

29.(1) As far as reasonably practicable the Licensee shall correctly label and preserve for reference for a period of five years samples of the sea bed and of strata encountered in any well and samples of any petroleum or water discovered in any well in the licensed area.

*Licensee to keep samples.*

(2) The Licensee shall not dispose of any sample after the expiry of the said period of five years unless -

(a) the Licensee has at least six months from the date of the disposal given notice to the Governor of the Licensee's intention to dispose of the sample; and

(b) the Governor or any person authorised by him has not within the said period of six months informed the Licensee that he wishes the sample to be delivered to him.

(3) The Governor or any person authorised by him shall be entitled at any time -

(a) to inform the Licensee in writing that he wishes part of any sample preserved by the Licensee to be delivered to him; or

(b) to inspect and analyse any sample preserved by the Licensee.

(4) The Licensee shall forthwith comply with any request for the delivery of the whole or any part of any sample which is made in accordance with the preceding provisions of this clause.

30.(1) All records, returns, plans, maps, samples, accounts and information (in this clause referred to as "the specified data") which the Licensee is or may from time to time be required to furnish under the provisions of this Licence shall be supplied at the expense of the Licensee and shall not without the consent of the Licensee (which shall not be unreasonably withheld) be disclosed to any person not in the service or employment of the Crown.

*Reports to be treated as confidential.*

Provided that -

(3) The Governor may by written notice require a person appearing to the Governor to be within any of the paragraphs of subsection (1) or (2) to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice believes to be within any of those paragraphs in relation to the installation or pipe-line concerned.

(4) A person who without reasonable excuse fails to comply with a notice under subsection (3) commits an offence.

(5) For the purposes of this section, one company is associated with another if one of them controls the other or a third company controls both of them; and one company controls another if it possesses or is entitled to acquire -

(a) one half or more of the issued share capital of the company,

(b) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company,

(c) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders, or

(d) such rights as would, if the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders,

or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes.

(6) In determining whether, by virtue of subsection (5), one company controls another, the first-mentioned company shall be taken to possess -

(a) any rights and powers possessed by a person as nominee for it, and

(b) any rights and powers possessed by a company which it controls (including rights or powers which such a company would be taken to possess by virtue of this paragraph).

50.(1) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to an offshore installation to a person within paragraph (d) or (e) of section 49(1) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a), (b) or (c) to ensure that a satisfactory abandonment programme will be carried out.

*Section 48  
notices: supplementary  
provisions. (1987,  
c.12, s.3).*

(2) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to a submarine pipe-line to a person within paragraph (b) or (c) of section 49(2) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a) to ensure that a satisfactory abandonment programme will be carried out.

(3) Subsections (1) and (2) shall not apply if there has been a failure to comply with a notice under section 48(1) or if the Governor has rejected a programme submitted in compliance with such a notice.

(4) The Governor shall not give a notice to a person under section 48(1) without first giving him an opportunity to make written representations as to whether the notice should be given.

(5) Where the Governor has given notice under section 48(1) in relation to an installation or pipe-line, he may at any time before the programme required by it is submitted withdraw the notice or give (subject to the preceding provisions of this section) a further notice under section 48(1) (whether in substitution for or in addition to any notice already given); and if he does so he shall inform the recipients of any other notices which have been given in relation to that installation or pipe-line and not withdrawn.

(6) Neither the withdrawal of a notice given under section 48(1) nor the giving of a further notice shall relieve the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices).

51.(1) The Governor may either approve or reject a programme submitted to him under section 48.

*Approval of programmes.*

(2) If he approves a programme, the Governor may approve it with or without modifications and either subject to conditions or unconditionally.

*(1987, c.12, s.4).*

(3) Before approving a programme with modifications or subject to conditions, the Governor shall give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions.

(4) If he rejects a programme, the Governor shall inform the persons who submitted it of his reasons for doing so.

(5) The Governor shall act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

52.(1) If a notice under section 48(1) is not complied with, or if the Governor rejects a programme submitted in compliance with such a notice, the Governor may himself prepare an abandonment programme for the installation or pipe-line concerned.

*Failure to submit programmes.*

*(1987, c.12, s.5).*

(2) With a view to exercising his powers under subsection (1) of this section, the Governor may by written notice require any of the persons to whom notice was given under section 48(1) to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified.

(3) A person who without reasonable excuse fails to comply with a notice under subsection (2) commits an offence.

(4) The Governor may recover from any of the persons to whom a notice was given under section 48(1) any expenditure incurred by the Governor in preparing an abandonment programme under this section, and any fee that would have been payable on the submission of a programme by those persons.

(5) A person liable to pay any sum to the Governor by virtue of subsection (4) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(6) The rate of interest payable in accordance with subsection (5) shall be a rate determined by the Governor to be comparable with commercial rates.

(7) Where the Governor prepares an abandonment programme under this section, he shall inform the persons to whom notice was given under section 48(1) of its terms; and when he has done so, the following provisions of this Part of this Ordinance shall have effect as if the programme had been submitted by those persons and approved by the Governor.

53.(1) Where the Governor has approved a programme submitted to him under section 48 -

*Revision of  
programmes.*

(a) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject, and

*(1987, c. 12, s.6).*

(b) either he or any of those persons may propose that any person who by virtue of section 55 has a duty to secure that the programme is carried out shall cease to have that duty, or that a person who does not already have that duty shall have it (either in addition to or in substitution for another person).

(2) In the case of a proposal of the kind mentioned in subsection (1)(b), any person who would if the proposed change were made have a duty to secure that the programme is carried out must be a person who -

(a) if the programme relates to an offshore installation, is within paragraph (a), (b) (c), (d) or (e) of section 49(1) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the installation, and

(b) if the programme relates to a submarine pipe-line, is within paragraph (a), (b) or (c) of section 49(2) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the pipe-line.

(3) The Governor shall not propose that a person who is or has been within paragraph (d) or (e) (but no other paragraph) of section 49(1) or paragraph (b) or (c) (but not paragraph (a)) of section 49(2) shall have a duty to secure that a programme is carried out unless it appears to the Governor that a person already under that duty has failed or may fail to discharge it.

(4) A proposal under subsection (1) shall be made by written notice given -

(a) if the proposal is the Governor's to each of the persons by whom the programme was submitted, and

(b) in any other case, to the Governor;

and a person giving notice to the Governor shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.



(5) Where the Governor has made a proposal under subsection (1) (a), he shall give an opportunity to make written representations about it to each of the persons who submitted the programme.

(6) Where a proposal has been made under subsection (1)(b), the Governor shall give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made -

(a) have a duty to secure that the programme is carried out, or

(b) cease to have that duty.

(7) The Governor shall determine whether a change proposed under subsection (1) is to be made and shall then give notice of his determination, and of his reasons for it, to -

(a) every person who, before the determination was made, had a duty to secure the carrying out of the programme, and

(b) any person who has that duty as a result of the determination.

(8) Where the Governor determines that a change proposed in accordance with this section shall be made, this Part of this Ordinance shall thereafter have effect as if the programme had been approved by the Governor after being submitted under section 48 with the alterations, or as the case may be by the persons, specified in the determination.

54.(1) The Governor may at the request of one or more of the persons who submitted an abandonment programme withdraw his approval of the programme.

*Withdrawal of approval*

(2) If a request under subsection (1) is made by some but not all of the persons who submitted the programme, the Governor shall give the others an opportunity to make written representations as to whether his approval should be withdrawn.

*(1987, c. 12, s.7).*

(3) The Governor shall after determining whether to withdraw his approval of an abandonment programme give notice of his determination to each of the persons who submitted the programme.

55. Where an abandonment programme is approved by the Governor, it shall be the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with.

*Duty to carry out programmes.  
(1987, c. 12, s.8).*

56.(1) If an abandonment programme approved by the Governor is not carried out or a condition to which the approval is subject is not complied with, the Governor may by written notice require any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be so specified.

*Default in carrying out programmes.*

*(1987, c. 12, s.9).*

(2) A person who fails to comply with a notice given to him under subsection (1) commits an offence unless he proves that he exercised due diligence to avoid the failure.

(3) If a notice under subsection (1) is not complied with, the Governor may carry out the remedial action required by the notice, and may recover any expenditure incurred by him in doing so from the person to whom the notice was given.

(4) A person liable to pay any sum to the Governor by virtue of subsection (3) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(5) The rate of interest payable in accordance with subsection (4) shall be a rate determined by the Governor to be comparable with commercial rates.

57.(1) At any time after the Secretary of State has given a notice under section 48(1) to any person and before he has approved an abandonment programme for the installation or pipe-line concerned, he may by written notice require that person within such time as may be specified in the notice -

*Financial  
resources.*

*(1987, c.12, s.10).*

(a) to provide such information relating to the financial affairs of that person, and

(b) to supply copies of such documents relating to those affairs,

as may be so specified.

(2) In order to satisfy himself that a person who has a duty to secure that an abandonment programme is carried out will be capable of discharging that duty, the Governor may at any time by written notice require that person, within such time as may be specified in the notice -

(a) to provide such information, and

(b) to supply copies of such documents,

as may be so specified.

(3) A person who -

(a) without reasonable excuse fails to comply with a notice under subsection (1) or subsection (2), or

(b) in purported compliance with such a notice provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular,

commits an offence.

(4) If the Governor is not satisfied that a person will be capable of discharging the duty imposed on him by section 55, he may by written notice require that person to take such action as may be specified in the notice within such time as may be so specified.

(5) The Governor shall not give notice to a person under subsection (4) without first giving him an opportunity to make written representations as to whether the notice should be given.

(6) A person who fails to comply with a notice under subsection (4) commits an offence unless he proves that he exercised due diligence to avoid the failure.

58.(1) The Governor may make regulations relating to the abandonment of offshore installations and submarine pipe-lines.

*Regulations.*

*(1987, c.12, s.11).*

(2) Without prejudice to the generality of subsection (1), regulations under this section may -

- (a) prescribe standards and safety requirements in respect of the dismantling, removal and disposal of installations and pipe-line;
- (b) prescribe standards and safety requirements in respect of anything left in the water in cases where an installation or pipe-line is not wholly removed;
- (c) make provision for the prevention of pollution;
- (d) make provision for inspection, including provision as to the payment of the costs of inspection;
- (e) may make provision as to the determination of the amount of any fees that are payable to the Governor under this Part of this Ordinance.

(3) The provisions of subsection (2) are without prejudice to the general powers of the Governor in relation to regulations under this Ordinance provided in Part VI of this Ordinance.

59. A person who commits an offence under section 49, 52, 56 or 57 is liable on conviction of that offence to a fine without limit.

*Offences under  
Part V.  
(1987, c.12, s.12).*

60.(1) If any person is aggrieved by any of the acts of the Governor mentioned in subsection (2) and desires to question its validity on the ground that it was not within the powers of the Governor or that the relevant procedural requirements had not been complied with, he may within 42 days of the day on which the act was done make an application to the Supreme Court under this section.

*Validity of  
Governor's acts.  
(1987, c.12, s.14).*

(2) The acts referred to in subsection (1) are -

- (a) the giving of a notice under section 48(1);
- (b) the approval of a programme under section 51;
- (c) the rejection of a programme under section 51;
- (d) a determination under section 53;
- (e) a determination under section 54; and
- (f) the giving of a notice under section 57(4).

(3) If on an application under this section the Supreme Court is satisfied that the act in question was not within the powers of the Governor or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the Supreme Court may quash the act.

(4) Except as provided by this section, the validity of any of the acts of the Governor referred to in subsection (1) of this section shall not be questioned in any legal proceedings whatsoever.

(5) In this section "the relevant procedural requirements" -

(a) in relation to the giving of a notice under section 48(1), means the requirements of section 50(4);

(b) in relation to the approval of a programme under section 51, means the requirements of section 51(3);

(c) in relation to the rejection of a programme under section 51, means the requirements of section 51(4);

(d) in relation to a determination under section 53, means the requirements of section 53(5), (6) and (7);

(e) in relation to a determination under section 54, means the requirements of section 54(2); and

(f) in relation to the giving of a notice under section 57(4) means the requirements of section 57(5).

## PART VI

### MISCELLANEOUS AND GENERAL

#### *Gas*

61.(1) In this section -

*Liquefaction  
of natural gas*

(a) "offshore natural gas" means natural gas won under the authority of a licence granted under section 6 of this Ordinance, but does not include gas derived from offshore crude otherwise than as a by-product of crude stabilisation;

(cf. 1976, c.76,  
s.9).

(b) "offshore crude" means crude liquid petroleum won from any place in offshore waters and whether within the controlled waters or not;

(c) "crude stabilisation" means the treating of offshore crude to enable it to be safely stored or transported.

(2) The Governor's consent is required for offshore natural gas to be subjected in the Falkland Islands to any process of liquefaction which results in the production of liquid methane or ethane.

(3) The Governor's consent under subsection (2) may be given either with reference to particular cases or by an Order or Orders of general application made under this subsection.

(4) A specific consent given to any person under subsection (2) (that is to say a consent given to him otherwise than by an Order of general application) may be expressed

(a) to be irrevocable;

(b) to be revocable in the manner and in the circumstances specified in that consent

(c) may, subject to paragraph (b) (as to revocation) be expressed to be -

(i) so as to be valid for a period specified in that consent, or

(ii) so as to be valid indefinitely.

(5) A general consent (that is to say by Order of general application) may be granted in any manner in which by virtue of paragraphs (a) and (c) of subsection (2) a specific consent may be granted and, in relation to any person undertaking liquefaction of offshore natural gas pursuant thereto, shall be revocable in the manner and in the circumstances specified in the Order but, on the application of any person the Governor may by Order under this subsection provide that in respect of that person and in relation to such liquefaction of offshore natural gas at such place or site as is specified therein, the general consent shall be irrevocable or irrevocable for such period as is specified in that Order.

(6) The Governor by Order under this subsection may make such provision as to or related to -

(a) the construction, inspection and safety of operations at installations for the liquefaction of offshore natural gas;

(b) the health and safety at work of persons working at, or present at such installations, (which shall include power to apply with such modifications and exceptions as may be specified in such an Order Part I of the Health and Safety at Work etc. Act 1974 and any regulations made thereunder);

(c) the health and safety of persons living or working in the vicinity of any such installation;

(d) for the purpose of preventing or reducing the risk of accidental emission of methane or ethane into the atmosphere;

(e) for the protection of the environment (including flora or fauna) from damage by reason of the operation of any such installation;

(f) for imposing strict liability on the operator of any such installation as to such matters as may be specified therein,

as the Governor considers necessary or expedient, and any such Order may confer power upon the Governor to make regulations as to any matter as to which the Order could be made or for any purpose connected with the Order, including the creation of offences punishable in any manner specified in such regulations, in relation to the operation, construction and safety of such installations or as to the safety, health and welfare of persons working therein or living or working in the vicinity of such installations.

62.(1) In this section "gas" means gas -

(a) won under the authority of a licence granted under section 6; or

(b) derived from offshore crude (including gas derived as a product of crude stabilisation)

*Flaring of  
offshore natural  
gas.*

*(cf. 1976. c.76,  
s.12).*

(2) Subject to subsection (3) the consent of the Governor is required for gas to be disposed of (whether at source or elsewhere) by flaring or by releasing it unignited into the atmosphere.

(3) Disposal of offshore natural gas does not require consent under this section if -

- (a) it is permitted under the conditions of a licence granted under section 6;
- (b) it is of refinery tail gas produced in refining crude liquid petroleum (and "refining" does not, for the purposes of this subsection, include the treatment of crude for the sole purpose of enabling it to be safely stored or transported); or
- (c) it is necessary in order to comply with a requirement imposed under this Ordinance or any other enactment.

(4) The Governor's consent under this section -

- (a) may be given either with reference to a particular case or cases or by an Order under this subsection of general application;
- (b) may (whether given with reference to a particular case or cases or by Order of general application) be made subject to conditions which, without prejudice to the generality of the conditions which may be imposed, may be framed by reference to the quantities of offshore natural gas to be disposed of.

(5) A person who -

- (a) requires consent under this section for the disposal of gas by flaring or release into the atmosphere;
- (b) without such consent or in contravention of the conditions of a consent of a kind mentioned in subsection (4)

disposes of gas by flaring it or releasing it into the atmosphere, commits an offence unless by virtue of the regulations made under this subsection he is excused in the circumstances of the particular case.

(6) A person who commits an offence under subsection (5) is liable on conviction of that offence to a fine without limit.

*Planning permission*

63.(1) For the sake of avoidance of doubt it is hereby declared that nothing in -

*Saving in  
respect of  
planning law.*

- (a) any licence granted under section 6;
- (b) any licence granted under section 11;
- (c) any authorisation to which section 40 relates;
- (d) any approval under section 61 or section 62

shall have effect so as to excuse the person to whom it is granted or given or who for the time being has or shares (and whether directly or indirectly) the benefit of the licence, authorisation, approval or consent, from any obligation under or requirement of or made under the Planning Ordinance 1991 which, apart from that licence, authorisation approval or consent, would have been an obligation or requirement he would have been bound in law to comply with or to perform.

(2) Without prejudice to the generality of the meaning of the words "obligation under or requirement of or made under the Planning Ordinance 1991" those words include -

(a) any obligation to seek and obtain planning permission for development (within the meaning given by that Ordinance); and

(b) any obligation to comply with the conditions of any planning permission granted under that Ordinance.

64.(1) For the purposes of this section -

*Environmental  
impact assessments  
and environmental  
impact statements.*

(a) "an application" means an application to the Governor for any authority, dispensation, exemption, licence or permission for or in relation to any thing (including the exploration for or exploitation of any mineral and the abandonment or proposed abandonment of any offshore installation), any process (including the liquefaction of gas and the refining of petroleum) or works (including the enlargement or alteration of or of the capacity or capability of any offshore installation) which the Governor has authority to grant under any provision of this Ordinance or which is required under the conditions lawfully imposed by the Governor on the grant of any authority, dispensation, exemption, licence or permission which the Governor has granted under this Ordinance to any person and "applicant" has a corresponding meaning;

(b) "environment" includes -

(i) the environment of the controlled waters and its dependent or associated ecosystems;

(ii) the littoral and sub-littoral environment and its dependent or associated ecosystems;

(iii) the atmospheric environment;

(iv) the terrestrial environment in the Falkland Islands and its dependent or associated ecosystems and public amenity in relation to any persons residing in the Falkland Islands,

and without prejudice to the generality of the foregoing includes all matters related to marine, atmospheric or terrestrial pollution by any substance whatsoever and all matters mentioned in Schedule 4 as matters as to which information may be required in an environmental impact statement.

(c) "environmental impact assessment" means an assessment commissioned by the Governor under subsection (2);

(d) "environmental impact statement" means a statement prepared by or on behalf of the applicant pursuant to a requirement made by the Governor under subsection (3) and dealing with all, or such as the Governor may require of the matters mentioned in paragraph 2 of Schedule 4.

(2) The Governor may, if he considers that the environment might be substantially affected were he to grant an application, cause an environmental impact assessment to be prepared and submitted to him by such person or persons as the Governor directs and in relation to the likely adverse and beneficial effects upon the environment if the application were to be granted, and Schedule 4 shall have effect as to the matters to be dealt with by an environmental impact assessment.

(3) In the circumstances in which the Governor, if he sees fit, may under subsection (2) himself commission an environmental impact assessment, the Governor may additionally or instead by notice in writing served upon the applicant require the applicant to submit to the Governor an environmental impact statement.

(4) Subject to section 65(3) where the Governor has commissioned an environmental impact assessment under subsection (2) or required the applicant under subsection (3) to submit an environmental impact statement, the Governor shall defer consideration of the application in accordance with section 65(4).

(5) This section has effect without prejudice to any power of the Governor under any other provision of this Ordinance to require the applicant to furnish an environmental impact statement.

(6) Schedule 4 has effect as to the information which may be required to be contained in an environmental impact assessment or environmental impact statement.

65.(1) Whenever the Governor commissions an environmental impact assessment under section 64(2), the Governor shall -

*Provisions as to  
notifications in  
relation to  
environmental impact  
assessments and  
environmental impact  
statements.*

(a) notify the person or persons commissioned to prepare that assessment of -

- (i) the matters with which that assessment is to deal;
- (ii) the period of time (which shall not exceed three months) within which the assessment is to be delivered to the Governor; and
- (iii) of any other requirements the Governor sees fit to make in relation to the formal contents of the assessment;

(b) notify the applicant of -

- (i) the fact that he has commissioned an environmental impact assessment;
- (ii) the matters notified under sub-paragraphs (i), (ii) and (iii) of paragraph (a);

(c) publish a notice in the Gazette of -

- (iii) the application in relation to which he has commissioned it; and
- (iv) the matters notified under subparagraphs (i), (ii) and (iii) of paragraph (a).

(2) A notice to the applicant under section 64(3) shall -



- (a) state the reasons for the Governor requiring the environmental impact statement;
- (b) specify the matters with which the environmental impact statement shall deal and these may -

- (i) require the applicant to state the applicant's intentions as to the protection of the environment;

- (ii) require the applicant to state the likely beneficial or adverse impact in the applicants's view, if the proposed proposals the subject of the application were carried out; and

- (iii) require the applicant to state his proposals (if any) as to measures to be taken by the applicant or on the applicants behalf to prevent or lessen any adverse impact on the environment; and

- (iv) require the applicant to deal with the statement with any other matter mentioned in Schedule 6; and

- (v) state the period within which the statement if to be delivered to the Governor.

(3) The Governor shall not exercise his powers under section 64(3) so as to require the applicant to furnish an environmental impact statement if -

- (a) the applicant has furnished an environmental impact statement under section 33 of the Planning Ordinance 1991 in connection with an application for planning permission relating to the same or substantially the same matter; or

- (b) the applicant has voluntarily furnished an environmental impact statement with or in connection with his application,

but the Governor may treat an environmental impact statement so furnished by the applicant as if it had been furnished pursuant to a requirement made by the Governor under section 64(3).

(4) Whenever the Governor has commissioned an environmental impact assessment or required the applicant to furnish an environmental impact statement he shall not decide upon the application until he has considered the environmental impact assessment or environmental impact statement and any written representations the Governor has received in relation to them pursuant to section 66.

66.(1) Whenever the Governor receives an environmental impact assessment commissioned by him under section 64(2) he shall -

- (a) serve a copy of it upon the applicant;

- (b) notify the applicant that the applicant may within such period as is specified in the notification (not being less than 21 days) make written representations to the Governor in relation to the contents of and any recommendations contained in the environmental impact assessment,

*Further action  
in relation to  
environmental impact  
assessments and  
environmental impact  
statements.*

and the Governor shall not decide upon the application without having taken into account any written representations of the applicant made pursuant to that notification.

(2) Whenever the Governor receives an environmental impact statement from the applicant pursuant to a requirement under section 64(3) or pursuant to section 65(3) treats an environmental impact statement previously furnished by the applicant as if it had been furnished pursuant to such a requirement the Governor may, if he thinks fit, publish the environmental impact statement in such manner as he thinks fit and invite any person who wishes to do so to make within 21 days written representation to him in relation to the contents of the environmental impact statement and, in particular as to the applicant's intentions stated therein as to the protection of the environment.

(3) Whenever the Governor receives any written representations pursuant to subsection (2) of this section, he shall serve a copy of them upon the applicant and shall inform the applicant that he may make written representations to the Governor in reply within 14 days of such service and that the Governor will take any such written representations in reply into account in deciding upon the application.

67.(1) The Governor, when dealing with an application in relation to which the applicant has furnished an environmental impact statement (and whether pursuant to a requirement under section 71(3) or otherwise), may require the applicant to provide such further information as the Governor may specify concerning any matter which is required to be, or may be, dealt with in the environmental impact statement.

*Further  
information and  
evidence.*

(2) The Governor may in writing require an applicant to produce such evidence as he may reasonably call for to verify any information in the applicant's environmental impact statement.

(3) For the purposes of section 65(4) and 66(2), further information furnished pursuant to subsection (1) of this section and evidence furnished pursuant to subsection (2) of this section shall be treated as forming part of the applicant's environmental impact statement.

#### *Diving operations*

68.(1) The Governor may make regulations in relation to diving operations -

*Regulations as  
to diving operations.*

(a) carried on in the controlled waters in connection with pipe-lines or works associated with pipe-lines in the controlled waters;

(b) carried on in the controlled waters in or in connection with other offshore installations or proposed offshore installations.

(2) Subsection (1) has effect without prejudice to the exercise by the Governor of any other power under this Ordinance, which might have effect so as to enable him to make such regulations.

(3) The powers of the Governor under subsection (1) to make regulations include power by such regulations to apply, with modifications and exceptions specified in regulations so made -

(a) the Submarine Pipe-lines (Diving Operations) Regulations 1976; and

(b) the Diving Operations at Work Regulations 1981, as amended by the Diving Operations at Work (Amendment) Regulations 1992.

*General provisions in relation to offences*

69.(1) The Magistrate's Court and the Summary Court shall each have jurisdiction to try and determine all offences under this Ordinance. *Jurisdiction of the courts.*

(2) The Magistrate's Court on convicting a person of an offence under this Ordinance may sentence that person to pay a fine up to the maximum amount provided by this Ordinance in respect of that offence, but the Summary Court shall not on convicting a person of an offence under this Ordinance order him to pay a fine of an amount greater than -

(a) (subject to an Order under Subsection (3) of this section) £50,000; or

(b) the maximum fine provided by this Ordinance in respect of that offence, whichever be the less

(3) The Governor may by Order under this subsection substitute an increased sum for the sum of £50,000 appearing in paragraph (a) of subsection (2).

70.(1) All offences under this Ordinance shall be tried summarily.

*Procedure in respect of offences.*

(2) Subject to section 69 and section 72, the general law of the Falkland Islands in respect of the powers and procedure of the Magistrates' Court and of the Summary Court respectively in and in connection with the offences tried summarily shall apply in and in connection with proceedings in respect of offences under this Ordinance commenced in those courts.

71.(1) Any proceedings in respect of an offence under this Ordinance shall be commenced within three years from the date on which it is alleged to have been committed and if a court on trying an alleged offence is not satisfied that the offence was committed within the period of three years preceding the commencement of the proceedings, the court shall dismiss the proceedings. *Limitation on commencement of proceedings for offences.*

(2) For the purposes of subsection (1), proceedings shall be taken as having been commenced in respect of the accused in question on the date on which the complaint or information by or on behalf of the prosecutor alleging the offence by the accused was delivered to the court.

72.(1) Any provision of this Ordinance which provides that on conviction of an offence to which that provision relates the offender is to be liable to pay a fine without limit shall have effect so as to enable the convicting court, subject to subsection (2) and (3) of this section - *Fines without limit.*

(a) in the case of the Summary Court, to order the offender to pay a fine of an amount not exceeding the maximum amount which that court is by virtue of section 69(2) and (3) for the time empowered to order the offender to pay; and

(b) in the case of the Magistrate's Court, to order the offender to pay a fine of any amount it sees fit without any limitation on the maximum amount it may order the offender to pay by way of fine.

(2) Before ordering a person to pay a fine after convicting him of an offence under this Ordinance, the court shall inquire into and take into account the means of the offender to pay that fine, but if the offender refuses to furnish to the Court such information as to his means as the court may reasonably require or does not furnish that information within such reasonable period of time as the Court may order, the Court may order that person to pay such fine as if considers fit without regard to the preceding provisions of this subsection, but without prejudice to any power of the Court under any other law at any later time to reduce or remit that fine or any part of it upon the offender making application to it so to do and providing to the Court such evidence or information as to his means as the Court may reasonably require.

73. Where a body corporate has committed an offence under this Ordinance and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity he, as well as the body corporate, has committed that offence and shall be liable to be proceeded against and punished accordingly.

*Offences by  
bodies corporate:  
liability of  
directors and  
others.*

74.(1) No prosecution for an offence under this Ordinance shall be brought except by, or with the consent of, the Attorney General.

*Subsidiary  
legislation: general  
provisions.*

(2) Subsection (1) has effect without prejudice to section 3 of the Territorial Waters Jurisdiction Act 1878 (which in certain cases requires the leave and certificate of the Governor in relation to prosecutions for offences committed within the territorial sea), but subsection (1) has effect in addition to that section.

#### *Subsidiary legislation*

75.(1) Any power conferred by any provision of this Ordinance to make any subsidiary legislation ("that power") shall be construed as including power to any later time -

*Consent for  
prosecutions.*

(a) to revoke any subsidiary legislation made under that power or any provision of that subsidiary legislation;

(b) to replace any subsidiary made under that power with further subsidiary legislation made under that power; and

(c) where any subsidiary legislation is not wholly revoked, to amend, modify or augment any provisions of that subsidiary legislation not revoked by further subsidiary legislation made under that power,

but where a provision of this Ordinance provides that subsidiary legislation under it may only be made with the consent or approval of the Secretary of State, the like consent or approval is required in relation to any subsidiary legislation which does any of the things mentioned in paragraphs (a), (b) and (c) of this subsection.

(2) Where a provision of this Ordinance conferring power to make subsidiary legislation under it requires the consent or approval of the Secretary of State to the exercise of the power or to the provisions of the subsidiary legislation made under that power, and it is shown that subsidiary legislation was made under that power it shall be conclusively presumed that the required consent or approval was obtained before that subsidiary legislation was made.

(3) Any power conferred by this Ordinance to make any subsidiary legislation may be exercised -

(a) either in relation to all cases to which the power extends, or to all those cases subject to specified exception, or in relation to any specified case or classes of case; and

(b) so as to make, as respects the case in relation to which it is exercised -

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Ordinance;

(iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such incidental or supplemental provision in the orders or regulations as the Governor considers appropriate.

(4) Where any subsidiary legislation is expressed to be made under a particular provision of this Ordinance it shall be deemed also to be expressed to be made under any other provision of this Ordinance enabling it to be made.

(5) Any power contained in this Ordinance to make subsidiary legislation includes power by that subsidiary legislation to apply, with such modifications and exceptions as may be specified in that subsidiary legislation, the provisions of any statutory instrument made under any provision of any United Kingdom enactment corresponding to the provision of this Ordinance under which the subsidiary legislation is made.

76.(1) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by subsidiary legislation made under that power to provide by any provision of that legislation that a contravention of such provision or provisions of that subsidiary legislation as is or are specified by the first mentioned provision shall constitute an offence punishable by such fine, not exceeding £100,000, as is specified in relation to that contravention.

*Subsidiary legislation: creation of offences: provisions imposing civil liability.*

(2) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by any subsidiary legislation made under that power to provide that a person contravening such of its provisions as are specified by any provision of that subsidiary legislation shall be civilly liable to any person suffering loss by reason of that contravention.

77.(1) Any subsidiary legislation made under this Ordinance may prescribe forms to be used for the purposes specified in that subsidiary legislation and may prescribe fees of such amount as are therein specified and in or in connection with the matters mentioned in the subsidiary legislation.

*Forms, fees and costs.*

(20) Any subsidiary legislation providing for a public or other inquiry to be held into any matter may confer power upon the person or persons appointed to conduct that inquiry to order such person or persons as he or they think fit to pay such sum as he or they think fit or limited as may be specified therein in relation to the costs of conducting the inquiry (including the costs relating to the representation of other persons at or in relation to the inquiry) and may provide for the enforcement of any such order.

#### *Payments under this Ordinance*

78.(1) All payments made to the Governor under any provision of this Ordinance shall be paid into the Consolidated Fund.

*Payments to and by Governor.*

(2) All payments made by the Governor under any provision of this Ordinance shall be paid out of the Consolidated Fund.

(3) Where, by virtue of any provision of this Ordinance, the Governor is under an obligation to make a payment to any person, the amount of that payment, if not provided for by an Appropriation Ordinance, is charged upon the Consolidated Fund.

#### *Notices*

79.(1) Any notice or other communication authorised or required to be given by any provision of this Ordinance may be sent -

*Notices.*

(a) by post;

(b) or by electronic mail (including telephonic facsimile transmission); or

(c) delivered to the addressee;

(2) In the case of any notice or other communication sent by post within the Falkland Islands by any person to an addressee in the Falkland Island, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the third business day following the day on which it is proved to have been posted.

(3) In the case of any notice or other communication sent by post where either the sender or the addressee are not within the Falkland Islands, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the tenth business day following the day on which it is proved to have been posted.

(4) In the case of any notice or other communication sent by electronic mail, it shall be deemed to have been received at nine in the morning on the business day following the day on which it is proved to have been received by the addressee's receiving equipment or, if earlier acknowledged by or on behalf of the addressee, at the time on the day the sender of the notice or communication received the acknowledgment.

(5) Where under the provisions of section 80(1)(a) or of regulations made under section 80(1)(b) an agent has been appointed and a notice or other communication has been posted, sent by electronic mail or delivered to that agent on account or in respect of the person appointing him pursuant to that section, that person shall be deemed to have received that notice or communication at the same time as he would, in accordance with the foregoing provisions of this section be taken to have received it if he himself were the agent he has appointed.

80.(1) The Governor may -

*Appointment of  
person to receive  
notices.*

(a) by a condition of a licence under 6; or

(b) by regulations under this section,

require any licensee who is not

(i) a living person ordinarily resident in the Falkland Islands;

(ii) a company incorporated under the laws of the Falkland Islands; or

(iii) a company registered under Part X of the Companies Act 1948 in its application to the Falkland Islands (foreign or overseas company to register and appoint agents for the service of process),

to appoint a person of a kind mentioned in sub-paragraph (i) as or its agent and so often as may be necessary to appoint another person in place of a person so appointed

(2) Where a company has -

(a) pursuant to Part X of the Companies Act 1948;

(b) pursuant to a condition of a licence under section 6; or

(c) pursuant to regulations made under subsection (1) of this section,

appointed a person for the purpose of accepting or receiving service of any notice or proceedings which might otherwise have been given to or served upon the licensee, any notice or communication under this Ordinance or process civil or criminal shall for all purposes be taken to have been duly served or given to the licensee if it is shown to have to have been served upon or given to the person appointed as mentioned in this subsection.

*Repeal and saving*

81.(1) Subject to subsection (2) of this section, the Continental Shelf Ordinance 1991 is repealed.

*Repeal of the  
Continental Shelf  
Ordinance 1991:  
saving as to  
regulations.*

(2) Notwithstanding the repeal of the Continental Shelf Ordinance 1991, the Petroleum Survey (Model Clauses) Regulations 1992 (which were made under that Ordinance) shall continue to have effect as if they had been made under section 7 of this Ordinance.

**SCHEDULE 1 (Section 14)**

**STRICT LIABILITY FOR CERTAIN LOSS OR DAMAGE ETC**

1. Subject to subsequent paragraphs of this Schedule, an operator shall be strictly liable (that is to say liable in law without proof of negligence on his part being necessary so as to establish his liability) for -

(a) damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems arising from exploration or exploitation of minerals in the controlled waters, including payment in the event that there has been no restoration of the *status quo ante*;

(b) loss or impairment of an established use referred to in paragraph 7 of this Schedule and arising directly out of damage described in sub-paragraph (a) of this paragraph;

(c) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in sub-paragraph (a) of this paragraph;

(d) reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment and clean up and removal measures, and action taken to restore the *statue quo ante* where exploration for or exploitation of minerals undertaken by the operator in the controlled waters result in or threaten to result in damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems.

2. An operator is not liable pursuant to paragraph 1 of this Schedule if the operator proves that the damage has been caused by (but only to the extent that the operator shows that it has been caused directly by) -

(a) an event constituting in all the circumstances of the controlled waters a natural disaster of an exceptional character which could not have been foreseen; or

(b) armed conflict or an act of terrorism directed against the activities of the operator and against no reasonable precautionary measures could have been effective.



3. If an operator proves that the damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, the operator is thereby relieved from its obligation by virtue of paragraph 1 of this Schedule to pay compensation in respect of the damage suffered by that party (but this paragraph does not affect any liability of the operator to pay compensation arising other than by virtue of paragraph 1 of this schedule.

4. Where compensation has been paid or is payable otherwise than by virtue of paragraph 1 of this schedule the operator shall be entitled to set-off against -

(a) any liability to pay compensation under paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation under any liability arising other than by virtue of paragraph 1 of this schedule;

(b) any liability to pay compensation otherwise than by virtue of paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation by virtue of paragraph 1 of this Schedule, but only if, and to the extent that, the earlier payment of compensation was in respect of the same damage.

5. Where more than one operator is liable to pay compensation by virtue of paragraph 1 to any party claiming compensation, subject to this Schedule, every operator is jointly and severally liable so to do but each operator is entitled to set-off against his own liability the amount of any compensation already paid by another operator in respect of the same damage to the same claiming party.

6. In this Schedule, "damage to the environment of the controlled waters or of the Falkland Islands" means any impact on the living or non-living components of the environment of the controlled waters or of the Falkland Islands or the ecosystems of the controlled waters or the Falkland Islands and includes harm to atmospheric, marine or terrestrial life, provided always that damage which, in all the circumstances, ought on any reasonable view to be regarded as negligible shall be deemed to be excluded from the foregoing definition.

7. The established uses referred to in sub-paragraph (b) or paragraph 1 are -

(a) the conservation, including rational use, of living resources of the controlled waters or of the Falkland Islands, and whether those living resources are marine, terrestrial or amphibious;

(b) tourism; and

(c) navigation and aviation.

8. Nothing in this Schedule shall have effect so as to relieve any operator of any liability in law he would have had if this Schedule had not been enacted.

*Protection of officers*

8. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Ordinance if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

**SCHEDULE 2 (Section 27(3))**

**SUBJECT MATTER OF REGULATIONS**

1.(1) Measures to ensure the safety of the installation, and of any other structures associated with the operations carried out from the installation.

(2) Measures to ensure safety when an installation or any part of an installation is being assembled or dismantled in the sea or other waters.

2. The movement of, and precautions to be taken by, vessels, aircraft and hovercraft in the neighbourhood of offshore installations.

3. Provisions as to the manner in which or occasions on which any operation or work is to be or may be carried out, or as to the safety or suitability of any place where it is carried out.

4.(1) Provisions as to the equipment, facilities or materials which are to be or may be supplied or used, whether the provision has reference to sufficiency, to suitability, to safety during use or while not in use, or to any other matter.

(2) The application of -

(a) the Anchors and Chain Cables Act 1967,

(b) the Employers' Liability (Compulsory Insurance) Act 1969,

subject to such modifications or extensions as may be prescribed by the regulations.

(3) Any provision corresponding to anything in the Acts mentioned in sub-paragraph (2) above.

5.(1) Limits on hours of employment in any specified operation or in any specified circumstances.

(2) The employment at installations of persons who are under the age of eighteen, or who have not received the prescribed instruction or training.

**6. Training.**

**7. Emergency equipment and emergency procedures.**

8.(1) Accidents, injuries and disease.

(2) Medical treatment and medical stores.

(3) Accommodation, provisioning and water.

*Inspectors and inquiries*

9. Powers and duties to be exercised by, and facilities to be accorded to, inspectors appointed by the Governor under section 27(4), and other persons acting at the direction of the Governor, and in particular -

- (a) powers to board, and to obtain access to all parts of, any offshore installation, to obtain information and to inspect and take copies from any log book or other document,
- (b) powers to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment,
- (c) powers to require, in connection with the survey or inspection of any installation, part of an installation or equipment, the carrying out of procedures and the conduct of tests by such person as may be prescribed by the regulations,
- (d) rights to require conveyance to and from any offshore installation, including conveyance of any equipment required by an inspector for testing, or any equipment of which he has taken possession in special circumstances,
- (e) duties to provide inspectors and others with reasonable accommodation and means of subsistence while on any offshore installation,
- (f) any powers exercisable in case of immediate or apprehended danger.

10.(1) Casualties or other accidents involving loss of life or danger to life, and in particular -

- (a) the making of special reports by inspectors, and
- (b) the holding of public inquiries.

(2) In the case of any public inquiry held in pursuance of regulations under the provisions referred to in paragraph 9 -

- (a) conferring on the person holding the inquiry, and any person assisting him in the inquiry, powers of entry and inspection,
- (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents,
- (c) powers to take evidence on oath and administer oaths or require the making of declarations,
- (d) authorising the Secretary of State to make payments to the person holding the inquiry to any assessor appointed to assist him and to witnesses summoned to the inquiry,
- (e) as to the persons by whom, and the manner in which, costs of any such inquiry, including the remuneration of the persons holding the inquiry, are to be defrayed.

(3) The provision as respects costs under sub-paragraph (2)(e) of this paragraph may include -

(a) provision for the treatment of any such costs as expenses of the Governor under this Ordinance -

(b) provision requiring any such costs to be defrayed by any person who appears to the person or persons holding the inquiry to be by reason of any act of default on his part or on the part of any servant or agent of his, responsible in any degree for the occurrence of the accident.

*Supplemental*

11.(1) The keeping of an official log book, and of other records.

(2) The creation of any right to inspect, or take extracts from, any such records, and the admissibility in evidence of, or of certified extracts of, any such records.

12. The making of returns and the giving of information, and in particular the making of returns to the Registrar General of Shipping and Seamen of deaths, including presumed deaths; and the duties of the Registrar General as respects such returns.

13. The display and posting of copies of, or of digests of, sections 22 to 29 of this Ordinance and regulations made under sections 23, 24, 25 and 27 of this Ordinance.

14. The punishment of forgery or falsification of documents, and of other offences as respects forged or falsified documents, where the documents are, or purport to be, made under the purposes of the regulations.

15. The regulations may, in prescribing standards of safety, or in imposing other requirements, refer to, and make obligations depend on, the provisions of any recognised industrial code of practice for the time being in force.

**SCHEDULE 3 (Section 40(1), 41(3) and 43(3))**

**AUTHORISATION IN PURSUANCE OF SECTION 40(1)**

**PART I**

**WORKS AUTHORISATIONS**

1. Provision may be made by regulations as to the manner in which an application for a works authorisation is to be made and to the information to be included or furnished in connection with an application; and, without prejudice to the generality of the power to make regulations conferred by the preceding provisions of this paragraph, regulations in pursuance of this paragraph may require the payment of fees in connection with an application.

2. On receiving an application for a works authorisation, the Governor shall -

(a) decide whether the application is to be considered further or rejected;

(b) serve notice of his decision on the applicant and -

(i) if the Governor has decided that the application is to be considered further, he shall in that notice give to the applicant such directions as the Governor, for the purposes of paragraph 3 of this Schedule, considers appropriate, but

(ii) if the Governor has decided to reject the application, he shall in that notice include a statement of his reasons for doing so unless, having consulted the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state the reasons for the rejection of the application (and, that in case, the notice shall state that the Governor is of that view).

3. If the Governor has, in pursuance of paragraph 2 of this Schedule notified the applicant that the application is to be considered further, the applicant shall, in compliance with the directions of the Governor contained in that notice -

(a) publish in such manner as the Governor has directed in that notice, a notice which -

(i) contains such particulars of the applicant as the Governor has so directed;

(ii) states that representations with respect to the application may be made to the Governor within the period of 28 days beginning with the date of the first publication of the notice or within such longer period as the Governor may have directed in his notice to the applicant;

(iii) states where the map mentioned in sub-paragraph (b) of this paragraph may be inspected during the period within which written representations to the Governor may be made;

(b) secure that a map of such scale and containing such particulars as the Governor has directed in the notice to the applicant may be inspected by the public, free of charge between the hours of 10.00 a.m. to 4.00 p.m. on each day (Saturdays, Sundays and public holidays in the relevant place being excluded) and

(c) serve a copy of the notice (together, if the Governor has so directed, with a copy of the map) on such persons, if any, as the Governor has directed; and, in any case

(d) send a copy of the notice so published, together with a copy of the map, to the Governor,

and the Governor shall not further consider the application until -

(i) he is satisfied that the applicant has complied with sub-paragraphs (a), (b), (c) and (d) of this paragraph, and

(ii) the period for written representations to be made to the Governor, specified in the applicant's notice in accordance with sub-paragraph (b) (ii) of this paragraph, has expired.

4. Where the Governor has decided that an application for a works authorisation is to be considered further and is of opinion either -

(i) of his own initiative (except in relation to the purpose mentioned in paragraph 6(b) of this Schedule), or

(ii) in consequence of written representations made to him by the applicant or by any other person -

(a) that the route proposed for the pipe-line or part of it in the application should be altered in a particular manner for any of the purposes mentioned in paragraph 6 of this Schedule; or

(b) that the capacity proposed for the pipe-line or part of it in the application should be increased for any of the purposes mentioned in sub-paragraphs (b) to (e) of paragraph 6 to this Schedule,

the Governor shall, before deciding whether to issue an authorisation in consequence of the authorisation, serve notice of his opinion on the applicant and, where the opinion relates to an alteration of the route proposed for the pipe-line or part of it, on any persons whom the Governor considers are likely to be affected by the alteration or any person appearing to the Governor to represent such persons.

5. Where, in pursuance of paragraph 4 of this Schedule, the Governor serves notice of his opinion on any person, the Governor shall -

(a) where the notice is served on the applicant, give to the applicant an opportunity of being heard with respect to that opinion; and

(b) where the notice is served on any other person, state in that notice that representations in writing with respect to that opinion may be made to the Governor within a period which shall be stated in that notice,

and where a person is heard in pursuance of sub-paragraph (a) of this paragraph -

(i) the hearing shall be by a person or persons appointed by the Governor for the purpose of conducting the hearing and of reporting to the Governor or thereon; and

(ii) the Governor may give to such other persons as he thinks fit, if any, an opportunity to be heard at the hearing.

6. The purposes referred to in paragraph 4 of this Schedule are -

(a) the avoidance or reduction of danger to -

(i) navigation;

(ii) persons engaged in fishing;

(iii) vessels and equipment used for fishing;

(iv) some structure or equipment (which may be the pipe-line); or

(v) marine (including littoral) flora or fauna;

(b) where it appears to the Governor that persons other than the applicant wish to use the pipe-line, the facilitation of the use of the pipe-line by such persons;

(c) the avoidance or reduction of interference with -

(i) fishing;

(ii) exploration for or exploitation of mineral resources in the controlled waters or the sea-bed or subsoil thereof;

(iii) any other legitimate use of the controlled waters or the sea-bed or subsoil thereof;

(d) the international obligations of or relating to the Falkland Islands,

(e) any other purpose which the Governor considers proper,

and the Governor shall state the reasons for his opinion in any notice of his opinion served in pursuance of paragraph 4 of this Schedule, except that the Governor is not obliged to state any reason for his opinion which, after consultation with the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state.

**7. When the Governor -**

(a) is satisfied that the applicant for a works authorisation has complied with his obligation under paragraph 3 of this Schedule;

(b) has considered any representations relating to the application which were made to the Governor within the period specified in the notice published in accordance with sub-paragraph (a) of paragraph 3 to this Schedule (and, where a hearing has taken place in accordance with paragraph 5, conducted by a person or persons appointed by the Governor to receive oral representations, has also considered the report with relation thereto of the person or persons so appointed)

the Governor shall -

(i) decide whether to issue an authorisation; and

(ii) publish his decision in accordance with paragraph 8.

**8.(1) Where the Governor has decided not to issue a works authorisation -**

(a) the Governor shall serve a notice stating his decision on the applicant and on each person upon whom he directed a copy of the notice of the application to be served; and

(b) in the notice to the applicant stating his decision, the Governor shall also state the reason for it, except that the Governor need not state any reason which, after consultation with the Secretary of State and acting in accordance with his advice, he considers if would be contrary to the national interest to state.

**(2) Where the Governor has decided to issue a works authorisation -**

(a) the Governor shall serve a notice stating his decision -

(i) on the applicant, and

(ii) on each person who made representations to which sub-paragraph (b) of paragraph 8 of this Schedule relates;

(b) the Governor shall publish a copy of the notice in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

**9. When the Governor issues a works authorisation he shall -**

(a) serve on the persons (excepting the applicant) on whom notice of his decision to issue a works authorisation is required to be served by paragraph 8(2) of this Schedule, a further notice -

(i) stating that he has issued the authorisation;

(ii) stating the name and address of the person to whom it was issued;



(iii) stating such particulars as the Governor considers appropriate of the route of the pipe-line, the authorised capacity of it, the things authorised to be conveyed by it and the persons authorised to use it, and

(iv) containing such other information about the pipe-line (if any) as the Governor considers appropriate; and

(b) publish a copy of the notice served in pursuance of sub-paragraph (a) of this paragraph in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

## PART II

### OTHER AUTHORISATIONS

10. When the Governor issues an authorisation other than a works authorisation he shall publish in the Gazette and in any other publications (including the London Gazette) he considers appropriate a notice -

(a) stating that the authorisation has been issued;

(b) stating the name and address of the person to whom it has been issued; and

(c) containing such other information (if any) about the pipe-line as the Governor considers appropriate.

### SCHEDULE 4 (Section 64(6))

#### ENVIRONMENTAL IMPACT ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

1. An environmental impact assessment or statement comprises a document or series of documents providing, so as to assist the Governor to assess the likely impact upon the environment of the development proposed to be carried out, the information specified in paragraph 2 of this Schedule ("the specified information").

2. The specified information is -

(a) a description of the development proposed comprising information about the site or location and the design and size or scale of the development;

(b) the data necessary to identify and assess the main effects which the development is likely to have on the environment;

(c) a description of the likely significant effect, direct and indirect, on the environment of the development, explained by reference to its possible impact on such of the following as, in the circumstances of the case, are relevant -

human beings;  
 flora (marine and terrestrial);  
 fauna (marine and terrestrial);  
 the seabed and subsoil;  
 the soil;  
 water (salt or fresh);  
 the atmosphere and the quality of the air;  
 climate;  
 the seascape or landscape;  
 the inter-action between any of the foregoing;  
 material assets;  
 the cultural heritage;

(d) where significant effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and

(e) a summary in non-technical language of the information specified above.

3. An environmental impact assessment or statement may (and if the Governor so requires shall) include by way of explanation or amplification of any specified information, further information on any of the following matters -

(a) the physical characteristics of the proposed development, and the land-use requirements during the construction stage;

(b) the main characteristics of the production processes proposed, including the nature and quality of the materials to be used;

(c) the estimated type and quantity of any expected residues and emissions (including pollutants of water, air or soil and "greenhouse gases", and including noise, vibration, light heat and radiation) resulting from the proposed development when in operation;

(d) in the case of an environmental impact statement (in outline) the main alternatives (if any) studied by the applicant and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;

(e) the likely significant direct and indirect effects on the environment of the development proposed, which may result from -

(i) the use of natural resources;

(ii) any emission of pollutants, creation of nuisances, or elimination of waste;

(f) the forecasting methods used to assess any effect on the environment about which information is given under sub-paragraph (e); and

(g) any difficulties, such as technical deficiencies or lack of know-how, encountered in compiling any specified information,

and for the purposes of sub-paragraph (e) of this paragraph, "effects" includes secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

4. Where further information is included in an environmental statement pursuant to paragraph 3 above, a non-technical summary of that information shall also be provided.





**THE  
FALKLAND ISLANDS GAZETTE  
Supplement  
PUBLISHED BY AUTHORITY**

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*Vol. 5*

*22nd AUGUST 1994*

*No. 16*

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**NOTICE**

The following is published in this Supplement —

**Proclamation No. 1 of 1994.**

**PROCLAMATION**

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No: 1 of 1994

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**IN THE NAME OF HER MAJESTY ELIZABETH II**, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith;

By **HIS HONOUR RONALD SAMPSON ESQUIRE**, the person designated in accordance with law to perform the functions of the office of Governor of the Falkland Islands during the present absence therefrom of **HIS EXCELLENCY DAVID EVERARD TATHAM ESQUIRE, COMPANION OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE**, Governor of the Falkland Islands,

**WHEREAS** Section 3 of Proclamation No: 2 of 1990 provides for the variation of the outer limits of the outer fishery conservation zone (hereinafter referred to as "the outer zone"),

**AND WHEREAS** there is a need to make further provision for the protection and preservation of the marine environment in the seas around the Falkland Islands in accordance with international law,

**NOW THEREFORE I, RONALD SAMPSON**, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do **HEREBY PROCLAIM** as follows:

1. The outer limits of the outer zone are hereby varied by the substitution of the lines defined in the Schedule to this Proclamation for the lines defined in the Schedule to Proclamation No: 2 of 1990.
2. In regard to the interim fishery conservation and management zone and the outer zone, Her Majesty will exercise jurisdiction in accordance with the rules of international law over the protection and preservation of the marine environment, subject to such provision as may hereafter be made by law for those matters.
3. This Proclamation will become effective on 1st September 1994.

**GIVEN** under my hand and the Public Seal of the Falkland Islands this 22nd day of August in the year of Our Lord One Thousand Nine Hundred and Ninety Four.

**R. SAMPSON**  
*Acting Governor*



**GOD SAVE THE QUEEN**

## SCHEDULE

The outer zone is bounded by lines of the type described in Column 2 joining the points defined to the nearest minute of arc by co-ordinates of latitude and longitude on WGS 72 Datum specified in Column 1.

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Column 1  
Co-ordinates of Latitude  
and Longitude

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Column 2  
Line Type

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1.	47° 42' S	60° 45' W	1-2	Meridian
2.	48° 20' S	60° 45' W	2-3	Rhumb line
3.	49° 00' S	60° 56' W	3-4	Rhumb line
4.	49° 26' S	61° 14' W	4-5	Arc of circle which has radius of 150 nautical miles and its centre at Latitude 51° 40' S, Longitude 59° 30' W drawn clockwise
5.	54° 02' S	58° 13' W	5-6	Rhumb line
6.	54° 38' S	58° 02' W	6-7	Meridian
7.	55° 30' S	58° 02' W	7-8	Rhumb line
8.	56° 14' S	58° 31' W	8-9	A line drawn anti-clockwise 200 nautical miles from the nearest points on the baseline of the territorial sea of the Falkland Islands
9.	47° 42' S	60° 45' W		

# ANNOUNCEMENT

THE GOVERNMENT OF THE FALKLAND ISLANDS has the pleasure to announce that the following persons have been appointed to the various offices of the Public Service.

Mr. J. H. B. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].

Mr. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].

Mr. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].

Mr. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].

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Mr. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].

Mr. [Name] has been appointed to the office of [Title] and will be responsible for the [Department].





# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*26th AUGUST 1994*

*No. 17*

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The following are published in this Supplement —

**Notice: Public Health Ordinance - Medical etc. Charges;**

**The Dogs (Amendment) Rules 1994, (S.R. & O. No. 8 of 1994);**

**Stanley Common (Commonage Fees) Amendment Regulations 1994, (S.R. & O. No. 10 of 1994);**

**The Enforcement of Judgements (Australia) Order 1994, (S.R. & O. No. 11 of 1994);**

**The Media Trust (Amendment) Bill 1994;**

**The Dogs (Amendment) Bill 1994;**

**Children Bill 1994.**

# PUBLIC HEALTH ORDINANCE

(Cap. 54)

## Section 56

### NOTICE AS TO MEDICAL ETC CHARGES

1. The charges set out in the First Schedule to this Notice are payable by or in respect of all patients etc, who are both -

(a) not resident in the Falkland Islands; and

(b) not entitled to treatment at the same charges (if any) as are payable by patients resident in the Falkland Islands.

2. The non-resident persons (called "non-entitled patients") who fall within paragraph 1(b) are all non residents EXCEPT those to whom the Reciprocal Health Care Agreement between the United Kingdom Government and the Falkland Islands Government applies (that Agreement applies to persons who prove that they are resident in the United Kingdom, Isle of Man or the Channel Islands. British citizens who are not so resident are NOT covered by the Agreement. Proof of residence will be required).

3. The charges set out in the Second Schedule are payable by ALL persons whether or not they are resident in the Falkland Islands, the United Kingdom, the Isle of Man or the Channel Islands.

4. All charges are payable in sterling.

### FIRST SCHEDULE

#### Charges payable by Non-entitled patients

#### Medical Charges for Non-entitled Patients

Inpatient Care Inclusive per day Charge..... £350  
(includes two weeks discharge supply of any necessary drugs)

#### Casualty/Outpatient Charge per attendance

Up to 15 minutes.....£42

Over 15 minutes.....£84

Casualty/Outpatient charge is inclusive of all treatment except for any necessary laboratory test, ECG, x-rays and or more than 2 week supply of medication.

ECG.....£45

Drug Charges:- Drugs will be charged at cost price + 10%

with minimum charge of.....£20

X-rays per film.....£75

Specialist x-rays & scans.....charged at cost

Laboratory Tests.....	per test... £20
Physiotherapy per 10 min session.....	£35
Mortuary Charge.....	£300 plus £20 per day
Certificate of Death.....	£84
Certification for Repatriation of Remains.....	£84
Visits to Ships in Port William/Stanley Harbour.....	£275
at FIPASS.....	£200
Visits to Ships elsewhere in the Colony.....	£120 per hour
Inspection/Issue of De-Ratting Certificate to Vessel.....	£84
(£275 + £84 if inspection made in Port William/Stanley Harbour)	
Outside Territorial Waters.....	Charged £84 + £120 per hour
(plus cost of transport incurred)	
Each Patient seen on visit to Ships.....	as outpatient charges
Use of Ambulance in vicinity of Stanley.....	£100 per patient
Public Health Inspection (Insurance Claim).....	£50
House Calls Surcharge on Consultation Rate.....	£25
Dental Charge Inclusive of Course of Treatment	
Up to 15 minute appointment.....	£42
Over 15 minute appointment.....	£84
Vaccination/Certification.....	£20

## SECOND SCHEDULE

### Charges payable by all patients

Dentistry: cosmetic dentistry: such charge as is notified by or on behalf of the Dental Service (this will include a charge for postage and the cost of any dental caps etc).

Optical Services: The extra cost of any non-standard lens frame or non-standard lens requested by or on behalf of the patient.

BOARD OF HEALTH  
12 August 1994

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## SUBSIDIARY LEGISLATION

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### ANIMALS

#### The Dogs (Amendment) Rules 1994

(S. R. & O. No: 8 of 1994)

*(Made: 27th July 1994)*

*(Published: 26th August 1994)*

*(Coming into force: 1st January 1995)*

IN EXERCISE of my powers under section 13 of the Dogs Ordinance (a) I make the following Rules -

1. These Rules may be cited as the Dogs (Amendment) Rules 1994 and shall come into force on 1st January 1995.

*Citation and  
commencement.*

2. Rule 3 of the Dogs Rules (b) is amended by replacing "£25" with "£15".

*Amendment of Dogs  
Rules.*

Made this 27th day of July 1994.

R. SAMPSON,  
*Acting Governor.*

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### EXPLANATORY NOTE

(not forming part of the above Rules)

The effect of these Rules is to reduce the annual fee for a Dog Licence from £25 to £15.

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(a) Cap. 21 Laws of the Falkland Islands 1950 Edition.

(b) Page 181 Vol. II Laws of the Falkland Islands 1950 Edition.

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## SUBSIDIARY LEGISLATION

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### TRESPASS

#### Stanley Common (Commonage Fees) Amendment Regulations 1994

(S. R. & O. No: 10 of 1994)

*(Made: 27th July 1994)*

*(Published: 26th August 1994)*

*(Coming into force: 1st October 1994)*

IN EXERCISE of my powers under section 11 of the Trespass Ordinance (a) I make the following Regulations -

1. These Rules may be cited as the Stanley Common (Commonage Fees) Amendment Regulations 1994 and shall come into force on 1st October 1994.

*Citation and  
commencement.*

2. The Schedule to the Trespass Ordinance is replaced by the following -

*Replacement of Schedule  
to Trespass Ordinance.*

#### SCHEDULE

1. Commonage on Stanley Common (except Cape Pembroke Peninsula): £15 per animal October to May and £30 per animal full year.

2. Commonage on Cape Pembroke Peninsula: £12.50 per animal per month.

Made this 27th day of July 1994.

R. SAMPSON,  
*Acting Governor.*

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#### EXPLANATORY NOTE (not forming part of above Order)

This Order raises grazing fees.

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(a) Cap. 74 Laws of the Falkland Islands 1950 Edition.

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## SUBSIDIARY LEGISLATION

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### ADMINISTRATION OF JUSTICE

#### The Enforcement of Judgments (Australia) Order 1994

(S.R. & O. No: 11 of 1994)

*Made: 22nd August 1994*

*Published: 26th August 1994*

*Coming into force: 1st September 1994*

IN EXERCISE of my powers under sections 3 and 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 (a) and of all other powers enabling me in that behalf, I make the following Order -

1. This Order may be cited as the Enforcement of Judgments (Australia) Order and shall come into operation on 1st September 1994.

*Citation and commencement.*

2.(1) The provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 (hereinafter in this Order called "the Ordinance") shall continue to apply in relation to the Commonwealth of Australia and every constituent part thereof.

*Application of Foreign Judgments (Reciprocal Enforcement) Ordinance to Commonwealth of Australia and to Territory of Norfolk Island.*

(2) From the coming into operation of this Order the provisions of the Ordinance shall also apply in relation to the Territory of Norfolk Island.

3. The courts specified in the Schedule to this Order are to be deemed to be superior courts for the purposes of section 3(1) of the Ordinance.

*Courts which are to be deemed to be superior courts.*

4. On the coming into force of this Order, the Foreign Judgments (Reciprocal Enforcement) Order 1975 (b) shall cease to have effect in relation to the Commonwealth of Australia and every constituent part thereof.

*Foreign Judgments (Reciprocal Enforcement) Order 1975 to cease to apply in relation to Commonwealth of Australia.*

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(a) No. 4 of 1959.

(b) S. R. & O. No. 8 of 1975.

## SCHEDULE

(article 3)

Courts which are to be deemed to be superior courts

High Court of Australia  
Federal Court of Australia  
Family Court of Australia  
Supreme Court of New South Wales  
Supreme Court of Victoria  
Supreme Court of Queensland  
Supreme Court of Western Australia  
Supreme Court of South Australia  
Supreme Court of Tasmania  
Supreme Court of the Northern Territory  
Supreme Court of the Australian Capital Territory  
Family Court of Western Australia  
Supreme Court of Norfolk Island

Made this 22nd day of August 1994.

R SAMPSON,  
*Acting Governor.*

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

This Order replaces, so far as concerns the Commonwealth of Australia, the Foreign Judgments (Reciprocal Enforcement) Order 1975 ("the 1975 Order") and applies the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 (which was applied to the Commonwealth of Australia by the 1975 Order) to Norfolk Island. The 1975 Order continues in force in respect of New Zealand, Austria, Belgium, the Federal Republic of Germany, France and Norway.

The courts which are to be deemed to be superior courts of the Commonwealth of Australia and of the States and Territories making up the Commonwealth of Australia are specified in the Schedule to the Order. The Supreme Court of Norfolk Island is also deemed, by inclusion in the Schedule, to be a superior court of record.

# The Media Trust (Amendment) Bill 1994

(No: of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title.
2. Principal Ordinance.
3. Amendment to Schedule 1 to the Principal Ordinance.

## A Bill

for

## An Ordinance

To amend the Media Trust Ordinance 1989.

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

1. This Ordinance may be cited as the Media Trust (Amendment) Bill 1994.

*Short title.*

2. In this Ordinance "the principal Ordinance" means the Media Trust Ordinance 1989.

*Principal Ordinance.*

3. Paragraph 6 of the Schedule 1 to the principal Ordinance is amended -

*Amendment of Schedule 1  
to the principal Ordinance.*

(a) by replacing "£500" in paragraph 6(1)(b) with "£1,000";

(b) by deleting the full stop at the end of paragraph 6(1)(b) and the insertion immediately thereafter of:

";or

(c) in the case of a cheque or other bill of exchange in an amount of £200 or less, by one trustee or the editor of the newspaper."; and

(c) by deleting the phrase "subparagraph (1)(b)" in paragraph 6(2) and replacing it with the phrase "subparagraphs (1)(b) and (1)(c)".

## OBJECTS AND REASONS

For administrative convenience, to allow one trustee or the editor of the newspaper to sign cheques and other bills of exchange for £200 or less and the editor and one trustee to sign cheques up to £1,000 and provided that not more than one cheque or bill of exchange is drawn in respect of the same debt or obligation.



# The Dogs (Amendment) Bill 1994

(No:            of 1994)

## ARRANGEMENTS OF PROVISIONS

### Clause

1. Short title and commencement.
2. Amendment of the Dogs Ordinance (*Cap. 21*).

### The Schedule

## A Bill

for

## An Ordinance To amend the Dogs Ordinance.

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

1. This Ordinance may be cited as the Dogs (Amendment) Ordinance 1994 and shall come into force on such date as may be appointed by the Governor by notice published in the Gazette. *Short title and commencement.*
2. The Dogs Ordinance is amended in the manner specified in the Schedule to this Ordinance. *Amendment of the Dogs Ordinance (Cap. 21).*

## THE SCHEDULE

1. In this Schedule, the expression "the Ordinance" means the Dogs Ordinance, and a reference in any subsequent paragraph of this Schedule to a section or a subdivision of a section is a reference to a section or subdivision of a section of the Ordinance.
2. The following sections are inserted in the Ordinance immediately after section 2 -

2A.(1) The Director of Agriculture is for the purposes of this Ordinance the Chief Inspector of Dogs. *Administration of this Ordinance.*

(2) The Government Veterinary Officer and every police officer and any public officer appointed for the purpose in writing by the Director of Agriculture is and each of them is an Inspector of Dogs for the purposes of this Ordinance.

(3) Every reference in this Ordinance to "the Chief Inspector" shall be construed as a reference to the Director of Agriculture and every reference in this Ordinance to an Inspector shall be construed as a reference to a person (including the Chief Inspector) who is an Inspector of Dogs by virtue of subsection (2) of this section.

**2B.(1)** It is the duty of the Chief Inspector and Inspectors to execute and enforce this Ordinance and any subsidiary legislation made under this Ordinance.

*Duties and authorities of inspectors.*

(2) Where a person is seen or found committing, an offence against a provision of an Order made under section 12A of this Ordinance, an Inspector may, without warrant, stop and detain him.

(3) An Inspector may -

(a) without so stopping or detaining the person or not, stop, detain and examine any animal, vehicle, boat or thing to which the offence or suspected offence under a provision of such an Order relates;

(b) except as provided by subsection (3), for the purposes of executing his duties under this Ordinance, without a warrant enter (and if need be by force) and search any land, building, pen, vessel or vehicle or place where he reasonably believes a dog to be;

(c) enter any land, building, pen, vessel or vehicle or place where he has reasonable ground for supposing -

(i) that any dog afflicted with a disease or condition to which an Order under section 12A relates has been at any time during the preceding 56 days;

(ii) that the carcass of a diseased or suspected dog or herbivorous animal is or has been kept, or has been buried, destroyed or otherwise disposed of;

(iii) that there is to be found any pen, place, vehicle or thing in respect of which any person has on any occasion within the preceding six months failed to comply with any provision of any such Order; and

(d) to inspect any dog or the carcass of any dog he may find in the exercise of any of his foregoing powers.

(4) Nothing in any provision of subsection (3) enables an Inspector to enter or search any dwelling house, caravan or other structure apparently used as a person's home.

**2C.(1)** A person commits an offence who, without lawful authority or excuse, proof of which lies upon him -

*Refusal and obstruction.*

(a) refuses to an Inspector, acting in execution of this Ordinance, admission to any land, building, place, pen, vessel, boat or vehicle of any other description which the inspector is entitled to enter, or

(b) obstructs or impedes him so entering or in searching any land, building, place, pen, vessel, boat or vehicle he is entitled to search in execution of this Ordinance.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 5 on the standard scale.

3. Sections 3(1) and 5 of the Ordinance are amended by replacing the words "five pounds" with the words "the maximum of level 2 on the standard scale" and by deleting paragraph (iii).

4. Section 7 of the Ordinance is amended by replacing the words "two pounds" with the words "the maximum of level 1 on the standard scale".
5. Section 9 of the Ordinance is amended by replacing with words "ten pounds" with the words "the maximum of level 3 on the standard scale".
6. Section 9 is further amended by the addition at the end of the section of the words "but nothing in this section applies in respect of a dog enclosed in a vehicle."
7. Section 10 is amended by replacing the words "one pound" with "£10".
8. Section 11 of the Ordinance is amended by replacing the words "forty shillings" with the words "the maximum of level 1 on the standard scale".
9. Section 12A of the Ordinance is replaced by the following section -

"12A.(1) The Governor may by Order under this section make such Order as he thinks fit -

- (a) for the purpose of preventing the spread of any disease or condition afflicting or carried by dogs; or
- (b) for the purpose of preventing the spread to dogs of any disease or condition afflicting an other creature.

(2) Without prejudice to the generality of his powers under subsection (1), the Governor may by Order under that subsection make such provision as he thinks fit for prescribing and regulating -

- (a) the muzzling of dogs, and the keeping of dogs under control;
- (b) the seizure, detention and disposal (including slaughter) of stray dogs and dogs not muzzled, and of dogs not being kept under control;
- (c) the recovery from the owners of dogs of the expenses incurred in respect of their detention;
- (d) the wearing by dogs of such means identification of the dog and the owner or keeper of the dog as may be specified in the Order;
- (e) the giving by the owner or keeper of a dog of notice to such person as may be specified by any such Order of the fact that such owner or keeper knows or suspects that the dog is suffering from any disease or condition to which the Order relates;
- (f) requiring the owner or keeper of any dog to which the Order relates to administer to that dog such medication or drug or substance by such method or methods in such quantities and at such intervals as may be specified by or under such Order;
- (g) the powers of Inspectors to take blood, tissue or other samples from dogs (including powers to take samples for the purpose of copro-antigen analysis and to administer substances to dogs for the purpose of obtaining samples for the purpose of copro-antigen analysis);

(h) the appointment of persons as Supervisors of the medication of dogs and the functions of persons so appointed;

(i) the circumstances in which a result certified by a person specified in the Order of analysis of any blood or tissue sample or a result so certified of copro-antigen analysis shall be conclusive evidence that a dog was suffering at the time the sample was taken of the disease or condition specified in the certificate.

(3) An Order under subsection (1) of this section may provide that a person contravening such provision or provisions of the Order or any other Order made under that subsection as may be specified in the first-mentioned Order commits an offence and shall be liable on conviction of that offence to such fine as may be specified thereby and to imprisonment, but a fine of an amount exceeding the maximum of level 5 on the standard scale or imprisonment for a period exceeding three months may not be so specified."

# Children Bill 1994

(No:            of 1994)

## ARRANGEMENT OF PROVISIONS

Clause

### Part I

#### INTRODUCTORY

1. Short title and commencement.
2. Interpretation.

#### *General principles of wide application*

3. Principle on which questions relating to upbringing etc. of children are to be decided.

#### *Provisions in relation to parental responsibility*

4. Parental responsibility for children.
5. Acquisition of parental responsibility by father.
6. Appointment of guardians.
7. Guardians: revocation and disclaimer.
8. Welfare reports.

### Part II

#### ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS

#### *General*

9. Residence, contact and other orders with respect to children.
10. Power of court to make Section 9 orders.
11. General principles and supplementary provisions.
12. Residence orders and parental responsibility.
13. Change of child's name or removal from jurisdiction.
14. Enforcement of residence orders.

*Financial relief*

15. Orders for financial relief with respect to children.

*Family assistance orders*

16. Family assistance orders.

**Part III****CARE AND SUPERVISION***General*

17. Care and supervision orders.  
18. Period within which application for an order under this Part must be disposed of.

*Care orders*

19. Effect of care order.  
20. Parental contact etc with children in care.

*Supervision orders*

21. Supervision orders.

*Powers of court*

22. Powers of court in certain family proceedings.  
23. Interim orders.  
24. Discharge and variation etc of care orders and supervision orders.  
25. Orders pending appeals in cases about care orders or supervision orders.

*Guardians ad litem*

26. Representation of child and of his interests in certain proceedings.

**Part IV****PROTECTION OF CHILDREN**

27. Child assessment orders.  
28. Orders for emergency protection of children.  
29. Duration of emergency protection orders and other supplemental provisions.

- 30. Removal and accommodation of children by police in cases in emergency.
- 31. Abduction of children in care etc.
- 32. Recovery of abducted children etc.
- 33. Rules and regulations.

## Part V

### MISCELLANEOUS AND GENERAL

#### *Criminal care and supervision orders*

- 34. Care and supervision orders in criminal proceedings.

#### *Effect and duration of orders etc.*

- 35. Effect and duration of orders etc.

#### *Jurisdiction and procedure etc.*

- 36. Jurisdiction of courts.
- 37. Rules of court.
- 38. Appeals.
- 39. Attendance of child at hearing under Part III or IV.
- 40. Evidence given by, or with respect to children.
- 41. Privacy for children involved in certain proceedings.
- 42. Self-incrimination.
- 43. Restrictions on use of wardship jurisdiction.

#### *General*

- 44. Offences by bodies corporate.
- 45. Consent by persons over 16 to surgical, medical and dental treatment.
- 46. Time at which a person attains a particular age.
- 47. Persons under full age may be described as children instead of as infants or minors.
- 48. Repeals etc.
- 49. Transitional.

A Bill  
for  
An Ordinance

To reform the law relating to children.

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

Part I

INTRODUCTORY

1. This Ordinance may be cited as the Children Ordinance 1994 and shall come into force on such date as the Governor may appoint by notice published in the Gazette. *Short title and commencement.*

2.(1) In this Ordinance - *Interpretation.*

"care order" means an order under section 17(1)(a) of this Ordinance and any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Ordinance and (except where express provision to the contrary is made) includes an interim care order made under section 23; and any reference to a child who is in the care of the Crown is a reference to a child who is in its care by virtue of a care order;

"child" means, subject to paragraph 15(1) of Schedule 1 to this Ordinance, a person under the age of eighteen;

"child assessment order" has the meaning given by section 27(3);

"child of the family", in relation to the parties of a marriage, means -

(a) a child of both of those parties;

(b) any other child, not being a child who is placed with those parties as foster parents by the Crown, who has been treated by both of those parties as a child of their family;



"a contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

"court", in so far as is consistent with the context, means the Supreme Court, the Magistrate's Court and, subject to section 36 and any order having effect thereunder, the Summary Court;

"court of summary jurisdiction" means the Magistrate's Court and the Summary Court;

"a family assistance order" means an order under section 16 of this Ordinance;

"family proceedings" means any proceedings -

(a) in the inherent jurisdiction of the Supreme Court in relation to children;

(b) under any of the following enactments -

(i) Parts II and III of this Ordinance;

(ii) the Matrimonial Proceedings (Court of Summary Jurisdiction) Ordinance 1967;

(iii) the Matrimonial Causes Ordinance 1973;

(iv) the Adoption Act 1976 in its application to the Falkland Islands;

(v) any other enactment specified by Ordinance for the purposes of this definition;

"parental responsibility" has the meaning given by subsection (4) of this section;

"a prohibited steps order" means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

"a section 9 Order" has the meaning given by section 9;

"a specific issue order" means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child;

"supervised child" and "supervisor", in relation to a supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order;

"supervision order" means an order under section 17(1)(b) of this Ordinance and (except in relation to a provision of this Ordinance as to which express provision to the contrary is made) includes an interim supervision order under section 23;

"upbringing", in relation to any child, includes the care of the child but not his maintenance;

(2) References in this Ordinance to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 2 of the Family Law Reform Ordinance 1994 (which extends the meaning of such references).

## (3) References in this Ordinance to -

(a) a person with whom a child lives, or is to live, as the result of a residence order; or

(b) a person in whose favour a residence order is in force,

shall be construed as references to the person named in the order as the person with whom the child is to live.

(4) In this Ordinance "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property and also includes the rights, powers and duties which a guardian of the child's estate (appointed, before the commencement of this Ordinance, to act generally) would have had in relation to the child and his property.

(5) The rights referred to in subsection (4) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(6) Any notice or other document required under this Ordinance to be served on any person may be served on him by being delivered personally to him, or by being sent by post to him in a registered letter at his proper address.

(7) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.

(8) For the purposes of subsection (6) of this section, the proper address of a person -

(a) in the case of a secretary or clerk of a body corporate, shall be that of the registered or principal office of that body;

(b) in the case of a partner of a firm, shall be that of the principal office of the firm; and

(c) in any other case, shall be the last known address of the person to be served.

***General principles of wide application***

3.(1) Where in any proceedings before any court (whether or not a court as defined in section 2) -

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it,

*Principles on which questions relating to upbringing etc. of children are to be decided.*

is in question, the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in subsection (4) of this section, a court shall have regard in particular to -

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Ordinance in the proceedings in question.

(4) The circumstances are that -

(a) the court is considering whether to make, vary or discharge a section 9 order, and the making variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge an order under Part III of this Ordinance.

(5) Where a court is considering whether or not to make one or more orders under this Ordinance with respect to a child, it shall not make the order or any other orders unless it considers that doing so would be better for the child than making no order at all.

#### *Provisions in relation to parental responsibility*

4.(1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child. *Parental responsibility for children.*

(2) Where a child's father and mother were not married to each other at the time of his birth -

(a) the mother shall have parental responsibility for the child;

(b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with this Ordinance.

(3) For the sake of avoidance of doubt, it is hereby declared that section 2 of the Family Law Ordinance 1994 applies for the purposes of subsection (2) of this section and as required by section 2(2) of this Ordinance.

(4) The rule that a father is the natural guardian of his legitimate child is abolished.

(5) More than one person may have parental responsibility for the same child at the same time.

(6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to effect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Ordinance.

(9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(11) The making of any such arrangement shall not affect the liability of the person making it which may arise from any failure to meet any part of his responsibility for the child concerned.

(12) The fact that a person has, or does not have, parental responsibility for a child shall not affect -

(a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(13) A person who -

(a) does not have parental responsibility for a particular child; but

(b) has care of the child,

may (subject to the provisions of this Ordinance and of any other enactment) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

5.(1) Where a child's father and mother were not married to each other at the time of his birth -

*Acquisition of  
parental responsibility  
by father.*

(a) the court may on the application of the father, order that he shall have parental responsibility for the child; or

(b) the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child.

(2) A parental responsibility agreement shall be of no effect until it has been approved by an order of a court made under this subsection on the application of either the father or the mother.

(3) The approval by a court of a parental responsibility agreement may be subject to such amendments to the agreement as are specified in the order of the court and the parental responsibility agreement shall have effect subject to any amendments so specified.

(4) An order under subsection (1)(a) or a parental responsibility agreement may only be brought to an end by an order of the court made on the application -

- (a) of any person who has parental responsibility for the child; or
- (b) with the leave of the court, of the child himself.

(5) The court may only grant leave under subsection (4)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

6.(1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if -

*Appointment of  
guardians.*

- (a) the child has no parent with parental responsibility for him; or
- (b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that such an order should be made even though no application has been made for it.

(3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death.

(4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.

(5) An appointment under subsection (3) or (4) of this section shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or -

- (a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837 in its application to the Falkland Islands;
- (b) in any other case, is signed at the direction of the person making the appointment, in his presence and join the presence of two persons who each attest the signature.

(6) A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.

(7) Where -

- (a) on the death of any person making an appointment under subsection (3) or (4) of this section, the child concerned has no parent with parental responsibility for him; or
- (b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child,

the appointment shall take effect on the death of that person.

(8) Where, on the death of any person making an appointment under subsection (3) or (4) of this section -

(a) the child concerned has a parent with parental responsibility for him; and

(b) subsection (7)(b) of this section does not apply,

the appointment shall take effect when the child no longer has a parent with parental responsibility for him.

(9) Subsections (1) and (7) of this section do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.

(10) Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) of this section being made by two or more persons acting jointly.

(11) Subject to any provision made by rules of court, no court shall exercise the Supreme Court's inherent jurisdiction to appoint a guardian of the estate of any child.

(12) Where rules of court are made under subsection (11) they may prescribe the circumstances in which, and subject to which, an appointment of such a guardian may be made, and until any rules of court are made under that subsection, rules of court made under section 5(11) of the Children Act 1989 shall have effect for the purposes of that subsection subject only to such modifications as may be required for them to apply in respect of the Supreme Court.

(13) A guardian of a child may only be appointed in accordance with the provisions of this section.

7.(1) An appointment under section 6(3) or (4) of this Ordinance revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

*Guardians: revocation and disclaimer.*

(2) An appointment under section 6(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed -

(a) by him; or

(b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.

(3) An appointment under section 6(3) or (4) of this Ordinance (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it -

(a) destroys the instrument by which it was made; or

(b) has some other person destroy that instrument in his presence.

(4) For the avoidance of doubt, an appointment under section 6(3) or (4) of this Ordinance is revoked if the will or codicil is revoked.

(5) A person who is appointed as a guardian under section 6(3) or (4) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect, but no such disclaimer shall have effect unless it is delivered to the Registrar of the Supreme Court for registration in the records of that court.

(6) An appointment of a guardian under section 6 may be brought to an end at any time by order of the court -

- (a) on the application of the person who has parental responsibility for the child;
- (b) on the application of the child concerned, with leave of the court; or
- (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

8.(1) A court considering any question with respect to a child under this Ordinance may -

*Welfare reports.*

- (a) ask a probation officer;
- (b) ask the Crown to arrange for -
  - (i) a public officer; or
  - (ii) such other person (other than a probation officer) as the Crown considers appropriate,

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The Chief Justice may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section.

(3) The report may be made in writing or orally, as the court requires.

(4) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

- (a) any statement contained in the report; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question it is considering.

(5) It shall be the duty of the Crown or probation officer to comply with any request for a report under this section.

## Part II

## ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS

*General*

9.(1) In this Ordinance, "a section 9 order" means a contact order, a prohibited steps order, a residence order, a specific issue order and any order varying or discharging such an order.

*Residence, contact and other orders with respect to children.*

(2) No court shall make any section 9 order, other than a residence order, with respect to any child who is in the care of the Crown.

(3) No court shall exercise its powers to make a specific issue order or prohibited steps order -

(a) with a view to achieving a result which could be achieved by making a residence or contact order;

(b) in any way which is by subsection (6) of this section denied to the Supreme Court in the exercise of its inherent jurisdiction in relation to children.

(4) No court shall make any section 9 Order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

(5) No court shall make any section 9 Order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

(6) No court shall exercise the Supreme Court's inherent jurisdiction with respect to children -

(a) so as to require a child to be placed in the care, or put under the supervision of the Crown;

(b) so as to require a child to be accommodated by or on behalf of the Crown;

(c) so as to make a child who is the subject of a care order a ward of court; or

(d) for the purpose of conferring upon the Crown power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

10.(1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 9 order with respect to the child if -

*Power of court to make Section 9 orders.*

(a) an application for an order has been made by a person who -

(i) is entitled to apply for a section 9 order with respect to the child; or

(ii) has obtained the leave of the court to make the application; or



(b) the court considers that the order should be made even though no such application has been made.

(2) The court may also make a section 9 order with respect to any child on the application of a person who -

(a) is entitled to apply for a section 9 order with respect to the child; or

(b) has obtained the leave of the court to make the application.

(3) This section is subject to the restrictions imposed by section 9.

(4) The following persons are entitled to apply to the court for any section 9 order with respect to a child -

(a) any parent or guardian of the child;

(b) any person in favour a residence order is in force with respect to the child.

(5) The following persons are entitled to apply for a residence or contact order with respect to a child -

(a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;

(b) any person with whom the child has lived for a period of at least three years;

(c) any person who -

(i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;

(ii) in any case where the child is in the care of the Crown, has the consent of the Crown; or

(iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.

(6) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for variation or discharge of a section 9 order shall be entitled to do so if -

(a) the order was made on his application; or

(b) in the case of a contact order, he is named in the order.

(7) Any person who falls within a category of persons prescribed by rules of court is entitled to apply for any such section 9 order as may be prescribed in relation to that category of person.

(8) Where a person applying for leave to make an application for a section 9 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for a section 9 order.

(9) Where the person applying for leave to make an application for a section 9 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to -

- (a) the nature of the proposed application for the section 9 order;
- (b) the applicant's connection with the child;
- (c) any risk there might be of the proposed application disrupting the child's life to the extent that he would be harmed by it; and
- (d) where the child is being looked after by the Crown -
  - (i) the Crown's plans for the child's future; and
  - (ii) the wishes and feelings of the child's parents.

(10) The period of three years mentioned in subsection (5)(b) of this section need not be continuous but must have begun not more than five years before, or ended more than three months before, the making of the application.

11.(1) In the proceedings in which any question of making a section 9 order, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of subsection (2)) -

*General principles and supplementary provisions.*

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

(2) Rules of court may -

- (a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.

(3) Where a court has power to make a section 9 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(5) Where -

- (a) a residence order has been made with respect to a child; and
- (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him,

the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.

(6) A contact order which requires the parent with whom the child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.

(7) A section 9 order may -

- (a) contain directions about how it is to be carried into effect;
- (b) contain conditions which must be complied with by any person -
  - (i) in whose favour the order is made;
  - (ii) who is a parent of the child concerned;
  - (iii) who is not a parent of his but who has parental responsibility for him; or
  - (iv) with whom the child is living,
 and to whom the conditions are expressed to apply;
- (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;
- (d) make such incidental, supplemental or consequential provision as the court thinks fit.

12.(1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 5 giving him that responsibility. *Residence orders and parental responsibility.*

(2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child as a result of subsection (2) of this section he shall not have the right -

- (a) to consent, or refuse to consent, to the making of an application with respect to the child under section 18 of the Adoption Act 1976 in its application to the Falkland Islands;
- (b) to agree, or refuse to agree, to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 in its application to the Falkland Islands, with respect to the child; or
- (c) to appoint a guardian for the child.

(4) Where subsection (1) of this section requires the court to make an order under section 5 of this Ordinance in respect of the father of the child, the court shall not bring that order to an end while the residence order remains in force.

13.(1) Where a residence order is in force with respect to a child no person may -

*Change of child's name  
or removal from jurisdiction.*

- (a) cause the child to be known by a new surname; or
- (b) remove him from the Falkland Islands;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than two months, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified purposes.

14.(1) Where -

*Enforcement of  
residence orders.*

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by that order,

the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) of this section is complied with, enforce the order under section 63(3) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands as if it were an order requiring the other person to produce the child to him.

(2) The requirement is that a copy of the residence order has been served on the other person.

(3) Subsection (1) of this section is without prejudice to any other remedy open to the person in whose favour the residence is in force.

### *Financial relief*

15.(1) Schedule 1 makes provision in relation to financial relief for children.

*Orders for financial relief  
with respect to children.*

(2) The powers of the Summary Court under section 60 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands to revoke, revive or vary an order for the periodical payment of money and the power of the clerk of the Summary Court to vary such an order shall not apply in relation to an order made under Schedule 1.

### *Family assistance orders*

16.(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order -

*Family assistance orders.*

- (a) requiring a probation officer; or
- (b) requesting the Crown to make a public officer available,

to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this section ("a family assistance order") are -

- (a) any parent or guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force in relation to the child;
- (c) the child himself.

(3) No court may make a family assistance order unless -

- (a) it is satisfied that the circumstances of the case are exceptional; and
- (b) it has obtained the consent of every person to be named in the order than the child.

(4) A family assistance order may direct -

- (a) the person named in the order; or
- (b) such of the persons named in the order as may be specified in the order,

to take such steps as may be so specified with a view to enabling the officer named in the order to visit any such person.

(5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.

(6) Where -

- (a) a family assistance is in force with respect to a child; and
- (b) a section 9 order is also in force with respect to the child,

the officer concerned may refer to the court the question whether the section 9 order should be varied or discharged.

### Part III

## CARE AND SUPERVISION

### *General*

17.(1) On the application of the Crown, the court may make an order -

*Care and supervision orders.*

- (a) placing the child with respect to whom the application is made in the care of the Crown;

(b) putting him under the supervision of a designated public officer or of a probation officer.

(2) A court may only make a care order or supervision order if it is satisfied -

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to -

(i) the care given to the child, or the care likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

(3) No care or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).

(4) An application under this section may be made on its own or in any other family proceedings.

(5) The court may -

(a) on an application for a care order, make a supervision order;

(b) on an application for a supervision order, make a care order.

(6) An application may only be made under this section by or with the consent of the Attorney General.

(7) In this section -

"harm" means ill-treatment or the impairment of health or development;

"development" means physical, intellectual, emotional, social or behavioural development;

"health" means physical or mental health;

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

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

18.(1) A court hearing an application under this Part shall (in light of any rules made by virtue of subsection (2)) -

(a) draw up a timetable with a view to disposing of the application without delay;

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

*Period within which application for an order under this Part must be disposed of.*

(2) Rules of court may -

(a) specify periods within which specified steps must be taken in relation to such proceedings; and

(b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

### *Care orders*

19.(1) Where a care order is made with respect to a child it shall be the duty of the Crown to receive the child into its care and to keep him in its care while the order remains in force. *Effect of care order.*

(2) While a care order is in force with respect to a child, the Crown shall -

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.

(3) The Crown shall not exercise the power in subsection (2)(b) unless it is satisfied that it is necessary to do so to safeguard or promote the child's welfare.

(4) Nothing in subsection (2)(b) shall prevent a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(5) While a care order is in force with respect to a child, the Crown shall not -

(a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or

(b) have the right -

(i) to agree or refuse to agree to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 in its application to the Falkland Islands, with respect to the child; or

(ii) to appoint a guardian for the child.

(6) While a care order is in force with respect to a child, no person may -

(a) cause the child to be known by a new surname; or

(b) remove him from the Falkland Islands,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(7) Subsection (6)(b) does not prevent the removal by the Crown of such a child, for a period less than three months.

(8) The power in subsection (2)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other enactment.

20.(1) Where a child is in the care of the Crown, the Crown shall (subject to the provisions of this section) allow the child reasonable contact with -

*Parental contact etc  
with children in care.*

(a) his parents;

(b) any guardian of his;

(c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and

(d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by -

(a) any person mentioned in paragraphs (a) to (d) of subsection (1); or

(b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(3) On an application made by the Crown or the child, the court may make an order authorising the Crown to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) of this section and named in the order.

(4) When making an order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Crown, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that such an order should be made.

(5) The Crown may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if -

(a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) the refusal -

(i) is decided upon as a matter of urgency; and

(ii) does not last for more than seven days.

(6) An order under this section may impose such conditions as the court considers appropriate.

(7) The court may vary or discharge any order made under this section on the application of the Crown, the child concerned or the person named in the order.

(8) An order under this section may be made either at the same time as the care order itself or later.



(9) Before making a care order with respect to any child the court shall -

(a) consider the arrangements which the Crown has made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

### *Supervision orders*

21.(1) While a supervision order is in force it shall be the duty of the supervisor -

*Supervision orders.*

(a) to advise, assist and befriend the supervised child;

(b) to take such steps as are reasonably necessary to give effect to the order;

(c) where -

(i) the order is not wholly complied with; or

(ii) the supervisor considers that the order may no longer be necessary,

to consider whether or not to apply to the court for its variation or discharge.

(2) Parts I and II of Schedule 2 make further provision with respect to supervision orders.

### *Powers of court*

22.(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may request the Crown to undertake an investigation of the child's circumstances.

*Powers of court in certain family proceedings.*

(2) When the court makes a request under this section, the Crown shall, when undertaking the investigation, consider whether it should -

(a) apply for a care order or for a supervision order with respect to the child;

(b) provide services or assistance for the child or his family; or

(c) take any other action with respect to the child.

(3) Where the Crown undertakes an investigation under this section, and decides not to apply for a care order or supervision order with respect to the child concerned, it shall inform the court of -

(a) its reasons for so deciding;

(b) the service or assistance the Crown has provided, or intends to provide, for the child and his family;

(c) any other action which the Crown has taken, or proposes to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the request, unless the court otherwise directs.

(5) If, on the conclusion of any investigation or review under this section, the Crown decides not to apply for a care order or supervision order with respect to the child -

(a) it shall consider whether it would be appropriate to review the case at a later date; and

(b) if it decides that it would be, it shall determine the date on which that review is to begin.

23.(1) Where -

*Interim orders.*

(a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or

(b) the court makes a request under section 22(1),

the court may make an interim order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 17(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless it is satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following first occurs -

(a) the expiry of the period of eight weeks beginning with the date on which the order is made;

(b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;

(c) in a case which falls within subsection (1)(a) of this section, the disposal of the application;

(d) in a case which falls within subsection (1)(b) of this section, on the disposal of an application for a care order or supervision order made by the Crown with respect to the child;

(e) in a case which falls within subsection (1)(b) of this section and in which -

(i) the court has given a direction under section 22(4), but

(ii) no application for a care order or supervision order has been made with respect to the child.

the expiry of the period fixed by that direction.

(5) In subsection (4)(b) of this section "the relevant period" means -

(a) the period of four weeks beginning with the date on which the order in question is made; or

(b) the period of eight weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in paragraph (a) of this subsection.

(6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

(7) A direction under subsection (6) may be to the effect that there is to be -

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court otherwise directs.

(8) A direction under subsection (6) may be -

(a) given when the interim order is made or at any time while it is in force; and

(b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

(9) Paragraphs 4 and 5 of Schedule 2 shall not apply in relation to an interim supervision order.

(10) Where a court makes an order under or by virtue of this section it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

24.(1) A care order may be discharged by the court on the application of -

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the Crown.

*Discharge and variation  
etc of care orders and  
supervision orders.*

(2) A supervision order may be varied or discharged by the court on the application of -

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(5) When a court is considering whether to substitute one order for another under subsection (4) of this section any provision of this Ordinance which would otherwise require section 17(2) of this Ordinance to be satisfied when the proposed order is substituted or made shall be disregarded.

25.(1) Where -

- (a) a court dismisses an application for a care order;
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

*Orders pending appeals in cases about care orders or supervision orders.*

the court may make a care order with respect to the child to have effect subject to such direction (if any) as the court may see fit to include in the order.

(2) Where -

- (a) a court dismisses an application for a care order, or an application for a supervision order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(3) Where the court grants an application to discharge a care order or supervision order, it may order that -

- (a) its decision is not to have effect; or
- (b) the care order, or supervision order, is to continue to have effect but subject to such direction as the court sees fit to include in the order.

(4) An order made under this section shall only have effect for such period, not exceeding the appeal period, as may be specified in the order.

(5) Where -

- (a) an appeal is made against any decision of the court under this section; or
- (b) any application is made to the appellate court in connection with a proposed appeal against that decision,

the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

(6) In this section "the appeal period " means -

- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal;
- (b) otherwise the period during which an appeal may be made against the decision.

#### *Guardians ad litem*

26.(1) For the purpose of any specified proceedings, the court shall appoint a guardian ad litem for the child concerned unless it is satisfied that it is not necessary to do so to safeguard his interests.

*Representation of child  
and of his interests in  
certain proceedings.*

(2) The guardian ad litem shall -

- (a) be appointed in accordance with rules of court; and
- (b) be under a duty to safeguard the interests of the child in the manner prescribed by the rules.

(3) Where -

- (a) the child concerned is not represented by a legal practitioner; and
- (b) any of the conditions specified in subsection (4) is satisfied,

the court may appoint a legal practitioner to represent him.

(4) The conditions are that -

- (a) no guardian ad litem has been appointed for the child;
- (b) the child has sufficient understanding to instruct a legal practitioner and wishes to do so;
- (c) it appears to the court that it would be in the child's best interests to be represented by a legal practitioner.

(5) Any legal practitioner appointed under or by virtue of this section shall be appointed, and shall represent the child in accordance with rules of court.

(6) In this section "specified proceedings" means any proceedings -

- (a) on an application for a care order or supervision order;
- (b) in which the court has given a direction under section 22(1) and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) on an application under section 24(4);
- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;
- (g) under Part IV;
- (h) on an appeal against -
  - (i) the making of, or refusal to make, a care order, supervision order or any order under section 19;
  - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order;
  - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);
  - (iv) the refusal of an application under section 24(4);
  - (v) the making of, or refusal to make an order under Part IV; or
  - (vi) which are specified for the time being, for the purposes of this section, by rules of court.

(7) Rules of court may make provision as to -

- (a) the assistance which any guardian ad litem may be required by the court to give it;
- (b) the consideration to be given by any guardian ad litem, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;
- (c) the participation of guardians ad litem in reviews, of a kind specified in the rules, which are conducted by the court.

(8) Notwithstanding any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

(a) any statement contained in a report made by a guardian ad litem who is appointed under this section for the purpose of the proceedings in question; and

(b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

#### **Part IV**

#### **PROTECTION OF CHILDREN**

27.(1) An application under this section may only be made by or with the consent of the Attorney General. *Child assessment orders.*

(2) On an application under this section for an order with respect to a child, the court may make the order if, but only if, it is satisfied that -

(a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;

(b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer significant harm; and

(c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

(3) In this Ordinance "a child assessment order" means an order under this section.

(4) A court may treat an application under this section as an application for an emergency protection order.

(5) No court shall make a child assessment order if it is satisfied -

(a) that there are grounds for making an emergency protection order with respect to the child; and

(b) that it ought to make such an order rather than a child assessment order.

(6) A child assessment order shall -

(a) specify the date by which the assessment is to begin; and

(b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.

(7) Where a child assessment order is in force with respect to a child it shall be the duty of any person who is in a position to produce the child -

(a) to produce him to such person as is named in the order; and

(b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.

(8) A child assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.

(9) Notwithstanding subsection (8) of this section, if the child is of sufficient understanding to make an informed decision he may refuse to submit to a medical or psychiatric examination or other assessment.

(10) The child may only be kept away from the home -

(a) in accordance with directions specified in the order;

(b) if it is necessary for the purposes of the assessment; and

(c) for such period or periods as may be specified in the order.

(11) Where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from home.

(12) Any person making an application for a child assessment order shall take such steps as are reasonably practicable to ensure that notice of the application is given to -

(a) the child's parents;

(b) any person who is not a parent of his but who has parental responsibility for him;

(c) any other person caring for the child;

(d) any person in whose favour a contact order is in force in relation to the child;

(e) any person who is allowed to have contact with the child by virtue of an order under section 19; and

(f) the child,

before the hearing of the application.

(13) Rules of court may make provision as to the circumstances in which -

(a) any of the persons mentioned in subsection (12) of this section; or

(b) such other persons as may be specified in the rules,

may apply to the court for a child assessment order to be varied or discharged.



28.(1) Where any person ("the applicant") applies to the court for an order to be made under this section with respect to a child, the court may make the order, but only if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if - *Orders for emergency protection of children.*

(a) he is not removed to accommodation provided by or on behalf of the Crown; or

(b) he does not remain in the place in which he is then being accommodated.

(2) An application under this section may only be made by a public officer authorised in that behalf by the Attorney General to make it.

(3) While an order under this section ("an emergency protection order") is in force it -

(a) operates as a direction to any person who is in a position to do so to produce the child to the applicant;

(b) authorises -

(i) the removal of the child at any time to accommodation provided by or on behalf of the Crown and the child being kept at such accommodation;

(ii) the prevention of the child's removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and

(iii) gives the Crown parental responsibility for the child, which may be exercised on behalf of the Crown by the applicant or any other public officer authorised for the purpose by the Governor.

(4) Where an emergency protection order is in force with respect to a child, the applicant and any other public officer so authorised -

(a) shall only exercise the power given by subsection (3)(b) of this section in order to safeguard the welfare of the child;

(b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and

(c) shall comply with any directions given him by the Governor for the purposes of this subsection as well as, and in so far as they are not inconsistent with, any directions given by the court under subsection (5) of this section.

(5) Where the court makes an emergency protection order, it may give such directions as it considers appropriate with respect to -

(a) the contact which is, or is not, to be allowed between the child and any named person;

(b) the medical or psychiatric examination or other assessment of the child.

(6) Where any direction is given under subsection (5)(b) of this section, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.

(7) A direction under subsection (5)(a) of this section may impose conditions and one under subsection (5)(b) may be to the effect that there is to be -

- (a) no such examination or assessment; or
- (b) no such examination or assessment unless the court otherwise directs.

(8) A direction under subsection (5) of this section may be -

- (a) given when the emergency protection order is made or at any time while it is in force;
- (b) varied at any time on the application of the applicant, the Attorney General or any public officer authorised by him or on the application of any person mentioned in subsection (12) of this section.

(9) Where an emergency protection order is in force in relation to a child and -

- (a) the applicant has exercised the power given by subsection (3)(b)(i) but it appears to him that it is safe for the child to be returned; or
- (b) the applicant has exercised the power given by subsection (3)(b)(ii) but it appears to him that it is safe for the child to be allowed to be removed from the place in question,

he shall return the child or (as the case may be) allow him to be removed.

(10) Where he is required by subsection (9) to return the child the applicant shall -

- (a) return him to the care of the person from whom he was removed; or
- (b) if that is not reasonably practicable, return him to the care of -
  - (i) a parent of his;
  - (ii) any person who is not a parent of his but who has parental responsibility for him;
  - (iii) such other person as the applicant (with the agreement of the court) considers appropriate.

(11) Where the applicant has been required by subsection (9) of this section to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.

(12) Where an emergency protection order has been made with respect to a child, the applicant shall, subject to any direction given by the court under subsection (5) of this section, allow the child reasonable contact with -

- (a) his parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any person with whom he was living immediately before the making of the order;
- (d) any person in whose favour or contact order is in force with respect to him;
- (e) any person who is allowed to have contact with him by virtue of an order under section 20; and
- (f) any person acting on behalf of those persons.

(13) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him it shall describe him as clearly as possible.

(14) A person who intentionally obstructs a person exercising the power under subsection (3)(b) of this section to remove, or prevent the removal of, a child commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

29.(1) An emergency protection order shall have effect for such period, not exceeding eight days as may be specified in the order.

*Duration of emergency protection orders and other supplemental provisions.*

(2) Where -

(a) the court making the emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order does not have effect; but

(b) the last of those eight days is a Sunday or public holiday,

the court may specify a period which ends at noon on the first later day which is not a Sunday or public holiday.

(3) Where an emergency protection order is made on an application under section 30(7), the period of eight days mentioned in subsection (1) of this section shall begin with the first day on which the child was taken into police protection under section 30.

(4) Any person who -

(a) has parental responsibility for a child as the result of an emergency protection order; and

(b) is entitled to apply for a care order with respect to the child.

may apply to the court for the period during which the emergency protection order is to have effect to be extended.

(5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding seven days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.

(6) An emergency protection order may only be extended once.

(7) Notwithstanding any enactment or rule of law which would otherwise prevent it from so doing, a court hearing an application for, or with respect to, an emergency protection order may take account of -

(a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or

(b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(8) Any of the following may apply to the court for an emergency protection order to be discharged -

(a) the child;

(b) a parent of his;

(c) any person who is not a parent of his but who has parental responsibility for him; or

(d) any person with whom he was living immediately before the making of the order.

(9) No application for the discharge of an emergency protection order shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.

(10) No appeal may be made against -

(a) the making of, or refusal to make, an emergency protection order;

(b) the extension of, or refusal to extend, the period during which such an order is to have effect;

(c) the discharge of, or refusal to discharge, such an order; or

(d) the giving of, or refusal to give, any direction in connection with such an order.

(11) Subsection (8) of this section does not apply -

(a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged -

(i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and

(ii) was present at the hearing; or

(b) to any emergency protection order the effective period of which has been extended under subsection (5).

(12) A court making an emergency protection order may direct that the applicant may, in exercising any powers which he has by virtue of the order, be accompanied by a medical practitioner, nurse or health visitor, if he so chooses.

30.(1) Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may -

*Removal and accommodation  
of children by police  
in cases of emergency.*

- (a) remove the child to suitable accommodation and take him there;
- (b) take such steps as are reasonable to ensure the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.

(2) For the purposes of this Ordinance, a person with respect to whom a police officer has exercised his powers under this section is referred to as having been taken into police protection.

(3) As soon as reasonably practicable after taking a child into police protection, the police officer concerned shall -

- (a) inform the Attorney General of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;
- (b) inform the Attorney General of the place at which the child is being accommodated;
- (c) inform the child (if he appears to be capable of understanding) -
  - (i) of the steps that have been taken with respect to him under this section and of the reasons for taking them; and
  - (ii) of the further steps that may be taken with respect to him under this section;
- (d) take such steps as are reasonably practicable to discover the wishes and feelings of the child; and
- (e) secure that the case is inquired into by the Chief Police Officer or by some other police officer not below the rank of inspector.

(4) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned shall take such steps as are reasonably practicable to inform -

- (a) the child's parents;
- (b) every person who is not a parent of his but who has parental responsibility for him; and
- (c) any other person with whom the child was living immediately before being taken into police protection,

of the steps that he has taken under this section with respect to the child, the reasons for them and the further steps that may be taken with respect to him under this section.

(5) On completing any enquiry under subsection (3)(e) of this section, the officer conducting it shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would be likely to suffer harm if released.

(6) No child may be kept in police protection for more than 72 hours.

(7) While a child is being kept in police protection, the Attorney General or any other public officer with the consent of the Attorney General may apply for an emergency protection order to be made under section 29 in respect of the child.

(8) While a child is being kept in police protection, no police officer shall have parental responsibility for him; but the Chief Police Officer shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the length of the period during which the child will be so protected).

(9) Where a child has been taken into police protection, the Chief Police Officer shall allow -

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for him;
- (c) any person with whom the child was living immediately before he was taken into police protection;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 20; and
- (f) any person acting on behalf of those persons,

to have such contact (if any) with the child as (in the opinion of the Chief Police Officer) is reasonable and in the child's best interests.

31.(1) A person who, knowingly and without lawful authority or reasonable excuse -

*Abduction of children  
in care etc.*

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person,

commits an offence.

(2) This section applies in relation to a child who is -

- (a) in care;
- (b) the subject of an emergency protection order; or
- (c) in police protection,

and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 30, as the case may be.

(3) A person convicted of an offence under this section is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale or both.

32.(1) Where it appears to the court that there is reason to believe that a child to whom this section applies -

*Recovery of abducted children etc.*

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section ("a recovery order").

(2) This section applies in relation to the same children to whom section 31 applies and in this section "the responsible person" has the same meaning as in section 31.

(3) A recovery order -

- (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
- (b) authorises the removal of the child by any authorised person;
- (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a police officer or to an officer of the court;
- (d) authorises a police officer to enter any premises specified in the order and search for the child, using reasonable force if necessary.

(4) The court may make a recovery order only on the application of -

- (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
- (b) where the child is in police protection, the Chief Police Officer.

(5) A recovery order shall name the child and -

- (a) any person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or
- (b) where the child is in police protection, the Chief Police Officer.

(6) Premises may only be specified under subsection (3)(d) of this section if the court is satisfied that there are reasonable grounds for believing the child to be on them.

(7) In this section "an authorised person" means -

- (a) any person specified by the court;
- (b) any police officer;
- (c) any person who is authorised -
  - (i) after the recovery order is made; and
  - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order,

to exercise any power under a recovery order.

(8) Where a person is authorised as mentioned in subsection (7)(c) of this section -

- (a) the authorisation shall identify the recovery order; and
- (b) any person claiming to be authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

(9) A person commits an offence who intentionally obstructs an authorised person exercising the power under subsection (3)(c) of this section to remove a child and on conviction of that offence is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(10) No person shall be excused from complying with any request made under subsection (3)(c) of this section on the ground that complying with it might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be evidence against either of them in proceedings for an offence other than perjury.

33.(1) Without prejudice to section 37 or any other power to make such rules, rules of court may be made with respect to the procedure to be followed in connection with proceedings under this Part of this Ordinance.

*Rules and regulations.*

(2) The rules may, in particular, make provision -

- (a) as to the form in which any application is to be made or direction is to be given;
- (b) prescribing the persons who are to be notified of -
  - (i) the making or extension of an emergency protection order;
  - (ii) the making of an application under section 29(4) or (8) or 30(7); and
- (c) as to the content of any such notification and the manner in which, and the person by whom, it is to be given.

(3) Until such time as rules of court to which subsection (1) of this section relates are first made, the rules of court for the time being in force to which section 52(1) of the Children Act 1989 relates ("the corresponding rules of court") shall have effect as if they had been made under subsection (1) of this section, but subject to such modifications as may be necessary to substitute references to courts and authorities in the Falkland Islands for references to courts and authorities in England and Wales.



(4) The power to make rules of court for the purposes mentioned in subsection (1) of this section includes power by such rules to adopt, subject to such modifications and adaptations as may be specified in those rules, the corresponding rules of court.

## Part V

### MISCELLANEOUS AND GENERAL

#### *Criminal care and supervision orders*

34.(1) The power of a court to make an order in the application to the Falkland Islands of subsection (2) of section 1 of the Children and Young Persons Act 1969 (care proceedings in juvenile courts) where it is of opinion that the condition mentioned in paragraph (f) of that subsection ("the offence condition") is satisfied is hereby abolished. *Care and supervision orders in criminal proceedings.*

(2) The powers of the court to make care orders -

(a) in the application of section 7(7)(a) of the Children and Young Persons Act 1969 (alteration in treatment of young offenders); and

(b) in the application of section 15(1) of that Act, on discharging a supervision order made under section 7(7)(b) of that Act,

are hereby abolished.

(3) The powers given by that Act in its application to the Falkland Islands to include requirements in supervision orders shall have effect subject to amendments made by Schedule 5.

#### *Effect and duration of orders etc.*

35.(1) The making of a residence order with respect to a child who is subject to a care order discharges the care order. *Effect and duration of orders etc.*

(2) The making of a care order with respect to a child who is the subject of any section 9 order discharges that other order.

(3) The making of a care order with respect to a child who is the subject of a supervision order discharges that other order.

(4) The making of a care order with respect to a child who is a ward of court brings that wardship to an end.

(5) Where an emergency protection order is made with respect to a child who is in care, the care order shall have effect subject to the emergency protection order.

(6) Any order made under section 5(1) or 6(1) shall continue in force until the child reaches the age of eighteen unless it is brought to an end earlier.

(7) Any -

(a) agreement under section 5; or

(b) appointment under section 6(3) or (4),

shall continue in force until the child reaches the age of eighteen unless it is brought to an end earlier.

(8) An order under Schedule 1 has effect as specified in that Schedule.

(9) A section 9 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of sixteen, unless it is to have effect beyond that age by virtue of section 9(4).

(10) Where a section 9 order has effect with respect to a child who has reached the age of sixteen, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

(11) Any care order, other than an interim care order, shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.

(12) Any order made under any other provision of this Ordinance in relation to a child shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

(13) On disposing of any application for an order under this Ordinance, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Ordinance of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(14) Where an application ("the previous application") has been made for -

- (a) the discharge of a care order;
- (b) the discharge of a supervision order;
- (c) the substitution of a supervision order for a care order; or
- (d) a child assessment order,

no further application of a kind mentioned in paragraphs (a) to (d) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds six months.

(15) Subsection (14) of this section does not apply to applications made in relation to interim orders.

(16) Where -

- (a) a person has made an application for an order under section 20;
- (b) the application has been refused; and
- (c) a period of less than six months has elapsed since the refusal,

that person may not make a further application for such an order with respect to the same child, unless he has obtained the leave of the court.

*Jurisdiction and procedure etc.*

36.(1) The name "domestic proceedings", given to certain proceedings in courts of summary jurisdiction, is hereby changed to "family proceedings" and the name "domestic court" is hereby changed to "family proceedings court". *Jurisdiction of courts.*

(2) Proceedings under this Ordinance shall in relation to the Summary Court be treated as family proceedings.

(3) Subsection (2) is subject to the provisions of sections 65(1) and (2) (proceedings which may be treated as not being family proceedings) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands as amended by this Ordinance.

(4) The Summary Court shall not be competent to entertain any application, or make any order, involving the administration or application of -

(a) any property belonging to or held in trust for a child; or

(b) the income of any such property.

(5) The powers of the Summary Court under section 63(2) of the Magistrates' Court Act 1980 in its application to the Falkland Islands to suspend or rescind orders shall not apply to any order made under this Ordinance.

(6) The Chief Justice shall have and may exercise the like powers as are possessed by the Lord Chancellor of England under Part I of Schedule 11 to the Children Act 1989 (powers by order to specify in what court various types of proceedings under this Ordinance or the Adoption Act 1976 in its application to the Falkland Islands may be commenced, by such order to make provision as to transfer of such proceedings or any specified part of such proceedings from one court to another, by such order to make provision as to the exercise by a single justice of the peace of the powers of the Summary Court to make an emergency protection order etc).

37.(1) The Chief Justice may by rules of court made by him make such provision for giving effect to - *Rules of court.*

(a) this Ordinance;

(b) the provisions of any Order made under this Ordinance (including any Order made by him under section 36(6); or

(c) any amendment made by this Ordinance to any other enactment (including an enactment of the United Kingdom Parliament in its application to the Falkland Islands by or under the provisions of any Ordinance of the Falkland Islands),

as appears to him to be necessary or expedient.

(2) The rules may, in particular, make provision -

(a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);

(b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;

(c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;

(d) applying (with or without modifications) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint to a court of summary jurisdiction to relevant proceedings in such a court brought otherwise than on such a complaint;

(e) with respect to preliminary hearings;

(f) for the service outside the Falkland Islands, in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a court of summary jurisdiction;

(g) for the exercise by courts of summary jurisdiction, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question may be outside the Falkland Islands);

(h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;

(i) authorising a single justice of the peace to discharge the functions of the Summary Court with respect to such relevant proceedings as may be prescribed;

(j) authorising the Summary Court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.

(3) In subsection (2) -

"notice of proceedings" means a summons or such other notice of proceedings as is required; and "given" in relation to a summons, means "served";

"prescribed" means prescribed by rules; and

"relevant proceedings" means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) of this section and any part of such proceedings.

(4) This section and any other power in this Ordinance to make rules of court are not to be taken as in any way limiting any other power of the Chief Justice to make rules of court.

(5) Until such time as the Chief Justice first makes rules of court under the powers conferred by the foregoing provisions of this section, and to the extent that he does not make inconsistent provision by any such rules of court, the rules of court made under section 93 of the Children Act 1989 and for the time being in force shall have effect as if they had been made by the Chief Justice under the foregoing provisions of this section and so that the provisions of those rules which apply to or have effect in relation to proceedings -

(a) at first instance in the High Court or the Family Division of that Court, shall apply to and in relation to corresponding proceedings in the Supreme Court under this Ordinance;

(b) in a county court, shall apply to or in relation to corresponding proceedings in the Magistrate's Court;

(c) in a magistrates' court, shall apply to or in relation to corresponding proceedings in the Summary Court,

and in each case, with such amendments and modifications only as are necessary in the circumstances.

38.(1) An appeal shall lie to the Supreme Court against -

*Appeals.*

(a) the making by the Magistrate's Court or by the Summary Court of any order under this Ordinance;

(b) any refusal by the Magistrate's Court or by the Summary Court to make such an order.

(2) Where, in relation to any proceedings under this Ordinance, the Summary Court declines jurisdiction because it considers that the case can be more conveniently dealt with by the Magistrate's Court or by the Supreme Court, no appeal shall lie against that decision of the Summary Court.

(3) Subsection (1) of this section does not apply in relation to an interim order for periodical payments made under Schedule 1 to this Ordinance.

(4) On an appeal under this section, the Supreme Court may make such order as may be necessary to give effect to its determination of the appeal.

(5) Where an order is made under subsection (4) of this section, the Supreme Court may also make such incidental or consequential order as appear to it to be just.

(6) Where an appeal under this section relates to an order for periodical payments, the Supreme Court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.

(7) The date so specified must not be earlier than the earliest date on which the court from which the appeal is brought could have ordered the periodical payments to commence.

(8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the Supreme Court reduces the amount of those payments or discharges the order -

(a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the Supreme Court thinks fit;

(b) if any arrears are due under the order for periodical payments, it may remit the whole, or part, or those arrears.

(9) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by the court from which the appeal was brought) shall, for the purposes -

(a) of the enforcement of the order; and

(b) of any power to vary, revive or discharge order,

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.

39.(1) In any proceedings in which a court is hearing an application for an order under Part III or IV of this Ordinance, or is considering whether to make any such order, the court may order the child concerned to attend at any such stage or stages of the proceedings as may be specified in the order.

*Attendance of child at hearing under Part III or IV.*

(2) The power conferred by subsection (1) shall be exercised in accordance with rules of court.

(3) Subsections (4) to (6) apply where -

(a) an order under subsection (1) has not been complied with; or

(b) the court has reasonable cause to believe that it will not be complied with.

(4) The court may make an order authorising a police officer, or such person as may be specified in the order -

(a) to take charge of the child and bring him to court;

(b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.

(5) The court may order any person who is in a position to do so to bring the child to the court.

(6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose it to the court.

40.(1) Subsection (2) applies where a child who is called as a witness in any civil proceeding does not, in the opinion of the court, understand the nature of an oath.

*Evidence given by, or with respect to children.*

(2) The child's evidence may be heard by the court if, in its opinion -

(a) he understands that it is duty to speak the truth; and

(b) he has sufficient understanding to justify this evidence being heard.

(3) The Governor, after consultation with the Chief Justice, may by Order make provision for the admission of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.

(4) An Order under subsection (3) may only be made with respect to -

(a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and

(b) evidence in connection with the upbringing, maintenance or welfare of a child.

(5) An order under subsection (3) -

(a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;

(b) may make different provision for different purposes and in relation to different descriptions of court; and

(c) may make such amendments and repeals in any enactment relating to evidence (other than this Ordinance) as the Governor, after consulting the Chief Justice, considers necessary or expedient in consequence of the provision made by the Order.

(6) In this section -

"civil proceedings" and "court" have the same meanings as they have in the Civil Evidence Act 1968 by virtue of section 18 of that Act, and in the application of that Act (and of that section) to the Falkland Islands; and

"prescribed" means prescribed by an order under subsection (3) of this section.

41.(1) It is hereby declared that any rules made under section 144 of the Magistrates' Courts Act 1980 and which provide for a magistrates' court to sit in private in proceedings in which any powers under the Children Act 1989 may be exercised by the court with respect to any child shall apply so as to have the effect that they provide for the Magistrate's Court and the Summary Court to sit in private in corresponding proceedings in which any powers under this Ordinance may be exercised by the court with respect to any child.

*Privacy for children involved in certain proceedings.*

(2) No person shall publish any material which is intended, or likely, to identify -

(a) any child as being involved in any proceedings before a court of summary jurisdiction in which any power under this Ordinance may be exercised by the court with respect to that or any other child; or

(b) an address as being that of a child involved in any such proceedings.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(4) The court or the Governor may, if satisfied that the welfare of the child in a particular case requires it, by order dispense with the requirement of subsection (2) of this section to such extent as may be specified in the order.

(5) For the purposes of this section -

"publish" includes -

(a) broadcast by radio, television or cable television;

(b) cause to be published; and

"material" includes any picture or representation.

(6) A person who contravenes this section commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 4 on the standard scale.

42.(1) In any proceedings in which a court is hearing an application for an order under Part III or IV of this Ordinance, no person shall be excused from giving evidence in any matter or from answering any question put to him on the ground that doing so might incriminate him or his spouse of an offence. *Self-incrimination.*

(2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

43.(1) There shall cease to be exercisable any power of the Supreme Court (otherwise than in the exercise of any power conferred on it by this Ordinance), whether by virtue of any provision of any enactment, at common law or in equity - *Restrictions on use of wardship jurisdiction.*

(a) to place a ward of court in the care of the Crown (as distinct from the court) or under the supervision of the Crown (as distinct from the court) or of a public officer in his capacity as such;

(b) to require a child to be accommodated by or on behalf of the Crown;

(c) so as to make a child who is the subject of a care order a ward of court;

(d) for the purpose of conferring upon the Crown power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) No application for the exercise of the Supreme Court's inherent jurisdiction with respect to children may be made by the Crown unless the Crown has obtained the leave of the Supreme Court.

(3) The court may only grant leave if it is satisfied that -

(a) the result which the Crown wishes to achieve could not be achieved through the making of any order of a kind to which subsection (4) applies;

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.



(4) This subsection applies to any order -

- (a) made otherwise than in the exercise of the Supreme Court's inherent jurisdiction;
- (b) which the Crown is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

### *General*

44.(1) This section applies where any offence under this Ordinance is committed by a body corporate.

*Offences by bodies corporate.*

(2) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) has committed the offence and is liable to be proceeded against and punished accordingly.

45.(1) The consent of a child who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian or any other person who has parental responsibility for him.

*Consent by persons over 16 to surgical, medical and dental treatment.*

(2) In this section "surgical, medical or dental treatment" includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

(3) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted, and, without prejudice to the foregoing, this section shall be deemed to state the law of the Falkland Islands as it has been at all times since 1st January 1970.

46.(1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.

*Time at which a person attains a particular age.*

(2) This section applies only when the relevant anniversary falls on a date after that on which this section comes into force and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein.

(3) This section abrogates the common law rule (sometimes known as the Rule in *Re Shurey*) that a person attains a particular age at the beginning of the day immediately preceding the relevant anniversary of his birth.

47. A person who is not of full age, and who might before the commencement of this Ordinance have been described as "an infant" or as a "minor" may after the commencement of this Ordinance be described in any instrument or enactment as a child instead of being described as an infant or as a minor, and in every instrument made in every enactment passed after the commencement of this Ordinance the expression "child" shall, unless in the context the expression describes a relationship between two persons or the contrary intention otherwise appears, be construed as referring to a person who is not of full age (that is to say a person who has not attained the age of eighteen years).

*Persons under full age may be described as children instead of as infants or minors.*

48.(1) The Ordinance mentioned in Part I of Schedule 3 to this Ordinance are repealed to the extent there specified. *Repeals etc.*

(2) The Ordinances mentioned in Part II of Schedule 3 to this Ordinance are amended to the extent there specified.

(3) The Acts mentioned in Part III of Schedule 3 to this Ordinance shall cease to apply in the Falkland Islands to the extent there specified.

49. Schedule 4 to this Ordinance (transitional provisions) shall have effect.

*Transitional.*

## SCHEDULES

### SCHEDULE 1

#### Section 15(1)

#### FINANCIAL PROVISION FOR CHILDREN

##### *Orders for financial relief against parents*

1.(1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may -

(a) in the case of an application to the Supreme Court or to the Magistrate's Court, make one or more of the orders mentioned in sub-paragraph (2);

(b) in the case of an application to the Summary Court, make one or both of the orders mentioned in paragraphs (a) and (b) of that sub-paragraph.

(2) The orders referred to in sub-paragraph (1) are -

(a) an order requiring either or both parents of a child -

(i) to make to the applicant for the benefit of the child; or

(ii) to make to the child himself,

such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both parents of a child -

(i) to secure to the applicant for the benefit of the child; or

(ii) to secure to the child himself,

such periodical payments, for such term, as may be so specified;

(c) an order requiring either or both parents of a child -

(i) to pay to the applicant for the benefit of the child; or

(ii) to pay to the child himself,

such lump sum as may be so specified;

(d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property -

(i) to which either parent is entitled (either in possession or reversion); and

- (ii) which is specified in the order;
- (e) an order requiring either or both parents of a child -
  - (i) to transfer to the applicant for the benefit of the child; or
  - (ii) to transfer to the child himself,
 such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.
- (3) The powers conferred by this paragraph may be exercised at any time.
- (4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (5) Where a court makes an order under this paragraph -
  - (i) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child if he has not attained the age of eighteen;
  - (ii) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.
- (6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.
- (7) Where a child is a ward of court, the court may exercise any of its powers under this Schedule even though no application has been made to it.

*Orders for financial relief for persons over eighteen*

2.(1) If, on an application by a person who has reached the age of eighteen, it appears to the court -

- (a) that the applicant is, will be (or if an order were made under this paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this paragraph,

the court may make one or more of the orders mentioned in sub-paragraph (2).

(2) The orders are -

- (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An application may not be made under this paragraph by any person if, immediately before he reached the age of sixteen, a periodical payments order was in force with respect to him.

(4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

(5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(6) In sub-paragraph (3) "periodical payments order" means an order under -

(a) this Schedule;

(b) section 26 or 30 of the Matrimonial Causes Ordinance 1979;

(c) section 4(1)(g) of the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967,

for the making or securing of periodical payments.

(7) The powers conferred by this paragraph shall be exercisable at any time.

(8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

#### *Duration of orders for financial relief*

3.(1) The term to be specified in an order for periodical payments made under paragraph 1(2)(a) or (b) in favour of a child may begin with the date of the making of an application in question or any later date but -

(a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and

(b) shall not in any event extend beyond the child's eighteenth birthday.

(2) Paragraph (b) of sub-paragraph (1) shall not apply in the case of a child if it appears to the court that -

(a) the child is, or will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for periodical payments made under paragraph 1(2)(a) or (b) requiring periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(4) Where an order is made under paragraph 1(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if -

- (a) any parent making or securing the payment; and
- (b) any parent to whom the payments are made or secured,

live together for a period of more than six months.

***Matters to which the court is to have regard in making orders for financial relief***

4.(1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances, including -

- (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;
- (f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to -

- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he assumed that responsibility and the period during which he met that responsibility;
- (b) whether he did so knowing that the child was not his child;
- (c) the liability of any other person to maintain the child.

(3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.

(4) The persons mentioned in sub-paragraph (1) are -

- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
- (b) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;

- (c) the applicant for the order;
- (d) any other person in whose favour the court proposes to make the order.

***Provisions relating to lump sums***

5.(1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liability or expenses -

- (a) incurred in connection with the birth of the child or in maintaining the child; and
- (b) reasonably incurred before the making of the order,

to be met.

(2) The amount of any sum required to be paid by an order made by the Summary Court under paragraph 1 or 2 shall not exceed £1,000 or such larger amount as the Governor may from time to time fix for the purposes of this sub-paragraph.

(3) The power of the court under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.

(4) The amount of a lump sum which a parent may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by the Summary Court, exceed the maximum amount that may at the time of the order be required to be paid under sub-paragraph (2), but the Summary Court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Ordinance.

(5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) Where the order provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying -

- (a) the number of instalments payable;
- (b) the amount of any instalment;
- (c) the date on which any instalment becomes payable.

***Variation etc of orders for periodical payments***

6.(1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under paragraph 1 or 2 for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where on an application under paragraph 1 or 2 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under the order, the court may provide that the payments so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child himself.

(5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child attains the age of sixteen, or at any time after that date but before the date on which he reaches the age of eighteen, the child may apply to the court which made the order for an order for its revival.

(6) If on such an application it appears to the court that -

(a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order under this sub-paragraph,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) An order which is revived by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.

(8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

#### *Variations of orders for periodical payments etc made by the Summary Court*

7.(1) Subject to sub-paragraphs (7) and (8), the power of the Summary Court -

(a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or

(b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

(2) In any case where -



(a) the Summary Court has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments;

(b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands (standing order, etc),

any person entitled to make application under this Schedule for the variation of the order (in this paragraph referred to as "the applicant") may apply to the clerk to the Summary Court for the order to be varied as mentioned in sub-paragraph (3).

(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after giving written notice (by post or otherwise) of the application to any interested party and allowing that party, within the period of 21 days beginning with the date of the giving of the notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it in appropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

(6) Subsection (4) of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands (power of court or order that account be opened) shall apply for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that section.

(7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands, the court shall, unless on representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) None of the powers of the court, or of the clerk to the Summary Court, conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands).

(10) In sub-paragraphs (3) and (4) "interested party", in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

*Variation of orders for secured periodical payments after death of parent*

8.(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation of a discharge of the order shall include the personal representatives of the deceased parent.

(2) No application for the variation of an order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.

(4) Sub-paragraph (3) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.

(5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) shall include the changed circumstances resulting from death of the parent.

(6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(7) In this paragraph "secured periodical payments order" means an order for secured periodical payments under paragraph 1(2)(b).

*Financial relief under other enactments*

9.(1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order ("the financial relief order") made under any enactment other than this Ordinance and requiring a person to contribute to the child's maintenance.

(2) Where this paragraph applies, the court may, on the application of -

(a) any person required by the financial relief order to contribute to the child's maintenance; or

(b) any person in whose favour a residence order with respect to the child is in force,

make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is payable under that order.

### *Interim orders*

10.(1) Where an application is made under paragraph 1 or 2 the court may, at any time before it disposes of the application, make an interim order -

(a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit;

(b) giving any direction that the court thinks fit.

(2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1 or 2.

(3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified or the purposes of this paragraph in the interim order.

(4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

### *Alteration of maintenance agreements*

11.(1) In this paragraph and in paragraph 12 "maintenance agreement" means any agreement in writing made with respect to a child, whether before or after the commencement of this Ordinance, which -

(a) is or was made between the father and mother of the child;

(b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,

and any such provisions are in this paragraph, and paragraph 12, referred to as "financial arrangements".

(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in the Falkland Islands, then, either party may apply to the court for an order under this paragraph.

(3) If the court to which the application is made is satisfied either -

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to the child,

then the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.

(4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.

(5) Where a court decides to make an order under this paragraph altering the maintenance agreement -

(a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or

(b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or (as the case may be) the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of the sub-paragraphs (1) and (2) of paragraph (3) as if the order were an order under paragraph 1(2)(a) or (b).

(6) The Summary Court shall not entertain an application under sub-paragraph (2) unless both parties are resident in the Falkland Islands, and shall not have power to make any order on such an application except -

(a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;

(b) in a case where the agreement contains provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

12.(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in the Falkland Islands, the surviving party or the personal representatives of the deceased party may apply to the Supreme Court or to the Magistrate's Court for an order under paragraph 11.

(2) If a maintenance agreement is altered by a court on an application under this paragraph the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

(3) An application under this paragraph shall not, except with the leave of the Supreme Court or the Magistrate's Court be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.

(4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(5) The Magistrate's Court has the same jurisdiction as the Supreme Court to entertain an application under this paragraph or an application for leave to make an application under this paragraph.

(6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by a surviving party after that period.

(7) Sub-paragraph (6) shall not prejudice any power to recover any part of the estate so distributed by virtue of the making of an order in pursuance of this paragraph.

#### *Enforcement of orders for maintenance*

13. An order for the payment of money made by the Magistrate's Court or the Summary Court under this Ordinance shall be enforceable as (or as if it were) a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

#### *Financial provision for child resident in country outside the Falkland Islands*

14.(1) Where one parent of a child lives in the Falkland Islands and the child lives outside the Falkland Islands with -

(a) another parent of his;

(b) a guardian of his; or

(c) a person in whose favour a residence order is in force with respect to the child,

the court shall have power, on an application by any of the persons mentioned in paragraphs (a) to (c) to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in the Falkland Islands.

(2) Any reference in this Ordinance to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or as the case may be to an order made by virtue of sub-paragraph (1).

#### *Interpretation*

15.(1) In this Schedule "child" includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has attained the age of eighteen, that person.

(2) In this Schedule, except in paragraph 2, "parent" includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family; and for this purpose any reference to either parent or to both parents shall be construed as references to any parent of his and to all of this parents.

**SCHEDULE 2****Section 20****SUPERVISION ORDERS****Part I****GENERAL***Meaning of "responsible person"*

1. In this Schedule, "the responsible person", in relation to a supervised child, means -

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

*Power of supervisor to give directions to supervised child*

2.(1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things -

- (a) to live at a place or places specified in the directions for a period or periods so specified;
- (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;
- (c) to participate in activities specified in the directions on a day or days so specified.

(2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.

(3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

*Imposition of obligations on responsible persons*

3.(1) With the consent of any responsible person, a supervision order may include a requirement -

- (a) that he shall take all reasonable steps to ensure that the supervised child complies with any directions given by the supervisor under paragraph 2;
- (b) that he takes all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;
- (c) that he complies with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is to attend with him.

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

*Psychiatric and medical examinations*

4.(1) A supervision order may require the supervised child -

(a) to submit to a medical or psychiatric examination; or

(b) to submit to any such examination from time to time as directed by the supervisor.

(2) Any such examination shall be required to be conducted -

(a) by, or under the direction of such medical practitioner as may be specified in the order;

(b) at a place specified in the order (and whether in the Falkland Islands or in the United Kingdom) and at which the supervised child is to attend as a non-resident patient; or

(c) at -

(i) such hospital in the Falkland Islands or in the United Kingdom; or

(ii) in the case of a psychiatric examination, a hospital in the Falkland Islands or in the United Kingdom or mental nursing home in the United Kingdom,

at which the supervised child is, or is to attend as, a resident patient.

(3) A requirement of the kind mentioned in sub-paragraph (2)(c) shall not be included unless the court is satisfied, on the evidence of a medical practitioner, that -

(a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment;

(b) a period as a resident patient is necessary if the examination is to be carried out properly; and

(c) (if the requirement is to attend as a non-resident patient at a place in the United Kingdom or as a resident patient at a hospital or mental nursing home in the United Kingdom) that the requisite examination is not ordinarily and sufficiently available at a place or at any hospital in the Falkland Islands.

*Psychiatric and medical treatment*

5.(1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a Government medical officer or some other medical practitioner approved by the Governor for the purpose (provided that a person who is approved for the purposes of section 12 of the Mental Health Act 1983 in the United Kingdom shall be deemed to have been approved by the Governor for the purpose), that the mental condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for the period specified in the order, submit to such treatment as is specified in the order.

(2) The treatment specified in accordance with sub-paragraph (1) must be -

(a) by, or under the direction of, such medical practitioner as may be specified in the order;

(b) as a non-resident patient at such place as may be so specified; or

(c) as a resident patient in a hospital or any place designated as an approved place for the purposes of the Mental Health Ordinance 1987.

(3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for the period specified in the order, submit to such treatment as is specified in the order.

(4) The treatment specified in accordance with sub-paragraph (3) must be -

(a) by, or under the direction of, such medical practitioner as may be specified in the order;

(b) as a non-resident patient at such place as may be specified in the order; or

(c) as a resident patient at a hospital in the Falkland Islands or in the United Kingdom.

(5) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied -

(a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion;

(b) that satisfactory arrangements have been, or can be, made for the treatment; and

(c) where it is proposed that the treatment shall be given in the United Kingdom, that that treatment is not ordinarily or sufficiently available in the Falkland Islands.

(6) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement contained in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that -



- (a) the treatment should be continued beyond the period specified in the order;
- (b) the supervised child needs different treatment;
- (c) that he is not susceptible to treatment; or
- (d) that he does not require further treatment,

the practitioner shall make a report in writing to the supervisor.

(7) On receiving a report under this paragraph the supervisor shall refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

## Part II

### MISCELLANEOUS

#### *Life of supervision order*

6.(1) Subject to sub-paragraph (2) and section 35, a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

(2) Where a supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as the court may specify.

(3) A supervision order may not be extended so as to run beyond the end of the period of three years beginning with the date on which the order was made.

#### *Information to be given to supervisor etc*

7.(1) A supervision order may require the supervised child -

- (a) to keep the supervisor informed of any change in his address; and
- (b) to allow the supervisor to visit him at the place where he is living.

(2) The responsible person in relation to any child with respect to whom a supervision order is made shall -

- (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
- (b) if he is living with the child, allow the supervisor reasonable contact with the child.

#### *Effect of supervision order on earlier orders*

8. The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which -

- (a) was made with respect to the child; and
- (b) would otherwise continue in force.

### SCHEDULE 3

#### REPEALS, AMENDMENTS AND MODIFICATIONS OF EXISTING ENACTMENTS

##### Part I

##### ORDINANCES REPEALED

The Ordinances mentioned in this Part of this Schedule are repealed to the extent specified in relation to them.

##### The Guardianship of Minors Ordinance 1979

###### *Extent to which repealed*

The whole Ordinance.

##### The Matrimonial Causes Ordinance 1979

###### *Extent to which repealed*

Section 45(3).

##### Part II

##### ORDINANCES AMENDED

The Ordinances mentioned in this Part of this Schedule are amended in the manner specified in relation to them.

##### The Matrimonial Causes Ordinance 1979

For section 44 of the Ordinance (restrictions on decrees for dissolution, annulment or separation affecting children) there shall be substituted -

"44.(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider -

*Restrictions on decrees for dissolution, annulment or separation affecting children.*

(a) whether there are any children of the family to whom this section applies; and

(b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Ordinance 1994 with respect to any of them.

(2) Where, in any case to which this section applies, it appears to the court that -

(a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the 1994 Ordinance with respect to any such child;

(b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and

(c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to -

(a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and

(b) any child of the family who has reached that age on that date and in relation to whom the court directs that this section shall apply."

### **The Crimes Ordinance 1989**

(a) The text under the heading "Extent of Application" in relation to the Sexual Offences Act 1956 in Part I of Schedule 1 is replaced by the following -

"Sections 1 to 7 (inclusive), 9 to 12(1) (inclusive), 16(1), 17, 19 to 37 (inclusive) (except section 37(2) and 37(4) in so far as it refers to section 37(2) and except section 37(7)(a) and (b)), 39, 41 to 47 (inclusive) 52, 53, 55, First Schedule (except paragraph 5) and Second Schedule (except column 2)"

(b) thereafter in the said Schedule and in relation to the Sexual Offences Act 1956 the text under the heading "Modifications" is replaced by the following -

"1. In sections 19(3), 20(2), 21(3) and 43(5) the words "the lawful charge of " are replaced by the words "parental responsibility for or care of".

2. In section 28 the following subsections replace subsections (3) and (4) -

"(3) The persons who are to be treated for the purposes of this section as responsible for a girl are (subject to subsection (4) of this section) -

(a) her parents;

(b) any person who is not a parent of hers but who has parental responsibility for her; and

(c) any person who has care of her.

(4) An individual falling within subsection (3)(a) or (b) of this section is not to be treated as responsible for a girl if -

(a) a residence order under the Children Ordinance 1994 is in force with respect to him and he is not named in the order as the person with whom she is to live; or

(b) a care order under that Ordinance is in force with respect to her."

3. Nothing in section 37 shall exclude the operation of any enactment of the Falkland Islands (whether made before or after the passing of this Ordinance) which is inconsistent with section 37 and section 37 shall take effect subject to such enactment.

4. In section 43(6) the words "section forty of the Children and Young Persons Act 1933" are replaced by the words "Part IV of the Children Ordinance 1994."

5. The following new section is inserted after section 46 -

"46A. In this Act "parental responsibility" has the same meaning as in the Children Ordinance 1994."

(c) the text under the heading "Modifications" in relation to the Child Abduction Act 1984 in Part 1 of Schedule 1 to the Crimes Ordinance 1989 is replaced by the following -

"1. Section 1(2) to (4) are replaced by -

*Meaning of  
parental responsibility.*

"(2) A person is connected with a child for the purposes of this section if -

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

(b) in the case of a child whose parents were not married to each other at the time of his birth, there are reasonable grounds for believing that he is the father of the child; or

(c) he is a guardian of the child;

(d) he is a person with respect to whom a residence order is in force with respect to the child; or

(e) he 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 he has parental responsibility for him;

(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; or

(b) the leave of the court granted under or by virtue of any provision of Part IV of the Children Ordinance 1994; or

(c) if any person has custody of the child, the leave of the court which granted custody to him.

(4) A person 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) he is a person in whose favour there is a residence order with respect to the child; and

(b) he takes or sends him out of the Falkland Islands for a period of less than three months.

(4A) 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 Part II of the Children Ordinance 1994".

2. In section 1(5) the words from "but" to the end are replaced by -

"(5A) Subsection (5)(c) does not apply if -

(a) the person who has 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."

3. Section 1(7) is replaced by the following -

"(7) For the purposes of this section -

(a) "guardian of a child", "residence order" and "parental responsibility" have the same meaning as in the Children Ordinance 1994; and

(b) a person shall be treated as having custody of a child if there is in force an order of a court in the Falkland Islands awarding him (whether solely or jointly with another person) custody, legal custody or care and control of the child.

4. In section 2(1) the words from "Subject" to "above" are replaced by the words "Subject to subsection (3), a person, other than one mentioned in subsection (2)".

5. Section 2(2) is replaced by -

"(2) The persons are -

(a) where the father and mother of the child in question were married to each other at the time of his birth, the child's father and mother;

(b) where the father and mother of the child in question were married to each other at the time of his birth, the child's mother; and

(c) any other person mentioned in section 1(2)(c) to (e) above.

(3) In proceedings against any person for an offence under this section, it shall be a defence for that person to prove -

(a) where the father and mother of the child in question were not married to each other at the time of his birth -

(i) that he is the child's father; or

(ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child's father; or

(b) that, at the time of the alleged offence, he believed that the child had attained the age of sixteen."

6. At the end of section 3 there shall be added the words -

"and

(d) references to a child's parents and to a child whose parents were (or were not) married to each other at the time of his birth shall be construed in accordance with section 2 of the Family Law Reform Ordinance 1994 (which extends their meaning)."

### **Part III**

#### **PROVISIONS OF ENGLISH ACTS CEASING TO HAVE EFFECT**

In so far as the following English Acts applied or may have applied as part of the law of the Falkland Islands immediately prior to the coming into force of this Ordinance, they shall on the commencement of this Ordinance cease to apply in the Falkland Islands to the extent stated individually in respect of them in this Schedule -

##### **The Guardianship of Infants Act 1886**

*Extent to which to cease to have effect*

All provisions

##### **The Custody of Children Act 1891**

*Extent to which to cease to have effect*

All provisions

##### **The Children and Young Persons Act 1933**

*Extent to which to cease to have effect*

In section 14(2), the words from (and including) "may also" to (and including) "together, and".  
Section 40.

### **Children and Young Persons Act 1963**

#### *Extent to which to cease to have effect*

Sections 1 to 15, 19 to 25, the words "under section 1 of the Children and Young Persons Act 1969 or" in section 29(1), sections 30, 32, 35(1) and (2)

### **Family Law Reform Act 1969**

#### *Extent to which to cease to have effect*

Section 7

### **Children and Young Persons Act 1969**

#### *Extent to which to cease to have effect*

The whole Act except sections 4 to 10

### **The Adoption Act 1976**

#### *Extent to which to cease to have effect*

Section 11(5), 14(3), in section 15(1) the words from "subject" to "cases", section 15(4), section 26.

### **The Child Care Act 1980**

#### *Extent to which to cease to have effect*

The whole Act.

### **The Magistrates' Courts Act 1980**

#### *Extent to which to cease to have effect*

Section 65(1)(c) and (g) and in section 81(8) the words "by deed or will" in the definition of "guardian" and the words from "as applied" to the end in the definition of "sums adjudged to be paid by a conviction".

## **Part IV**

### **MODIFICATIONS WHICH ARE TO HAVE EFFECT IN RELATION TO ENGLISH ACTS IN THEIR APPLICATION TO THE FALKLAND ISLANDS**

With effect from the coming into force of this Ordinance, the English Acts mentioned in this Part of this Schedule are modified in their application to the Falkland Islands in the manner specified in this Part of this Schedule.

### **The Wills Act 1937**

#### *Modifications*

In section 1 (interpretation), in the definition of "will", for the words "and also to a disposition by will and testament or devise of the custody and tuition of any child" there shall be substituted "and also to an appointment by will" and also to an appointment by will of a guardian of a child".

### **The Children and Young Persons Act 1933**

#### *Modifications*

In section 1(2)(a) (cruelty to persons under sixteen), after the words "young person" there shall be inserted ", or the legal guardian of a child or young person,".

### **The Children and Young Persons Act 1969**

#### *Modifications*

In section 5 (restrictions on criminal proceedings for offences by young persons) in subsection (2), for the words "section 1 of this Act" there shall be substituted "Part IV of the Children Ordinance 1994".

### **The Magistrates' Courts Act 1980**

#### *Modifications*

In section 59(2) (in its application to the Falkland Islands, periodical payments through the clerk to the Summary court) for the words "the Guardianship of Minors Acts 1971 and 1973" (which in the Falkland Islands are to be taken as a reference to the Guardianship of Minors Ordinance 1979) there shall be substituted "(or having effect as if made under) Schedule 1 to the Children Ordinance 1994".

## **SCHEDULE 4**

### **TRANSITIONAL AND SAVINGS**

#### *Pending proceedings etc*

1.(1) Subject to sub-paragraphs (2) and (5), nothing in any provision of this Ordinance (other than the repeals mentioned in sub-paragraph (3)) shall affect any proceedings which are pending immediately before the coming into force of this Ordinance.

(2) Any proceedings for the committal of wards of court to the care of the Crown or in the exercise of the Supreme Court's inherent jurisdiction with respect to children which are pending in relation to a child who has been placed or allowed to remain in the care of the Crown shall not be treated for the purposes of this Schedule as pending proceedings after the expiry of six weeks from the coming into force of this Ordinance if no final order has been made in those proceedings by that time.



(3) The repeals are -

(a) section 45(3) of the Matrimonial Causes Ordinance 1979 (declaration by court that party to the marriage unfit to have custody of children of the family); and

(b) section 38 of the Sexual Offences Act 1956 in its application to the Falkland Islands (power of court to divest person of authority over girl or boy in cases of incest).

(4) For the purposes of the following provisions of this Schedule, any reference to an order in force immediately before the coming into force of this Ordinance shall be construed as including a reference to an order made after the coming into force of this Ordinance in proceedings pending before it came into force.

(5) Sub-paragraph (4) is not to be read as making the order in question have effect from a date earlier than that on which it was made.

(6) An Order under section 40(3) may make such provision with respect to the application of the Order in relation to proceedings which are pending when the Order comes into force as the Governor, acting in accordance with the advice of the Chief Justice, considers appropriate.

### CUSTODY ORDERS, ETC

#### *Cessation of declarations of unfitness etc*

2. Where immediately before the day on which this Ordinance comes into force there was in force -

(a) a declaration under section 45(3) of the Matrimonial Causes Ordinance 1979 (declaration by court that party to marriage unfit to have custody of children of family);  
or

(b) an order under section 38(1) of the Sexual Offences Act 1956 divesting a person of authority over a girl or boy in a case of incest);

the declaration or, as the case may be, the order, shall cease to have effect on that day.

#### *Orders to which paragraphs 4 to 9 apply*

3. In paragraphs 4 to 9 "an existing order" means any order which -

(a) is in force immediately before this Ordinance comes into force;

(b) was made under any enactment mentioned in sub-paragraph (2);

(c) determines all or any of the following -

(i) who is to have custody of a child;

(ii) who is to have care and control of a child;

(iii) who is to have access to a child;

(iv) any matter with respect to a child's education or upbringing; and

(2) The enactments are -

(a) the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967;

(b) the Matrimonial Causes Ordinance 1979;

(c) the Guardianship of Minors Ordinance 1979.

(3) For the purposes of this paragraph and paragraphs 4 to 9 "custody" includes legal custody and joint as well as sole custody but does not include access.

*Parental responsibility of parents*

4.(1) Where -

(a) a child's father and mother were married to each other at the time of his birth; and

(b) there is an existing order in force in relation to the child,

each parent shall have parental responsibility for the child in accordance with section 4 of this Ordinance as modified by sub-paragraph (3) of this paragraph.

(2) Where -

(a) a child's father and mother were not married to each other at the time of his birth; and

(b) there is an existing order with respect to the child,

section 4 of this Ordinance shall apply as modified by sub-paragraphs (3) and (4) of this paragraph.

(3) The modification is that for section 4(8) there shall be substituted -

"(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or order made under this Ordinance with respect to the child."

(4) The modifications are that -

(a) for the purposes of section 4(2) of this Ordinance, where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of this Ordinance) an order under section 5(1) of this Ordinance giving him parental responsibility for the child;

(b) where by virtue of paragraph (a) a court is deemed to have made an order under section 5(1) in favour of a father who has care and control by virtue of an existing order, the court shall not bring the order under section 4(1) to an end at any time while he has care and custody of the child by virtue of the order.

***Persons who are not parents but who have custody or care and control***

5.(1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) of this paragraph applies Parts I and II of Schedule 1 to this Ordinance shall have effect as modified by this paragraph.

(3) The modifications are that -

(a) for section 4(8) of this Ordinance there shall be substituted -

"(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Ordinance with respect to the child."

(b) at the end of section 10(4) of this Ordinance there shall be inserted -

"(c) any person who has custody and care and control of a child by virtue of any existing order"; and

(c) at the end of section 20(1)(c) there shall be inserted -

"(cc) where immediately before the care order was made there was an existing order by virtue of which a person had custody or care and control of the child, that person."

***Persons who have care and control***

6.(1) Sub-paragraphs (2) to (4) of this paragraph apply when a person has care and control by virtue of an existing order, but they cease to apply when that order ceases to have effect.

(2) Section 6 shall have effect as if -

(a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child; and

(b) for subsection (9) there were substituted -

"(9) Subsection (1) and (7) do not apply if the existing order referred to in paragraph (b) of those subsections was one by virtue of which a surviving parent of the child also had care and control of him."

(3) Section 10 shall have effect as if for subsection (5)(c)(i) of that section there were substituted -

"(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons."

(4) In Schedule 1 to this Ordinance, paragraph 1(1) shall have effect as if for the words "in whose favour a residence order is in force with respect to the child" there were substituted "who has been given care and control of the child by an existing order."

*Persons who have access*

7.(1) Sub-paragraphs (2) to (4) of this paragraph apply where a person has access by virtue of an existing order.

(2) Section 10 shall have effect as if after subsection (5) there were inserted -

"(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order."

(3) Section 16(2) shall have effect as if after paragraph (b) there were inserted -

"(bb) any person who has access to the child by virtue of an existing order."

(4) Sections 27(12), 28(12) and 30(12) shall have effect as if in each case after paragraph (d) there were inserted -

"(dd) any person who has been given access to him by virtue of an existing order."

*Enforcement of certain existing orders*

8. Sub-paragraph (2) of this paragraph applies in relation to any existing order which but for the repeal by this Ordinance of -

(a) the Guardianship of Minors Ordinance 1979;

(b) section 15 of the Matrimonial Proceedings (Court of Summary Jurisdiction) Ordinance 1967,

might have been enforced as if it were an order requiring a person to give up a child to another person.

(2) Where this sub-paragraph applies, the existing order may be enforced under section 14 of this Ordinance as if -

(a) any reference to a residence order were a reference to the existing order;

(b) any reference to the person in whose favour the residence order is in force were a reference to a person in whom actual custody of the child is given by an existing order which is in force.

(3) In sub-paragraph (2) of this paragraph "actual custody", in relation to a child, means the actual possession of his person.

### ***Discharge of existing orders***

9.(1) The making of a residence order or a care order with respect to a child who is the subject of an existing order discharges the existing order.

(2) Where the court makes any section 9 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the section 9 order.

(3) The court may discharge an existing order which is in force with respect to a child -

(a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or

(b) on the application of -

(i) any parent or guardian of the child;

(ii) the child himself; or

(iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) of this paragraph to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed any party to the proceedings, have regard to the matters mentioned in section 3(3) of this Ordinance.

## **GUARDIANS**

### ***Existing guardians to be guardians under this Ordinance***

10.(1) Any appointment of a guardian of a child which -

(a) was made -

(i) under sections 5 to 7 of the Guardianship of Minors Ordinance 1979;

(ii) under section 38(3) of the Sexual Offences Act 1956 in its application to the Falkland Islands; or

(iii) under the Supreme Court's inherent jurisdiction in relation to children; and

(b) has taken effect before the commencement of this Ordinance,

shall (subject to sub-paragraph (2)) be deemed, on and after the commencement of this Ordinance, to be an appointment made and having effect under section 6 of this Ordinance.

(2) Where an appointment of a person as guardian of a child has taken effect by virtue of subparagraph (1)(a)(ii) the appointment shall not have effect for a period which is longer than any period specified in the order.

*Appointment of guardian not yet in effect*

11. Any appointment of a person to be the guardian of a child -

(a) which was made as mentioned in paragraph 10(1)(a)(i); but

(b) which, immediately before the commencement of this Ordinance, had not taken effect,

shall take effect in accordance with section 6 of this Ordinance (modified, where it applies by paragraph 6(2) of this Schedule).

*Persons deemed to be appointed as guardians under existing wills*

13.(1) For the purposes of the Wills Act 1937 in its application to the Falkland Islands and of this Ordinance any disposition by will and testament or devise of the custody and tuition of a child, made before the commencement of this Ordinance shall be deemed to be an appointment by will of a guardian of a child.

**SUPERVISION ORDERS**

*Orders under section 1(3)(b) or 21(2) of the 1969 Act*

12(1) This paragraph applies to any supervision order -

(a) made under section 1(3)(b) of the Children and Young Persons Act 1969 in its application to the Falkland Islands; and

(b) in force immediately before the coming into force of this Ordinance.

(2) On and after the coming into force of this Ordinance, the order shall be deemed to be a supervision order made under section 17 of this Ordinance and -

(a) any requirement of the order that the child reside with a named individual shall continue to have effect while the order remains in force unless the court otherwise directs;

(b) any other requirement imposed by the court or directions given by the supervisor shall be deemed to have been given under the appropriate provisions of Schedule 2 of this Ordinance.

(3) Where immediately before the coming into force of this Ordinance, the order had been in force for more than six months it shall cease to have effect at the end of a period of six months commencing with the date on which this Ordinance comes into force unless -

(a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years);

(b) it ceases to have effect earlier in accordance with section 35 of this Ordinance; or

(c) it would have ceased to have effect earlier if this Ordinance had not been enacted.

(4) Where sub-paragraph (3) of this paragraph applies paragraph 6 of Schedule 2 to this Ordinance shall not apply.

(5) Where immediately before the coming into force of this Ordinance, the order had been in force for less than six months it shall cease to have effect in accordance with section 35 and paragraph 6 of Schedule 2 to this Ordinance unless -

(a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or

(b) it would have ceased to have had effect earlier had this Ordinance not been enacted.







# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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The following are published in this Supplement —

The Abusable Substances (Young Persons) Ordinance 1994, (No. 13 of 1994);

The Darwin Road and Port Louis Road Designation Order 1994, (S.R. & O. No. 12 of 1994;)

The Magistrates and Summary Courts (Guilty Pleas in Absence) Rules 1994,  
(S.R. & O. No. 13 of 1994).

# **The Abusable Substances (Young Persons) Ordinance 1994**

(No: 13 of 1994)

## **ARRANGEMENT OF PROVISIONS**

### **Section**

1. Short title.
2. Interpretation.
3. Offence of supply of abusable substances.

## ELIZABETH II



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Abusable Substances (Young Persons) Ordinance 1994

(No: 13 of 1994)

An Ordinance  
to prohibit the supply to young persons of certain intoxicants and the inhalation of  
those substances or their fumes by young persons.

(assented to: 29th August 1994)  
(commencement: on publication)  
(published: 31st August 1994)

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Abusable Substances (Young Persons) Ordinance 1994.

*Short title.*

2. In this Ordinance -

*Interpretation.*

"abusable substances" means any substance, other than a controlled drug or intoxicating  
liquor, the inhalation of which or of the fumes of which is capable of causing intoxication;

"controlled drug" has the same meaning as it has in the Misuse of Drugs Ordinance 1987;

"intoxicating liquor" has the same meaning as it has in the Licensing Ordinance.

3.(1) It is an offence for a person of any age to supply (whether or not by way of sale or for  
reward of any kind) or to offer to supply an abusable substance -

*Offence of supply of  
abusable substances.*

(a) to a person under the age of eighteen years whom he knows, or has reasonable cause  
to believe, to be under that age; or

(b) to a person

(i) who is acting on behalf of a person under that age; and

(ii) whom he knows, or has reasonable cause to believe, to be so acting,

if in the case of either (a) or (b) he knows or has reasonable cause to believe that the substance is,  
or its fumes are, likely to be inhaled for the purpose of causing intoxication by the person under  
the age of eighteen or any other person under that age.

(2) It is an offence for a person of under the age of eighteen years to inhale any abusable substance or its fumes for the purpose of inducing intoxication in himself.

(3) A person convicted of an offence under this section is liable to imprisonment for six months or a fine not exceeding the maximum of level 5 on the standard scale.

(4) A police officer may arrest without warrant a person whom he reasonably suspects to have committed an offence under this section.

Passed by the Legislature of the Falkland Islands this 2nd day of June 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

Assented to in Her Majesty's name  
and on Her Majesty's behalf this  
7th day of June 1994.

D. E. TATHAM,  
*Governor.*

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## SUBSIDIARY LEGISLATION

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### ROAD TRAFFIC

#### The Darwin Road and Port Louis Road Designation Order 1994

(S. R. & O. No: 12 of 1994)

*Made: 29th August 1994*

*Published: 31st August 1994*

*Coming into force: 8th September 1994*

IN EXERCISE of my powers under section 2, 9N and 18(1) of the Road Traffic Ordinance (a) and of all other power enabling me, I make the following Order -

1. This Order may be cited as the Darwin Road and Port Louis Road Designation Order 1994 and shall come into force on 8th September 1994. *Citation and commencement.*

2. In this Order - *Interpretation.*

"the Darwin Road" means all those parts of the road from Stanley via Mount Pleasant Airport to Darwin as lie on the Darwin side of L' Antioja Stream; and

"the Port Louis Road" means the road from the point known as "Mount Kent turnoff" on the Stanley to Mount Pleasant Airport road to the point known as "Port Louis gate".

3. The Darwin Road and the Port Louis Road are both declared to be roads for the purposes of the Road Traffic Ordinance. *Application of Road Traffic Ordinance to Darwin Road and to Port Louis Road.*

4. The Darwin Road and the Port Louis Road are both designated as restricted roads for the purposes of section 9N(1)(b) of the Road Traffic Ordinance and a maximum speed of forty miles per hour is prescribed in respect of each of them. *Speed limits.*

Made this 29th day of August 1994.

D. E. TATHAM,  
*Governor.*

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### EXPLANATORY NOTE

*(this note does not form part of the Order)*

The effect of this Order is to apply the Road Traffic Ordinance to the Darwin Road and the Port Louis Road and to prescribe a maximum speed limit of 40 mph in respect of them.

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(a) Cap. 60 Laws of the Falkland Islands 1950 Edition.

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## SUBSIDIARY LEGISLATION

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### ADMINISTRATION OF JUSTICE

#### The Magistrate's and Summary Courts (Guilty Pleas in Absence) Rules 1994

(S. R. & O. No: 13 of 1994)

*Made: 29th August 1994*

*Published: 31st August 1994*

*Coming into force: 1st September 1994*

IN EXERCISE of my powers under section 69 of the Administration of Justice Ordinance (a) in its application to the Falkland Islands, I make the following Rules -

1. These Rules may be cited as the Magistrate's and Summary Courts (Guilty Pleas in Absence) Rules 1994 and shall come into effect on 1st September 1994.

*Citation and  
commencement.*

2. In these Rules -

"court" means the Magistrate's Court or the Summary Court (other than a Youth Court).

*Interpretation.*

"the Act of 1980" means the Magistrates Courts Act 1980 in its application to the Falkland Islands.

3. These rules shall apply where a summons has been issued -

(a) requiring a person to appear before the court to answer an information for an offence, not being an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding 3 months; and

*Non appearance of the  
accused - pleas of  
guilty.*

(b) the court is satisfied that the following documents have been served on the accused with the summons -

(i) the forms set out in the Schedule to these Rules with such modification as may be necessary in the circumstances of the case; and

(ii) a concise statement of such facts relating to the charge as will be placed before the court by or on behalf of the prosecutor if the accused pleads guilty without appearing before the Court.

4. Where the prosecutor receives a notification in writing purporting to be given by the accused or a legal practitioner on his behalf that the accused desires to plead guilty without appearing before the court the prosecutor shall retain the same and if at the time appointed for the trial or adjourned trial of the information the accused does not appear and it is proved to the satisfaction of the court, that the notice and statement of facts referred to in Rule 3 above have been served upon the accused with the summons, then -

*Procedure on written postal pleas of guilty.*

(a) subject to section 11(3) and (4) of the Act of 1980 (which preclude a sentence of imprisonment, whether immediate or suspended, and limit the imposition of disqualification in the absence of the accused), the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the prosecutor is also absent in like the manner as if both parties had appeared and the accused had pleaded guilty; or

(b) if the court decides not to proceed as aforesaid, the court shall adjourn or further adjourn the trial for the purpose of dealing with information as if the notification aforesaid had not been given.

5. If at any time before the hearing the prosecutor receives an intimation in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification aforesaid the prosecutor and the court shall deal with the information as if no notification under rule 4 had been given and the prosecutor shall disclose to the court neither the receipt nor the contents of the said notification under rule 4.

*Withdrawal of written plea of guilty.*

6. Before accepting the plea of guilty and convicting the accused in his absence under rule 4 above, the court shall cause the notification and statement of facts aforesaid, including any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence, to be read out before the court.

*Statement of facts to be read aloud.*

7. If the court proceeds under rule 4 above to hear and dispose of the case in the absence of the accused, the court shall 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 aforesaid except on a resumption of the trial after an adjournment,

*Further statements by prosecution.*

8. In relation to an adjournment by reason of the requirements of paragraph (b) of rule 4 above or to an adjournment on the occasion of the accused's conviction in his absence under that rule, the notice shall include notice of the reason for adjournment.

*Requirements as to notice of adjournment.*

9. Where the prosecutor has received such a notification as is mention in rule 4 above but the accused nevertheless appears before the court at the time and place appointed for the trial or adjourned trial the court may, if the accused consents, proceed under this section as if he were absent.

*Power to proceed with written plea with accused's consent if accused present.*

**SCHEDULE**

Form 27

**MAGISTRATES/SUMMARY COURT  
FALKLAND ISLANDS**

Notice to defendant: plea of guilty in absence

(MC Act 1980, s.12(1)(a))

To:

Address:

**PLEASE READ THIS NOTICE CAREFULLY**

If you admit the offence(s) referred to in the Summons(es) served herewith and do not wish to appear before the Court, it is open to you under Section 12 of the Magistrates' Courts Act 1980, to inform the Prosecutor in writing that you wish to plead guilty to the charge(s) without appearing. If you decide to do this, you should write to the Prosecutor in time for him to receive your reply at least three days before the date fixed for the hearing in order to avoid the unnecessary attendance of witnesses. In writing to the Prosecutor you should mention any mitigating circumstances which you wish to have put before the Court.

If you send in a written plea of guilty, the enclosed Statement of Facts and your statement in mitigation will be read out in open Court before the Court decides whether to accept your plea and hear and dispose of the case in your absence. Unless the Court adjourns the case after accepting your plea and before sentencing you, (in which case you will be informed of the time and place of the adjourned hearing so that you may appear), the prosecution will not be permitted to make any statement with respect to any facts relating to the offence(s) other than the Statement(s) of Facts.

If you send in a written plea of guilty but the Court decides not to accept the plea, the hearing will be adjourned and you will be informed of the time and place of the adjourned hearing. The case would then be heard as if you had not sent in a written plea of guilty.

If you send in a written plea of guilty you may, if you wish, withdraw it by informing the Prosecutor of the withdrawal at any time before the hearing.



Neither this notice nor any reply you may send limits your right to appear before the Court at the time fixed for the hearing, either in person or by Legal Practitioner, and then to plead guilty or not guilty as you may desire; if after sending in a written plea of guilty you do so appear, or if you inform the Prosecutor before the hearing of the withdrawal of your written plea, the case will be heard as if you had not sent it in. If after sending in a written plea of guilty you wish to appear and plead not guilty you will avoid delay and expense by informing the Prosecutor immediately of your change of intention: unless you do inform the Prosecutor in good time there will have to be an adjournment to allow the prosecution to bring their witnesses to Court.

### NOTES

1. If you want any more information you may get in touch with the Clerk to the Court.
2. If you intend to consult a Legal Practitioner you would be well advised to do so before taking any action in response to this notice.
3. Address any letter to the Prosecutor at the address stated in the summons.
4. Whilst you are under no obligation to do so, you are encouraged to use the enclosed reply form. If you elect not to use the form then you should supply all of the information required by it.

**WRITTEN PLEA OF GUILTY****IMPORTANT**

1. In connection with the summon(es), notice and statement of facts, now served upon you, will you please acknowledge receipt by signing and returning this form as soon as possible.

I hereby acknowledge receipt of ..... summon(es), notice, statement of facts and notice of alleged previous convictions.

2. Please complete either section A or B.

**Note:** If you intend to consult a Legal Practitioner you would be well advised to consult him before completing this form.

A. If you desire a plea of guilty to be accepted without your attendance at Court, please complete the following:

I have read the statement of facts relating to the charge(s) against me. I plead guilty to the charge(s) and I desire the Court to deal with the case in my absence, and to take the following circumstances into account.

My date of birth is.....

I enclose my driving licence

Mitigating Circumstances (continue overleaf if necessary).

(i) About the Offence

(ii) About my financial circumstances

B. If you propose to attend Court considerable saving of time and expense may be effected if you will complete the following:

Do you intend to plead guilty?.....

If not please state the number of witnesses (including yourself if necessary) who will give evidence for the defence and details of any date (with reasons) upon which you and your witnesses will be unable to attend court.

**Note** If having completed and returned this form, you change your mind, you should let the Prosecutor know immediately.

Name (Block Capitals)..... Present Address.....

Signed.....

Date.....

Made this 29th day of August 1994.

D. E. TATHAM,  
*Governor.*

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**EXPLANATORY NOTE**  
(not part of above Rules)

These Rules enable plea of guilty by post in criminal prosecutions for certain minor offences and prescribe the procedure for dealing with them.





# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*31st AUGUST 1994*

*No. 19*

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The following is published in this Supplement —

The Fishing Licences (Application and Fees) Regulations Order 1994, (S. R. & O. No. 14 of 1994).

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## SUBSIDIARY LEGISLATION

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### FISHERIES

The Fisheries (Conservation and Management) Ordinance 1986  
(No. 11 of 1986)

The Fishing Licences (Application and Fees) Regulations Order 1994

(S.R. & O. No: 14 of 1994)

*Made: 30th August 1994*

*Published: 31st August 1994*

*Coming into operation: on publication*

IN EXERCISE of my powers under section 20 of the Fisheries (Conservation and Management) Ordinance 1986 (a) I make the following Order -

1.(1) This Order may be cited as the Fishing Licences (Applications and Fees) Regulations Order 1994 and shall come into operation on the date it is first published in the Gazette and cease to have effect on the 30th June 1995. *Commencement and citation.*

(2) This Order is hereinafter called "these Regulations" and any paragraph of this Order may be cited as (and is hereafter described as) a regulation bearing the same number as that paragraph and every subparagraph of a paragraph of this Order may be cited as (and is hereafter described as) a paragraph of the same number of the regulation in which it appears.

2.(1) Nothing in these Regulations applies to licences for exploratory or scientific purposes or to fishing within the territorial sea or internal waters.

3. In these Regulations -

*Application.*

"combination vessel" means a fishing boat which is equipped so as to be able to catch or take fish both by jigging machines and by trawl or trawls;

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

"FICZ" means the interim conservation and management zone as defined in Section 2 of The Fisheries (Conservation and Management) Ordinance 1986;

"FOCZ" means the outer conservation zone as defined in Proclamation 2 of 1990 as varied by Proclamation 1 of 1994;

"fishing licence" means a licence to catch or take fish within the fishing waters;

"jigger" means a fishing boat which is equipped so as to be able to catch or take fish by means of jigging machines;

"southern area" means all that part of the FICZ which lies to the south of latitude 51°15' South and to the East of 60° of longitude West and South of latitude 52°00' South and to the west of 60° longitude West;

"northern area" means all that part of the FICZ which lies to the north of latitude 51°15' South, East of longitude 60° West and North of latitude 52° South, West of longitude 60° West;

"the fishing season" means -

(a) in relation to an "A" Licence, the period commencing on 1st January 1995 and ending on 30th June 1995;

(b) in relation to a "B" Licence the period commencing on 15th January 1995 and ending on 30th June 1995;

(c) in relation to a "C" Licence, the period commencing on 1st February 1995 and ending on 31st May 1995;

(d) in relation to a "W" Licence, the period commencing on 1st January 1995 and ending on 30th June 1995;

(e) in relation to an "F" Licence, the period commencing on 1st January 1995 and ending on 30th June 1995;

"the principal regulations" means the Fishing Regulations Order 1987; and

"trawler" means a fishing boat which is equipped so as to be able to catch or take fish by means of a trawl or trawls.

4. For so long as these Regulations are in force such of the provisions of the principal Regulations as are inconsistent with these Regulations shall not be in force, but except as aforesaid the provisions of the principal Regulations remain in force and shall be complied with in addition to those of these Regulations. *Relationship with principal Regulations.*

5.(1) For the purpose of these Regulations there shall be the following categories of licence - *Types of licence.*

(a) an "A" Licence;

(b) a "B" Licence;

(c) a "C" Licence;

(d) a "W" Licence; and.

(e) a "F" Licence.

(2) An "A" Licence issued under these Regulations shall authorise the catching or taking of any finfish with the exception of Toothfish (*Dissostichus eleginoides*), that is to say vertebrate fish having a dorsal fin, a ventral or pectoral fin and shall not in any case include squid of any kind.

(3) A "B" Licence issued under these Regulations shall authorise the catching or taking within the northern area and the FOCZ of *Illex argentinus* and *Martilia hyadesi*.

(4) A "C" Licence issued under these Regulations shall authorise the catching or taking within the southern area of *Loligo gahi*.

(5) A "W" Licence issued under these Regulations shall authorise the catching or taking of any finfish, with the exception of Hake (*Merluccius spp.*), Skate (*Rajidae*) and Toothfish (*Dissostichus eleginoides*) that is to say vertebrate fish having a dorsal fin, a ventral or pectoral fin and shall not in any case include squid of any kind.

(6) An "F" Licence issued under these Regulations shall permit the catching or taking of all species of the family *Rajidae* (Skate) and shall not permit the taking of other species of finfish or squid of any kind.

Provided that a "by-catch" which in the reasonable opinion of the Director of Fisheries could not reasonably be avoided shall not be deemed to have been caught or taken without the authority of a licence.

6. (1) Applications for licences in respect of the whole or any part of any fishing season shall be made to the Director of Fisheries at the Falkland Islands Fisheries Department, P O Box 122, Stanley, Falkland Islands. *Applications for licences.*

(2) Any application to which paragraph (1) of this regulation relates shall be accompanied by an application fee of £200 (which shall not be returnable whether or not the application is granted) and shall be made so as to be received there by Friday, 30th September 1994.

(3) The Director of Fisheries in his discretion may consider an application lodged after the date mentioned in paragraph (2) of this regulation but shall not be bound to do so.

7. (1) Table 1 of the Schedule to these Regulations applies in respect of the fees payable for type "A" licences. *The Schedule and its Tables.*

(2) Table 2 of the Schedule to these Regulations applies in respect of the fees payable for type "B" licences granted to any jigger.

(3) Table 3 of the Schedule to these Regulations applies in respect of the fees payable for type "B" licences granted to any trawler or combination vessel.

(4) Table 4 of the Schedule to these Regulations applies in respect of the fees payable for type "C" licences.

(5) Table 5 of the Schedule to these Regulations applies in respect of the fees payable for type "W" licences.

(6) Table 6 of the Schedule to these Regulations applies in respect of the fees payable for type "F" licences.



(7) All fees payable under this regulation shall be paid in pounds sterling and in accordance with the principal Regulations.

(8) The explanatory notes at the commencement of each Table in the Schedule to these Regulations are for guidance only and shall not have legislative effect.

8.(1) The Director of Fisheries may, if he thinks fit, grant a licence in respect of one or more vessels in rotation for one another. *Licences in rotation.*

(2) Where a licence is granted under paragraph (1) the Director of Fisheries shall impose such conditions in the licence as are necessary to make clear and ensure

(a) that only one vessel is permitted to fish within the fishing waters at any one time;

(b) that proper and adequate notice is given to him of the intention to substitute one vessel for another and that any vessel previously permitted to fish in the fishing waters has ceased to do so before another vessel is permitted to commence fishing;

(c) that all and any other conditions specially necessary to promote the proper conservation and management of fish within the fishing waters appear therein.

(3) The Director of Fisheries may require -

(a) that, where appropriate so as to take into consideration the overall fishing capacity of vessels as they are rotating for one another, a special licence fee calculated by reference to a formula approved by the Governor and published in the Gazette shall be paid in respect of a rotating licence; and

(b) that an administration fee of such amounts as he may fix in the circumstances of the case shall be paid before one vessel is substituted for another under a rotating licence.

(4) A rotating licence is not transferable except as expressly permitted thereby.

9.(1) The Director of Fisheries, may, if he thinks fit, grant a "B" licence for such period within the fishing season as he thinks fit.

(2) Where a licence is granted under paragraph (1) a special fee, calculated by reference to a formula or table approved by the Governor and published in the Gazette, shall be paid.

10. The fees for transshipment or transshipment and export licences for the period 1st January 1995 to 30th June 1995 shall be £1500 per transshipment operation.

## THE SCHEDULE

Provision as to fishing licences in respect of the fishing season

**TABLE 1**

Finfish only - Type "A" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish except Toothfish (*Dissostichus eleginoides*).
3. The season for this type of licence commences on 1st January 1995 and ends on 30th June 1995 and will be subject to closed areas and The Fishing (Nets and Supplementary Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

In the following Formula, "GT" means "Gross Tonnage" as shown in Tonnage Certificates issued in accordance with the International Tonnage Measurement Rules;

### FORMULA

Fee payable per licensed month is the result of whichever of the following is applicable

I. Where the vessel has a Gross tonnage of 966GT or less

$$£(4.13 \times GT) + 1010$$

II. Where the vessel has a Gross tonnage of greater than 966GT

$$£(7.67 \times GT) - 2411$$

**TABLE 2**

Jiggers - Squid North - Type "B" Licences

(Explanatory notes:

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to jiggers licensed to take squid in the northern area and FOCZ and not to trawlers or combination vessels.
3. The season for this type of licence commences on 15th January 1995 and ends on 30th June 1995.

4. Fees calculated by the Formula set out in this Table are for the full season only).

Effective text (of legislative effect)

A. In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules; "D" means the number of double jigging machines located upon the jigger to which the licence relates and "S" means the number of single jigging machines located upon the jigger to which the licences relates.

B. A licence is not transferable.

FORMULA

Whichever of the following is applicable -

I. Where the vessel held and utilised a comparable licence in respect of the first season of 1994.

Fee payable is the result of

$$£(0.4647 \times GT \times (S + 1.5D) + 88781)$$

II. In any case to which Formula I does not apply -

Fee payable is the result of

$$£(0.5740 \times GT \times (S + 1.5D) + 109670)$$

TABLE 3

Trawlers - Squid North - Type "B" Licences

(Explanatory notes:

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers and combination vessels licensed to take squid in the northern area and FOCZ and not to jiggers.
3. The season for this type of licence commences on 15 January 1995 and ends on 30 June 1995 and is exempt from the Fishing (Nets and Supplementary Net Equipment) Regulations Order 1990.
4. Fees calculated by the Formula set out in this Table are for the full season only).

Effective text (of legislative effect)

In the following Formula, "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.

### FORMULA

I. Where the vessel held and utilised a comparable licence in respect of the first season of 1994.

Fee payable is the result of

$$£((7.038 \times GT) + 54856)$$

II. In any case to which Formula I does not apply -

Fee payable is the result of

$$£((8.28 \times GT) + 64536)$$

### TABLE 4

Trawlers - Squid South - Type "C" Licences

(Explanatory notes :

1. These notes are not of legislative effect but are for guidance only.
2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take squid in the southern area.
3. The season for this type of licences commences on 1st February 1995 and ends on 31st May 1995 and is exempt from The Fishing (Nets and Supplementary Equipment) Regulations Order 1990 in certain parts of the southern area.
4. Fees calculated by the Formula set out in this Table are for the full season only.)

Effective text (of legislative effect)

In the following Formula "GT" means "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.

### FORMULA

Fee payable is the result of

$$£((64.00 \times GT) + 102,075)$$

### TABLE 5

Finfish only: Species Restricted - Type "W" Licences

(Explanatory notes:

1. These notes are not of legislative effect but are for guidance only.

2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take all finfish except Hake (*Merluccius spp.*), Skate (*Rajidae*) and Toothfish (*Dissostichus eleginoides*).

3. The season for this type of licence commences on 1st January 1995 and ends on 30th June 1995 and will be subject to closed areas and The Fishing (Nets and Supplementary Equipment) Regulations Order 1990.

4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

In the following Formula, "GT" means "Gross Tonnage" as shown in Tonnage Certificates issued in accordance with the International Tonnage Measurement Rules.

#### FORMULA

Fee payable per licensed month of fishing is the result of

$$£((3.95 \times GT) + 966)$$

However if the trawler is equipped to enable it to produce surimi the fee payable is 50% higher than that resulting from the above formula.

#### TABLE 6

Skate only - Type "F" Licences

(Explanatory notes:

1. These notes are not of legislative effect but are for guidance only.

2. Fees calculated by the Formula set out in this Table apply to trawlers licensed to take Skate (*Rajidae*) only.

3. The season for this type of licence commences on 1st January 1995 and ends on 30th June 1995 and will be subject to closed areas and The Fishing (Nets and Supplementary Equipment) Regulations Order 1990.

4. Fees calculated by the Formula set out in this Table are payable in respect of the number of months for which the licence is valid.)

Effective text (of legislative effect)

In the following Formula "GT" means the "Gross Tonnage" as shown in a Tonnage Certificate issued in accordance with the International Tonnage Measurement Rules.

#### FORMULA

Fee payable per licensed month of fishing is the result of

$$£((1.40 \times GT) + 11344)$$

Made this 30th day of August 1994

D. E. TATHAM,  
Governor.





Archivist

# THE FALKLAND ISLANDS GAZETTE Supplement

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2nd September 1994

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The following is published in this Supplement —

The Post Office (Amendment) (No. 2) Order 1994 (S.R. & O. No.15 of 1994).

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## SUBSIDIARY LEGISLATION

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### POST OFFICE

The Post Office (Amendment) (No.2) Order 1994

(S.R. & O. No: 15 of 1994)

*Made: 1st September 1994*

*Published: 2nd September 1994*

*Coming into force: 5th September 1994*

IN EXERCISE of my powers under section 4 of the Post Office Ordinance (a), I make the following Order -

1. This Order may be cited as the Post Office (Amendment) (No.2) Order 1994 and shall come into force on 5th September 1994.

*Citation and  
commencement.*

2. In this Order, "the principal Order" means the Post Office Order 1981 (b).

*The principal  
Order.*

3. The First Schedule to the principal Order 1994 is replaced by the following -

*Amendment of  
principal Order.*

**"FIRST SCHEDULE  
AIRMAIL RATES  
TO ALL COUNTRIES**

Letters -

- (a) for the first 20 grams, 40p; and
- (b) for each additional 10 grams or part thereof, 25p;

Small packets -

- (a) for the first 20 grams, 30p; and
- (b) for each additional 10 grams or part thereof, 25p;

Printed papers -

- (a) for the first 20 grams, 28p; and
- (b) for each additional 10 grams or part thereof, 15p;

Postcard     35p

Aerogram -

- (a) plain 37p;
- (b) illustrated 50p;"

Made this 1st day of September 1994.

D. E. TATHAM,  
*Governor.*



Archivist



# THE FALKLAND ISLANDS GAZETTE Supplement

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## NOTICE

The following is published in this Supplement —

**The Family Allowances Bill 1994.**

# The Family Allowances Bill 1994

(No:                      of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title and commencement.
2. Amendment of principal Ordinance.

## A Bill

for

## An Ordinance

To amend the Family Allowances Ordinance.

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

1. This Ordinance may be cited as the Family Allowances (Amendment) Ordinance 1994 and comes into operation on 1st January 1995. *Short title and commencement.*
- 2.(1) Section 3(2) and (3) of the principal Ordinance are replaced by the following subsection - *Amendment of principal Ordinance.*  

"(2) The Superintendent shall pay for each child of a family an allowance at the rate of £43.50.

(3) Subject to subsection (4) of this section the Superintendent shall pay each month to any person to whom he pays an allowance under subsection (2) of this section in respect of a family to which paragraph (b) or (c) of section 5(1) applies ("a single parent") a further allowance of £36.00 ("a single parent's allowance") and this sum shall be paid regardless of the number of children that person maintains."

## OBJECTS AND REASONS

To increase with effect from 1st January 1995, the monthly allowances payable under the principal Ordinance approved in principle by Executive Council on 28 April 1994 as follows:

Principal Ordinance Section	Allowance	Current Rate	Revised Rate	Increase	
		£	£	£	%
3(2)	Child Allowance	41.00	43.50	2.50	6.1
3(3)	Single Parent Allowance	34.00	36.00	2.00	5.9



# THE FALKLAND ISLANDS GAZETTE Supplement

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## SUBSIDIARY LEGISLATION

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### PUBLIC SERVICE PENSIONS

Pensions (Unestablished Locally Recruited Employees) (Amendment)  
Regulations 1994

(S. R. & O. No. 16 of 1994)

*Made: 30th September 1994*

*Published: 3rd October 1994*

*Coming into force: 1st October 1994*

IN EXERCISE of my powers under section 4 of the Pensions (Unestablished Locally Recruited Employees) Ordinance 1979 (a) I make the following regulations -

1. These regulations may be cited as the Pensions (Unestablished Locally Recruited Government Employees) (Amendment) Regulations 1994 and shall come into force on 1st October 1994.

*Citation and  
commencement.*

2. In these regulations, "the principal regulations" means the Pensions (Unestablished Locally Recruited Employees) Regulations 1984 (b).

*The principal  
regulations.*

3.(1) The words "Civil Commissioner" wherever they appear in the principal regulations are replaced by the word "Governor".

*Amendment of the  
principal regulations.*

(2) The words "sixty-five" in regulation 3 of the principal regulations are replaced by the words "sixty-four".

(3) Regulation 7 of the principal regulations is amended by the insertion of the following paragraph after paragraph (1) -

"(1A) Service which falls both -

(a) after the sixty-fourth birthday of the employee; and

(b) after the coming into force of the Pensions (Unestablished Locally Recruited Employees) (Amendment) Regulations 1994,

shall not be taken into account for the purposes of regulation 3 or regulation 8."

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(a) No. 23 of 1979.

(b) S. R. & O. No. 1 of 1984.

Made this 30th day of September 1994.

D. E. TATHAM,  
*Governor.*

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#### EXPLANATORY NOTE

*(not forming part of the above regulations)*

The effect of these regulations is that an unestablished locally recruited male employee will be able to retire on pension on attaining his sixty-fourth birthday, instead of his sixty-fifth birthday and that service which is both after an employee's sixty-fourth birthday and after the commencement of the regulations, and whether the employee is male or female, will not be service counting towards a pension or gratuity under the Ordinance. An unestablished locally recruited female employee will continue to be able to retire at sixty years but may, instead of retiring at that age continue to accumulate pensionable service until she attains her sixty-fourth birthday.



# THE FALKLAND ISLANDS GAZETTE Supplement

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*7th OCTOBER 1994*

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The following are published in this Supplement —

The Old Age Pensions (Credit of Contributions) Bill 1994;  
The Wireless Telegraphy Bill 1994.

# The Old Age Pensions (Credit of Contributions) Bill 1994

(No:            of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1.        Short title.
2.        Amendment of Old Age Pensions (Amendment) (No.2) Ordinance 1986.

## A Bill

for

### An Ordinance

To amend the Old Age Pensions (Amendment) (No.2) Ordinance 1986 by providing that 1st January 1982 shall be substituted for 1st January 1986 as the date from which it is to have effect.

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

1. This Ordinance may be cited as the Old Age Pensions (Credit Contributions) Ordinance 1994. *Short title.*
2. Section 1 of the Old Age Pensions (Amendment) (No.2) Ordinance 1986 is amended by replacing the words "1st day of January 1986" with the words "1st day of January 1982" (and so that the amendments made by section 2 of that Ordinance to the Old Age Pensions Ordinance 1952 shall have effect on and from the 1st day of January 1982). *Amendment of Old Age Pensions (Amendment) (No.2) Ordinance 1986.*

## The Wireless Telegraphy Bill 1994

(No: of 1994)

### ARRANGEMENT OF PROVISIONS

#### Clause

1. Short title.
2. Interpretation.
3. Saving for Telecommunications Ordinance 1988.
4. Licensing of wireless telegraphy.
5. Fees and charges for telegraphy licences.
6. Regulations as to wireless telegraphy.
7. Misleading messages and interception and disclosure of messages.
8. Territorial extent of preceding provisions.
9. Prevention or reduction of interference.
10. Deliberate interference.
11. Penalties and legal proceedings.

A Bill  
for  
An Ordinance  
To make further provision in relation to wireless telegraphy

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

1. This Ordinance may be cited as the Wireless Telegraphy Ordinance 1994.

*Short title.*

- 2.(1) In this Ordinance, except where the context otherwise requires -

*Interpretation.*

"1949 Act" means the Wireless Telegraphy Act 1949;

"electric line" means a wire or wires, or other means used for the purpose of conveying, transmitting or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, electricity or electric currents;

"station for wireless telegraphy" includes the wireless telegraphy apparatus of a ship or aircraft;

"Superintendent" means the Superintendent of Posts and Telecommunications and any public officer for the time being responsible for the functions of the Superintendent of Posts and Telecommunications;

"wireless telegraphy" means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megacycles a second, being energy which either -

- (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not), or for the actuation or control of machinery or apparatus; or



(b) is used in connection with the determination of position, bearing or distance, of for the gaining of information as to the presence, absence, position or motion of any object or of objects of any class,

and references to stations for wireless telegraphy and apparatus for wireless telegraphy or wireless telegraphy apparatus shall be construed as references to stations and apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy as aforesaid;

"wireless telegraphy licence" means a licence granted under section 4.

(2) Any reference in this Ordinance to the emission of electro-magnetic energy, or to emission (as opposed to reception) shall be construed as including a reference to the deliberate reflection of electro-magnetic energy by means of any apparatus designed or specially adapted for the purpose, whether the reflection is continuous or intermittent;

(3) In this Ordinance, the expression "interference", in relation to wireless telegraphy, means the prejudicing by any emission or reflection of electro-magnetic energy of the fulfilment of the purpose of the telegraphy (either generally or in part, and, without prejudice to the generality of the preceding words, as respects all, or as respects any, of the recipients or intended recipients of any message, sound or visual image intended to be conveyed by the telegraphy), and the expression "interfere" shall be construed accordingly.

(4) In considering for any of the purposes of this Ordinance whether in any particular case any interference with wireless telegraphy caused or likely to be caused by the use of any apparatus is, or is not, undue interference, regard shall be had to all the known circumstances of the case and the interference shall not be regarded as undue interference if so to regard it would unreasonably cause hardship to the person using or desiring to use the apparatus.

(5) Any reference in this Ordinance to the sending or conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly.

(6) In this Ordinance, the expression "ship" and "vessel" have the meanings respectively assigned to them by section 742 of the Merchant Shipping Act 1894.

(7) References in this Ordinance to apparatus on board a ship or vessel include references to apparatus on a kite or balloon flown from a ship or vessel.

3. Nothing in this Ordinance shall -

(a) render unlawful anything which is done under the authority of a licence granted under the Telecommunications Ordinance 1988;

(b) require the holding of a licence for the doing of anything for which a licence under that Ordinance has been granted; or

(c) render lawful anything which is unlawful unless done under the authority of a licence granted under that Ordinance.

*Saving for  
Telecommunications  
Ordinance 1988.*

4.(1) No person shall establish or use any station for wireless telegraphy or install or use any apparatus for wireless telegraphy except under the authority of a licence in that behalf granted by the Governor, but this subsection, unless otherwise provided by regulations made under this Ordinance, does not apply to any apparatus designed and used only for the reception of wireless telegraphy or to any station for wireless telegraphy or wireless telegraphy apparatus used by Her Majesty's armed forces under the authority of United Kingdom legislation applicable to such armed forces.

*Licensing of  
wireless telegraphy.*

(2) The Governor may by regulations exempt from the provisions of this subsection the establishment, installation or use of stations for wireless telegraphy or wireless telegraphy apparatus of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be so specified.

(3) A licence granted under this section may be issued subject to such terms, provisions and limitations as the Governor may think fit, including in particular in the case of a licence to establish a station, limitations as to the position and nature of the station, the purpose for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be installed or used therein, and in the case of any other licence, limitations as to the apparatus which may be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.

(4) A wireless telegraphy licence shall, unless previously revoked by the Governor, continue in force for such period as may be specified in the licence.

(5) A wireless telegraphy licence may be revoked, or the terms, provisions or limitations thereof varied, by a notice in writing of the governor served on the holder of the licence or by a general notice applicable to licences of the class to which the licence in question belongs published in the *Gazette* or in such other manner as may be specified in the licence.

(6) Where a wireless telegraphy licence has expired or has been revoked, it shall be the duty of the person to whom the licence was issued, and of every person in whose possession or under whose control the licence may be, to cause the licence to be surrendered to the Governor if required by the Governor so to do and any person who without reasonable excuse fails or refuses to comply with the provisions of this subsection commits an offence under this Ordinance.

(7) The Governor may by instrument in writing signed by him authorise the Superintendent to exercise in his name and on his behalf any of the Governor's powers under this section, except any power to make regulations, and any such authorisation may be subject to such exceptions, limitations and conditions as the Governor may think fit and shall not preclude the Governor himself from exercising any of the powers to which the authorisation relates.

5.(1) On the issue or renewal of a wireless telegraphy licence, and where the regulations under this section so provide, at such times thereafter as may be prescribed by the regulations, there shall be paid to the Governor by the person to whom the licence is issued such sums as may be prescribed by regulations made by the Governor, and different provision may be made in relation to different licences, according to the nature, terms, provisions, limitations and duration thereof; and such regulations may provide authorising, in such cases as are not otherwise dealt with by the regulations, the charge by the Governor (or, where under section 4(7) the Governor has authorised the Superintendent to exercise the power of the issue or renewal of the licence in question, the charge by the Superintendent) of such sums, whether on the issue or renewal of the licence or subsequently, as may in the particular case appear to the Governor (or, as the case may be, the Superintendent) to be proper.

*Fees and charges for  
telegraphy licences.*

(2) Where sums will or may become payable under subsection (1) of this section subsequently to the issue or renewal of a licence, the Governor (or, as the case may be, the Superintendent) may on the issue or renewal of the licence require such security as he thinks fits to be given, by way of deposit or otherwise, for the payment of sums which will or may become payable.

6.(1) The Governor may make regulations -

*Regulations as to wireless telegraphy.*

(a) prescribing the things which are to be done or are not to be done in connection with the use of any station for wireless telegraphy or wireless telegraphy apparatus, and, in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf of any such persons as may be prescribed by or under the regulations;

(b) imposing on the person to whom a wireless telegraphy licence is issued with respect to any station for wireless telegraphy or wireless telegraphy apparatus, or who is in possession or control of any station for wireless telegraphy or wireless telegraphy apparatus, obligations as to permitting and facilitating the inspection of the station and apparatus, as to the condition in which the station and apparatus are to be kept and, in the case of a station or apparatus for the establishment, installation or use of which a wireless telegraphy licence is necessary, as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;

(c) where sums are or may become due from the person to whom a wireless telegraphy licence is issued after the issue or renewal thereof, requiring that person to keep and produce such accounts and records as may be specified in the regulations; and

(d) requiring the person to whom a wireless telegraphy licence authorising the establishment or use of a station has been issued to exhibit at the station such notices as may be specified in the regulations,

and different provision may be made by any such regulations for different classes of case.

(2) A person commits an offence under this Ordinance who contravenes any regulations made under this section.

7. A person commits an offence under this Ordinance who -

*Misleading messages and interception and disclosure of messages.*

(a) by means of wireless telegraphy, sends or attempts to send, any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or in need of assistance; or

(b) otherwise than under the authority of the Governor or in the course of his duty as a servant of the Crown, either -

(i) uses any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Governor to receive; or

(ii) except in the course of legal proceedings of for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or another person.

8.(1) Subject to the provisions of this section, sections 3 to 7 apply -

*Territorial extent  
of preceding  
provisions.*

(a) to all stations and apparatus in or over, or for the time being in or over, the Falkland Islands and the territorial sea adjacent thereto;

(b) subject to any limitations which the Governor may by regulations determine, to all stations and apparatus on board any ship or aircraft which is registered in the Falkland Islands but is not for the time being in or over the Falkland Islands or the said territorial sea; and

(c) subject to any limitations which the Governor may by regulations determine, to all apparatus which is not or over the Falkland Islands or the said territorial sea but was released from within the Falkland Islands or the said territorial sea, or from any ship or aircraft which is registered in the Falkland Islands,

and, without prejudice to the liability of any other person, in the event of any contravention of section 3 to 7 or of any regulations made thereunder occurring in relation to any station or apparatus on board or released from any vessel or aircraft, the captain or person for the time being in charge of the vessel or aircraft commits an offence under this Ordinance.

(2) The Governor may make regulations for regulating the use on board any ship or aircraft not registered in the Falkland Islands of any wireless telegraphy apparatus on board the ship or aircraft while it is within the limits of the Falkland Islands and the territorial sea adjacent thereto, and such regulations may provide for the punishment of persons contravening the regulations by a fine for each offence of an amount not exceeding the maximum of level 5 on the standard scale.

9. The Governor may by Order under this section apply to and in respect of the Falkland Islands and apparatus within the Falkland Islands -

*Prevention or  
reduction of  
interference.*

(a) all or any of the provisions of any regulations made under section 10(1) of the 1949 Act (regulations as to radiation of electro-magnetic energy) and section 15(2) to (4) of the 1949 Act so far as relevant to such regulations; and

(b) sections 11 and 12 of the 1949 Act (enforcement of regulations as to use of apparatus and enforcement of regulations as to sales, etc, by manufacturers and others), subject to such modifications and adaptations as are specified in such Order, and may render contraventions of those provisions offences under this Ordinance.

10.(1) A person commits an offence under this Ordinance who uses any apparatus for the purpose of interfering with any wireless telegraphy.

*Deliberate  
interference.*

(2) Subsection (1) applies whether or not the apparatus is question in wireless telegraphy apparatus or apparatus to which the preceding provisions of this Ordinance apply, and whether or not (in the event that sections 11 and 12 of the 1949 Act have been applied) any notice under either of those sections has been given with respect to the apparatus or, if given, has been varied or revoked.

11.(1) A person who commits an offence under section 5 of this Ordinance is liable on conviction to imprisonment for a term not exceeding two years and a fine not exceeding the maximum of level 10 on the standard scale. *Penalties and legal proceedings.*

(2) A person who commits any other offence under this Ordinance is liable on conviction of that offence to a fine not exceeding the maximum of level 5 on the standard scale.

(3) Where any offence under this Ordinance has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

(4) Where a person is convicted of an offence under this Ordinance consisting in any contravention of sections 3 to 7 of this Ordinance in relation to any station for wireless telegraphy or any wireless telegraphy apparatus or in the use of any apparatus for the purpose of interfering with any wireless telegraphy apparatus the court may in addition to any other penalty, order all or any of the apparatus of the station, or (as the case may be) of the apparatus in connection with which the offence was committed, to be forfeited to the Crown.

(5) An order under subsection (4) may be made notwithstanding that the apparatus is not the property of the person by whom the offence giving rise to the forfeiture was committed and any apparatus forfeited under that subsection may be disposed of as the Governor thinks fit.

(6) Subsection (4) and (5) have effect notwithstanding anything in section 140 of the Magistrate's Court Act 1980 in its application to the Falkland Islands.

(7) The court by which any apparatus is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that apparatus except by delivering it up to the Governor within forty-eight hours of being so required by him.

(8) If a person against whom an order under subsection (7) of this section is made contravenes that order or fails to deliver up the apparatus to the Governor as required he commits a further offence in respect of which he is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(9) Without prejudice to the right to bring separate proceedings for contraventions of this Ordinance taking place on separate occasion, a person who is convicted of an offence under this Ordinance consisting of the use of any station or apparatus, or in a failure or refusal to cause any licence or authority to be surrendered, shall, where the use, or failure or refusal continues after the conviction, be deemed to commit a separate offence in respect of every day on which the use, failure or refusal so continues.

(10) Nothing in the preceding provisions of this section shall limit any right of any person to bring civil proceedings in respect of the doing apprehended doing of anything rendered unlawful by any provision of this Ordinance, and, without prejudice to the or generality of the preceding words, compliance with the provisions of this Ordinance, compliance with the provisions of this Ordinance which are declared to be offences under this Ordinance shall be enforceable by Civil proceedings by the Crown for an injunction or for any other appropriate relief.

12.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Ordinance or any provision of law applied by this Ordinance has been or is being committed, and evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, he may grant a search warrant authorising any person authorised in that behalf by the Attorney General and named in the warrant, with or without any police officers, to enter, at any time within one month from the date of that warrant, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and any premises on which it may be, and to search the premises or, as the case may be, the vehicle or aircraft, and to examine and test any apparatus found on the premises, vessel, vehicle or aircraft.

(2) Where under this section a person has a right to examine any apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give him any such assistance as he may reasonably require in the examination or testing of the apparatus.

(3) A person commits an offence under this Ordinance who -

(a) intentionally obstructs any person in the exercise of the powers conferred on him under this section;

(b) without reasonable excuse fails or refuses to give to any such person any assistance which he is under this section under a duty to give to him; or

(c) discloses, otherwise than for the purposes of this Ordinance or of any report of proceedings thereunder, any information obtained by means of the exercise of powers under this Ordinance, which is information with regard to any manufacturing process or trade secret.





# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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*Vol. 5*

*7th OCTOBER 1994*

*No. ~~23~~ 24*

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The following is published in this Supplement —

**Suspension of United Nations Sanctions against Serbia and Montenegro.**



### United Nations Act 1946

The Serbia and Montenegro (United Nations Prohibition of Flights) Order 1992 (No. 3104)

The Serbia and Montenegro (United Nations Sanctions) Order 1992 (No. 3102)

The Serbia and Montenegro (United Nations Sanctions) (Channel Islands) Order 1992 (No. 1308)

The Serbia and Montenegro (United Nations Sanctions) Order 1993 (No. 1188)

The Serbia and Montenegro (United Nations Sanctions) (Channel Islands) Order 1993 (No. 1253)

The Serbia and Montenegro (United Nations Sanctions) (Isle of Man) Order 1993 (No. 1254)

Pursuant to the provisions of Article 1(2) of the above-mentioned Orders, the Secretary of State for Foreign and Commonwealth Affairs hereby gives notice that, by resolution 943 (1994) adopted on 23 September 1994, the Security Council of the United Nations decided to suspend for an initial period of 100 days with effect from 5 October 1994 the operation of the following provisions of resolution 757 (1992) adopted by it on 30 May 1992 and of resolution 820 (1993) adopted by it on 17 April 1993, and of other relevant resolutions, which imposed certain economic measures in relation to Serbia and Montenegro:

Paragraph 7 of resolution 757 (1992), paragraph 24 of resolution 820 (1993) with regard to aircraft which are not impounded, and the provisions of other relevant resolutions which relate to the provision of goods and services, with respect to all civilian passenger flights to and from Belgrade airport carrying only passengers and personal effects, and no cargo unless authorised under the procedures of the Committee established by resolution 724 (1991).

Paragraphs 24 and 28 of resolution 820 (1993) and the provision of other relevant resolutions which relate to the provision of goods and services, with respect to the ferry service between Ba in Montenegro and Bari in Italy carrying only passengers and personal effects, and no cargo unless authorised under the procedures of the Committee established by resolution 724 (1991)

In accordance with the provisions of the said Article 1(2), the operation of the above-mentioned Orders was therefore suspended for an initial period of 100 days as from 5 October 1994 to the extent required in the above-mentioned decision of the Security Council



**THE  
FALKLAND ISLANDS GAZETTE  
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The following are published in this Supplement —

**The Supplementary Appropriation (1994-1995) Bill 1994;  
The Evidence Bill 1994;  
The Employment Protection (Amendment) Bill 1994;  
The Pool Betting Bill 1994.**

# The Supplementary Appropriation (1994-1995) Bill 1994

(No: of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title.
2. Appropriation of £330,580 for the service of the year 1994-1995.

### SCHEDULE

## A Bill

for

## An Ordinance

to appropriate and authorise the withdrawal from the Consolidated Fund of additional sums totalling £330,580 for the service of the financial year ending 30 June 1995.

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

1. This Ordinance may be cited as the Supplementary Appropriation (1994-1995) Ordinance 1994. *Short title.*
2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 1994 and ending on 30 June 1995 ("the financial year"), sums not exceeding in aggregate the sum of THREE HUNDRED AND THIRTY THOUSAND FIVE HUNDRED AND EIGHTY POUNDS, which sum is granted and shall be appropriated for replenishing the Contingencies Fund in respect of advances authorised to be issued therefrom for the purposes of the Heads of Service mentioned in the Schedule hereto and which will come into course of payment during the Financial Year. *Appropriation of £330,580 for the services of the year 1994-1995.*

# SCHEDULE

Number	Head of Service	£
PART I OPERATING BUDGET		
200	Medical and Dental	24,550
300	Customs and Harbour	200
320	Fisheries	29,060
350	Public Works	60,000
390	Fox Bay Village	600
400	Agriculture	5,000
450	Justice	20,000
500	Falklands Islands Defence Force	1,800
550	Police, Fire and Rescue Service	2,200
600	Secretariat, Treasury etc	19,400
750	The Governor	5,720
800	Legislature	1,220
850	Falklands Islands Government London Office	5,750
Total Operating Supplementary Expenditure		175,500
PART II CAPITAL BUDGET		
950	Expenditure	155,080
Total Supplementary Expenditure		330,580

## OBJECTS AND REASONS

To provide for supplementary expenditure authorised in the first instance to be advanced out of the Contingencies Fund by the issue of the following 1994/95 Contingencies Warrants pursuant to the provisions of Section 26 of the Finance and Audit Ordinance 1988:

No: 1	154,230
2	90,000
3	52,300
4	750
5	3,000
6	30,300
	<hr/>
Total	330,580

## The Evidence Bill 1994

(No:            of 1994)

### ARRANGEMENT OF PROVISIONS

#### Clause

1.     Short title and commencement.
2.     Rebuttal of common law presumptions as to legitimacy or illegitimacy.
3.     Proof of instrument to validity of which attestation is necessary.
4.     Presumptions as to documents twenty years old.
5.     Application of Acts relating to evidence.

#### Schedule

## A Bill

for

### An Ordinance

To make further and better provision in relation to the law of evidence in the Falkland Islands.

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

1. This Ordinance may be cited as the Evidence Ordinance 1994 and shall come into force on such date as may be appointed by the Governor by notice published in the *Gazette*. *Short title and commencement*
  
2. Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence which shows that it is more probable than not that that person is legitimate or illegitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption. *Rebuttal of common law presumptions as to legitimacy or illegitimacy.*
  
- 3.(1) Subject to subsection (2), in any proceedings, civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive. *Proof of instrument to validity of which attestation is necessary.*
  
- (2) Subsection (1) does not apply to the proof of wills or other testamentary documents.
  
- 4.(1) Subject to subsection (2), in any proceedings, civil or criminal, any written document which - *Presumptions as to documents twenty years old.*
  - (a) is proved to be or purports to be not less than twenty years old; and
  - (b) is produced from proper custody,

shall (unless there is proved to be any reason to suspect to the contrary) be presumed to have been duly signed, sealed, attested, delivered or published in accordance with its purport and recitals, statements, descriptions of facts, matters and parties contained in any such document not so proved shall, unless and except so far as they may be proved to be inaccurate be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

5.(1) The Acts mentioned in the Schedule are adopted as law of the Falkland Islands to the extent and subject to the modifications and adaptations there specified.

*Application of  
Acts relating to  
evidence.*

(2) Subsection (1) has effect without prejudice to the application of any of the provisions of the said Acts under and in accordance with any provision of the Interpretation and General Clauses Ordinance 1977.

## THE SCHEDULE

(section 5(1))

### ADOPTION OF ACTS WITH MODIFICATIONS AND ADAPTATIONS

1. Except where in this Schedule specified to the contrary, the words "United Kingdom", "England" and "England and Wales" wherever appearing in any provision of any Act adopted as law of the Falkland Islands by virtue of this Ordinance are replaced by the words "Falkland Islands".

*General*

2. The Civil Evidence Act 1968 ("the 1968 Act") is adopted as law of the Falkland Islands subject to the exceptions, modifications and adaptations specified in paragraphs 3 and 4 of this Schedule.

*Adoption of Civil  
Evidence Act 1968.*

3. Sections 11(5), 15, 17, 19 and 20(2), (3) and (4) of the 1968 Act shall be omitted.

4. Paragraph 1 of this Schedule shall not apply in relation to section 11(1), 11(2) or 13(3) of the 1968 Act and in every instance in which they appear in those provisions the words "United Kingdom or by a court-martial there or elsewhere" are replaced by the words "United Kingdom or the Falkland Islands or by a court-martial in the United Kingdom, in the Falkland Islands or elsewhere".

5. The Civil Evidence Act 1972 ("the 1972 Act") is adopted as law of the Falkland Islands subject to the modifications and adaptations specified in paragraphs 6 and 7 of this Schedule.

*Adoption of Civil  
Evidence Act 1972.*

6. Paragraph 1 of this Schedule shall not apply in relation to section 4(1), (2) and (5) of the 1972 Act and -

(a) the words "and the Falkland Islands" are inserted after the words "United Kingdom" where they first appear in each of section 4(1) and (2);

(b) the words "after the passing of this Act" in section 4(2) of the 1972 Act shall, subject to section 5(2) of this Ordinance, have effect as if the Act had been passed on such date as this Ordinance comes into force under the provisions of section 1 of this Ordinance; and

(c) the words "or the Falkland Islands" are inserted after the words "England and Wales" where they first appear in section 4(5) of the 1972 Act and those words where they secondly appear in that provision are replaced by the words "the Falkland Islands".

7. Section 4(4) of the 1972 Act is replaced by the following -

"(4) The proceedings referred to in subsection (2) above are the following, whether civil or criminal, namely -

(a) proceedings at first instance in the Supreme Court or in the Magistrate's Court;

(b) appeals arising out of any such proceedings as are mentioned in paragraph (a) above."



# The Employment Protection (Amendment) Bill 1994

(No: of 1994)

## ARRANGEMENT OF PROVISIONS

### Clause

1. Short title.
2. Correction of Employment Protection Ordinance 1989.

## A Bill

for

## An Ordinance

To correct errors and omissions in the Employment Protection Ordinance 1989

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

1. This Ordinance may be cited as the Employment Protection (Amendment) Ordinance 1994. *Short title.*
2. The Employment Protection Ordinance 1989 is corrected by being amended as specified in the Schedule to this Ordinance and shall be deemed to have been enacted as so corrected. *Correction of Employment Protection Ordinance 1989.*

## SCHEDULE

### General

1. In this Schedule, a reference to a section is to the section of that number of the Employment Protection Ordinance 1989 ("the 1989 Ordinance").
2. The word "tribunal", wherever it appears in the 1989 Ordinance, is replaced by the word "court".

### Section 52(2)

3. In section 52(2), the words "by section 3 or by or under any provision of this Part" are replaced by the words "by any provision of this Ordinance".

### Section 60

4. In section 60(2)(a) the words "section 56(1)(b)" are replaced by the words "section 22".

### Section 71(2)

5. In section 71(2), the following words are added at the end of the subsection, and so as to complete it -

"(a) by virtue of section 80(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment;

(b) by virtue of the operation of section 82(1) is not treated as dismissed for the purposes of Part VIII".

*Sections 100(6) to (8), 101(1) to (3) and 102(1) and (2)*

6. The following provisions (which were included in the provisions of the Bill published in the *Gazette* on 19th October 1988 and were passed by the Legislative Council but were inadvertently omitted from the assent copies of the Bill) are inserted in the Ordinance (with a correction of an incorrect cross-reference in section 100(6) so published and passed to "subsection (11)" to subsection (7) (of that section)) -

(a) the following subsections in section 100 -

"(6) Subject to subsection (7), the Governor shall not in such a case authorise any payment under this section in respect of any debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Governor, provide him as soon as reasonably practicable with such a statement.

(7) Where -

(a) the application for a payment under this section has been received by the Governor, but no such payment has been made;

(b) the Governor is satisfied that a payment under this section should be made; and

(c) it appears to the Governor that there is likely to be unreasonable delay before he receives a statement about the debt in question,

then the Governor may, if the applicant so requests or, if the Governor thinks fit, without such a request, make a payment under this subsection notwithstanding that no such statement has been received.

(8) The total amount payable to an employee in respect of any debt mentioned in subsection (3), where that debt is referable to a period of time, shall not exceed £152 in respect of any one week or, in respect of any shorter period, an amount bearing the same proportion to £152 as that shorter period bears to a week,";

(b) the following section 101 -

"101.(1) Where in pursuance of section 100, the Financial Secretary makes any payment to an employee in respect of any debt to which that section applies -

*Transfer of rights  
and remedies to  
the Crown.*

(a) any rights and remedies of the employee in respect of that debt (or, if the Financial Secretary has paid only part of it, in respect of that part) shall, on the making of the payment become rights and remedies of the Crown;

(b) any decision of the Summary Court requiring an employer to pay that debt shall have the effect that that debt or, as the case may be, that part of it which the Financial Secretary has paid, is to be paid to the Financial Secretary.

(2) There shall be included in the rights and remedies which become rights and remedies of the Crown in accordance with subsection (1)(a) any right to be paid in priority to other creditors of the employer in accordance with -

(a) section 33 of the Bankruptcy Act 1948,

(b) section 319 of the Companies Act 1948,

and the Crown shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of those provisions any limit of the amount of sums to be so paid any sums payable to the Crown shall be treated as if they had been paid to the employee.

(3) Any sum recovered by the Crown in exercising any right or pursuing any remedy which is its by virtue of this section shall be paid into the Consolidated Fund."

(c) the following section 102(1) and (2) -

*Power of Crown  
to obtain information  
in connection with  
applications.*

"102.(1) Where an application is made to the Governor under section 100 in respect of a debt owed by a employer, the Financial Secretary may require -

(a) the employer to provide him with such information as the Governor may reasonably require for the purpose of determining whether the application is well-founded;

(b) any person having the custody or control of any relevant records or documents to produce for examination on behalf of the Governor any such document in that person's custody or control which is of such a description as the Financial Secretary may require.

(2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given."

#### *Section 104*

7. Section 104 is amended -

(a) by constituting the existing section as subsection (1) of that section; and

(b) by adding the following subsection -

"(2) Subsection (1) shall not apply -

(a) to any provision of a collective agreement excluding rights under section 15 if an order under section 21 is for the time being in force in respect of it;

(b) to any provision of an agreement relating to dismissal from employment as is mentioned in section 106(1) or (2)."

## **The Pool Betting Bill 1994**

(No:            of 1994)

### **ARRANGEMENT OF PROVISIONS**

#### **Clause**

1.     **Short title.**
2.     **Definition of pool betting.**
3.     **Registration of pool promoters.**
4.     **Pool betting duty.**
5.     **Submission of returns.**

## A Bill

for

## An Ordinance

To legalise certain betting by way of Pool Betting and for connected purposes

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

1. This Ordinance may be cited as the Pool Betting Ordinance 1994.

*Short title.*

2.(1) In this Ordinance "pool betting" has the meaning given by section 3.

*Interpretation.*

(2) For the purpose of this Ordinance, a bet shall be deemed to be made by way of pool betting unless it is a bet at fixed odds or a bet upon the result of a race by way of a sum of money staked by way of totalisator bet and, in particular and subject as aforesaid, bets shall be held to be made by way of pool betting wherever a number of persons make bets -

(a) on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets are made by filling up and returning coupons or other printed and written forms, or in any other way; or

(b) on terms that the winnings of such of those persons as are winners shall be, or shall include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners; or

(c) on the basis that the winners or their winnings shall, to any extent, be at the discretion of the promoter or any other person.

(3) A bet is at fixed odds within the meaning of this section only if each of the persons making it knows or can know, at the time he makes it, the amount he will win, except in so far as that amount is to depend on the result of the event or events betted on, or on any such event taking place or producing a result, or on the numbers taking part in any such event, or on the starting prices or totalisator odds for any such event, or on the time when this bet is received by any person with or through whom it is made.

In this subsection -

"starting prices" means, in relation to any event, the odds ruling at the scene of the event immediately before the start, and

"totalisator odds" means the odds paid on bets by means of a totalisator at the scene of the event.

(4) A bet made with or through a person carrying on business or receiving or negotiating bets, being a bet made in the course of that business, shall be deemed not to be a bet at fixed odds within the meaning of this section if the winnings of the person by whom it is so made consist of or may consist wholly or in part of something other than money.

(5) Where a person carries on a business of receiving or negotiating bets and there is or has been issued in connection with that business any advertisement or other publication calculated to encourage in person making bets of any description a belief that the bets are made on the basis mentioned in subsection (2)(c), then any bets subsequently made with or through him in the course of that business shall be deemed for the purposes of this section to be made on that basis.

3.(1) The Financial Secretary shall be the authority for the registration of pool promoters.

*Registration of  
pool promoters.*

(2) No person shall be registered as a pool promoter -

(a) without the permission of the Governor;

(b) who has been convicted of an offence under this Ordinance or of any offence involving fraud or dishonesty; or

(c) until he has paid the fee of £25.

(3) If after a person has been registered under this section, the Financial Secretary after giving him the opportunity of being heard, is satisfied -

(a) that he does not intend to carry on a pool betting business or activity; or

(b) that he has permanently ceased to carry on a pool betting business or activity,

he shall revoke his registration.

(4) The Financial Secretary shall also revoke the registration of a person under this section if he is satisfied, by virtue of the production of a certificate of conviction or such other information as the Financial Secretary considers sufficient in the circumstances of the case, that the person concerned has been convicted of an offence under this Ordinance or, whether in the Falkland Islands or elsewhere, has been convicted of an offence involving fraud or dishonesty.

(5) No appeal shall lie to any court or authority whatsoever against -

(a) the refusal or failure of the Governor to approve the registration of a person under this section or the Financial Secretary to register a person under;

(b) the decision of the Financial Secretary to revoke a person's registration under this section.

(6) The revocation of a person's registration under this section shall not take effect until the expiry of 28 days after the service or delivery to him of notice in writing of such revocation.

(8) Any person who carries on the business or activity of pool promoter when he is not registered under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

4.(1) Subject to this section, there shall be paid by every promoter to the Financial Secretary by way of pool betting duty ten per centum of the aggregate staked in relation to every pool betting competition organised or promoted by the promoter. *Pool betting duty.*

(2) The said pool betting duty shall be paid to the Financial Secretary at the same time as the promoter sends to the Financial Secretary the account in respect of the pool betting competition in question required by section 5(1).

(3) Pool betting duty is not payable in relation to a pool competition -

(a) if the Governor has granted an exemption under subsection (4); and

(b) paid or to be paid to a club, association or society established and conducted mainly for the support of athletic sports or athletic games is to be treated as money which has been or will be paid or applied for a public purpose.

(4) The Governor may by order exempt any promoter from the payment of pool betting duty on condition that the profits of all pool betting competition conducted by him are applied for such charitable, sporting or public purposes as are mentioned in the order.

(5) For the purposes of pool betting duty, any payment which entitles a person to make a bet by way of pool betting or coupon betting shall, if he makes the bet, be treated as stake money on the bet; and this subsection shall apply to any payment entitling a person to take part in a transaction which is, on his part only, not a bet made by way of pool betting or coupon betting by reason of his not in fact making any stake as if the transaction were such a bet, and the transaction shall accordingly be treated as a bet for the purposes of pool betting duty.

5.(1) Within seven days after the event on which any pool betting of which he is the promoter takes place, or where a bet is made by way of pool betting on the results in combination of more than one event, within seven days of the date on which the last of those event takes place, the promoter shall submit to the Financial Secretary in writing in such form as the Financial Secretary may reasonably require, an account containing the following information - *Submission of returns.*



(a) the total amount received by way of stake money in respect of the pool betting promoted on the occasion in question;

(b) the total amount paid by way of prizes in relation to the results of the pool betting;

(c) any amount carried forward so as to be available as prize money in relation to pool betting on another occasion on which the promoter intends to promote pool betting;

(d) any amount charged by way of expenses and the expenses in respect of which it has been charged;

(e) the amount (if any) paid or proposed to be paid for charitable sporting or public purposes and to what person or body;

(f) the amount payable by way of pool betting duty,

and the return shall be accompanied by a remittance in the amount (if any) mentioned under paragraph (f) of this subsection.

(2) The Financial Secretary may -

(a) require the promoter to produce to him or any person authorised by him, receipts or evidence of payment of any sums included in any amount to which any return under subsection (1) relates;

(b) require the promoter to produce for the purposes of audit by a person appointed by the Financial Secretary all books, papers, accounts and documents as may be necessary to verify and substantiate any return made in accordance with subsection (1), or in default of any such return having been made, to indicate the receipts and outgoings of the pools promoter in connection with all pools promotions undertaken by him, and the application by him of moneys received by him in his capacity as such.

(3) A pools promoter who contravenes any provision of this section or obstructs or impedes any person appointed by the Financial Secretary under subsection (2) in the performance of any audit or inspection he is to undertake in accordance with that section commits an offence and is liable on conviction thereof to imprisonment for six months or to a fine not exceeding the maximum of level 5 on the standard scale.

(4) A justice of the peace may, on being satisfied by evidence given on oath that a person has wilfully refused to produce or has failed to produce or has failed to produce the same within a reasonable time of being required so to do any receipt, book, paper, account or document he is required pursuant to subsection (2) to produce, grant to a police officer a warrant authorising him with such assistance as he may think necessary, within one month after the date of such warrant, to enter, if need be by force, any premises named in the warrant, and there to search for and if found seize and carry away any such receipt, book, paper, account or document.



# THE FALKLAND ISLANDS GAZETTE Supplement

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## NOTICE

The Gazette Supplements published on the following dates have been allocated the following numbers in substitution for the numbers under which they were published —

Date	Published Numbers	Allocated Numbers
2nd September 1994	19	20
23rd September 1994	20	21
3rd October 1994	21	22
7th October 1994	22	23
7th October 1994	23	24
7th November 1994	21	25

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The following is published in this Supplement —

**The Licensing Bill 1994.**

## EXPLANATORY MEMORANDUM

### THE LICENSING BILL 1994

#### *Introductory*

The Licensing Bill 1994, if enacted, would wholly replace the Licensing Ordinance (Cap. 38 of the Laws of the Falkland Islands 1950 Edition). That Ordinance was itself a consolidating and amending enactment, which of course signifies that many of the provisions to be found in the present Ordinance represent provisions taken from Ordinances enacted long before Cap. 38 was enacted in 1949. Although it has been amended eleven times since 1949 it is overdue for legislative overhaul.

The principal subject dealt with by the present Ordinance is the licensing of premises for the sale of alcohol and offences related to the supply and consumption of alcohol. It also deals with the licensing of auctioneers, billiard and bagatelle tables and the sale of tobacco. The Bill would entirely repeal the present Ordinance. Since it makes no provision for auctioneers licences or for billiard or bagatelle licences, the need for them would be abolished. Additionally, while the provisions prohibiting the sale of tobacco to persons under the age of 16 would, in effect, be repeated, the omission of provisions requiring tobacco licences means that they would be abolished.

The principal changes in the law which would be made by the Bill are-

- \* licensing functions would be transferred from the Financial Secretary to the justices of the peace sitting in the Summary Court, with a right of appeal to the Magistrate's Court
- \* the present *de facto* exclusion from the licensing system of military messes and canteens would be formalised in law (but civilian bars and clubs on land leased to the UK Ministry of Defence would remain subject to the general licensing system)
- \* provision would be made for the control and permitting by justices of the peace of amusements with prizes and gaming machines presently upon licensed premises in breach of law
- \* provision would be made for "proprietary clubs" to be licensed for the sale of alcohol (a proprietary club is in essence one the profits of which do not belong to the members of the club and under the present Ordinance only clubs the whole of the profits of which are for the benefit of the members can be licensed)
- \* public houses could remain open for the sale and supply of intoxicating liquor all day long on weekdays

## *Detail*

### *Part I*

Under **clause 1** the Bill would come into force on 1 January 1995. Various provisions of the Bill provide that existing licences would, subject to payment of a fee (the same as the existing licence fee) remain in force until 30 June 1995. Before that date the licence holder would have to apply for obtain a renewal of his licence from the Summary Court.

**Clause 2** defines terms used in the Bill.

### *Part II*

By **clause 3(1)** licences for the sale of intoxicating liquor are given the name "justices' licences". **Clause 3(2)** defines what is meant by "justices' on-licence" and "justices' off-licence" respectively. A justices' licence could under **clause 3(3)** be granted so as to be valid in respect of only certain kinds of intoxicating liquor. **Clause 4** is, in effect, a transitional provision providing for the temporary continuation (until 30th June 1995) of existing "publican's retail" and "wholesale" licences granted under the existing Ordinance.

It is three or more justices of the peace, sitting as the Summary Court, who are the licensing justices by virtue of **clause 5(1)** and **clause 5(2)** provides that the Senior Magistrate cannot sit with them when the Summary Court is exercising the powers of the licensing justices. This is because appeals from its decisions in the exercise of such powers lie to the Magistrate's Court over which the Senior Magistrate presides. Applications for occasional licences and for extensions of permitted hours can be made to, and dealt with by, either the Summary Court or by the Magistrate's Court. No appeal lies from any decision on such an application.

Various provisions of the Bill would disqualify, or provide for the disqualification of, a person from holding, or from applying for, a justices' licence. By **clause 6(1)** a justices' licence could not be granted to a person who is disqualified. Such licences could by **clause 6(2)** be granted by way of new licence or by way of renewal or transfer. Every justices' licence would, by virtue of **clause 6(3)** expire on 30th June in the year following the year in which it was granted. Licences granted by way of renewal would take effect from 1st July.

**Clause 6(3)** and **Schedule 2** lay down the procedure for applying for a justices' licence other than an occasional licence. The prospective applicant would have first to ask the clerk to the Summary Court to nominate a date of hearing of the application for a new justices' licence or for the transfer of an existing justices' licence (renewals of justices' licences are dealt with by **clause 9**). The clerk would set a date within three days' of request and the applicant would then have to give at least 21 days' notice of his intended application on that date to the clerk of the Summary Court, the Government Secretary and (if the application relates to a new licence) to the chief fire officer. In

addition notice of the application would have to be posted up for at least 7 days at or near the premises to which the application relates and be advertised in a newspaper not more than 28 days nor less than 14 days before the date of the application. If the application was for a new licence a plan of the premises would have to be sent with the notice to the clerk to the Summary Court, the Government Secretary, the chief police officer and the chief fire officer.

By **clause 7(1)** the licensing justices could on granting a new justices' licence (other than one for wine alone) attach such conditions regarding the tenure of the licence and other matters as they think fit in the interests of the public. These powers could, for example, be used to require notices to be displayed concerning the supply of intoxicating liquor to persons under the age of 18. By **clause 7(2)** the licensing justices, before granting a new licence, have to be satisfied that the premises are structurally suitable. An application for a justices' licence to take effect on the expiry of a wholesale or publican's retail licence granted under the present Ordinance is, by **clause 7(3)** not to be treated as a an application for a new licence.

**Clause 8** would enable a justices' licence to be provisionally granted in relation to premises yet to be constructed or altered. The object of this is so that the applicant, before incurring the expenditure, knows whether a justices' licence will be granted. There is no comparable provision in the existing Ordinance. A provisional grant would be affirmed on satisfactory completion of the premises.

Renewals of licences are dealt with by **clause 9** which by virtue of **clause 7(3)** would apply in respect of premises as to which a publican's retail or wholesale licence under the present Ordinance is temporarily continued. The Summary Court would hold a session in the second week of May each year for the renewal of licences. Unless the holder of an existing licence notified the clerk to the Summary Court that he did not wish his licence to be renewed, he would be deemed to have applied for its renewal (the purpose of that is to avoid the awkward consequences which could follow if a licensee accidentally failed to apply for the renewal of his licence). If any person wished to oppose the renewal of a justices' licence, he would have to give notice in writing not later than 30th April to the clerk to the Summary Court and to the holder of the licence.

**Clause 10** deals with transfers of justices' licences. The need for transfer of a justices' licence would arise in the following cases-

- \* death of the licensee (when application would be made for transfer of the licence to his personal representative(s) or to the new tenant or occupier of the premises)
- \* illness or infirmity of the holder of the licence (when application would be made for transfer to his assigns (the person(s) he chooses) or to the new tenant or occupier of the premises;
- \* insolvency of the licensee (when application would be made for transfer of the licence to his trustee in bankruptcy or supervisor under deed of arrangement or to the new tenant or occupier of the premises)

\* on sale or transfer of the premises (when application would be made for the transfer of the licence to the new tenant or occupier of the premises or to the person to whom the premises have been sold or transferred)

\* where the occupier of the premises, being about to quit them, has given notice that he intends not to apply for the renewal of the licence, when application would be made for the transfer of the licence to the new tenant or occupier;

\* in a case where a protection order has been granted under **clause 12** to the owner or some person applying on his behalf, when application is made for the transfer of the licence to the owner or some person applying on his behalf.

**Clause 11** would provide that officers of the Supreme Court (this includes, besides various court personnel, all legal practitioners), bankrupts, persons serving or who have served within the past five years more than 2 months imprisonment, persons under 21 and persons who "are of unsound mind" would be disqualified from holding a justices' licence. A justices' licence could not be granted in respect of premises primarily used as a garage or filling station or in respect of premises where two persons have forfeited separate justices' licences within the previous two years.

It should be added, as **clause 11(1)** states, that it has effect "without prejudice to any provisions of this or any other Ordinance whereby a person may be disqualified for holding a justices' licence". An example of another provision of the Bill which provides for disqualification is **clause 76(14)** which provides that a person who is subject to a prohibition order (is on what is locally called "the blacklist") is disqualified for holding a justices' licence for so long as the order is in force.

"Protection orders" are dealt with by **clause 12**. The purpose of protection orders would be to give temporary authority to a person to operate under a justices' licence granted to somebody else. A protection order can remain in force for up to four months and can be granted "by a court of summary jurisdiction" (that is to say either the Magistrate's Court or the Summary Court) to any person to whom the justices' licence could be transferred. **Clause 12(1)** provides that an application for a protection order can be made by "a person who proposes to apply for the transfer of [the] justices' licence". But he is not forced to go on to apply in due course for the transfer of the licence, as will be seen from **clause 13(1)** which provides for a further protection order to be granted if the holder of a protection order changes his mind about applying for a transfer of the licence. Protection orders could only be granted in the usual case on the giving of seven days notice of application, but in an urgent case the court could allow such shorter notice "as is reasonable" to have been given.

Examples of circumstances where a protection order might be applied for would be if the holder of the licence had died or had become seriously ill, so as to be unlikely to return to management of the premises. It will be recalled that under Schedule 2, a special date of sitting of the Summary Court would have to be obtained for an application for transfer of the licence to be made, and 21 days notice of the application

would have to be given. A protection order is a "stopgap" authority, obtainable on short notice.

**Clause 14** would enable the licensing justices on application being made for renewal of a justices' on-licence to require structural alterations to be made to the part of the premises in which intoxicating liquor is sold "so as to secure the proper conduct of the business". In respect of the same premises, if such an order were made and complied with, the licensing justices could not make a further such order for five years.

Alterations proposed to be made to licensed premises other than by order of the licensing justices are dealt with by **clause 15**. Some such alterations would require the consent of the licensing justices: those that would are specified in **clause 15(1)**. Breach of the requirements to obtain consent could lead, under **clause 15(3)** to forfeiture of the licence, subject to a right of appeal to the Supreme Court under **clause 15(4)**.

The licensing justices would under **clause 16** have power to revoke a justices' licence on any ground on which they could refuse to renew that licence. A decision to revoke a justices' licence is subject to appeal to the Magistrate's Court under **clause 17(1)(f)** and under **clause 16(5)** could not have effect until the time within such an appeal may be brought has expired and, if the revocation is appealed against, until the appeal has been dealt with.

**Clause 17(1)** also provides for appeals to the Magistrate's Court against-

- \* a decision granting or refusing to grant a justices' licence
- \* a decision refusing the renewal or transfer of a justices' licence
- \* a refusal to declare the provisional grant of a justices' licence final or affirm a provisional grant of a licence or give consent on the application of the holder of a provisional licence to a modification of plans
- \* an order under **clause 14** requiring structural alterations to licensed premises
- \* the refusal of consent to alteration of licensed premises
- \* any decision as to the conditions of a justices' licence.

**Clause 17(2)** would provide that a person may not appeal against the grant of a justices' licence unless he appeared before the licensing justices to oppose its grant and **clause 17(3)** would provide that where refusal to renew a justices' licence has been appealed against, the licensing justices or the Magistrate's Court could order that the licence should continue in force until the appeal has been dealt with. Procedural provisions in relation to appeals would be made by **clause 18** and **clause 19** provides for powers of the Magistrate's Court on appeals.

**Clause 20(1)** provides for the fees specified in **Schedule 3** to be chargeable and **clause 20(2)** enables that Schedule to be amended by Order made by the Governor.

A register of licences, and its contents, is provided for by **clause 21** and **clause 22** provides for convictions of the holder of a justices' licence committed by him as such, forfeitures of licences and disqualifications of premises for licences to be entered in that register. **Clause 23** would provide for the registration of owners of licensed premises in the register, **clause 24** would provide for notice of conviction of the holder of a justices' licence to be given to the registered owner of the premises to which the licence relates. Inspection of the register would be provided for by **clause 25** and **clause 26** would impose upon the licensing justices a duty to have regard to the entries on the register.

**Clause 27** contains evidential provisions in relation to justices' licences and **clause 28** would enable the licensing justices to extend a justices' licence which relates to limited classes of intoxicating liquor to be extended so as to include other classes.

### *Part III*

This Part of the Bill contains provisions dealing with the sale and supply of intoxicating liquor in club premises. Under the Bill, there would be two ways in which a club might lawfully sell intoxicating liquor. The first of these would be for the club to be registered. This route would be open to members' clubs whose rules and organisation complied with the requirements of the Ordinance in relation to registration. Registered clubs would not be subject to any restrictions on the hours in which intoxicating liquor might be supplied to their members. The other route would be for the club to obtain a justices' on-licence subject to conditions restricting the sale and supply of intoxicating liquor to members and their guests. Under such a licence, the supply of intoxicating liquor would be restricted to the permitted hours. A club the profits of which belonged to anybody other than the members could only be authorised to sell intoxicating liquor under such a licence. Existing club licences are held by members' clubs: these would convert to registered clubs and, in effect, would operate in entirely the same way as they do under the present Ordinance. The second route: for a "proprietary club" to be able to obtain a justices' on-licence is a new provision. One advantage to the proprietors of such a licence is that they could limit and "vet" the number of persons who would be permitted to use their premises.

**Clause 29(1)** reflects the two routes, explained above, by which a club may be authorised to supply intoxicating liquor. **Clause 29(2)** would restricts off-sales on the premises of a registered club to off-sales to a member in person and **clause 29(3)** contains provisions which would restrict the places at which a registered club might supply intoxicating liquor to members and guests to the premises in respect of which the club is registered and premises which the club is using on a special occasion for the accommodation of members and their guests. At "special occasion" premises only "on-sales" would be permitted. (An example of "special occasion" premises of a registered club might be a tent at Stanley or Camp Sports reserved for the use of members of the club and their guests).

**Clause 29(4) and (5)** would create criminal offences in relation to breaches of the earlier provisions of the clause.



Registration of clubs would be provided for by **clause 30**. Certificates of registration would, under **clause 30(1)**, be issued by the Summary Court and would, under **clause 30(2)**, be in effect for 12 months, but could be renewed and renewals would have effect for 12 months from the date on which the certificate was last issued or renewed. Under **clause 30(4)** applications for issue and renewal would have to comply with **Schedule 4** and **Schedule 5** would apply as to the procedure for registration and related matters.

**Schedule 4** contains a number of requirements. Most of these are aimed at preventing a club the profits of which belong to any body else other than the members of the club as a whole from being registered as a club. The reason for this is that members' clubs are given the privilege of being exempt from the provisions limiting the supply of intoxicating liquor to permitted hours.

**Schedule 5** sets out how an application for a registration certificate or the renewal of such a certificate is to be made. It also sets out how an objection etc to the issue or renewal of a registration certificate is to be made.

Under **clause 30(5)** where application for renewal of a registration certificate is made not less than 28 days before it is due to expire, the registration certificate will continue in force until the application for renewal has been dealt with by the Summary Court. **Clause 30(6)** limits the power of the court to refuse the issue or renewal of a registration certificate where no objection has been made. Transitional provisions in relation to existing licensed clubs are made by **clause 30(7)**. A transitional continuation fee will be payable, and subject to that being paid not later than 15th January 1995 will remain in force until 30th June 1995. The club should apply for a registration certificate not later than 2nd June 1995 (see **clause 30(5)**), and the application will be treated as an application for renewal of a registration.

**Clause 31** deals with qualifications for registration whether in the first instance or by way of renewal. Under **clause 31(1)** the rules of the club would have to prescribe that nobody could be admitted as an ordinary member or visiting or honorary member or as a candidate for membership to any of the privileges of membership without an interval of at least two days from his nomination or application for membership and his admission. Under **clause 31(2)** the club would have to have at least 25 members and the other arrangements would have to be that nobody other than the club as a whole would benefit from the profit on the sales of intoxicating liquor at the club. **Clause 31(3)** would require the Summary Court to have regard to certain matters (all of which are aimed at preventing a private profit to an individual from the sale of intoxicating liquor by the club).

Under **clause 31(4)** the Summary Court would ordinarily be required to assume various matters in favour of the club if its rules comply with **Schedule 6**. That **Schedule** sets out the provisions which would have to be contained in a club's rules if it were to qualify for a registration certificate.

**Clause 32** deals with disqualification for and refusal of a club registration certificate. Under **clause 32(1)** premises would be disqualified for obtaining a registration certificate if-

- \* they were disqualified by order of the Summary Court under **clause 35**

- \* they were licensed premises (i.e. if a justices' licence were held in respect of them: the object of this is to prevent *both* a justices' licence and a club registration certificate being held in respect of the same premises) or

- \* they formed part of premises so disqualified or licensed premises.

**Clause 32(2)** would provide that the Summary Court could refuse an application for the issue or renewal of a club registration certificate if it were proved that a person unfit in view of his known character as proved to the court would, or would be likely to, take an active part in the management of the club. Under **clause 32(3)** the Summary Court could refuse an application for the issue or renewal of a registration certificate if the premises or any part of them had within the preceding 12 months been licensed premises but had ceased to be licensed premises by virtue of the forfeiture or revocation of the licence.

**Clause 33** would deal with objections to and cancellation of club registration certificates. **Clause 33(1)** would provide that the Attorney General or the chief police officer or any other person affected by reason of his occupation or interest in the premises could object on any of five grounds specified in the subclause to the issue or renewal of a club registration certificate. Similarly, **clause 33(2)** would enable the Attorney General or the chief police officer to apply to the court for cancellation of a club registration certificate on any one or more of three grounds.

**Clause 34** contains provisions as to the inspection of premises involved in an application for a new club registration certificate or for a registration certificate in respect of different, additional or enlarged premises.

Under **clause 35(1) and (2)**, the Summary Court would have power to order the disqualification of premises for a club registration certificate for a period not exceeding 12 months if not previously disqualified and 5 years if previously disqualified but only if it had cancelled or refused to renew a club registration certificate on any one of three specified grounds. Any person affected by such a disqualification order could under **clause 35(3)** apply to the Summary Court to revoke it or shorten the period of disqualification and under **clause 35(4)** the summons issued by the court on his application would have to be served on the Attorney General (who would therefore have the right to object to the application being granted).

**Clause 36** would require alterations in the club rules to be served on the Attorney General and the chief police officer and provides that failure to do so would be an offence on the part of the club secretary. The reason for these provisions is that certain

alterations in the club rules could mean that the club would no longer be qualified to have a club registration certificate.

**Clause 37(1)** would provide that when a club is registered in respect of any premises no justices' licence is required for the supply of intoxicating liquor on those premises to members of the club and their bona fide guests. Under **clause 37(2)**, the provisions of Part VII of the Bill would apply to premises in respect of which a club is registered: Part VII contains provisions related to the supply of alcohol to persons under the age of 18 and other provisions related to the conduct of premises in respect of which a justices' on-licence is held. **Clause 37(3)** would make it clear that nothing in the preceding provisions of the clause would apply to a club in respect of which a justices' on-licence was held. **Clause 37(4)** would enable the Summary Court to impose conditions on the issue or renewal of a registration certificate.

Appeals to the Magistrate's Court against decisions of the Summary Court in relation to club registration certificates would be provided for by **clause 38(1) to (3)**. **Clause 38(4)** would enable a club registration certificate the refusal of which had been refused by the Summary Court to be continued in force pending consideration of the question of appealing and, if an appeal is brought, pending determination of the appeal.

Search warrants in relation to suspected offences in relation to the supply of intoxicating liquor on premises of a registered club would be provided for by **clause 39**.

**Clause 40** would deal with the issue of justices' licences for club premises. These would relate to premises which are not covered by a club registration certificate and would be likely to relate to clubs the profits of which might belong to persons other than the members of the club as a whole. Such licences would really be justices' on-licences subject to special sets of conditions limiting the supply of intoxicating liquor to members and their invited guests. Permitted hours would apply in respect of such clubs. Examples of clubs which might be licensed in this way would be discotheque clubs, jazz clubs and the like.

### *Part III*

This Part of the Bill is headed "Permitted Hours" and deals with the subject of the hours in which intoxicating liquor may be sold in premises licensed under a justices' licence.

**Clause 41** would provide that "*subject to the provisions of this Ordinance*" it would be an offence for a licensee or his employee to sell or supply intoxicating liquor on licensed premises or for anyone to consume intoxicating liquor on, or take it from, licensed premises outside permitted hours.

The permitted hours, subject to the subsequent provisions, would be as prescribed by **clause 42(1)** which could be amended by an order by the Governor under **clause 42(2)**. The permitted hours specified in **clause 42(1)** vary the permitted hours presently existing by providing that licensed premises may remain open all day long on

weekdays (other than Christmas Day and Good Friday). The permitted hours for on-licensed premises under **clause 42(3)** would be the same as those for Mondays to Fridays for on-licensed premises except that they would be extended so as to begin at 7 in the morning.

"Drinking-up" time would be provided for by **clause 43(1)**. There would be twenty minutes' drinking-up time after the end of permitted hours and 30 minutes' drinking-up time in relation to liquor taken as ancillary to a table meal. ("Table meal" is defined in **clause 2(1)**).

The restrictions of permitted hours, by virtue of **clause 43(2)**, would not apply-

- \* in relation to sale or supply of intoxicating liquor to a person in premises in which he is residing
- \* to orders for "off-sales" or the despatch of such orders
- \* to "trade sales" or sales to a registered club for the purposes of the club
- \* to supply to a canteen or mess

nor, by virtue of **clause 43(3)** would they apply-

- \* to the taking of intoxicating liquor from licensed premises by a person residing there
- \* the supply for consumption on premises licensed under a residential licence to private friends of a person residing there who are bona fide entertained by him at his own expense or to consumption of intoxicating liquor by persons so supplied.

**Clause 44** would make provision for "special hours certificates" in relation to premises in which "music and dancing" is provided (which under **clause 2(1)** includes live music without dancing and by **clause 45(4)** includes recorded music provided for the purpose of dancing but does not otherwise include recorded music, even if provided for the purpose of persons singing to it). Where a special hours certificate is on force, on nights on which music and dancing (as so defined) is provided, permitted hours would end at half past twelve or at the end of the music and dancing, whichever is the earlier. Under **clause 44(4)** on nights where the permitted hours are extended by the operation of a special hours certificate, "drinking-up time" of half an hour would be allowed after the end of the permitted hours.

The licensing justices would be given power by **clause 45(1)** to grant special hours certificates but under **clause 45(2)** could only grant a special hours certificate if satisfied that the premises are suitable for "music and dancing" (as defined) and that the licensed premises concerned in the application were bona fide used or intended to be used for the purpose of music and dancing or for that purpose and substantial refreshment, to which the supply of intoxicating liquor would be ancillary. A special hours certificate could under **clause 45(3)** be granted in respect of particular days of

the week (e.g. Friday and Saturday nights), particular periods of the year or so as to exclude any particular day or days of national or religious significance.

Revocation of special hours certificates is provided for by **clause 46**. Under it such certificates could be revoked on the grounds-

- \* that the premises have not been used for music and dancing
- \* that a person has been convicted of an offence at the premises of selling or supplying intoxicating liquor "after hours"
- \* that the premises are used during the extended hours principally for the sale and supply of liquor rather than music and dancing or other enjoyment of music
- \* disorderly or indecent conduct on the premises to which the special hours certificate relates.

**Clause 47** contains provisions in relation to appeals connected with the refusal to grant, revocation of and limitation of special hours certificates.

Provision for the grant of extensions of permitted hours at licensed premises on special occasions would be made by **clause 48**. Such an extension could be granted by a "court of summary jurisdiction" (defined in **clause 2(1)**) if it were satisfied that the occasion was a special occasion "in respect of which it is reasonable to grant an extension" and reasonable notice of the application to the court has been given to the chief police officer (ordinarily seven days' notice would be required). The chief police officer or his representative could, if he saw fit, oppose an application for an extension of permitted hours.

**Clause 49** would create offences in relation to parties organised for gain at which intoxicating liquor is supplied and **clause 50** would make supplementary provision in relation to such parties.

**Clause 51** would provide that a licensee is not, unless so required by the conditions of his licence, required to keep his premises open at any time during permitted hours.

### *Part V*

This Part contains a number of special provisions in relation to justices' on-licences granted in relation to restaurants and guesthouses (which latter expression includes boarding-houses hotels and travel lodges) which are not full "public house" on-licences.

**Clause 52(1)** would define such licences as "Part V licences". Under **clause 52(2)** there would be three types of Part V licences: restaurant licences, residential licences and combined restaurant and residential licences. Combined restaurant and residential licences are not provided for by the existing Ordinance, but it is necessary for the Bill to provide for them because it is an underlying philosophy of the present Bill that not

more than one justices' on-licence can be held in respect of the *same part* of the same premises at the same time. This is because a duplicity or multiplicity of licences in respect of the same part of the same premises can lead to difficulties in administration of the liquor licensing law. **Clause 52(3)** would limit the grounds on which Part V licences could be refused and **clause 52(4)** would provide that a Part V licence could be granted for wine alone. Restaurant and residential licences granted under the existing Ordinance would under clause 52(5) temporarily continue in force after the commencement of the Bill if enacted.

**Clause 53(1),(2) and (3)** would respectively define "restaurant licence", residential licence and residential and restaurant licence and **clause 53(4) and (5)** would make supplementary provision in relation to those provisions. **Clause 53(6)** would make it an implied condition of every Part V licence that suitable non-alcoholic beverages (including drinking water) should be equally available for consumption at meals served in the licensed premises.

**Clause 54(1)** would require the licensing justices where granting a new residential or residential and restaurant (and unless it seems to them unnecessary to do so in the circumstances of the particular case) to require adequate sitting accommodation in a room not used as a bedroom, room for meals or the supply of intoxicating liquor. **Clause 54(2)** would require them to impose that condition on the transfer or renewal of the licence if they thought that the requirement should no longer be dispensed with.

Under **clause 55** the licensing justices would not be able to apply more onerous conditions to on-licences intended in relation to the supply of intoxicating liquor with meals or residing in the licensed premises than those provided in **clause 53**.

**Clause 56** would restrict the grounds on which the licensing justices might refuse to grant a Part V licence to the following-

- \* that the applicant is under 21 or for any other reason is not a fit and proper person to hold the licence

- \* that the premises are not structurally adapted and bona fide used or intended to be used for a purpose or the purposes for which a Part V licence of that type can be granted or are not suitable and convenient for that use having regard to their character and condition, to the nature and extent of the proposed use and (where it applies) to the condition as to sitting accommodation under **clause 54** or to the consumption of intoxicating liquor as an ancillary to a table meal

- \* that during the 12 months preceding the application-

- (a) a justices' on-licence for the premises has been forfeited

- (b) the premises have been ill-conducted while a justices' licence was in force in respect of them

- (c) that the condition as to sitting accommodation has been habitually broken

(d) the condition which would be implied by **clause 53(6)** as to the availability of beverages other than intoxicating liquor has been habitually broken

\* that the trade of the premises (in the case of an application for a restaurant or restaurant and residential licence) does not consist to a substantial extent in providing table meals of a kind to which the consumption of intoxicating liquor might be ancillary

\* that the sale or supply of intoxicating liquor would be undesirable because it would be by self-service methods

\* that a large proportion of the customers consist of persons under the age of eighteen not accompanied by others (whether parents or other persons of full age) who pay for them

\* that the chief police or chief fire officer have unreasonably been refused access for the purpose of inspecting the premises in connection with the application.

Powers would be conferred upon the licensing justices by **clause 57** to disqualify persons from holding Part V licences and premises for Part V licences being held in respect of them. The maximum period of such a disqualification would be five years. The offences in respect of which disqualification could be ordered would be-

\* selling or supplying intoxicating liquor in breach of the conditions of a licence

\* permitting drunkenness on licensed premises

\* permitting licensed premises to be used as a brothel

\* permitting premises to be used for fighting or baiting any animal bird or other creature, unlawful betting or gaming or a sale by auction.

**Clause 58** would make provision supplementary to the previous clause-

\* it would enable a disqualification order to be suspended so as to enable the question of an appeal to be considered and, if an appeal were brought, pending determination of the appeal

\* it would forbid the making of a disqualification order in relation to any premises until an opportunity had been given to any person interested in the premises to be heard by the court to show cause why the order should not be made

\* it would enable a court of summary jurisdiction on application to vary or reduce the period of disqualification, and confer a right of appeal to the Supreme Court against any refusal to do so

### *Part VI*

The heading to this Part of the Bill indicates that it contains a number of provisions relating to the sale etc., possession and delivery of intoxicating liquor.

**Clause 59(1)** would exempt "canteens" and "messes" authorised by the Commander British Forces from the licensing provisions of the Bill. **Clause 59(2)** would specifically state that **clauses 64** (supply of over-measure prohibited) **67** (serving or delivering intoxicating liquor to person under 18 prohibited) **73 to 78** (power to exclude drunkards etc., exclusion orders, penalties for non-compliance with exclusion orders, prohibition orders, notification and knowledge of prohibition orders and application of **clauses 76 and 77** to prohibition orders under section 26 of the repealed Ordinance) would apply to such messes and canteens.

**Clause 60** would provide that it would be an offence (as it is under the existing Ordinance), and except as permitted under the Bill, to sell intoxicating liquor without a licence and contain supplementary provisions in relation to that offence. **Clause 61** would similarly provide that it would be an offence to sell intoxicating liquor in contravention of the conditions of a licence and supplementary provisions in relation to that offence. **Clause 62** would prohibit the keeping, without reasonable excuse, upon licensed premises of intoxicating liquor of a kind that the licence did not permit the sale. **Clause 63** would make provision in relation to a number of offences in effect consisting of or related to "on" consumption of intoxicating liquor on or in proximity to premises only having an "on" licence.

**Clause 64** would prohibit the deliberate supply of an over-measure. The rationale behind that offence is simply that supplying a person with more alcohol than he orders can have the effect of making him drunk through no real fault of his own, or cause him to commit an "over-the-limit" offence under the Road Traffic Ordinance.

Sale of alcohol on credit for consumption "on" the premises would be prohibited, subject to exceptions, by **clause 65** which is identical in effect to provisions of the existing Ordinance. The rationale is to prevent persons getting themselves into debt through addiction to drink.



### *Part VII*

As the heading to this Part of the Bill indicates, it contains a number of provisions relating to the protection of persons under the age of eighteen and other provisions as to the conduct of licensed premises.

As is the case under the present Ordinance, it would be an offence, subject to exceptions, for a person under the age of eighteen to be in the bar of licensed premises during permitted hours (**clause 66(1)**). But a licensee would not commit an offence if he proves that he exercised all due diligence to prevent the person under the age of eighteen from being admitted to the bar or that that person was apparently over the age of eighteen years (**clause 66(3)**). Under **clause 66(2)**, and subject to exceptions, it would be an offence for a person under the age of eighteen to enter or attempt to enter the bar of licensed premises during permitted hours. Exceptions to these provisions would be (**clause 66(4)**)-

- \* if the person is the licensee's child
- \* if the person resides in the premises but is not employed there
- \* if the person is in the bar only for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress

A further exception (**clause 69**) would be if the bar is licensed under a Part V licence (restaurant, residential or residential and restaurant licence).

The employment of person under 18 in bars would be prohibited by **clause 68**, but by **clause 69** this would not apply in premises licensed under a Part V licence. **Clause 70** would prevent unsupervised off-sales by a person under eighteen.

It would be an offence under **clause 71** for a licensee to permit drunkenness or violent, quarrelsome or riotous conduct on the licensed premises or to sell intoxicating liquor to a drunken person. Under **clause 72** it would be an offence for any person on licensed premises to procure or to attempt to procure intoxicating liquor for a drunken person or to aid such a person to obtain or consume intoxicating liquor.

**Clause 73(1)** would confer power upon the licensee to refuse admission to or expel any drunken, violent, quarrelsome or disorderly person or who is the subject of an exclusion order (under **clause 74**) or a prohibition order (under **clause 76**). By **clause 73(2)** a person liable to be expelled from licensed premises who failed to leave licensed premises when requested by or on behalf of the licensee to do so would be committing a criminal offence. Under **clause 73(3)** a police officer would be under a duty to help to expel such a person and might use such force as might be required for the purpose.

**Clause 74** would make provision enabling an "exclusion order" to be made in respect of persons convicted of an offence committed on licensed premises if the court was satisfied that in committing the offence he had resorted to violence or threatened to

resort to violence. The effect of the order would be to exclude the person to which it related from those licensed premises (or any other premises mentioned in the order) without the express consent of the licensee of the premises or his servant or agent. An exclusion order would be in force for such period not being less than three months nor more than two years as might be specified in the order. It could be made in addition to any sentence imposed on him for the offence in question and in addition to a probation order or an order discharging him conditionally or unconditionally. It could also be made in addition to a prohibition order.

**Clause 75(1)** would render it an offence for a person to contravene an exclusion order and **clause 75(2)** would enable the order to be terminated or varied by a court "of its own motion or on the application of any person" and to be extended (but not so as to exceed three years in duration) on any occasion on which a court sentences a person for an offence under **clause 75(1)**.

Provisions in relation to prohibition orders would be made by **clause 76**. This clause would re-enact, with amendments, the provisions of clause 26 of the present Ordinance. A prohibition order could only be made (**clause 76(1)**) if a court were satisfied by evidence given on oath that the person concerned was by reason of the consumption of intoxicating liquor severely prejudicing his health or neglecting his person or failing to make adequate financial or other provision for a spouse or dependent child or was violent or abusive to his spouse or child or any person living with him in the same household. The order could be made on the application of some person or by the court of its own motion (**clause 76(2)**) but under **clause 76(3)** except where an application for a prohibition order was made by the prosecutor in the course of or at the conclusion of criminal proceedings, all proceedings for a prohibition order would be dealt with in chambers (that is to say, with the public excluded). Under **clause 76(4)** a prohibition order could be made against a person accused in criminal proceedings notwithstanding that he had not been convicted or found guilty in those proceedings. The order would be deemed not to be by way of sentence for a criminal offence. Under **clause 76(5)** an appeal would lie to the Supreme Court against the prohibition order and would (**clause 76(6)**) be civil proceedings in that court. The effect of a prohibition order, under **clause 76(7)**, to render it unlawful for the person the subject of the order to consume intoxicating liquor or enter or remain in a public house bar or the bar of a registered club or for any person to sell or supply to him or to assist him to consume or to procure for him or attempt to procure intoxicating liquor for him. It would also be an offence for a licensee or his agent or employee or the secretary of a registered club to permit him to enter or remain in any bar in such bar. **Clause 76(8)** would provide an exception in respect of the sacrament of Holy Communion. A prohibition order would be made so as to have effect for a period of not less than six months nor more than twelve months (**clause 76(10)**) but could be extended for a period not exceeding twelve months by a court which convicts the person concerned of an offence under **clause 76(12)** of contravening a provision of **clause 76(7)**. **Clause 76(11)** would enable a court on the application of the person to whom the prohibition order relates, provided that six months have elapsed since the order was made or last extended, to discharge the order or vary it by shortening the period for which it would remain in force. **Clause 76(12)** would provide that contraventions of **clause 76(7)** would constitute an offence and provide for the manner in which such an offence would be punishable. **Clause 76(13)** would disapply certain

restrictions of the Criminal Justice Ordinance 1988 in relation to the imposition of a prison sentence so that a prison sentence would readily be available as a punishment of a person who knowingly supplied intoxicating liquor to a person "on the blacklist" (subject to a prohibition order). **Clause 76(14)** would provide that a person who was the subject of a prohibition order would be disqualified, so long as he remained subject to the order from holding a justices' licence.

**Clause 77** would make provision as to the notification to licensees and others of prohibition orders and as to knowledge of a prohibition order.

**Clause 78** would apply the provisions of **clause 76** to prohibition orders under the present Ordinance which are not spent on the coming into force of the Bill, and provide that such prohibition orders would continue to have effect as if they had been made under **clause 76(1)**.

Drunken behaviour in a public place would be dealt with by **clause 79**. It would not be an offence simply to be drunk in a public place, but it would an offence, while drunk, to be disorderly in a public place, or to be found incapable, through drunkenness in a public place.

Under **clause 80**, there would be three offences in relation to police officers-

- \* allowing a police officer to remain on licensed premises during duty hours except for the purposes of his duty
- \* supplying any liquor or refreshment, whether by way of gift or sale, to any police officer on duty without the authority of his superior officer
- \* bribing or attempting to bribe a police officer

There then follow in **clauses 81 and 82** provisions as to offences in or in respect of licensed premises related to prostitution.

**Clause 83** contains provisions as to other prohibited activities on licensed premises-

- \* fighting or baiting animals, birds or other creatures
- \* betting (other than for moderate stakes on games of pure skill) or gaming
- \* sales by auction.

All of these (and subject to the subsequent provisions of the clause) would be offences under **clause 83(1)**.

Fighting or baiting animals, birds or other creatures is objectionable in itself (not only on licensed premises) but might be particularly likely to occur at or in relation to licensed premises if it were not prohibited and it is an offence in relation to which the licensee can forfeit his licence.

Betting would no longer be regarded as objectionable in itself, but is prohibited on licensed premises because persons who are the worse for drink are highly likely to bet unwisely. Most forms of gaming are in any case illegal. Sales by auction in licensed premises have always been prohibited because persons the worse for drink may bid more than they can afford.

By **clause 83(2)** raffles and lotteries permitted under the Lotteries Ordinance, the playing of cribbage or dominoes for moderate stakes and gaming or amusements with prizes machines approved by the licensing justices would not be illegal.

**Clause 83(3)** defines certain games as being games of pure skill and a "moderate stake" as being one of £5 or less.

### *Part VIII*

This Part of the Bill deals with a number of miscellaneous subjects. **Clause 84** deals with the grant of occasional licences, **clause 85** deals with applications for occasional licences and **clause 86** contains further provisions in relation to occasional licences.

An occasional licence would be one authorising a person to sell intoxicating liquor during a period not exceeding five days at some function or event (**clause 84(1)**). It could only be granted to a fit and proper person, persons under eighteen must be capable of being readily excluded from the place where the intoxicating liquor will be sold, the sale of intoxicating liquor must be merely ancillary to the function or event and the grant of the occasional licence must not be likely to result in disturbance or annoyance being caused to residents in the neighbourhood or any disorderly conduct (**clause 84(2)**). An occasional licence could not be granted to a person who is disqualified from holding or obtaining a justices' licence or in respect of premises which are disqualified for receiving a justices' licence (**clause 86(2)**).

**Clause 87(1)** would provide that a police officer might for the purpose of detecting or preventing any offence provided by the Bill enter licensed premises at any time they are open or appear to be open. Obstruction of a police officer in the exercise of his powers under **clause 87(1)** would be an offence under **clause 87(2)**.

**Clause 88** would provide for the offence of adulterating liquor.

**Clause 89** contains special exemptions from the need for justices' licences in relation to sales on board ship to passengers and crew of the ship and their bona fide guests and in relation to sales on Camp stations to employees where the sale is by the owner, lessee or manager of the station.

**Clause 90** would limit the liability of the licensee or owner of licensed premises for loss or damage to the property of a customer, visitor or guest.

Sale of tobacco to persons under the age of sixteen would by **clause 91** continue to be prohibited. The provisions as to seizure of tobacco in the possession of persons under the age of sixteen in the existing Ordinance would be repeated in **clause 91(4)**.

Power to make regulations would be conferred by **clause 91** and **clause 92** would repeal the existing Ordinance in its entirety.

The Schedules which follow have been dealt with in relation to the clauses which incorporate them in the Bill

# The Licensing Bill 1994

(No:            of 1994)

## ARRANGEMENT OF PROVISIONS

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- 40. Licensing of club premises.

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- 41. Prohibition of sale, etc of intoxicating liquor outside permitted hours.

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## A Bill

for

### An Ordinance

To make new provision in relation to the licensing and conduct of premises used for the sale of intoxicating liquor, in relation to the consumption of intoxicating liquor, the sale of tobacco and for the purposes connected with the foregoing purposes.

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

### PART I

#### INTRODUCTORY

1. This Ordinance may be cited as the Licensing Ordinance 1994 and shall come into force on 1st January 1995. *Short title and commencement.*

2.(1) In this Ordinance, unless the context otherwise requires - *Interpretation.*

"bar" includes any place exclusively or mainly used for the sale and consumption of intoxicating liquor;

"canteen" means any premises which are not a mess, in the occupation of the Ministry of Defence, any of Her Majesty's armed services or of the Navy Army and Air Force Institute, and where intoxicating liquor is supplied under the authority of the Commander British Forces;

"club licence", in accordance with its context, means a licence of that description granted under the provisions of the repealed Ordinance or a justices' on-licence granted to a club;

"cider" includes perry;

"club premises" means premises which are occupied by the habitually used for the purposes of a club;

"court of summary jurisdiction" means either of the Summary Court and the Magistrate's Court;

"family proceedings" has the same meaning as it has in the Childrens Ordinance 1994;

"full age" means the age of twenty-one years;

"the general licensing hours" has the meaning given by section 42(5)(a);

"grant" in relation to a justices' licence includes a grant by way of renewal or transfer and "application" shall be construed accordingly;

"intoxicating liquor" means spirits, wine, beer, cider and any fermented, distilled or spirituous liquor but does not include -

(a) any liquor which is found on analysis of a sample thereof at any time to be of an original gravity not exceeding 1016 and of a strength not exceeding 1.2 per cent;

(b) perfumes;

(c) flavouring essences recognised by the Collector of Customs as not being intended for consumption as or with dutiable alcoholic liquor;

(d) spirits, wine or made-wine so medicated, as to be in the opinion of the Collector of Customs, intended for use as a medicine and not as a beverage;

"justices' licence" has the meaning given by section 3(1);

"legal practitioner" has the same meaning as it has under the Legal Practitioners Ordinance 1988;

"licensed premises" includes a reference to premises in relation to which an occasional licence is in force;

"mess" means a mess of members of Her Majesty's naval, military or air forces authorised by the Commander British Forces or other competent authority;

"music and dancing" includes live music, without dancing, and dancing (but not singing) to recorded music;

"occasional licence" means a licence granted under section 84;

"Part V licence" has the meaning given by section 52;

"permitted hours", in relation to any licensed premises, has the meaning given by section 42(5)(b), and in relation to a registered club means all hours whatever;

"prohibition order" means an order under section 76 of this Ordinance or section 26 of the repealed Ordinance;

"protection order" has the meaning give by section 12(1);

"registration certificate" means a certificate of registration of a club granted by the Summary Court under Part III of this Ordinance;

"residential licence" has the meaning given by section 53(2) of this Ordinance;

"restaurant licence" has the meaning given by section 53(1) of this Ordinance;

"residential and restaurant licence" has the meaning given by section 53(3) of this Ordinance;

"the repealed Ordinance" means the Licensing Ordinance (Chapter 38 of the Laws of the Falkland Islands 1950 Edition);

"publican's retail licence" means a licence of that description granted or renewed under the provisions of section 7 of the repealed Ordinance;

"secretary", in relation to a club, includes any officer of the club or other person performing the duties of the secretary and, in relation to a proprietary club where there is no secretary, the proprietor of the club;

"spouse" has the same meaning as it has in the Matrimonial Proceedings (Domestic Violence) Ordinance 1994;

"table meal" means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table;

"wholesale licence" means a licence of that description granted under section 3 of the repealed Ordinance.

(2) For the purposes of this Ordinance a person shall be treated as residing in any premises, notwithstanding that he occupies accommodation in a separate building, if he is provided with that accommodation in the course of a business of providing board and lodging for reward at those premises and the building is habitually used for the purpose by way of annex or overflow in connection with those premises and is occupied and managed with those premises.

(3) In this Ordinance -

(a) renewing a justices' licence means granting a justices' licence for any premises to the holder of a similar licence in force for those premises;

(b) transferring a justices' licence means granting it for any premises to a person in substitution for another person who holds or who has held a licence for those premises.

(4) Any reference in this Ordinance to the registered owner of premises shall be construed as a reference to any person whose name is for the time being entered in the register of licences maintained under section 21.

## PART II

### THE GENERAL LICENSING SYSTEM

3.(1) In this Ordinance "justices' licence" means a licence granted by the licensing justices under this Ordinance authorising the sale by retail of intoxicating liquor (and also, in the case of a licence granted to a club for club premises, for its supply to or to the order of members otherwise than by way of sale) and includes a Part V licence and an occasional licence. *Justices' licences.*

(2) In this Ordinance "justices' on-licence" and "justices' off-licence" means respectively -

(a) a justices' licence authorising sale for consumption either on or off the premises for which the licence is granted;

(b) a justices' licence authorising sale for consumption off those premises only.

(3) A justices' licence shall be in such form as is prescribed by regulations under this Ordinance and -

(a) in the case of a justices' on-licence may authorise the sale -

(i) of intoxicating liquor of all descriptions; or

(ii) of beer, cider and wine only; or

(iii) of beer and cider only or

(iv) of cider only; or

(v) of wine only;

(b) in the case of a justices' off-licence, may authorise the sale -

(i) of intoxicating liquor of all descriptions; or

(ii) of beer, cider and wine only.

4.(1) Subject to the payment of such fee as may be prescribed under subsection (3), a publican's retail licence which was in force immediately prior to the commencement of this Ordinance after such commencement (and unless it earlier ceases to have effect by virtue of any provision of this Ordinance including subsection (3)) continues in force and effect as if upon such commencement it had been granted as a justices' on-licence ceasing to have effect on 30th day of June next following the commencement of this Ordinance.

*Licences granted under the repealed Ordinance: application of this Ordinance to premises licensed under repealed Ordinance.*

(2) Subject to the payment of such fee as may be prescribed under subsection (3), a wholesale licence that was in force immediately prior to the commencement of this Ordinance after such commencement (and unless it earlier ceases to have effect by virtue of any provision of this Ordinance including subsection (3)) continues in force and effect as if upon such commencement it had been granted as a justices' off-licence ceasing to have effect on 30th June next following the commencement of this Ordinance.

(3) The fees referred to in subsection (1) and (2) are those specified in the Schedule 1 to this ordinance and if such fee as may be appropriate in relation to the licence in question has not then been paid by or on behalf of the holder of the publican's retail or, as the case may be, the wholesale licence, that licence shall cease to continue to have effect on the fifteenth day following the commencement of this Ordinance.

(4) Subject to the foregoing provisions of this section, all licences granted under the repealed Ordinance and held at the commencement of this Ordinance, all persons holding such a licence and all premises in respect of which such a licence was held shall, except where otherwise provided, be under the subject to the provisions of this Ordinance.

5.(1) Three or more justices of the peace, sitting as the Summary court, may exercise any of the powers conferred upon the licensing justices by this Ordinance. *Licensing justices.*

(2) The Senior Magistrate shall not be capable, as a justice of the peace, of constituting a member of the Summary Court for the purpose of the exercise by justices of the peace, sitting as the Summary Court, of any of the powers conferred upon licensing justices by this Ordinance.

(3) Nothing in the preceding provisions of this section applies to powers under this Ordinance expressed to be exercisable by a court of summary jurisdiction (that is to say, either by the Magistrate's Court or by the Summary Court).

#### *Grant of justices' licence*

6.(1) Licensing justices may grant a justices' licence to any such person, not disqualified under this or any other Ordinance for holding a justices' licence, as they think fit and proper. *Grant of justices' licence.*

(2) A justices' licence may be granted as a new licence or by way of renewal or transfer.

(3) A justices' licence granted by way of renewal shall be expressed to take effect on the 1st July next following the date on which it was granted, a justices licence granted by way of new licence or by way of transfer shall be expressed to take effect on the day it was granted and every justices' licence shall be expressed to expire on 30th June in the year next following the date on which it was granted.

(4) Schedule 2 to this Ordinance shall have effect with regard to the procedure to be followed in relation to applications for the grant of a justices' licence other than a grant by way of renewal or the grant of an occasional licence.

(5) Sections 7 to 10, 12 to 26 and 28 do not apply in respect of occasional licences.

7.(1) Subject to the provisions of Part V of this Ordinance, licensing justices granting a new justices' licence, other than a licence for the sale of wine alone may attach to it such conditions regarding the tenure of the licence and any other matters as they think proper in the interests of the public; but no payment may be required in pursuance of a condition imposed under this subsection. *New licences.*

(2) Licensing justices shall not grant a new justices' on-licence for premises unless the premises are in their opinion structurally adapted to the class of licence required.



(3) An application by the holder of a publican's retail licence or a wholesale licence for the grant of a justices' licence to have effect immediately on the expiry of the licence continued in force by the provisions of section 4(1) or (2) of this ordinance shall be deemed not to be an application for a new licence.

(4) Except as provided by paragraph 6 of Schedule 2, the licensing justices shall not consider an application for a new justices' licence or the provisional grant of a new justices' licence until they are satisfied by evidence given on oath in open court that the notices required by paragraph 3 of Schedule 2 have been given in conformity with the requirements of that paragraph.

8.(1) Where licensing justices are satisfied, on application by a person interest in any premises which are -

*Provisional grant  
of new licence.*

(a) about to be constructed or in the course of construction for the purpose of being used as a house for the sale of intoxicating liquor (whether for consumption on or off the premises); or

(b) about to be altered or extended or in the course of alteration or extension for the purpose (whether or not they are already used for that purpose);

that the premises, if completed in accordance with plans deposited under this Ordinance, would be such that they would have granted a justices' on-licence or a justices' off-licence for the premises, they may make a provisional grant of such a licence for those premises.

(2) On an application by the holder of a provisional licence, licensing justices may consent to any modifications of the deposited plans where, in their opinion, the premises if completed in accordance with the modified plans, will be fit and convenient for their purpose.

(3) Licensing justices shall, after such notice has been given as they may require, declare a provisional grant to be final on being satisfied -

(a) that the premises have been completed in accordance with the plans deposited, or in accordance with those plans with modifications consented to under the preceding subsection; and

(b) that the holder of the provisional licence is not disqualified by this or any other Ordinance for holding a justices' licence and is in all other respects a fit and proper person to hold a justices' licence.

(4) Until a provisional grant has been declared final under subsection (3) of this section it shall not authorise the sale of intoxicating liquor upon any part of the premises or proposed premises to which it relates.

(5) If on an application for the provisional grant of a justices' licence the applicant deposits, instead of plans of the premises, a plan sufficient to identify the site of the premises together with such description of the premises as will give a general indication of their proposed site and character (with reference in particular to the sale of intoxicating liquor), then -

(a) the licensing justices shall deal with the application as if the site plan and description deposited instead where the deposited plans, and shall assume that the premises will be fit and convenient for their purpose; but

(b) any provisional grant of a licence made on the application shall become ineffective unless affirmed under subsection (6) of this section in pursuance of an application to the licensing justices made within the twelve months following the date of the grant.

(6) Where licensing justices made a provisional grant of a licence by virtue of subsection (5) of this section the holder of the provisional licence may apply for the grant to be affirmed, and shall give notice of the application and deposit plans, as if he were applying (otherwise than under that subsection) for the grant of the licence; and the licensing justices shall affirm the provisional grant if satisfied that the premises, if completed in accordance with the plans deposited, will be fit and convenient for their purpose.

9.(1) Licensing justices shall consider at a session of the Summary Court held during the second week in May of each year applications for the grant of justices' licences by way of renewal of licences which expire on the 30th June next following. *Renewals.*

(2) If the volume of business before the licensing justices at the session of the Summary Court held in accordance with subsection (1) shall so require, the licensing justices may adjourn from day to day. In event that the licensing justices have not, by 31st May in the year in question, notified the holder of the renewal or refusal of the renewal of a justices' licence (other than one the renewal of which the holder has notified the clerk to the Summary Court that he does not intend to apply for) the holder may if he sees fit treat the renewal of the licence as having been refused on that day and appeal to the Magistrate's Court under section 17 as if such renewal had actually been refused.

(3) Unless the holder of a justices' licence or of a licence that takes effect as if it were a justices' licence and which expires on 30th June next following notifies the clerk to the Summary Court in writing that he does not intend to apply for the grant of a justices' licence by way of renewal of that licence, he shall be deemed to have applied for that renewal and, if it is renewed, is liable to pay all fees payable on renewal of the licence.

(4) A person intending to oppose the renewal of a justices' licence or a licence which takes effect as if it were a justices' licence shall, not later than 30th April in the year in question, give notice in writing of his intention to the holder of the licence and to the clerk to the Summary court specifying in general terms the grounds of the opposition, and unless notice has been so given the licensing justices shall not entertain the objection.

(5) Evidence given on an application for the renewal of a justices' licence or in opposition thereto shall be given on oath but no evidence need be given if the renewal is not opposed unless the licensing justices otherwise direct.

10.(1) Licensing justices shall not grant a transfer of a justices' licence except in the following cases and to the following persons - *Transfers.*

(a) where the holder of the licence has died, to his representatives or to the new tenant or occupier of the premises;

(b) where the holder of the licence becomes incapable through illness or other infirmity of carrying on business under the licence (and notwithstanding that the licence may have ceased to be in force before the transfer), to his assigns or to the new tenant or occupier of the premises;

(c) where the holder of the licence has been adjudged bankrupt or has made a voluntary arrangement with his creditors, or a trustee has been appointed under a deed of arrangement within the meaning of the Deeds of Arrangement Act 1914 for the benefit of the creditors of the holder of the licence, to the trustee of the bankrupt's estate or under the deed or to the supervisor of the voluntary arrangement or the new tenant or occupier of the premises;

(d) where the holder of the licence has given up or is about to give up, or his representatives have given up or are about to give up, occupation of the premises, to the new tenant or occupier of the premises or the person to whom the representatives or assigns have, by sale or otherwise, bona fide conveyed or made over the interest in the premises;

(e) where the occupier of the premises, being about to quit them, has wilfully given notice that he intends not to apply for renewal of the licence, to the new tenant or occupier of the premises;

(f) where the owner of the premises or some person on his behalf has been granted a protection order under section 12 of this Ordinance, to the owner or other person applying on his behalf.

(2) For the purposes of paragraph (d) of subsection (1), a person occupying premises for the purposes of carrying on business under a licence shall be treated as giving up occupation on his giving up the carrying on of the business, notwithstanding that he remains temporarily in occupation of the premises or part of them.

(3) The foregoing provisions of this section, except paragraphs (e) and (f) of subsection (1), shall apply in relation to the transfer of a provisional licence as if the licence were in force and shall, as so applying, be construed as if "occupation" included intended occupation, and similarly as respect other expressions.

(4) Except as provided by paragraph 6 of Schedule 2, the licensing justices shall not consider an application for the transfer of a justices' licence until they are satisfied by evidence given on oath in open court that the notices required by paragraph 3 of that Schedule have been given in conformity with the requirements of that paragraph.

#### 11.(1) Without prejudice to -

(a) any provisions of this or any other Ordinance whereby a person may be disqualified for holding a justices' licence;

(b) the power of the licensing justices to refuse to grant (whether by way of new grant or by way of transfer or renewal) a justices' licence to any person on the ground -

(i) that the character of the applicant is such that, in the licensing justices' view, he is not a fit and proper person to hold such a licence;

(ii) in the case of an application for a renewal of a justices' licence, that the manner that the premises have been conducted during the period since a justices' licence was last renewed or transferred has been such that, in the licensing justices' view, the justices' licence in respect of the premises ought not to be renewed.

*Persons and premises  
disqualified for holding  
or receiving justices'  
licence.*

(aa) the following persons shall be disqualified for holding a justices' licence -

- (i) every officer of the Supreme Court;
- (ii) every undischarged bankrupt;
- (iii) subject to subsection (3) upon whom every person, a period of imprisonment of more than twelve months in length has been imposed by any court of competent jurisdiction in the Commonwealth;
- (iv) every person who at any time during the past twelve months has been the subject of a prohibition order;
- (v) every person under the age of twenty-one years; and
- (vi) every person of unsound mind;

(bb) premises shall be disqualified for receiving a justices' licence -

- (i) for twelve months reckoned from the date of the second forfeiture to occur of the forfeitures to which this sub-paragraph relates whenever within any period of two years two persons severally holding a justices' licence for the premises forfeit a justices' licence held for the premises; or
- (ii) if the premises are primarily used as a garage or filling-station or form part of premises so used.

(2) A justices' licence purporting to be held by any person disqualified for holding a licence, or attached to premises disqualified for receiving a licence, shall be void.

(3) Nothing in subsection (1)(aa)(iii) shall apply in relation to a sentence of imprisonment imposed by any court outside the Falkland Islands in relation to any act or omission which, if that act or omission had been done or made in the Falkland Islands would not -

- (i) have constituted an offence under the law of the Falkland Islands; or
- (ii) if it constituted such an offence, would not under the law of the Falkland Islands be punishable by imprisonment.

#### *Protection orders*

12.(1) A person who proposes to apply for the transfer of a justices' licence for any premises may apply to a court of summary jurisdiction for the grant of an authority, in this Ordinance called a "protection order" to sell intoxicating liquor on the premises, and the court may grant the protection order if it is satisfied that the applicant is a person to whom the licensing justices could grant a transfer of the licence.

*Protection orders.*

(2) The authority conferred by a protection order in respect of any premises shall be the same as that conferred by the justices' licence in force (or last in force) for those premises; and, while the order is in force, the enactments relating to the sale of intoxicating liquor and to licensed premises (other than those relating to the renewal or transfer of licences or to protection orders) shall apply to the person granted the order as if he were the holder of that licence.

(3) Where -

(a) a justices' licence for any premises is forfeited for the first time by virtue of a second or subsequent conviction under section 60 of this Ordinance;

(b) a justices' licence for any premises is forfeited by order of a court of summary jurisdiction made on complaint under section 15(3); or

(c) a justices' licence for any premises is forfeited by virtue of an order of any court under section 67(9); or

(d) the holder of a justices' licence for any premises becomes disqualified for holding a justices' licence by reason of being imprisoned as mentioned in section 11(1)(a)(iii) of this Ordinance,

a court of summary jurisdiction may grant a protection order to any owner of the premises or any other person authorised by an owner of the premises, notwithstanding the forfeiture or the previous licence holder's disqualification; but not more than one protection order may be granted under this subsection on any such forfeiture or disqualification.

(4) A protection order shall remain in force for a period of four months from the date on which it was granted, except that it shall cease to have effect before that time on the coming into force of a justices' licence granted by way of transfer of the licence for the premises or the coming into force of a further protection order for the premises.

13.(1) A protection order may be made for any premises as to supersede a previous protection order (other than one made under section 12(3) of this Ordinance), if the court making the order is satisfied that the person granted the previous protection order consents to its being superseded, or that he no longer proposes to apply for the transfer of the licence or is not qualified to do so, or that he is for any reason unable to carry on business under the protection order.

*Supplementary provisions relating to protection orders.*

(2) A court of summary jurisdiction to which application is made for a protection order may examine on oath the applicant or any other person giving evidence in connection with the application.

(3) A court of summary jurisdiction shall not grant a protection order unless the applicant has, not less than seven days before the application, given notice to the Chief Police Officer or, in an urgent case has given the chief police officer such notice as the court considers to be reasonable.

*Control of licensing justices over structure of licensed premises*

14.(1) On an application for renewal of a justices' on-licence the licensing justices may require a plan of the premises to be produced to them and deposited with the clerk to the Summary Court, and on renewing such a licence the licensing justices may order that, within a time fixed by the order, such structural alterations shall be made in the part of the premises where intoxicating liquor is sold or consumed as they think reasonably necessary to secure the proper conduct of the business.

*Power to require structural alterations on renewal of on-licence.*

(2) The clerk to the Summary Court shall serve on the registered owner of the premises notice of any order made under this section.

(3) Where an order under this section to make structural alterations is complied with, the licensing justices shall not make a further such order within the five years following the making of the first-mentioned order.

(4) If the holder of the licence makes default in complying with an order under this section, he commits an offence and he commits a further offence for every day on which the default continues after the expiration of the time fixed by the order.

(5) A person convicted of an offence under this section shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

(6) The preceding provisions of this section apply also in relation to an application for the transfer of a licence.

15.(1) No alteration shall be made to premises for which a justices' on-licence is in force if the alteration -

*Consent required  
for certain alterations  
to on-licensed premises.*

- (a) gives increased facilities for drinking in a public or common part of the premises; or
- (b) conceals from observation a public or common part of the premises used for drinking;  
or
- (c) affects the communication between the public part of the premises where intoxicating liquor is sold and the remainder of the premises or any street or other public way;

unless the licensing justices have consented to the alteration or the alteration is required by order of some lawful authority.

(2) Before considering an application for their consent under this section, the licensing justices may require plans of the proposed alteration to be deposited with the clerk to the Summary Court at such time as they may determine.

(3) If subsection (1) of this section is contravened, a court of summary jurisdiction may by order on complaint declare the licence to be forfeited or direct that within a time fixed by the order the premises shall be restored to their original condition.

(4) A person aggrieved by an order under subsection (3) of this section may appeal to the Supreme Court.

(5) In this section -

- (a) "public part" means a part open to customers who are not residents or guests of residents;
- (b) "common part" means a part open generally to all residents or to a particular class of them.

#### *Revocation of justices' licences*

16.(1) The licensing justices may revoke a justices' licence either of their own motion or on the application of any other person.

*Revocation.*

(2) The power to revoke a justices' licence under this section is exercisable on any ground on which licensing justices might refuse to renew a justices' licence or a justices' licence of that description.

(3) Licensing justices may only exercise the power conferred by this section if at least twenty-one days' notice in writing of the proposal to exercise the power, or as the case may be, to make the application, has been given to the holder of the licence and, in the case of a proposed application, to the clerk to the Summary Court, specifying in general terms the grounds on which it is proposed that the licence should be revoked.

(4) Evidence given for the purpose of proceedings under this section shall be given on oath.

(5) A decision under this section to revoke a justices' licence shall not have effect -

(a) until the expiry of the time for appealing against that decision; or

(b) if the decision is appealed against, until the appeal is disposed of.

### *Appeals*

17.(1) Subject to subsection (2) of this section, any person aggrieved by any of the following decisions of licensing justices, that is to say - *Appeals.*

(a) a decision granting or refusing to grant a new justices' licence;

(b) a decision refusing the renewal or transfer of a justices' licence;

(c) a refusal to declare a provisional grant final or to affirm a provisional grant or to give consent, on the application of the holder of a provisional licence to a modification of plans;

(d) the making of an order under section 14 of this Ordinance;

(e) the refusal of a consent required under 15 of this Ordinance;

(f) the revocation of a justices' licence; or

(g) any decision as to the conditions of a justices' licence,

may appeal to the Magistrate's Court against that decision.

(2) A person may not appeal against the grant of a justices' licence unless he has appeared before the licensing justices and opposed the grant; and no person may appeal against a refusal to attach conditions to a licence or to vary or revoke conditions previously attached, except the person (if any) whose application or request is required for the justices to have jurisdiction to attach or to vary or revoke the conditions.

(3) Where the holder of a justices' licence give notice of appeal against a refusal by licensing justices to renew that licence or a decision by the licensing justices to revoke it, the licensing justices or the Magistrate's Court may, on such conditions as they think fit or it thinks fit, order that the licence shall continue in force until the determination of the appeal notwithstanding that the appeal is not determined until after the date when the licence would otherwise cease to have effect.

18.(1) An appeal under section 17 of this Ordinance shall be commenced by notice of appeal given by the applicant to the clerk to the Summary Court within fourteen days of the decision appealed against.

(2) On an appeal against the grant of a justices' licence the applicant for the licence and not the licensing justices shall be the respondent, and notice of appeal must be given to him as well as the clerk to the Summary Court.

(3) On an appeal against a refusal to grant a justices' licence, or against a decision as to conditions given on the grant of a justices' licence, any person who appeared before the licensing justices and opposed the grant shall be the respondent in addition to the licensing justices.

(4) On an appeal against a decision to revoke a justices' licence, any person on whose application the licence was revoked shall be the respondent in addition to the licensing justices.

(5) On any appeal under section 17 of this Ordinance the clerk to the Summary Court shall transmit the notice of appeal to the clerk to the Magistrate's Court, and the appeal shall be entered and notice thereof given as in a case where the clerk to the Summary Court is required to transmit the notice of an appeal from the Summary Court; and section 109(1) of the Magistrate's Court Act 1980 in its application to the Falkland Islands shall apply accordingly with respect to the abandonment of the appeal.

(6) Where a person appears before licensing justices and opposes the grant of a justices' licence, his name and address shall be recorded by the clerk to the Summary Court and, in the event of an appeal against the refusal of the grant or against a decision as to condition given on a grant, shall be transmitted to the clerk to the Magistrate's Court with the notice of appeal.

(7) Where the same application to licensing justices gives rise to more than one appeal to the Magistrate's Court, the Senior Magistrate may give such directions as he thinks fit for the appeals to be heard together or separately, and where two or more appeals are heard together in the Magistrate's Court may deal with the costs of the appeal, so far as those costs are in its discretion, as if they were a single appeal.

(8) A justice shall not sit with the Senior Magistrate as an assessor or otherwise upon the hearing of an appeal under section 17 of this Ordinance from any decision in which the justice took part.

19.(1) The judgment of the Magistrate's Court on any appeal under section 17 of this Ordinance shall be final and no further appeal shall lie therefrom to any tribunal or authority.

*Powers of  
Magistrate's Court  
on appeals.*

(2) Where the Magistrate's Court allows an appeal against the revocation of a justices' licence which has been contained in force under section 17(4) of this Ordinance, it may order that, on payment of such fee as would have been payable if the justices had renewed the licence for a period expiring on 30th June next following the allowance of the appeal, the licence shall further continue in force until that date.



### *Fees and register*

20.(1) Subject to subsection (3) of this section, there may be charged by the clerk to the Summary Court and by the clerk to the Magistrate's Court such fees as may be provided for by Schedule 3 to this Ordinance. *Fees.*

(2) Schedule 3 may from time to time be replaced or amended by an Order made by the Governor under this subsection.

(3) This section shall not affect the court fees chargeable under the Magistrate's Courts Act 1980 in its application to the Falkland Islands or otherwise under any law of the Falkland Islands.

21.(1) The clerk to the Summary Court shall keep a register of licences in such form as may be prescribed by the Senior Magistrate, containing particulars of all justices' licences granted, the premises for which they were granted, the names of the owners of those premises, and the names of the holders of the licences. *Register of licences.*

(2) The register of licences shall be received in evidence of the matters required by this or any other Ordinance to be entered into it, and any document purporting to be certified by the clerk to the Summary Court to be a true copy of an entry in the register of licences kept by him shall be received in evidence of any such matters contained in the entry.

22.(1) The clerk to the Summary Court shall enter in the register of licence, in such form as may be prescribed by the Senior Magistrate, notice of any conviction of the holder of a justices' licence of an offence committed by him as such, including an offence against any written law of the Falkland Islands relating to the adulteration of drink; and the clerk of the court before whom the holder of a justices' licence is so convicted shall, if he is not the clerk to the Summary Court, forthwith send notice of conviction to the clerk. *Convictions forfeitures and disqualifications to be entered in register.*

(2) The clerk to the Summary court shall enter in the register of licences any forfeiture of a justices' licence, any disqualification of premises under any enactment and any other matter relating to the licences in the register.

(3) The provisions of this and the preceding section shall be in addition to those of any other enactment requiring entries to be made in the register of licences.

23.(1) Every person applying for a new justices' licence shall state the name of the person for the time being entitled to receive, either on his own account or as a mortgagee or other encumbrance in possession, the rack-rent of the premises for which the licence is granted; and the clerk to the Summary Court shall enter that name in the register of licences as the name of an owner of the premises, and shall endorse that name on the licence and on any further justices' licence granted for the premises granted by way of renewal or transfer. *Registration of owner, etc.*

(2) Whenever, to the knowledge of the person who is for the time being the holder of the licence for the premises, any change occurs in the person or persons who is or are for the time being entitled to receive the rack-rent of the premises, he shall within 28 days of becoming aware of the change give notice in writing containing sufficient particulars thereof to the clerk to the Summary court, who shall make such entries in the register as may be necessary in the circumstances of the case.

(3) The clerk to the Summary Court shall, on the application of any person whose name is not entered under the preceding provisions of this section, and who has an estate or interest in the premises, whether as owner, lessee or mortgagee, prior or paramount to that of the occupier, enter that person's name in the register as an owner of the premises, but where such an estate or interest is vested in two or more persons jointly, only one of those persons shall be registered as representing that estate or interest.

24.(1) Where the conviction of the holder of a justices' licence is entered in the register of licences under section 22(1) of this Ordinance, the clerk to the Summary Court shall serve notice of the conviction on the registered owner of the premises.

*Notice or conviction of licence holder to be given to registered owner.*

(2) Where the conviction of the holder of a justices' licence involves the disqualification of the licensed premises, the court before which the conviction takes place shall cause notice of the disqualification to be served on any registered owner of the premises who is not the occupier.

25.(1) The following persons shall be entitled at any reasonable time to inspect the register of licences on payment of the fee chargeable -

*Inspection of register.*

(a) any person whose name is entered upon the register of electors;

(b) any owner of licensed premises; and

(c) any holder of a justices' licence.

(2) Any police or customs officer shall, without payment, be entitled at any reasonable time to inspect the register of licences.

(3) In subsection (1), "the fee chargeable" means the fee specified for the purposes of that subsection in Schedule 3 to this Ordinance.

26. On an application for the grant of a justices' licence the licensing justices shall have regard to any entries in the register of licences relating to the person by whom, or for which, the licence is to be held.

*Duty of licensing justices to have regard to the entries in the register.*

#### *Miscellaneous*

27.(1) Any document purporting to be a justices' licence and -

*Proof of justices' licence and provisions as to forgery thereof.*

(a) to be signed by the majority of the justices present when the licence was granted, or

(b) to be sealed or stamped with an official seal or stamp affixed or impressed under the authority of the licensing justices and to contain a certificate signed by the clerk to the Summary Court verifying that authority,

shall be received in evidence.

(2) Any document purporting to be a copy of a justices' licence certified under the hand of the clerk to the Summary Court to be a true copy shall be received in evidence.

28.(1) On an application by the holder of a justices' on-licence or on the renewal or transfer of such a licence and at the request of the person applying for renewal or transfer, the licensing justices, if satisfied that the application or request is made with the consent of the registered owner, may vary the licence so as to add to the descriptions of intoxicating liquor so authorised to be sold on the licensed premises.

*Power to extend  
existing on-licence  
to additional types  
of liquor.*

(2) On the variation of a licence under this section the licensing justices shall have the like power to attach conditions as they would have if they were granting the licence (with the variation) as a new justices' on-licence, and any conditions attached may be in addition to or in substitution for any conditions previously attached to the licence.

### PART III

#### SALE AND SUPPLY OF INTOXICATING LIQUOR IN CLUB PREMISES

##### *Conditions for supply of intoxicating liquor by clubs*

29.(1) No intoxicating liquor shall on any clubs premises be supplied by or on behalf of the club to a member or guest, unless the club is registered under this Ordinance in respect of those premises or the liquor is supplied under the authority of justices' licence held by the club for the premises (but a club shall not be registered in respect of any premises in respect of which a justices' licence is held, neither shall a justices' licence be granted in respect of any premises in respect of which a club is registered under this Ordinance, nor shall a club be registered in respect of any premises if a justices' licence is held on behalf of that club in respect of any premises whatsoever).

*Conditions for  
supply of intoxicating  
liquor by clubs.*

(2) No intoxicating liquor shall, on any premises in respect of which a club is registered, be supplied by or on behalf of the club for consumption off the premises except to the member in person.

(3) Intoxicating liquor shall not be supplied by or on behalf of a registered club to a member or guest except at premises in respect of which the club is registered or any premises or place which the club is using on a special occasion for the accommodation of members and to which persons other than members and their guests are not permitted access; and at any premises or place other than the premises in respect of which the club is registered intoxicating liquor shall be so supplied only for consumption in the premises or place.

(4) A person supplying or authorising the supply of intoxicating liquor in contravention of subsection (1) of this section commits an offence and shall be liable on conviction of that offence to imprisonment for a term not exceeding six months, or to a fine not exceeding the maximum of level 4 on the standard scale, or to both, and a person supplying or obtaining intoxicating liquor in contravention of subsection (2) or (3) of this section commits an offence in respect of which he shall be liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(5) If intoxicating liquor is kept in any premises or place by or on behalf of a club for supply to members in contravention of this section, every officer of the club commits an offence unless he shows that it was so kept without his knowledge or consent and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

##### *Registered clubs*

30.(1) A club is registered, within the meaning of this Ordinance, in respect of any premises if and so long as it holds for those premises a certificate under this Part of this Ordinance of the Summary Court.

*Registration of  
clubs.*

(2) Subject to the provisions of this section and of section 37(4) of this Ordinance, a registration certificate shall have effect for twelve months, but may from time to time be renewed, and may at any time be surrendered by the club.

(3) Any renewal of a registration certificate shall be for one year from the expiry of the period for which the certificate was last issued or renewed.

(4) An application by a club for the issue or renewal of a registration certificate shall be made to the Summary Court and shall comply with the requirements of Schedule 4 to this Ordinance; and the provisions of Schedule 5 to this Ordinance shall have effect as regards the procedure for registration and related matters.

(5) Where an application for the renewal of a registration certificate is made not less than 28 days before the certificate is due to expire, the certificate shall continue in force until the application is disposed of by the Summary Court.

(6) Where an application is duly made in accordance with this Part of this Ordinance for the issue or renewal of a registration certificate, the Summary Court shall not, in the absence of an objection duly made in accordance with this Part of this Ordinance, refuse the application except as provided in the following provisions of this Ordinance; and the Summary Court shall state in writing the grounds of any refusal to issue or renew a registration certificate.

(7) Where, immediately before the commencement of this Ordinance, a club licence granted under the repealed Ordinance was held in respect of club premises, that licence shall after the commencement of this Ordinance and until 30th June next after that commencement and subject to this subsection have effect as if it were a certificate granted under this Part in respect of those premises but -

(a) such licence shall cease so to have effect on the fifteenth day after the commencement of this Ordinance if before that date there is not paid to the Financial Secretary the transitional continuation fee specified for the purpose in Schedule 1;

(b) subject to (a), where application is made under this Part on behalf of the club for a registration certificate in respect of the same premises as those to which the club licence relates and is refused such licence may under section 36(4) be continued in force after the 30th day of June next after the commencement of this Ordinance pending determination of any appeal against that refusal and as if that refusal had been a refusal to renew a registration certificate in respect of the same premises.

31.(1) A club shall only be qualified to receive a registration certificate (whether in the first instance or by way of renewal), if the issue of such a certificate would not cause a contravention of section 29(1) and under the rules of the club - *Qualifications for registration.*

(a) persons may not be admitted to membership or be admitted as candidates for membership to any of the privileges of membership, without an interval of at least two days between their nomination or application for membership and their admission; and

(b) persons becoming members without prior nomination or application may not be admitted to the privileges or membership without an interval of at least two days between their becoming members and their admission.

(2) A club shall be qualified to receive a registration certificate for any premises (whether in the first instance or by way of renewal), only if -

(a) it is established and conducted in good faith as a club and has not less than twenty-five members;

(b) intoxicating liquor is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club; and

(c) the purchase for the club, and the supply by the club, of intoxicating liquor (so far as not managed by the club in general meeting or otherwise by the general body of members) is managed by an elective committee, as defined by Schedule 6 to this Ordinance;

(d) no arrangements are or are intended to be made -

(i) for any person to receive at the expense of the club any commission, percentage or similar payment on or with reference to purchases of intoxicating liquor by the club;

(ii) for any person directly or indirectly to derive any pecuniary benefit from the supply of intoxicating liquor by or on behalf of the club to members or guests, apart from any benefit accruing to the club as a whole and apart also from any benefit which a person derives indirectly by reason of the supply giving rise or contributing to a general gain from the carrying on of the club; and

(e) no justices' licence is held in respect of the premises or any part of the premises.

(3) Subject to subsection (4) of this section, in determining whether a club is established and conducted in good faith as a club the Summary Court may have regard -

(a) to any arrangement restricting the club's freedom of purchase of intoxicating liquor; and

(b) to any provision in the rules, or arrangement, under which money or property of the club, or any gain from the carrying on of the club, is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;

(c) to the arrangements for giving members proper information as to the finances of the club, and to the books of accounts and other records kept to ensure the accuracy of that information; and to the nature of the premises occupied by the club.

(4) Where the rules of a club applying for the issue or renewal of a registration certificate conform with Schedule 6, the Summary Court shall assume, as regards any matters not raised by an objection duly made in accordance with this Part, that the club satisfied the conditions of paragraph (a) to (c) of subsection (2) and, in the case of a renewal, also the conditions of paragraph (d) of that subsection, except that the court may, if it sees fit, inquire whether there is any such arrangement or provision in the rules as is referred to in paragraph (a) or (b) of subsection (3), and, if so, whether it is such that the club ought not to be treated as established and conducted in good faith as a club.

32.(1) A registration certificate shall not be issued or renewed, not have effect, for premises disqualified by order under section 35 for use for the purposes of a registered club, nor for licensed premises, nor for premises which include or form part of premises so disqualified or licensed premises; but this subsection does not prevent the issue or renewal for any premises of a registration certificate to take effect on their ceasing to be, include or form part of premises so disqualified or licensed premises.

*Disqualification for and refusal of a club registration certificate.*

(2) The Summary Court may refuse an application for the issue or renewal of a registration certificate, if it is proved that a person who, if a certificate is granted, will or is likely to take any active part in the management of the club during the currency of the certificate, is not a fit person, in view of his known character as proved to the court, to be concerned in the management of a registered club.

(3) The Summary Court may refuse an application for the issue or renewal of a registration certificate if the premises or any premises including or forming part of them have been licensed premises within the twelve months preceding the making of the application but have ceased to be licensed premises by the forfeiture or revocation of the licence or by the refusal of an application to renew it.

33.(1) Objection to an application for the issue or renewal of a registration certificate for any premises may be made by the Attorney General, the chief police officer or by any person affected by reason of his occupation or interest in other premises and may be made on any one or more of the following grounds -

*Objection to and  
cancellation of  
registration certificate.*

(a) that the application does not give the information required by this Part or the information is incomplete or inaccurate, or the application is otherwise not in conformity with this Part;

(b) that the premises are not suitable and convenient for the purpose in view of their character and condition and the size or nature of the club;

(c) that the club does not satisfy the conditions of subsection (1) and (2) of section 31 or that the application ought to be refused under section 32;

(d) that the club is conducted in a disorderly manner for an unlawful purpose, or that the rules of the club are habitually disregarded as respects the admission of person to membership or in any other material respect;

(e) that the club premises or any of them (including premises in respect of which the club is not registered or seeking registration) are habitually used for an unlawful purpose, or for indecent displays, or as a resort of criminals or prostitutes, or that in any such premises there is frequent drunkenness, or there have within the preceding twelve months been illegal sales of intoxicating liquor, or persons not qualified to be supplied with intoxicating liquor there are habitually admitted for the purpose of obtaining it;

and the Summary Court, if satisfied that the ground of objection is made, may refuse the application and, in the case of an objection made on any of the grounds mentioned in paragraphs (a) to (c) of this subsection, shall do so unless the case of an objection made on the ground mentioned in paragraph (b) the court thinks it reasonable not to do so, having regard to any steps taken or proposed to be taken to remove the ground of objection.

(2) A complaint against a club for the cancellation of a registration certificate held by the club for any premises may be made in writing to the Summary Court by the Attorney General or the chief police officer, and may be made on any ground on which objection might be made under paragraph (c), (d) or (e) of the preceding subsection to an application for the renewal of the certificate; and the court is satisfied that on such an objection the application for renewal must or ought to be refused on that ground, shall cancel the certificate.

34.(1) Where a club applies for the issue of a registration certificate in respect of any premises, the chief police officer and any police officer authorised in writing by the chief police officer, the chief fire officer and any fire officer authorised in writing by the chief fire officer may, on at least 48 hours' notice to the person signing the application, and if the premises are not occupied by the club, to the occupier, may enter and inspect the premises at any reasonable time on any day, not more than 14 days after the making of the application, as may be specified in the notice.

*Inspection of  
premises before  
first registration.*

(2) If on application by the chief police officer or the chief fire officer to the Summary Court it appears to the court that after reasonable steps had been taken by or on behalf of the applicant to inspect the premises in good time under subsection (1) of this section, but it was not possible to do so within the time allowed, the court may extend the time allowed.

(3) Where a club applies for the renewal of a registration certificate in respect of different, additional or enlarged premises, the foregoing subsections shall have effect as if the application were, so far as relates to those premises, an application for the issue of a registration certificate.

(4) Any person obstructing a police officer or a fire officer in the exercise of any power conferred by this section commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

35.(1) Subject to the following provisions of this section, where a club is registered in respect of any premises, and the Summary Court cancels or refuses to renew the registration certificate for those premises on any ground mentioned in paragraph (c), (d) or (e) of section 33(1), the court may order that for the period specified in the order the premises shall not be occupied and used for the purpose of any registered club.

*Power to order  
disqualification  
of premises.*

(2) The period specified in an order under this section shall not exceed one year unless the premises have been subject to a previous order under this section, and shall not in any case exceed five years.

(3) At any time while an order under this section is in force, the Summary Court, on complaint being made by any person affected by the order, may revoke the order or vary it by reducing the period of disqualification specified in it.

(4) Any summons granted on a complaint under subsection (3) shall be served on the Attorney General and on the chief police officer.

36.(1) Where any alteration is made in the rules of a club registered in respect of any premises, the secretary of the club shall give written notice of the alteration to the chief police officer and to the Attorney General.

*Notification of  
alteration in  
rules of  
registered club.*

(2) If the notice required by this section is not given within 28 days of the alteration, the secretary commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

37.(1) Notwithstanding anything in any enactment, where a club is registered in respect of any premises, the sale and supply of intoxicating liquor to members of the club and their bona fide guests is permitted upon those premises at any time and the authority of a justices' licence is not required for such sale and supply.

*Sale of intoxicating  
liquor by registered  
clubs.*



(2) Part VII applies to premises in respect of which a club is registered under this Part as if those premises were premises in respect of which a justices' on-licence were in force and as if the officers of the club were joint holders of such a license and the officers of the club shall be liable to prosecution and conviction of any offence and punishment in respect thereof under those sections in the same way and to the same extent as they would have been if the premises had been so licensed and they and each of them were a licensee under the licence and servants and agents of the club or officers of the club shall be so liable in the same way and to the same extent as they would be under that Part if they were the servants or agents of a licensee under a justices' on-licence held in respect of the same premises.

(3) Nothing in subsections (1) and (2) applies in respect of any premises belonging to a club and in respect of which a justices' licence is for the time being in force.

(4) Except that no condition inconsistent with subsection (1) of this section shall be imposed, the Summary Court, on the issue or renewal of a registration certificate for any premises may attach such conditions as it thinks fit.

38.(1) A club may appeal to the Magistrate's Court against any decision of the Summary Court refusing to issue or renew a registration certificate, or cancelling a registration certificate, or against any decision of the Summary Court as to the conditions of a registration certificate, or against any order of the Summary Court under section 36 of this Ordinance.

*Appeals to the  
Magistrate's Court.*

(2) Where the decision appealed against relates to two or more premises, the appeal may be brought in respect of any of those premises without others.

(3) Where the decision appealed against was given on an application to the Summary Court by the club, no person shall be made a party to the appeal except a person who appeared before the Summary Court to make an objection to or representations on such application, but any such person shall be a party to the appeal whether or not his objection related to the same premises as the appeal.

(4) Where the Summary Court refuses an application for the renewal of a registration certificate, that court or the Magistrate's Court may, on such conditions as it thinks fit, order that the certificate (as in force at the time of the application) shall continue in force pending the determination of an appeal against the refusal, or pending the consideration of the question of bringing such an appeal.

39.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for believing -

*Search warrants.*

(a) that there is ground for cancelling in whole or in part a registration certificate held by a club, and that evidence of it is to be obtained at the club premises or any of them; or

(b) that intoxicating liquor is sold or supplied by or on behalf of a club in a club premises for which the club does not hold a registration certificate or a justices' licence, or is kept in any club premises for sale and supply in contravention of this Part or any provision of this Ordinance applied by this Part;

he may issue a search warrant under his hand to a police officer authorising him at any time or times within one month from the date of the warrant to enter the club premises, or any of them, by force if need be, and search them and seize any documents relating to the business of the club.

### *Licensing of club premises*

40.(1) Any justices' licence for club premises which is to be granted to a club, shall be taken out or granted in the name of one or more officers of the club nominated for the purpose by or on behalf of the club; and in relation to any premises for which a licence is so taken out or granted - *Licensing of club premises.*

(a) the rights and obligations of the holder of the licence under the enactments relating to the sale of intoxicating liquor and to licensed premises shall attach to the person or person in whose name or names the licence is, and those enactments shall apply as if he or they were, as holder or holders of the licence, in occupation of the premises;

(b) for the purposes of those enactments any supply of intoxicating liquor by or on behalf of the club to a member as such or to any person on the order of a member shall be treated as a sale of intoxicating liquor to the member and as a supply of the intoxicating liquor to the person to whom it is actually supplied by or on behalf of the club.

(2) Where a justices' licence granted for club premises is subject to conditions forbidding or restricting the sale of intoxicating liquor to non-members, the Summary Court may insert in the licence a provision relieving the holder or holders, if and so far as the court thinks fit in view of those conditions, from compliance with any provision of this Ordinance which requires notices to be displayed in or on licensed premises but does not apply to premises in respect of which a club is registered.

## **PART IV**

### **PERMITTED HOURS**

#### *Prohibition of sale, etc of intoxicating liquor outside permitted hours*

41.(1) Subject to the provisions of this Ordinance, no person shall, except during the permitted hours - *Prohibition of sale, etc of intoxicating liquor outside permitted hours.*

(a) himself or by his employee or agent sell or supply to any person in licensed premises any intoxicating liquor, whether to be consumed on or off the premises;

(b) consume in or take from the premises any intoxicating liquor.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale.

(3) This section applies in relation to intoxicating liquor sold in any premises under the authority of an occasional licence in the same way as it does in respect of premises licensed under a justices' on-licence.

#### *General provisions as to permitted hours*

42.(1) Subject to the following provisions of this Ordinance, the permitted hours in licensed premises are - *Permitted hours in licensed premises.*

(a) on weekdays, except Fridays and Saturdays and Christmas Day, the hours from ten in the morning to eleven in the evening;

(b) on Fridays and Saturdays, except Christmas Day and Good Friday, the hours from ten in the morning to half past eleven in the evening;

(c) on Sundays, Christmas Day and Good Friday, twelve noon to two in the afternoon and seven in the evening to half past ten in the evening.

(2) The permitted hours set forth in subsection (1) may be amended by Order made by the Governor under this subsection amending said subsection (1).

(3) In premises licensed only for the sale of intoxicating liquor for consumption off the premises the permitted hours on weekdays, other than Christmas Day and Good Friday, shall begin at seven in the morning but otherwise be the same as those specified in subsection (1).

(4) The permitted hours under a Part V licence shall end on the evening of every day one half of an hour later than those applying under this section in respect of premises for which a justices' on-licence is held.

(5) In this Ordinance -

(a) "the general licensing hours" means the hours specified in paragraph (a) to (c) of subsection (1); and

(b) reference to "the permitted hours" shall, except in so far as the context otherwise requires, be construed in relation to any licensed premises as meaning the hours between which, by virtue of this Ordinance and any conditions attached to any justices' licence applying to those premises, intoxicating liquor can lawfully be sold or supplied in those premises.

### *Exceptions*

43.(1) Where intoxicating liquor is supplied in any premises during the permitted hours, section 42 does not prohibit or restrict -

*Drinking-up time  
and other exceptions.*

(a) during the first twenty minutes after the end of any period forming part of those hours, the consumption of the liquor on the premises, nor, unless the liquor was supplied or is taken away in an open vessel, the taking of the liquor from the premises; or

(b) during the first half hour after the end of such a period, the consumption of the liquor on the premises by persons taking meals there, if the liquor was supplied as an ancillary to their meals.

(2) Section 42 does not prohibit or restrict -

(a) the sale or supply to, or consumption by, any person of intoxicating liquor in any premises in which he is residing;

(b) the ordering of intoxicating liquor to be consumed off the premises, or the despatch by the vendor of liquor so ordered;

(c) the sale of intoxicating liquor to a trader for the purposes of his trade, or to a registered club for the purposes of the club; or

(d) the sale or supply of intoxicating liquor to any canteen or mess.

(3) Section 42 does not prohibit or restrict as regards licensed premises -

(a) the taking of intoxicating liquor from the premises by a person residing there; or

(b) the supply of intoxicating liquor for consumption on any premises licensed under a residential licence to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of intoxicating liquor by persons so supplied.

(4) In subsection (2), as it applies to licensed premises, and in subsection (3), references to persons residing on the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

### *Special hours certificates*

44.(1) This section applies to licensed premises, or any part of such premises, during the time that there is in force for the premises a special hours certificate granted under the following provisions of this Part;

*Permitted hours  
where special hours  
certificate in  
force.*

(2) Subject to the following provisions of this section, the permitted hours on weekdays in any premises or part of premises to which this section applies shall extend to half past twelve in the morning following, except that -

(a) the permitted hours shall end at the time at which music and dancing end on any day on which music and dancing end earlier than half past twelve in the morning;

(b) the permitted hours shall not be extended by virtue of this section on any evening when music and dancing is not provided.

(3) Where the permitted hours are fixed by this section, section 43(1) shall apply to the consumption of liquor on the premises as if in paragraph (a) thereof half an hour were substituted for twenty minutes and paragraph (b) thereof were omitted.

(4) Where a special hours certificate for any premises or part of premises is limited to particular days in every week, this section does not affect the permitted hours in the premises on days on which the certificate does not apply.

45.(1) If, on an application made to the licensing justices with respect to licensed premises, the justices are satisfied -

*Special hours  
certificates for  
licensed premises.*

(a) that the premises are suitable for music and dancing or for the provision of entertainment by live music; and

(b) that the whole or part of the licensed premises is bona fide used, or intended to be used, for the purpose of providing for persons resorting to the premises music and dancing, or such entertainment, and substantial refreshment to which the sale of intoxicating liquor is ancillary,

the licensing justices may grant, with or without limitations, a special hours certificate for the premises or, if they are satisfied that part only of the premises is used or intended to be used as mentioned in paragraph (b) of this section, for that part.

(2) The licensing justices may grant a certificate under subsection (1) limited in any of the following ways -

- (a) to particular days of the week;
- (b) to particular periods of the year;
- (c) so as to exclude any particular day or days of religious or national significance.

(3) Where a special hours certificate is subject to limitations under this section, the licensing justices may on the application of the licensee vary any limitation to which it is so subject.

(4) For the purposes of this Part, music is not provided for persons resorting to the premises or part of the premises in question by reproducing music which has been recorded (to which persons resorting to the premises may sing) but nothing in this subsection prevents the grant of a special hours certificate in respect of the provision of recorded music for dancing if the premises are structurally and otherwise suitable for dancing and bona fide used or intended to be used for that purpose.

(5) There is payable in relation to the grant a special hours certificate the fee specified in relation thereto in Schedule 3.

46.(1) At any time while a special hours certificate for any premises or part of any premises is in force, the chief police officer may apply to the licensing justices for the revocation of the certificate on the ground that, while the certificate has been in force -

*Revocation of  
special hours  
certificate.*

- (a) the premises have not, or the part has not, been used as mentioned in section 44;
- (b) a person has been convicted of having at those premises or that part committed an offence under section 41,

or that on the whole the persons resorting to the premises or part are there at time when the sale or supply of intoxicating liquor there is lawful by virtue only of the certificate, for the purpose of obtaining intoxicating liquor rather than for the purpose of dancing or the other enjoyment of music (including singing) or the obtaining of refreshments other than intoxicating liquor; and if the licensing justices are satisfied that the ground of the application is made out, they may revoke the licence.

(2) At any time while a special hours certificate for any premises or part of any premises is in force, the chief police officer may apply to the licensing justices for the revocation of the licence on the ground that the revocation is expedient by reason of the occurrence of disorderly or indecent conduct in the premises or the part thereof to which the certificate relates; and if the licensing justices are satisfied that the ground of the application is made out, they shall revoke the certificate.

47.(1) Subject to subsection (2), any person aggrieved by a decision of the licensing justices -

*Special hours  
certificates: appeals.*

- (a) not to grant a special hours certificate under section 45(1);
- (b) to revoke or not to revoke a special hours certificate on an application under section 46(1) or (2);
- (c) to attach or not to attach limitations under section 45(2);

may appeal to the Magistrate's Court against that decision.

(2) Only the Attorney General or the chief police officer may appeal against a decision not to revoke a special hours certificate under section 46(1) or (2).

(3) A person other than the appellant shall be a party to an appeal under this section if, and only if, he has appeared before the licensing justices and made representations in relation to the application to which the decision appealed against relates.

(4) The licensing justices shall have the same powers to make an order for the payment of costs on the abandonment of an appeal under this section as the Summary Court has on the abandonment of appeal to which section 109 of the Magistrate's Court Act 1980 in its application to the Falkland Islands relates.

48.(1) A court of summary jurisdiction may in respect of a special occasion, subject to this section, grant to the holder of a justices' on-licence an extension of permitted hours at the premises to which the licence relates.

*Extensions of permitted  
hours on special  
occasions.*

(2) The court shall not grant an extension of permitted hours under subsection (1) -

- (a) unless it is satisfied that the occasion is a special occasion in respect of which it is reasonable to grant such an extension;
- (b) unless such notice of the application has been given to the clerk to the court and to the chief police officer as the court thinks reasonable in all the circumstances (and unless the court for special reason decides otherwise in the circumstances of any particular case, seven days' notice shall be required).

(3) The chief police officer shall be entitled to be heard either in person or by his representative in objection to the grant of an extension of permitted hours under this section.

(4) There shall be payable in respect of every extension of permitted hours the fee specified in Schedule 3 in relation thereto.

*Parties organised for gain*

49.(1) It is unlawful either before the beginning or after the end of general licensing hours to supply to consume intoxicating liquor at any party organised for gain and taking place in premises kept or habitually used for the purpose of parties so organised at which intoxicating liquor is consumed; but this subsection does not prohibit anything done at a party taking place in licensed premises or at any party for which an occasional licence has been granted nor anything done as part of the activities of a canteen or mess at the canteen or mess in question.

*Prohibition of  
consumption of intoxicating  
liquor outside general  
licensing hours at  
parties organised  
for gain.*

(2) If any person -

- (a) supplies intoxicating liquor in contravention of subsection (1) of this section;
- (b) being the occupier of any premises permits them to be used for a party, and that subsection is contravened at the party;
- (c) being a person concerned in the organisation of a party, permits any person to supply or consume intoxicating liquor at the party in contravention of that subsection; or
- (d) being a person licensed to sell intoxicating liquor, delivers such liquor before the beginning or after the end of the general licensing hours to any premises habitually used as mentioned in that subsection or permits it to be so delivered,

he commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding three months or a fine not exceeding the maximum of level 4 on the standard scale.

(3) Any person who consumes intoxicating liquor in contravention of subsection (1) of this section commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(4) For the purposes of this section, a party shall be deemed to have been organised for gain if any pecuniary advantage accrued or was intended to accrue to any person concerned in its organisation as a result of the party; and in determining whether any such advantage so accrued or was intended to accrue no account shall be taken of any expenditure incurred in connection with the party; but a party shall not be deemed to have been organised for gain by reason only that any person concerned in its organisation took part or intended to take part in the playing of any game, if the arrangements were such as to give him no greater chance of winning than any other person.

(5) For the purposes of this section, a person shall be deemed to have been concerned in the organisation of a party if he took any part in procuring the assembly of the party or in acting as host or assisting the host at the party.

(6) Nothing in this section shall affect the delivery or supply of intoxicating liquor to, or the consumption of intoxicating liquor by, a person in premises in which he is for the time being residing; and in determining for the purpose of this section whether a party is being held in any premises, or whether any premises are kept or habitually used for the purpose of holding parties, the presence of any persons habitually residing in the premises shall be disregarded.

50.(1) If a justice of the peace is satisfied by evidence given on oath that there is reasonable ground for believing that any premises are kept or habitually used for the holding of parties at which the provisions of section 49(1) are contravened, he may issue a search warrant under his hand to a police officer authorising him at any time or times within one month from the date of the warrant to enter those premises, which shall be named in the warrant, by force if need be, and search them and to seize and remove any intoxicating liquor found there that the police officer has reasonable grounds for supposing to be on the premises for the purpose of being supplied or consumed in contravention of the provisions of that section and also to seize and remove any other thing the police officer has reasonable grounds to suppose may be evidence of an offence under that section having been committed.

*Supplemental provisions in relation to parties organised for gain.*

(2) If any person found on any premises in which intoxicating liquor is seized under subsection (1), on being asked by a police officer for his name and address refuses to give them or gives a false name and address, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 2 on the standard scale.

(3) If any person is convicted of an offence under section 49 in respect of the premises in which any intoxicating liquor is seized under this sect, the liquor so seized and the vessels containing it shall be forfeited to the Crown.

51. Nothing in this Ordinance shall be taken to require licensed premises to be open for the sale of intoxicating liquor of for any other purpose during the permitted hours, except in so far as they required by any conditions attached to the licence.

*Opening during permitted hours not obligatory.*

## PART V

### RESTAURANTS AND GUEST HOUSES

52.(1) In this Ordinance, "Part V licence" means a justices' on-licence which -

(a) is granted for such premises and is subject to such conditions as are mentioned in section 53;

(b) is not subject to any other condition except -

(i) conditions required to be attached to it under section 54 or 55; or

(ii) in the case of a licence for club premises, conditions prohibiting or restricting sales of intoxicating liquor to non-members.

*Provisions as to the grant of certain licences for restaurants, guest houses, etc.*

(2) A Part V licence is a restaurant licence, a residential licence or a residential and restaurant licence, according as it falls within subsection (1), (2) or (3) of section 53.

(3) Licensing justices shall not refuse an application duly made for the grant of a new Part V licence or for the renewal or transfer of a Part V licence, except on one or more of the grounds specified in section 56; but this subsection shall not affect the operation of any enactment relating to the disqualification of persons or premises for holding or receiving a justices' licence.

(4) A Part V licence may be granted for wine alone.



(5) Subject to the payment not later than the fifteenth day after the commencement of this Ordinance of such fee as may be prescribed under subsection (6), any restaurant licence or residential licence that was in force immediately before the commencement of this Ordinance and which was granted under section 13A or section 13B (as the case may be) of the repealed Ordinance shall after such commencement (and unless it earlier ceases to have effect under any provision of this Ordinance including subsection (6)) continue in force and effect as if upon such commencement it had been granted as a Part V licence ceasing to have effect on 30th June next following the commencement of this Ordinance.

(6) The fee specified in subsection (5) is that specified in relation to the continuation of such licences in Schedule 1 and if such fee has not then been paid by or on behalf of the holder of the licence, that licence shall cease to continue to have effect on the fifteenth day following the commencement of this Ordinance.

(7) Subject to the foregoing provisions of this section, all provisions of this Ordinance applicable to or in respect of a Part V licence granted under this Ordinance shall apply to or in respect of a licence continued in force under subsection (5) of this section.

53.(1) In this Ordinance, "restaurant licence" means a Part V licence which -

*Conditions attached  
to Part V licences  
for restaurants,  
guest houses etc.*

(a) is granted for premises structurally adapted and bona fide used, or intended to be used, for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises; and

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.

(2) In this Ordinance, "residential licence" means a Part V licence which -

(a) is granted for premises bona fide used or intended to be used for the purpose of habitually providing for reward board and lodging, including breakfast and at least one other of the customary main meals;

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons residing there or their private friends bona fide entertained by them at their own expense, and for consumption by such a person or his private friend so entertained by him either on the premises or with a meal supplied at but to be consumed off the premises.

(3) In this Ordinance, "residential and restaurant licence" means a Part V licence which -

(a) is granted for premises falling within both paragraph (a) of subsection (1) and paragraph (a) of subsection (2); and

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied otherwise than as permitted by the conditions of a restaurant licence or by those of a residential licence.

(4) The conditions as to the sale and supply of intoxicating liquor set out in subsection (1)(b) and (2)(b) of this section -

(a) do not extend to the supply for consumption on the premises of intoxicating liquor (whether inside or outside the permitted hours) in any case where section 41 does not prohibit liquor being so supplied outside the permitted hours;

(b) do not extend to the sale or supply of liquor on the premises under the authority of an occasional licence; but

(c) subject to the foregoing do extend to all sales of intoxicating liquor on the premises, whether or not requiring the authority of a justices' licence.

(5) Paragraphs (a) to (c) of subsection (4) apply also to any conditions which are in the same terms as those set out in subsection (1)(b) or subsection (2)(b) of that section but are attached to a justices' licence which is not a Part V licence.

(6) It shall be an implied condition of every Part V licence that suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the licensed premises.

54.(1) Where licensing justices grant a new residential licence or residential and restaurant licence, they shall, unless it appears to them that in the circumstances of the particular case there is good reason not to do so, attach to the licence a condition that there shall be afforded in the premises, for persons provided with board and lodging for reward, adequate sitting accommodation in a room not used or to be used for sleeping accommodation, for the service of substantial refreshment or for the supply or consumption of intoxicating liquor.

*Requirement of sitting accommodation for residential licence or residential and restaurant licence.*

(2) Where such a licence is granted without the condition required by subsection (1) the licensing justices shall, on the renewal and transfer of the licence, attach the condition if by reason of any change of circumstances it appears to them that the requirement ought no longer to be dispensed with.

55. Licensing justices shall not attach to any new justices' on-licence -

*Restrictions concerning justices' licences for restaurants and guest houses etc.*

(a) any conditions calculated to restrict the sale or supply of intoxicating liquor to a sale or supply in connection with the service of meals, other than such condition as is required to be attached to a restaurant licence (modified, if need be, to allow for any sale or supply which it is desired to authorise in addition to the sale or supply in connection with the service of table meals); or

(b) any conditions calculated to restrict the sale or supply to persons residing in the licensed premises, other than such condition as is required to be attached to a residential licence (modified, if need be, to allow for any sale or supply which it is desired to authorise in addition to a sale or supply to persons residing in the premises).

56.(1) Licensing justices may refuse an application for the grant of a Part V licence on any of the following grounds -

*Grounds for refusing applications for Part V licences.*

(a) that the applicant is not of full age, or is not in any other respect a fit and proper person to hold one;

(b) that the premises do not fall within paragraph (a) of subsection (1), (2) or (3), as the case may be, of section 53, or are not suitable and convenient for the use contemplated by that paragraph, having regard to their character and condition, to the nature and extent of the proposed use and (where it applies) to the condition as to sitting accommodation required by section 54 or to the consumption of intoxicating liquor for consumption as an ancillary to a table meal only;

(c) that within the twelve months preceding the application -

(i) a justices' on-licence for the premises has been forfeited; or

(ii) the premises have been ill conducted while a justices' on-licence was in force for them; or

(iii) the condition as to sitting accommodation by section 54 has been habitually broken while a residential licence or a residential and restaurant licence, or other licence with the like condition, was in force for the premises; or

(iv) the condition implied by section 53(6) as to the availability of beverages other than intoxicating liquor has been habitually broken while a Part V licence, or other licence with the like condition, was in force for the premises.

(2) Licensing justices may also refuse an application for the grant of a restaurant licence or residential and restaurant licence on the ground that the trade done in the premises in providing refreshment to persons resorting there (but not provided with board and lodging) does not habitually consist to a substantial extent in providing table meals of a kind to which the consumption of intoxicating liquor might be ancillary.

(3) Licensing justices may also refuse an application for the grant of a Part V licence on the ground that the sale or supply of intoxicating liquor on the premises is undesirable either because it would be by self-service methods, that is to say methods allowing a customer to help himself on payment or before payment, or because -

(a) in the case of a residential or a residential and restaurant licence, a large proportion of the persons provided with board and lodging for reward;

(b) in the case of a restaurant licence or a residential and restaurant licence, a large proportion of the persons resorting to the premises but not provided with board and lodging.

is habitually made up of persons under the age of eighteen who are not accompanied by others (whether parents or persons of full age) who pay for them.

(4) If on an application for the grant of a Part V licence for any premises it is made to appear to the licensing justices that -

(a) the chief police officer or chief fire officer desired to inspect the premises in connection with the application either personally or through a designated police officer or, as the case may be, fire officer; and

(b) that after reasonably steps had been taken to obtain access to the premises for the purpose of such inspection, it was not possible to inspect the premises,

the licensing justices may refuse the application.

57.(1) Where a person is convicted of an offence to which this section applies committed by him in respect of premises for which, at the time of the offence, he held a Part V licence, the court by or before which he is convicted may make a disqualification order under this section.

*Power of court to disqualify for Part V licences on conviction of certain offences.*

(2) A disqualification order may, at the discretion of the court, be either -

(a) an order disqualifying the person convicted for such period as may be specified in the order (but not exceeding five years from the date on which the order comes into force) from holding or obtaining Part V licences;

(b) an order prohibiting such licences being held or granted within such period as aforesaid by or to any person in respect of the premises at which the offence in question was committed; or

(c) an order imposing both such a disqualification and such a prohibition;

and, if such an order is made, any licence within the disqualification or prohibition, if previously obtained, shall be forfeited or, if subsequently obtained, shall be null and void.

(3) This section applies to the following offences, that is to say -

(a) offences under sections 61 and 71;

(b) offences under section 82 and any other offence of permitting the premises to be used as a brothel; and

(c) any offence under section 83(1) and, without prejudice to the foregoing so far as it relates to games of chance, any offence an element of which is permitting any unlawful game of chance to be played on the premises.

58.(1) The court making a disqualification order under section 57 may, on such conditions as it thinks just, suspend the operation of the order with a view to enable a licence to remain in force pending an appeal against the conviction or against the making of the disqualification order, or pending the consideration of the question of bringing such an appeal; but, unless so suspended, a disqualification order under the section shall come into force on the day it is made.

*Supplementary provisions as to disqualification orders.*

(2) A court shall not make a disqualification order containing a prohibition on the holding or grant of licences in respect of premises specified in the order, unless an opportunity has been given to any person interested in the premises and applying to be heard by the court to show cause why the order should not be made.

(3) At any time when such a disqualification order is in force, a court of summary jurisdiction, on complaint made by any person affected by the order, may revoke the order or vary it by reducing any period of disqualification or prohibition specified in the order; and any person who has made a complaint under this section and is aggrieved by the decision of the court on the complaint may appeal to the Supreme Court.

(4) Where on a complaint made under subsection (3) the relief asked for is or includes the revocation or variation of a prohibition imposed by the order on the holding or grant of licences in respect of any premises, any summons granted on the complaint shall be served on the chief police officer.

(5) References in any enactment, including this Ordinance, to a person disqualified for holding a justices' licence, or to premises disqualified for receiving a justices' licence shall for the purpose of Part V licences apply, but for other purposes shall not apply, to persons or premises disqualified only by reason of a disqualification order under section 57 of this Ordinance.

(6) The powers of the court under section 57 may be exercised on a conviction in addition to any other powers which the court is required to exercise or does exercise on the conviction.

## PART VI

### GENERAL PROVISIONS REGULATING SALE, ETC, POSSESSION AND DELIVERY OF INTOXICATING LIQUOR

59.(1) Nothing in this Ordinance -

*Exemption in relation to messes and canteens.*

(a) requiring the authorisation of a justices' licence for the sale or supply of intoxicating liquor; or

(b) restricting the sale or supply of intoxicating liquor to permitted hours or general licensing hours, or

(c) requiring intoxicating liquor to be paid for before or at the time it is delivered,

applies to any mess or canteen authorised by the Commander British Forces or in relation to any intoxicating liquor sold or supplied in any such mess or canteen.

(2) Sections 64, 67, 73 to 78 and 80 apply in relation to any such mess or canteen as they apply in respect of premises licensed under a justices' on-licence and as if the person or persons for the time being managing the same were the licensee under such a licence and every other person selling or supplying intoxicating liquor in any such mess or canteen were a servant or agent of such a licence.

60.(1) Subject to this Ordinance, if any person -

*Selling liquor without a licence.*

(a) sells or exposes for sale by retail any intoxicating liquor without holding a justices' licence authorising the sale of that liquor; or

(b) holding a justices' licence sells or exposes for sale by retail any intoxicating liquor except at the place for which that licence authorises the sale of that liquor.

he commits an offence under this section.

(2) Where intoxicating liquor is sold in contravention of this section on any premises, every occupier of the premises who is proved to have been privy or consenting to the sale commits an offence under this section.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

(4) The holder of a justices' licence shall, on his second or subsequent conviction of an offence under this section, forfeit the licence.

(5) The court by or before which a person is convicted of an offence under this section committed after a previous conviction of such an offence may order him to be disqualified for holding a justices' licence -

(a) on a second conviction, for a period not exceeding five years;

(b) on a third or subsequent conviction, for any term of years or for life.

(6) The court by or before the holder of a justices' licence is convicted of an offence under this section may declare all intoxicating liquor in his possession, and the vessels containing it, to be forfeited to the Crown.

61.(1) If the holder of a justices' on-licence knowingly sells or supplies intoxicating liquor to any person to whom he is not permitted by the conditions of his licence to sell or supply it commits an offence under this section.

*Selling liquor in breach of conditions of licence.*

(2) If the holder of a Part V licence knowingly permits intoxicating liquor sold in pursuance of the licence to be consumed on the licensed premises by persons for whose consumption there he is not permitted by the conditions of the licence to sell it, he commits an offence under this section.

(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

62. If without reasonable excuse the holder of a justices' licence has in his possession on the premises in respect of which the licence is in force any kind of intoxicating liquor which he is not authorised to sell, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale and shall forfeit the liquor and the vessels containing it.

*Keeping on premises of liquor of a kind not authorised by licence.*

63.(1) Where a person, having purchased intoxicating liquor from the holder of a justices' licence which does not cover the sale of that liquor for consumption on the premises, drinks the liquor -

*Penalty for breach of terms of off-licence.*

(a) in the licensed premises;

(b) in premises which are near to or adjoin the licensed premises and which belong to the holder of the licence or are under his control or used by his permission, or

(c) on a highway adjoining or near those premises,

then if the drinking is with the privity or consent of the holder of the licence, the holder of the licence commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(2) If the holder of a justices' off-licence, with intent to evade the terms of the licence, takes or suffers any person to take, any intoxicating liquor from the licensed premises for the purpose of its being sold on the holder of the licence's account or for his benefit or profit, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(3) For the purposes of subsection (2), if liquor is taken for the purpose of its being drunk in any house, tent, shed or other building belonging to the holder of the licence, or hired used or occupied by him, the burden of proving that he did not intend to evade the terms of the licence shall lie upon him.

(4) If the holder of a justices' off-licence sells any spirits or wine in an open vessel, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

64. If any person in licensed premises, himself or by his servant or agent sells or supplies to another person as the measure of intoxicating liquor for which he asks an amount exceeding that measure, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

*Supply of over-measure prohibited.*

65.(1) Subject to subsection (2), a person shall not in any licensed premises -

*Restriction on credit sales.*

(a) himself or by his servant or agent sell or supply intoxicating liquor for consumption on the premises; or

(b) consume intoxicating liquor,

unless it is paid for before or at the time it is sold or supplied; and any person who contravenes this subsection commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(2) Subsection (1) does not apply -

(a) if the liquor is sold or supplied for consumption at a meal supplied at the same time, is consumed with the meal and paid for together with the meal; or

(b) if, in the case of licensed premises, the liquor is sold or supplied for consumption by a person residing in the premises or his guests and is paid for together with his accommodation.

## PART VII

### PROTECTION OF PERSONS UNDER EIGHTEEN AND OTHER PROVISIONS AS TO CONDUCT OF LICENSED PREMISES

66.(1) Subject to subsection (3) and (4) and to section 67, the holder of justices' licence commits an offence if he allows a person under the age of eighteen to be in the bar of the licensed premises during the permitted hours.

*Children and young persons prohibited from bars.*

(2) Subject to subsection (4) and to section 69, a person under the age of eighteen shall not enter or attempt to enter the bar of licensed premises during the permitted hours and no person shall cause or procure or attempt to cause or procure any person under the age of eighteen years to be in the bar of licensed premises during the permitted hours and a person who contravenes this subsection commits an offence.

(3) The holder of the justices' licence shall not be convicted of an offence under subsection (1) if he proves either -

(a) he exercised all due diligence to prevent the person under the age of eighteen from being admitted to the bar; or

(b) that the person under the age of eighteen years had apparently attained that age.

(4) No offence under subsection (1) or (2) is committed if the person under the age of eighteen years -

(a) is the licence-holder's child, or

(b) resides in the premises, but is not employed there, or

(c) is in the bar only for the purpose of passing to or from some part of the premises which is not a bar to or from which there is no other convenient means of access or egress.

(5) A person convicted of an offence under subsection (1) or (2) is liable on conviction of the offence to a fine not exceeding the maximum of level 2 on the standard scale.

(6) Where in any proceedings for an offence under this section it is alleged that a person was at any time under eighteen, and he appears to the court to have been under that age, he shall be deemed for the purpose of those proceedings to be under that age unless the contrary is shown.

67.(1) In licensed premises the holder of the licence or his servant shall not sell intoxicating liquor to a person under the age of eighteen or knowingly allow a person under the age of eighteen to consume intoxicating liquor in a bar nor shall the holder of the licence knowingly allow any person to sell intoxicating liquor to a person under eighteen.

*Serving or delivering intoxicating liquor to or for consumption by persons under 18.*

(2) A person under eighteen shall not in licensed premises buy or attempt to buy intoxicating liquor, nor consume intoxicating liquor in a bar.

(3) No person shall buy or attempt to buy intoxicating liquor for consumption in a bar in licensed premises by a person under eighteen.



(4) Where a person is charged with an offence under subsection (1) of this section with the offence of selling intoxicating liquor to a person under eighteen and is charged by reason of his own act, it is a defence for him to prove -

(a) that he exercised all due diligence to avoid the commission of such an offence; or

(b) that he had no reason to suspect that the person was under eighteen.

(5) Where the person charged with an offence under subsection (1) is the licence-holder and he is charged by reason of the act or default of some other person, it shall be a defence for him to prove that he exercised all due diligence to avoid the commission of an offence under that subsection.

(6) Subject to subsection (8), the holder of the licence or his servant shall not knowingly deliver, nor shall the holder of the licence knowingly allow any person to deliver, to a person under eighteen intoxicating liquor sold in licensed premises for consumption off the premises, except where the delivery is made at the residence or working-place of the purchaser.

(7) Subject to subsection (8) of this section, a person shall not knowingly send a person under eighteen for the purpose of obtaining intoxicating liquor sold or to be sold in licensed premises for consumption off the premises, whether the liquor is to be obtained from the licensed premises or other premises from which it is delivered in pursuance of the sale.

(8) Subsections (6) and (7) of this section do not apply where the person under eighteen is a member of the licence-holder's family or his servant or apprentice and is employed as a messenger to deliver intoxicating liquor.

(9) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 4 on the standard scale; and on a person's second or subsequent conviction of such an offence the court may, if the offence was committed by him as the holder of a justices' licence, order that he shall forfeit the licence.

68.(1) If any person under eighteen is employed in the bar of any licensed premises at a time when the bar is open for the sale or consumption of intoxicating liquor, the holder of the licence shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

*Persons under  
18 not to be employed  
in bars.*

(2) For the purposes of this section a person shall not be deemed to be employed in a bar by reason only that in the course of his employment in some part of the premises he enters the bar for the purpose of giving or receiving any message or of passing to or from some part of the premises which is not a bar and to or from which there is no convenient means of access or egress.

(3) For the purposes of this section a person shall be deemed to be employed by the person for whom he works notwithstanding that he receives no wages for his work.

(4) Where in any proceedings under this section it is alleged that a person was at any time under eighteen, and he appears to the court to have then been under that age, he shall be deemed for the purposes of the proceedings to have then been under that age unless the contrary is shown.

69. Nothing in sections 66 and 68 applies in respect of any bar licensed only under a Part V licence.

*Exclusion from  
sections 66 and  
68 of Part V  
licensed bars.*

70.(1) In any premises which are licensed for the sale of intoxicating liquor for consumption off the premises only or any off-sales department of on-licensed premises, the holder of the licence shall not allow a person under eighteen to make any sale of such liquor unless the sale has been specifically approved by the holder of the licence or by a person of over the age of eighteen acting on his behalf.

*Prohibition of unsupervised off-sales by persons under 18.*

(2) The reference in subsection (1) to an off-sales department of on-licensed premises is a reference to any part of the premises for which a justices' on-licence has been granted which is set aside for the use only for the sale of intoxicating liquor for consumption off the premises.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

### *Preservation of order*

71.(1) The holder of a justices' licence shall not permit drunkenness or any violent, quarrelsome or riotous conduct to take place in the licensed premises.

*Licence holder not to permit drunkenness, etc.*

(2) If the holder of a justices' licence is charged under subsection (1) with permitting drunkenness, and it is proved that any person was drunk in the licensed premises, the burden of proving that the licence holder and all persons employed by him took all reasonable steps for preventing drunkenness on the licensed premises shall lie upon him.

(3) The holder of a justices' licence shall not sell intoxicating liquor to a drunken person.

(4) A person who contravenes subsection (1) or subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 2 on the standard scale.

72.(1) Any person who in licensed premises procures or attempts to procure any intoxicating liquor for consumption by a drunken person commits an offence.

*Procuring drink for drunken person.*

(2) Any person who aids a drunken person in obtaining or consuming intoxicating liquor in licensed premises commits an offence.

(3) A person convicted of an offence under subsection (1) or (2) is liable to imprisonment for a term not exceeding one month or to a fine not exceeding the maximum of level 3 on the standard scale.

73.(1) Without prejudice to any other right to refuse a person admission to premises or to expel a person from premises, the holder of a justices' licence may refuse to admit to, or may expel from, the licensed premises any person who is drunken, violent, quarrelsome or disorderly or is the subject of an exclusion order or prohibition order, or whose presence in the licensed premises would subject the licence holder to a penalty under this Ordinance.

*Power to exclude drunkards, etc, from licensed premises.*

(2) If any person liable to be expelled from licensed premises fails to leave the premises when requested by the holder of the justices' licence, his agent or servant or by a police officer, he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 1 on the standard scale.

(3) Any police officer shall, at the request of the holder of a justices' licence or his agent or servant, help to expel from the licensed premises any person liable to be expelled from them under this section, and may use such force as may be required for the purpose.

### *Exclusion orders*

74.(1) Where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing the offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) make an order (in this Ordinance referred to as an "exclusion order") prohibiting him from entering those premises or any other specified licensed premises, without the express consent of the licensee of the premises or his servant or agent. *Exclusion orders.*

(2) An exclusion order may be made either -

(a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or

(b) notwithstanding any other enactment, in addition to a probation order or an order discharging him absolutely or conditionally and in addition to a prohibition order;

but not otherwise and shall not have effect in relation to premises licensed under a justices' off-licence.

(3) An exclusion order shall, unless it is terminated under section 75(2), have effect for such period, not less than three months, or more than two years, as is specified in the order.

75.(1) A person who enters any premises in breach of an exclusion order commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding one month or to a fine not exceeding the maximum of level 3 on the standard scale. *Penalty for non-compliance with an exclusion order.*

(2) Any court may at any time, either of its own motion or on the application of any person (1), by order -

(a) terminate an exclusion order;

(b) vary it by -

(i) deleting the name of any specified licensed premises;

(ii) shortening the period for which it remains in force,

and any court may, on any occasion on which it sentences a person in respect of an offence under subsection (1) extend the period which the order remains in force (except that the order shall not be so extended so that it may remain in force for more than three years from the date on which it is extended under this subsection).

***Prohibition orders***

**76.(1)** If a court is satisfied by evidence given on oath given in -

*Prohibition order.*

- (a) family proceedings to which the person concerned is a party;
- (b) criminal proceedings in which the person concerned stands or stood charged with having committed any offence;
- (c) any civil proceedings in which there is an material allegation against the person concerned that he has assaulted or offered violence to any other person;
- (d) proceedings brought specifically in relation to an application for an order under this section;

that a person whether male or female ("the person concerned") is by reason of consumption of intoxicating liquor -

- (i) severely prejudicing his health or neglecting his person;
- (ii) failing to make adequate financial or other provision for any spouse or dependent child for whom is appears the person concerned ought to make provision;
- (iii) frequently violent or abusive to any other person;

the court may make an order under this subsection ("a prohibition order").

(2) A prohibition order may be made on the application of any person (including the person concerned) or by the court of its own motion.

(3) Except where an application for a prohibition order is made by the prosecutor in the course of, or at the conclusion of, criminal proceedings, or the court of its own motion in the course of, or at the conclusion of, criminal proceedings initiates consideration of the making of a prohibition order, all proceedings for a prohibition order shall be dealt with in chambers.

(4) A prohibition order may be made in, or at the conclusion of, criminal proceedings, notwithstanding that the person concerned has not been convicted or found guilty of any offence in those proceedings and any order made in such proceedings shall be deemed not to have been made by way of sentence of the person concerned.

(5) A person aggrieved by the making of a prohibition order in respect of him may apply on motion within twenty-one days of the making of the order to the Supreme Court for the discharge or variation of the order, and the Supreme Court on hearing such motion may make such order as it thinks fit, and this subsection applies in respect of prohibition orders to the exclusion of any provisions of any enactments relating to appeals in civil or criminal proceedings which would otherwise apply in relation thereto.

(6) Proceedings in the Supreme Court pursuant to subsection (5) are civil proceedings, regardless of the nature of the proceedings in which the prohibition order was made.

(7) The effect of a prohibition order shall be to render it unlawful -

- (a) for the person concerned -

(i) subject to subsection (8), to consume, attempt to consume, procure or attempt to procure, intoxicating liquor;

(ii) subject to subsection (9), in permitted hours to enter or remain in any bar in any premises in respect of which a justices' on-licence (other than a Part V licence) is in force or any bar in premises in respect of which a club is registered;

(b) for any person who is aware of the order and the identity of the person concerned -

(i) subject to subsection (8), to sell or supply to the person concerned, assist him to consume or to procure for him or attempt to procure for him, intoxicating liquor;

(ii) who is the holder of a justices' licence or secretary of a registered club or the servant or agent of the holder of a justices' licence or secretary of a registered club, subject to subsection (9) in permitted hours, knowingly and willingly to allow or suffer the person concerned to enter or remain in any bar in the premises to which the justices' licence relates or in any bar upon premises in respect of which the club is registered.

(8) Nothing in subsection (7) applies to the supply or consumption of intoxicating liquor in the course of the sacrament of Holy Communion in accordance with the rites of any religious denomination.

(9) Nothing in subsection (8) prohibits the person concerned from entering in and remaining upon or from being permitted to enter or remain upon any bar to which a Part V licence relates.

(10) A prohibition order shall be made so as to have effect for a period of not less than six and not more than twelve months from the date on which it is made, and may be extended for a period of not more than twelve months by any court upon its convicting the person to whom it relates of any offence under subsection (12) of contravening any provision of subsection (7)(a).

(11) A court of summary jurisdiction may on the application of the person to whom a prohibition order relates made at any time not less than six months after the order was made or last extended (whichever is the later) (but so that no application may be made under this subsection within three months of the date on which a previous application in respect of the order under this subsection was last determined by a court) discharge the order or vary it by shortening the period for which it will remain in force.

(12) A person commits an offence who contravenes subsection (7) and -

(a) if such offence consists of contravening subsection (7)(b)(i) is liable on conviction to imprisonment for six months or a fine not exceeding the maximum of level 5 on the standard scale; and

(b) in any other case is liable to a fine not exceeding the maximum of level 3 on the standard scale and, if he is the person to whom the order relates, to imprisonment for a term not exceeding one month.

(13) Nothing in the Criminal Justice Ordinance 1988 restricting the circumstances in which a custodial sentence may be imposed on a person or relating to the minimum period of a custodial sentence shall apply in respect of any offence under this section.

(14) A person to whom a prohibition order relates shall be disqualified for holding or obtaining a justices' licence of any kind so long as the order remains in force.

77.(1) Any court by order under section 76 making extending, varying or discharging a prohibition order shall transmit a copy of that order to the chief police officer who shall in writing inform every holder of a justices' licence of the effect of the order.

*Notification of  
and knowledge of a  
prohibition order.*

(2) Every licensee shall bring every notification from the chief police officer under subsection (1) to the attention of all persons engaged in the sale or supply of intoxicating liquor on or from any premises of which he is the licensee.

(3) In any proceedings for an offence under section 76 in which knowledge of a prohibition order is relevant, the accused shall be deemed to have been aware of the order unless he proves the contrary.

78.(1) Sections 76(7) to (9), (11), (12) and (14) and 77(3) apply in relation to a prohibition order made under section 26 of the repealed Ordinance and which was in effect immediately before the coming into force of this Ordinance as they do in relation to a prohibition order made under section 76(1) of this Ordinance.

*Application of sections  
76 and 77 to prohibition  
order under section  
26 of repealed  
Ordinance.*

(2) A prohibition order which was made under section 26 of the repealed Ordinance and which was in effect immediately before the coming into force of this Ordinance shall, notwithstanding the repeal of the repealed Ordinance, continue to have effect on the coming into force of this Ordinance and as if it had been made under section 76(1) of this Ordinance.

79.(1) A person commits an offence who -

*Drunken behaviour  
in public place.*

(a) in any public place, while drunk, is disorderly in his behaviour; or

(b) is, in any public place, found incapable through drunkenness.

(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding one month and to a fine not exceeding the maximum of level 2 on the standard scale.

(3) A police officer may arrest without warrant any person whom he reasonably suspects to have committed an offence under this subsection (1).

(4) In subsection (1), "public place" includes any place to which the public have or are at the material time permitted to have access, whether on payment or otherwise.

### *Offences in relation to constables*

80. If the holder of a justices' licence -

*Offence in relation  
to constables.*

(a) knowingly suffers to remain on the licensed premises any police officer during any time appointed for the police officer's being on duty, except for the purpose of the execution of the police officer's duty;

(b) supplies any liquor or refreshment, whether by way of gift or sale, to any police officer on duty except by authority of a superior officer of the police officer; or

- (c) bribes or attempts to bribe any police officer,

he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 4 on the standard scale.

#### *Offences related to prostitution*

81.(1) The holder of a justices' licence shall not knowingly allow the licensed premises to be the habitual resort or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution; but this section does not prohibit his allowing any such person to remain in the premises for the purpose of obtaining reasonable refreshment for such time as is necessary for that purpose.

*Prostitutes not to be allowed to assemble on licensed premises.*

(2) A holder of a justices' licence who contravenes subsection (1) commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

82.(1) If the holder of a justices' licence permits the licensed premises to be a brothel, he commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

*Permitting licensed premises to be a brothel.*

(2) If the holder of a justices' licence is convicted, whether under this section or under any other enactment, of permitting his premises to be a brothel, he shall forfeit his licence.

#### *Other prohibited activities*

83.(1) If the holder of a justices' licence permits the licensed premises to be used -

*Other prohibited activities on licensed premises.*

- (a) for the purpose of fighting or baiting any animal, bird or other creature;
- (b) for betting (other than for moderate stakes upon the result of any game of pure skill played upon the premises) or for gaming; or
- (c) any sale by auction,

he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale.

(2) Nothing in subsection (1) applies to -

- (a) any raffle or lottery conducted in accordance with, or under a permit granted under, the Lotteries Ordinance;
- (b) the playing for moderate stakes of cribbage or dominoes or other game approved for the purposes of this section by Order made by the Governor;
- (c) the operation of any electronic or mechanical gaming or amusement with prizes machine approved by the licensing justices and placed upon the licensed premises with their approval.

(3) For the purpose of this section -

(a) darts, skittles, shove halfpenny, billiards, snooker and pool are declared to be games of pure skill (but nothing in this paragraph shall preclude any other game from being, or being found by a court to be, a game of pure skill);

(b) "moderate stake" means a stake not exceeding £5 on the result of any game.

(4) Any electronic or mechanical gaming or amusement with prizes machine which was upon the licensed premises immediately before the coming into force of this Ordinance shall, until otherwise ordered by the licensing justices under this subsection or 30th June next following the coming into force of this Ordinance (whichever shall first occur) be deemed to have been placed upon the licensed premises, and be there operated, with the approval of the licensing justices.

(5) The licensing justices may approve the placing and operation of an electronic or mechanical gaming or amusement with prizes machine upon licensed premises either subject to conditions or unconditionally and may in the exercise of their powers under this subsection limit the number of such machines which may be placed upon any premises licensed under any justices' licence. No approval under this subsection shall have effect for a period of more than one year at any one time.

(6) No appeal shall lie from a decision of the licensing justices under subsection (5).

## PART VII

### MISCELLANEOUS

84.(1) A court of summary jurisdiction may, if satisfied as to the matters mentioned in subsection (2), grant to any person a licence (in this Ordinance called an "occasional licence") authorising him to sell intoxicating liquor during a period not exceeding five days at some function or event. *Grant of occasional licences.*

(2) The matters as to which the court must be satisfied are -

(a) that the applicant is a fit and proper to sell intoxicating liquor;

(b) that the place where the intoxicating liquor will be sold is suitable and persons under the age of eighteen years can readily and suitably be excluded therefrom;

(c) that the sale of intoxicating liquor will be merely ancillary to the function or event;

(d) that the sale of intoxicating liquor at the function is not likely to result in disturbance or annoyance being caused to residents in the neighbourhood of that place, or any disorderly conduct.

(3) An occasional licence shall specify -

(a) the place where intoxicating liquor may be sold by virtue of the licence;

(b) the kind or kinds of intoxicating liquor that may be sold by virtue of the licence;

(c) the hours between which such liquor may be so sold and the date (or dates) on which those hours fall,

and the court may attach to the licence any condition that it thinks proper.



85.(1) An application for an occasional licence shall be in writing and shall contain the following particulars -

*Application for occasional licences.*

- (a) the name and address of the applicant;
- (b) the date and nature of the function and the place where it is to be held;
- (c) the premises or place in which it is proposed intoxicating liquor will be sold; and
- (d) the kind or kinds of intoxicating liquor proposed to be sold at the function and the hours between which it is proposed that such liquor shall be sold;

(2) An application for an occasional licence shall be made by sending two copies of the application to the clerk to the court to whom it is desired to make application for the occasional licence at least seven days before it is intended that the application shall be heard, but the court may, if for specific reason, thinks fit, consider and grant application on shorter notice.

(3) On receiving a notice of application pursuant to subsection (2), the clerk of the court shall forthwith send one copy of it to the chief police officer.

(4) On application for an occasional licence the application shall attend unless his non-attendance has been excused by the court.

86.(1) On the grant of an occasional licence a fee calculated as specified in paragraph 10 of Schedule 3 shall be paid and, until it has been paid, the licence shall be of no effect.

*Further provisions in relation to occasional licences.*

(2) No occasional licence shall be granted -

- (a) to any person who for the time being is disqualified from holding or obtaining a justices' licence; or
- (b) for any premises which for the time being is disqualified from receiving a justices' licence.

(3) The provisions of Parts VI and VII of this Ordinance apply to premises licensed under an occasional licence, the holder of an occasional licence and his servants and agents as if the premises were licensed under a justices' on-licence and the holder of the occasional licence were the holder of such a licence.

87.(1) For the purpose of preventing or detecting any offence under this Ordinance, a police officer may during any time when the same are apparently open to the public, or he reasonably believes them to be so open, enter or remain in any premises licensed under a justices' licence or under an occasional licence.

*Right of police officer to enter licensed premises.*

(2) Any person who hinders or obstructs a police officer in the exercise of his powers under subsection (1) commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

88.(1) If the holder of a justices' licence -

*Adulterating liquor.*

- (a) mixes any unwholesome ingredient with any intoxicating liquor;

(b) has in his possession any unwholesome ingredient with intent to mix the same with any intoxicating liquor;

(c) other than at the request of the person to whom the same is sold or supplied, and in his sight and presence, adds any water to any intoxicating liquor;

(d) permits any servant or agent of his to do anything prohibited by paragraph (a), (b) or (c).

he commits an offence under this subsection.

(2) A person who is the servant or agent of the holder of a justices' licence under this subsection who, while acting as such servant or agent, does anything which, if that holder had done it, would be an offence by that holder under paragraph (a), (b) or (c) of subsection (1).

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale and in the case of an offence under subsection (1) by a person who is the holder of a justices' licence, he shall forfeit that licence.

89. Notwithstanding any foregoing provision of this Ordinance -

(a) intoxicating liquor may, without the authority of a justices' licence, be sold or supplied at any time abroad any ship to any passenger or member of the crew of that ship and the *bona fide* guest of any such passenger or member of the crew;

(b) the owner, lessee or manager of any farm or sheep station may, at any place on that farm or station which is further than 10 kilometres from the spire of Christ Church Cathedral Stanley, without a justices' licence sell or supply intoxicating liquor at any time to any person who is *bona fide* employed on that farm or station.

*Special provision  
as to sale or supply  
of intoxicating  
liquor on ships and  
on Camp farms or sheep  
stations.*

90.(1) The holder of a justices' on-licence shall not be liable in a sum greater than £300 for the loss of, or damage to, any goods or other property of a customer, visitor or guest brought upon the licensed premises unless -

(a) the goods or other property were stolen, lost or damaged through the wilful act or through the default or neglect of the licensee or any person in his employment on the licensed premises;

(b) the goods or other property were deposited for safe-keeping with him or some person authorised by him to accept the same on his behalf for safe-keeping.

*Limitation of  
liability for property  
of guest.*

(2) Where the owner of the business conducted on premises licensed under a justices' on-licence is not the holder of that licence, subsection (1) shall have effect as if he were such holder.

91.(1) It is unlawful for any person to sell any tobacco to any person whom he knows or has reasonable cause to suspect may be under 16.

*Sale of tobacco  
to persons under 16.*

(2) It is unlawful for any person under 16 to consume tobacco, whether by smoking, chewing it or in any other way.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 2 on the standard scale.

(4) A police officer may, with the use only of such force as may be reasonably necessary in the circumstances of the case, seize any tobacco which he finds in the possession in a street or other public place of a person he reasonably suspects to be under 16, and shall deliver any tobacco so seized to, or as may be directed by, the chief police officer.

92. The Governor may make any regulations he thinks necessary or convenient for the carrying out of the purposes of this Ordinance and may by regulations under this subsection vary the amount of any fee prescribed under the provisions of any Schedule to this Ordinance. *Regulations.*

93. The Licensing Ordinance is repealed.

*Repeal.*

## SCHEDULE 1

### TRANSITIONAL CONTINUATION FEES

1. The fee payable in respect of the transitional continuation of a publican's retail licence is £75.
2. The fee payable in respect of the transitional continuation of a wholesale licence is £60.
3. The fee payable in respect of the transitional continuation of a club licence is £25.
4. The fee payable for the transitional continuation of a restaurant licence or residential licence is £15.
5. The fees specified in paragraphs 1, 2, 3 and 4 shall be paid to the Financial Secretary.

## SCHEDULE 2

### APPLICATIONS FOR JUSTICES' LICENCES

1. A person proposing to apply for the grant of a new justices' licence or the transfer of a justices' licence, shall first apply in writing to the clerk to the Summary Court to nominate a date not less than four weeks and not more than five weeks from the date of the notification pursuant to paragraph 2 of this Schedule ("the nominated date") on which the application, if the notice is given in accordance with the following paragraphs of this Schedule, will be considered.
2. The clerk to the Summary Court on receiving an application to nominate a date made pursuant to paragraph 1 shall within three days from the receipt of the application notify the applicant in writing of the nominate date.
3. The applicant shall then -
  - (a) not less than 21 days before the nominated date give notice in writing of the application to the clerk to the Summary Court, the chief police officer and to the Government Secretary and, if the application is an application for the grant of a new licence, also to the chief fire officer;
  - (b) if the application is an application for a transfer, give the like notice to the holder of the licence (if any);
  - (c) except where the application is for a transfer -
    - (i) display notice of the application for a period of 7 days in a place where it can conveniently be read by the public on or near the premises to be licensed (or, in the case of an application for a provisional grant, on or near the proposed site of those premises);
    - (ii) not more than 28 days nor less than 14 days before the nominated date, advertise notice of the application in a newspaper circulating in the Falkland Islands.

4. Where the application is an application for a new justices' licence or, except where the application is made pursuant to section 8(5), for the provisional grant of a new justices' licence, with the notices of the application sent under paragraph 2 the applicant shall supply a copy of a plan of the premises to be licensed.

5. A notice under this Schedule -

- (a) shall be signed by the applicant or his authorised agent;
- (b) shall state the name and address of the applicant;
- (c) shall state the situation of the premises to be licensed;
- (d) in the case of a new licence, shall state the kind of licence for which application is to be made;
- (e) shall state the date on which it is intended the application shall be dealt with by the licensing justices in the Summary Court (which date shall be the nominated date);
- (f) shall state that any person intending to oppose the application should give notice of his intended opposition to the applicant and to the clerk to the licensing justices not later than three clear days before the date notified under sub-paragraph (e).

6. Where an applicant for a new justices' licence has, through inadvertence or misadventure, failed to comply with the preceding paragraphs of this Schedule, the licensing justices may, upon such terms as they think fit, postpone consideration of his application; and, if on the postponed consideration they are satisfied that any terms so imposed have been complied with, they may deal with the application as if the applicant had complied with those requirements.

### SCHEDULE 3

#### COURT FEES PAYABLE IN CONNECTION WITH JUSTICES' LICENCES

- 1. On an application for the grant of a new justices' licence, £50.
- 2. On the grant (including a grant on transfer) or renewal of a new justices' on-licence, other than a Part V licence or an occasional licence, £200.
- 3. On the grant (including a grant on transfer) or renewal of a Part V licence, £80.
- 4. On the grant (including a grant on transfer) or renewal of a justices' off-licence, £150.
- 5. On an application for a protection order, £10.
- 6. On the grant of an application for a protection order, £25.
- 7. On inspection of the register of licences pursuant to section 25(1), £5.
- 8. On the grant of a special hours certificate, £50.

9. On the grant of an extension of permitted hours, for every hour or part thereof to which the extension relates, £10.

10. On the grant of an occasional licence, for every day or part thereof to which the occasional licence relates, £15.

#### **SCHEDULE 4**

##### **REQUIREMENTS TO BE COMPLIED WITH BY CLUB'S APPLICATION FOR REGISTRATION CERTIFICATE**

1. The application shall specify the name, objects and address of the club, and shall state that there is kept at that address a list of the names and addresses of the members.

2. The application shall state in terms of subsections (1) and (2) of section 30 of this Ordinance that the club is qualified under those subsections to receive a registration certificate for the premises.

3. The application shall set out, or shall incorporate a document annexed which sets out, the names and addresses of the members of any committee having the general management of the affairs of the club, and those of the members of any other committee concerned with the purchase for the club or with the supply by the club of intoxicating liquor, and those of the other officers of the club.

4.(1) The application shall state, or shall incorporate a document annexed which states, the rules of the club or, in the case of an application for renewal, the changes in the rules of the club made since the last application for the issue or renewal of the certificate.

(2) If, in the case of an application for renewal, there has been no such change as aforesaid, the application shall so state.

5. The application shall -

(a) identify the premises for which the issue or renewal of the registration certificate is sought;

(b) state that those premises are or are to be occupied by the habitually used for the purposes of the club;

(c) state the interest held by or in trust for the club in those premises and, if it is a leasehold interest or if the club has no interest, the name and address of any person to whom payment is or is to be made of rent under the lease or otherwise for use of the premises.

6.(1) The application shall give, or shall incorporate a document annexed which gives -

(a) particulars of any property not comprised in paragraph 5 of this Schedule which is or is to be used for the purposes of the club and not held by or in trust for the club absolutely, including the name and address of any person to whom payment is or is to be made for the use of that property;

(b) particulars of any liability of the club in respect of the principal or interest of moneys borrowed by the club or charges on property held by or in trust for the club, including the name and address of the person to whom payment is or is to be made in account of that principal interest;

(c) particulars of any liability of the club or of a trustee for the club in respect of which any person has given any guarantee or provided any security, together with particulars of the guarantee or security given or provided, including the name and address of the person giving or providing it.

(2) An application for renewal, or document annexed to it, may give the particulars required by this paragraph by reference to the changes (if any) since the last application by the club for the issue or renewal of the registration certificate.

(3) If there is no property or liability of which particulars are required by any paragraph of subparagraph (1) of this paragraph, the application shall so state.

(4) In this paragraph, "liability" includes a future or contingent liability.

7.(1) The application shall give, or shall incorporate a document annexed which gives, particulars of any premises not comprised in paragraph 5 of this Schedule, which have within the preceding twelve months been occupied and habitually used for the purposes of the club, and shall state the interest then held by or in trust for the club in those premises and, if it was a leasehold interest or if the club had no interest, the name and address of any person to whom payment was made of rent under the lease or otherwise for the use of the premises.

(2) If there are no premises of which particulars are required by this paragraph, the application shall so state.

8. Where the interest held by or in trust for the club of which particulars are required by paragraph 5, 6 or 7 of this Schedule is or was a leasehold interest, and the rent under the lease is not or was not paid by the club or the trustees for the club, the application shall state the name and address of the person by whom it was paid.

## SCHEDULE 5

### PROCEDURE ON APPLICATIONS AND COMPLAINTS RELATING TO REGISTRATION CERTIFICATES

#### PART I

#### ISSUE, RENEWAL AND SURRENDER OF REGISTRATION CERTIFICATES

##### *Applications, etc*

1.(1) An application by the club for the issue, renewal or variation of a registration certificate shall be made by lodging the application, together with the number of additional copies required under paragraph 4 of this Schedule, with the clerk to the Summary Court.

(2) The court may, on such conditions as the court thinks fit, allow such an application to be amended.

(3) An amended application shall be made by lodging with the clerk to the Summary Court the original application or the relevant parts of it altered so as to show the amendments, together with the number of additional copies required under paragraph 4 of this Schedule.

2. A registration certificate shall be surrendered by lodging with the clerk to the Summary Court a notice of surrender, together with the certificate and such number of additional copies required under paragraph 4 of this Schedule.

3.(1) Any such application or amended application and any such notice shall be signed by the chairman or by the secretary of the club.

(2) In the absence of objection the court shall not require proof that an application or amended application is so signed.

4. On receipt of any such application or amended application or of any such notice the clerk to the Summary Court shall forthwith send a copy to the chief police officer and to the Attorney General and the chief fire officer and the number of additional copies required to be lodged with the clerk is the number necessary to provide the copies the clerk requires for the purpose.

5. A club applying for the issue of a registration certificate for any premises, or for the renewal of a registration certificate in respect of different, additional or enlarged premises, shall give public notice of the application (identifying those premises and giving the name and address of the club) either -

(a) by displaying the notice on or near the premises, in a place where it can conveniently be read by the public, for the seven days beginning with the date of the application; or

(b) by advertisement in a newspaper circulating in the Falkland Islands in the two weeks commencing with the date of the application.

#### *Objections, etc*

6. An objection to an application for the issue or renewal of a registration certificate shall be made by lodging with the clerk to the Summary Court two copies in writing of the objection not later than twenty-one days after the making of the application or, if the application is amended, after the making of the amended application.

7. On receipt of an objection to an application for the issue or renewal of a registration certificate the clerk to the Summary Court shall forthwith send a copy to the person signing the application at an address furnished by him for communications relating to the application or, in default of such an address, at the address given in the application as that of the club.

8. Paragraphs 6 and 7 of this Schedule shall apply in relation to any notice of intention, on an application for the issue, renewal or variation of a registration certificate, to make representations as to conditions relating to the sale of intoxicating liquor as they apply to objections to an application for the issue or renewal of a registration certificate (with the substitution of reference to giving the notice for references to making the objection).



9. Where any such objection or any such notice is given, the Summary Court may make such order as it thinks just and reasonable for the payment of costs to the club by the person making the objection or giving the notice or by the club to that person; and for the purposes of enforcement the order shall be treated as an order for the payment of a sum enforceable as a civil debt.

10.(1) Subject to sub-paragraph (2) of this paragraph, an objection to an application for the issue or renewal of a registration certificate shall specify the ground of objection with such particulars as are sufficient to indicate the matters relied on to make it out.

(2) Where objection is made to an application for the issue or renewal of a registration certificate on the ground that the application does not give the information required by this Ordinance, or the information is incomplete or inaccurate, or the application is not otherwise in conformity with this Ordinance, it shall be sufficient for the objection to state the ground as a matter of suspicion, and to indicate the reasons for the suspicion.

11. Where, on an objection to an application for the issue or renewal of a registration certificate, there appears to the court to be good reason to suspect that the application does not give the information required by this Ordinance, or that the information is incomplete or inaccurate, or the application is otherwise not in conformity with this Ordinance, it shall be for the applicant to satisfy the court that the ground of objection cannot be made out, unless the applicant desires and is permitted to amend the application so as to remove the ground of objection.

## PART II

### COMPLAINT FOR CANCELLATION OR VARIATION OR REGISTRATION CERTIFICATE

12.(1) A summons issued on a complaint made against a club for the cancellation or variation of a registration certificate shall be served on the chairman or secretary of the club or the person who signed the last application for the issue or renewal of the certificate, and that service shall be treated as service on the club.

(2) Any such summons shall, in addition to being served on the club, be served on such persons, if any, as the justices issuing the summons may direct.

(3) Only the Summary Court shall have jurisdiction to deal with any such complaint.

13. Where it appears to the Summary Court that the summons cannot be served on the club in accordance with paragraph 12 of this Schedule, or not without undue difficulty or delay, the court may order that service on the club may be effected by serving the summons on a person who appears to the court to have, or to have had, an interest in the club, or to be, or to have been an officer of the club.

14. A complaint may be made against the club for the cancellation of a registration certificate on the ground that the club has not twenty-five members, notwithstanding that the complainants's case is that the club does not exist.

### PART III

#### GENERAL

15.(1) The Summary Court may deal with an application by a club for the issue, variation or renewal of a registration certificate without hearing the club, but before refusing such an application, shall give the club an opportunity to be heard.

(2) In relation to any such application subsection (1) and (3) of section 97 and section 121 of the Magistrate's Court Act 1980 in their application to the Falkland Islands shall apply as they apply in relation to a complaint.

(3) The Senior Magistrate shall not sit as a member of the Summary Court when it is exercising any function in relation to registration of clubs under this Ordinance.

16. On any application or complaint made to the Summary Court by or against a club under Part III of this Ordinance, and on any appeal by a club under section 17 of this Ordinance, the club, if not represented by a legal practitioner, shall be heard by the chairman or secretary, by any member of the committee having the general management of the affairs of the club or by any officer of the club duly authorised.

#### SCHEDULE 6

##### PROVISIONS AS TO CLUB RULES

###### *Management of club*

1. The affairs of the club, in matters not reserved for the club in general meeting or otherwise for the general body of members, must, under the rules, be managed by one or more elective committees; and one committee must be a general committee, charged with the general management of those affairs in committee not assigned to special committees.

###### *General meetings*

2.(1) There must, under the rules, be a general meeting of the club at least once in every year, and fifteen months must not elapse without a general meeting.

(2) The general committee must be capable of summoning a general meeting at any time on reasonable notice.

(3) Any members entitled to attend and vote at a general meeting must be capable of summoning one or requiring one to be summoned at any time on reasonable notice, if a specified number of them join to do so; and the number must not be more than thirty or one-fifth of the total number of members so entitled.

(4) At a general meeting the voting must be confined to members, and all members entitled to use the club premises must be entitled to vote, and must have equal voting rights, except that -

(a) the rules may exclude from voting, either generally or on particular matters, members below a specified age (not greater than twenty-one), women, if the club is primarily a men's club, and men if the club is primarily a men's club, and

(b) if the club is primarily a club for persons qualified by service or past service, or by any particular service or past service, in Her Majesty's forces, the rules may exclude persons not qualified from voting, either generally or on particular matters, and

(c) if the rules make special provision for family membership or family subscriptions or any similar provision, the rules may exclude from voting, either generally or on particular matters, all or any of the persons taking the benefit of that provision as being members of a person's family, other than that person.

3.(1) Ordinary members must, under the rules, be elected either by the club in general meeting or by an elective committee, or by an elective committee with other members of the club added to it for the purpose; and the name and address of any person proposed for election must, for not less than two days before the election, be prominently displayed in the club premises or principal club premises in a part frequented by the members.

(2) The rules must not make any such provision for the admission of persons to membership otherwise than as ordinary members (or in accordance with the rules required for ordinary members by sub-paragraph (1) of this paragraph) as is likely to result in the number of members so admitted being significant in proportion to the total membership.

*Meaning of "elective committee"*

4.(1) In this Schedule "elective committee" means, subject to the following provisions of this paragraph, a committee consisting of members of the club who are elected to the committee by the club in accordance with sub-paragraph (2) of this paragraph for a period of not less than one year and not more than five years; and paragraph 2(4) of this Schedule shall apply to the voting as it applies to voting at general meetings.

(2) Elections to the committee must be held annually, and if all the elected members do not go out of office in every year, there must be fixed rules for determining those that are to; and all members entitled to vote at the election and of not less than two years' standing, must be equally capable of being elected (subject only to any provision made for nomination by the club and to any provision prohibiting or restricting re-election) and, if nomination is required, must have equal rights to nominate persons for election.

(3) Except in the case of a committee with less than four members, of a committee concerned with the purchase for the club or with the supply by the club of intoxicating liquor, a committee of which not less than two-thirds of the members are members of the club elected to the committee in accordance with sub-paragraphs (1) and (2) of this paragraph shall be treated as an elective committee.

(4) A sub-committee of an elective committee shall also be treated as an elective committee if its members are appointed by the committee and not less than two-thirds of them (or, in the case of a sub-committee having less than four members, or concerned with the purchase for the club or with the supply by the club of intoxicating liquor, all of them) are members of the committee elected to the committee in accordance with sub-paragraphs (1) and (2) of this paragraph who go out of office in the sub-committee on ceasing to be members of the committee.

(5) For the purposes of this paragraph a person who on a casual vacancy is appointed to fill the place of a member of an elective committee for the remainder of his term and no longer shall, however appointed, be treated as elected in accordance with sub-paragraphs (1) and (2) of this paragraph if the person whose place he fills was so elected or is to be treated as having been so elected.



Archivist



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**The Taxes Ordinance 1994 (No. 17 of 1994).**

# THE TAXES ORDINANCE 1994

(No. 17 of 1994)

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Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

THE TAXES ORDINANCE 1994

(No. 17 of 1994)

An Ordinance

To restate the law relating to income tax with amendments  
and to introduce corporation tax.

*(assented to: 23rd November 1994)*

*(commencement: on publication)*

*(published: 7th December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows:—

PART I  
GENERAL PROVISIONS

*Short title  
and commencement.*

1.—(1) This Ordinance may be cited as the Taxes Ordinance 1994.

(2) Except as otherwise provided, this Ordinance shall apply in relation to the charge to income tax for years of assessment beginning on or after 1st January 1995 and for the charge to corporation tax for corporation tax years beginning on or after 1st January 1996.

*General interpretation  
of Ordinance.*

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

"accounting period" has the meaning given by section 24;

"ACT" has the meaning given by section 31;

"bank" means a financial institution licensed under the Banking Ordinance 1987;

"base lending rate" means the rate of interest payable in respect of loans to customers in the Falklands Islands for the time being as announced by the Standard Chartered Bank, Stanley Branch;

"body of persons" means any body politic or corporate, and any company or partnership or society of persons whether corporate or unincorporate;

"business" means any trade, business, profession or vocation;

"chargeable income", in relation to any chargeable period, means the aggregate amount of the income of any person for that period (less any amounts which may be deducted or allowed in accordance with this Ordinance) in respect of which income tax or corporation tax is chargeable under this Ordinance;

"chargeable period" means, in relation to income tax, a year of assessment and, in relation to corporation tax, a corporation tax year;

"Commissioner" means the Commissioner of Taxation but any reference to a decision or determination of the Commissioner includes a reference to a decision or determination of the Tribunal on appeal from the Commissioner and a reference to a decision or determination of the Supreme Court on a further appeal from the Tribunal on a point of law;

"company" means any body corporate or unincorporated association but does not include a partnership or a local authority;

"corporation tax year" means the period of 12 months beginning on 1st January in any calendar year;

"earned income" has the meaning given by section 162;

"earned income relief" means relief under section 14(1);

"incapacitated person" means any person under the age of 18 years or any person under a mental incapacity;

"magistrate" means the Senior Magistrate;

"maintenance payments" means payments under an order of the court in the Falkland Islands or the United Kingdom—

(a) by one of the parties to a marriage (whether subsisting, dissolved or annulled) for the maintenance of the other party; or

(b) to any person for the benefit, maintenance or education of a person under the age of 21 years not being a payment mentioned in paragraph (a);

and for the purposes of this Ordinance a court order which varies, supplements or replaces an earlier court order shall be taken to be made on the day that earlier order was made, or if that earlier order itself fell within this provision, on the day that earlier order was taken to have been made;

"notice" means notice in writing;

"notice of assessment" has the meaning given by section 136;

"period of account", in relation to a company or a business, means a period for which the accounts of the company or business are made up;

"person" includes a body of persons;

"prescribed" means prescribed by rule under this Ordinance;

"registered co-operative society" means a co-operative society registered under the Co-operative Societies Ordinance 1987;

"relevant accounting period", in relation to any chargeable period, means, for corporation tax purposes, the accounting period or periods, and for income tax purposes, the period of account, on the income of which tax for that period falls to be charged;

"return of income" means a return of income under section 11(1);  
 "tax", except where the context otherwise requires, means either income tax or corporation tax;  
 "the Tribunal" means the Tax Appeal Tribunal constituted in accordance with section 138;  
 "year of assessment" means the period of 12 months beginning on 1st January in any year.

(2) In this Ordinance references to the higher rate or to the lower rate shall be construed in accordance with section 9.

(3) In this Ordinance—

- (a) any reference to a person being connected with another person, shall be construed in accordance with section 164;
- (b) any reference to a person being in control of another, shall be construed in accordance with section 165; and
- (c) any reference to a subsidiary shall be construed in accordance with section 163.

(4) For the purposes of income tax and corporation tax a source of income is within the charge to income tax or corporation tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax shall be similarly construed.

*Transitional provisions.*

3.—(1) The continuity of the law relating to income tax shall not be affected by the substitution of this Ordinance for the enactments repealed by this Ordinance and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Ordinance or any Ordinance amended by this Ordinance) to, or to things done or falling to be done under or for the purposes of, any provision of this Ordinance shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made or otherwise coming into existence after the commencement of this Ordinance) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Ordinance has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Where an offence for the continuation of which a penalty was provided has been committed under an enactment repealed by this Ordinance, proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance in the same manner as if

the offence had been committed under the corresponding provision of this Ordinance.

*Appointment and duties  
of Commissioner of  
Taxation, etc.*

4.—(1) The Governor shall appoint a public officer to be Commissioner of Taxation ("the Commissioner"), and income tax and corporation tax shall be under the care and management of the Commissioner.

(2) The Governor shall appoint such collectors and officers as may be necessary to collect, receive and account for income tax and corporation tax.

(3) The Commissioner shall generally carry out the provisions of and exercise the powers delegated to or vested in him under this Ordinance and may in particular prescribe the form of returns, claims, statements and notices under this Ordinance.

*Impeding or obstructing  
Commissioner or  
officers.*

5. Any person who obstructs or impedes or molests the Commissioner or a collector or other officer lawfully authorized by this Ordinance in the discharge of his duties or in his official capacity or in the exercise of his powers commits an offence under this Ordinance.

*Power to remit.*

6.—(1) The Governor in Council may remit the whole or any part of the tax payable by any person if he is satisfied that it would be just and equitable to do so.

(2) Notice of any remission of tax under this section shall be published in the Gazette.

(3) The Commissioner may in his discretion mitigate any penalty, or stay or compound any proceedings for a penalty, and may also after judgment further mitigate or entirely remit the penalty.

## PART II

### THE CHARGE TO INCOME TAX AND CORPORATION TAX

#### CHAPTER I

#### INCOME TAX

*The charge to income tax*

*The charge to income  
tax.*

7.—(1) Subject to the provisions of this Ordinance, income tax shall be payable for a year of assessment at the rate or rates specified in section 9 for that year on the income of any person accruing in or derived from the Falkland Islands or elsewhere, and whether received in the Falkland Islands or not in respect of—

- (a) gains or profits from any business carried on by or exercised by that person;
- (b) gains or profits from any employment received in money;
- (c) the prescribed annual value of any prescribed benefit received otherwise than in money in respect of any employment;
- (d) the prescribed annual value of land and improvements thereon;
- (e) dividends, interest, or discounts;
- (f) any pension, charge or annuity;
- (g) rents, royalties, premiums, and any other profits arising from property;
- (h) maintenance payments paid in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993.



(2) In subsection (1)(d) above the reference to land and improvements thereon includes housing used rent-free or for which a token rent is paid by the occupier for enjoyment, but does not include any land or housing which is not provided to or for the benefit of that person by reason of his employment.

(3) Rules made by the Governor in Council prescribing benefits and annual values for the purposes of subsection (1)(c) and (d) above shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following the publication of the rules.

*Basis of assessment.*

8.—(1) Income tax shall be charged, levied and collected for each year of assessment on the chargeable income of any person for the year immediately preceding the year of assessment.

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of his business to a date other than 31st December, the Commissioner shall permit the gains or profits of that business to be computed, for the purposes of income tax, on the income of the year terminating on the business's accounting date in the year immediately preceding the year of assessment.

(3) In subsection (2) "accounting date" means the date to which the accounts in question have usually been made up.

(4) Subject to any provision to the contrary in this Ordinance, the date to which the accounts of any business the profits of which are within the charge to income tax are made up shall not be changed by any voluntary act (excepting voluntary liquidation or bankruptcy or ceasing to carry on the business), unless the Commissioner so requires or approves.

*Rates of income tax.*

9. Income tax shall be charged on the chargeable income of a person at the following rates—

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

(b) on the remainder of his chargeable income, at 25 per cent;  
and in this Ordinance any reference to the lower rate or the higher rate, in relation to income tax, is a reference to the rate specified in paragraph (a) or (b) respectively.

*Time for payment of  
income tax and interest  
on overdue tax.*

10.—(1) Income tax charged in an assessment for a year of assessment shall be payable before—

(a) the expiry of the period of 90 days beginning with the date of service of the notice of assessment, or

(b) if later the 1st August in that year.

(2) Interest shall be due on any income tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

*Notice of chargeability  
and tax returns.*

11.—(1) The Commissioner may by notice require any person chargeable to income tax to furnish him within 60 days of the date of issue of the notice with a return relating to his income which shall include such particulars as the Commissioner may require for the purposes of this Ordinance.

(2) The Commissioner may by notice require any person chargeable to

income tax for a year of assessment, who claims to be or the Commissioner believes to be carrying on a business in the Falkland Islands, to lodge with his return under subsection (1) above or within such period thereafter as may be specified in the notice—

(a) accounts of that business for the period of account last ending before the commencement of that year of assessment in such form as may be specified in the notice, and

(b) any notes to the accounts and an explanation of any matter which may be necessary to enable the accounts to be understood;

and the accounts shall if the notice so requires be audited by an auditor approved by the Commissioner.

(3) Every person chargeable to income tax for any year of assessment shall not later than 4 months after the beginning of that year give notice to the Commissioner that he is so chargeable, specifying each source of income separately, unless he has previously received a notice under subsection (1) above or made a return of his income for that year.

(4) Any person who fails or neglects to lodge any accounts or other information in accordance with subsection (2) shall be liable to a penalty—

(a) if the accounts or other information are delivered not more than 3 months after the due time, of £100;

(b) if the accounts or other information are delivered more than 3 months after the due time, of £200.

*Income from sources  
outside Falkland  
Islands.*

12.—(1) This section applies to income which arises from a source outside the Falkland Islands.

(2) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if it accrues to a person who is neither resident nor ordinarily resident in the Falkland Islands at the time the income accrues to him.

(3) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if the income—

(a) is not remitted to the Falkland Islands, and

(b) accrues to a person who either—

(i) is not domiciled in the Falkland Islands at the time the income accrues to him, or

(ii) if he is domiciled in the Falkland Islands, is not ordinarily resident in the Falkland Islands at the time the income accrues to him.

(4) For the purposes of this section—

(a) a source of income is outside the Falkland Islands if it is an office or employment the duties of which are performed outside the Falkland Islands, and

(b) if the duties of the office or employment are performed partly outside and partly within the Falkland Islands, the amount of the remuneration from that office or employment which is to be taken as arising from a source outside the Falkland Islands shall be such part of the total remuneration for the period in question as the Commissioner shall determine having regard in particular to the amount of time devoted to the performance of the

duties outside the Falkland Islands as compared to the amount of time devoted to the duties performed within the Falkland Islands.

*Married women.*

13.—(1) Subject to the following provisions of this section, the income of a married woman shall for the purposes of this Ordinance be deemed to be the income of her husband and shall be charged in the name of the husband and not in her name nor in that of her trustee.

(2) So much of the total amount of tax charged upon the husband as bears the same proportion to that total amount as the amount of the income of the wife bore to the amount of the total income of husband and wife may, if necessary, be collected from the wife, notwithstanding that an assessment has not been made on her.

(3) A married woman separated from her husband—

- (a) under an order of a court of competent jurisdiction, or
  - (b) under a written agreement, or
  - (c) in such circumstances that the Commissioner considers that the separation is likely to be permanent,
- shall be treated as an unmarried person.

(4) A married woman in receipt of earned income and her husband may elect to be assessed separately, and where an election made under this section the following provisions shall apply—

- (a) both husband and wife shall be assessed for tax as single persons and shall be entitled to the personal relief for single persons under section 15(1);
- (b) the additional relief for a wife under section 16(1) shall not be granted;
- (c) relief under section 17 shall be granted to the husband only;
- (d) the question whether a person is eligible for relief under section 18 shall be determined without regard to paragraph (a) above; and
- (e) the husband's income shall include all income of his wife other than her earnings.

(5) An election for separate assessment under this section shall be made jointly by the husband and wife in writing to the Commissioner not later than 1st April in the year of assessment as respects which the election is first to have effect.

(6) If no election has been made by the parties concerned, the Commissioner may tax both parties individually or jointly, whichever is to the advantage of the taxpayers, subject to the agreement of both parties.

(7) When an election is made in respect of any year of assessment it shall be irrevocable in respect of that year and such election shall continue to apply in respect of subsequent years until the election is jointly revoked by the husband and wife.

(8) When an election is revoked after 1st April in any year the revocation shall not have effect in respect of that year but shall affect subsequent years.

(9) Revocation of an election shall not be a bar to further election.

*Ascertainment of chargeable income of individuals*

*Earned income relief  
and other deductions.*

14.—(1) In computing the chargeable income of an individual, an amount equal to 15 per cent. of the earned income of that individual shall first be deducted from that earned income ("earned income relief") and, subject to subsection (2), the deductions allowed under subsection (3) below or section 53 or 89 shall be allowed against earned income after the deduction of earned income relief.

(2) Any deduction allowed under subsection (3) or section 53 or 89 shall be allowed against an individual's unearned income only to the extent (if any) that his earned income (after deduction of earned income relief) is insufficient.

(3) There shall be deducted from an individual's income—

- (a) any maintenance payment paid by him in pursuance of an order of a court in the Falkland Islands made before 1st January 1994 in pursuance of an application made before 1st July 1993;
- (b) sums payable by him by way of interest upon any housing loan, provided that the Commissioner shall have discretion to disallow the same, in whole or in part, in respect of any period that the house is unoccupied by that person;
- (c) subject to subsection (4) below, any annual subscription paid to a body of persons approved for the purposes of this section by the Commissioner;
- (d) any sums paid by the individual in respect of himself or his spouse under the Old Age Pensions Ordinance.

(4) A subscription shall not be deducted under subsection (3) above unless—

- (a) it is deducted from the emoluments of an office or employment, and
- (b) it is paid to a body the activities of which, so far as they are directed at the objects mentioned in subsection (5) below, are relevant to the office or employment, that is to say the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

(5) The Commissioner shall not approve any body of persons for the purposes of subsection (3)(c) above unless the activities of the body are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—

- (a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions);
- (b) the maintenance or improvement of standards of conduct and competence among the members of any profession.

(6) In this section "housing loan" means such part of any principal sum advanced for the purpose of purchasing, building, adding to or altering a dwelling house in the Falkland Islands as does not exceed £50,000.

*Personal allowance and dependent relative allowances.*

15.—(1) In computing the chargeable income of an individual there shall be allowed a deduction of £5,000.

(2) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year that he maintained at his own expense a dependent relative whose total income from all sources for that preceding year did not exceed £4,000, there shall be made a deduction not exceeding £1,300 a year in respect of each dependent relative whom he so maintains.

Where two or more persons jointly maintain a dependent relative the deduction to be made under this subsection shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) In computing the chargeable income for a year of assessment of an individual who proves to the satisfaction of the Commissioner that during the year immediately preceding that year, by reason of old age or infirmity, he was compelled to depend upon the service of a son or daughter resident with and maintained by him, there shall be made a deduction not exceeding £1,300 a year.

(4) In this section "dependent relative", in relation to any person, means a relative of that person or of his spouse who is incapacitated by old age or infirmity from maintaining himself.

*Married man's allowance and wife's earnings relief.*

16.—(1) In ascertaining the chargeable income for a year of assessment of a man who proves to the satisfaction of the Commissioner that he had during the year immediately preceding that year of assessment his wife living with him or wholly maintained by him a deduction shall be made of £2,250.

(2) In ascertaining the chargeable income for a year of assessment of a husband in any case where he is assessed jointly with his wife who has earned income arising during the year immediately preceding that year of assessment, then, subject to subsection (3), a deduction shall be made of £5,000 or the amount of the wife's earned income, whichever is the less.

(3) In any case where a loss arises in the year immediately preceding a year of assessment in the exercise of any business carried on by the husband or the wife or a loss is brought forward under section 106 and set against the profits of such a business or other income of the husband arising in that preceding year, the amount of the deduction made under subsection (2) shall not exceed the amount (if any) by which the wife's earned income for that preceding year exceeds the amount (or aggregate amount) of any such loss.

(4) In this section, any reference to earned income is a reference to earned income after making any deductions allowed by sections 14 and 53 and Chapters I and II of Part V.

*Age allowance.*

17.—(1) In computing the chargeable income for a year of assessment of any married man who proves that at any time during the year immediately preceding that year he was of the age of 60 years or upwards and that his wife was living with him or was wholly maintained by him, there shall be deducted an amount equal (whether or not he actually receives the same) to the annual value of the Falkland Islands contributory old age pension at the married man's rate payable as at the beginning of the year of assessment in question.

(2) In computing the chargeable income for a year of assessment of any

individual who is not entitled to a deduction under subsection (1) in making that computation, who proves that at any time within the year immediately preceding the year of assessment he was of the age of 60 years or upwards, a deduction shall be made of an amount equal (whether or not he actually receives the same) to the annual value of the Falkland Islands contributory old age pension at the single person's rate payable as at the beginning of that year.

*Additional allowance in respect of children.*

18.—(1) In ascertaining the chargeable income of any person for any year of assessment—

- (a) any individual who was not throughout the year preceding the year of assessment either married and living with his spouse or wholly maintaining his spouse; and
- (b) any man who for the whole or any part of the year preceding the year of assessment is married to and living with a wife who is totally incapacitated by physical or mental infirmity throughout the year,

a deduction may be made in accordance with subsection (2) below.

(2) The amount of the deduction to be made under this section for any year of assessment—

- (a) if the person proves that the child was resident with him for the whole of the preceding year, shall be £1,300, and
- (b) if the person proves that the child was resident with him for only part of the preceding year, shall be an amount which bears the same proportion to £1,300 as that part of the year bears to the whole.

(3) An individual is entitled to only one deduction under this section for any year of assessment irrespective of the number of qualifying children resident with him in that year.

(4) An individual shall not be entitled to relief under this section for a year of assessment if during any part of the preceding year he is married and living with his spouse unless the child in respect of whom the relief is claimed is resident with that individual during a part of the preceding year when he is not married and living with his spouse.

(5) Where—

- (a) a man and a woman who are not married to each other live together as husband and wife for the whole or any part of the year preceding the year of assessment, and
- (b) apart from this subsection each of them would on making a claim be entitled to a deduction under this section,

neither of them shall be entitled to such a deduction except in respect of the youngest of the children concerned (that is to say, the children in respect of whom either would otherwise be entitled to a deduction).

(6) For the purposes of this section a qualifying child means, in relation to an individual and any year, a child who—

- (a) is born in, or is under the age of 16 years at the commencement of, the year or, being over that age at the commencement of that year, is receiving full-time instruction at any university, college, school or other educational establishment; and
- (b) is a child of the individual or, not being such a child, is born in, or is under the age of 18 years at the commencement

of, the year and maintained for the whole or part of that year by the individual at his own expense.

*Provisions  
supplementary to  
section 18.*

19.—(1) In section 18(6)(a) the reference to a child receiving full-time instruction at an educational establishment includes a reference to a child undergoing training by any person ("the employer") for any trade, profession or vocation in such circumstances that the child is required to devote the whole of his time to the training for a period of not less than two years.

(2) In section 18(6)(b) the reference to a child of an individual includes a reference to a stepchild of his, an illegitimate child of his if he has married the other parent after the child's birth and an adopted child of his if the child was under the age of 18 years when he was adopted.

(3) For the purposes of section 18(6) a child whose birthday falls on 1st January shall be taken to be over the age of 16 at the commencement of the year which begins with his 16th birthday and over the age of 18 at the commencement of the year which begins with his 18th birthday.

(4) Where for any year of assessment two or more individuals are entitled to relief under section 18 in connection with the same child—

(a) the amount of the deduction under that section shall be apportioned between them; and

(b) the deduction to which each of them is entitled under that section shall, subject to subsection (5) below, be equal to so much of that amount as is apportioned to him.

(5) Where for any year of assessment amounts are apportioned to an individual under this section in respect of two or more children, the deduction to which he is entitled for that year under section 18 shall be equal to the sum of those amounts or the amount specified in subsection (2)(a) of that section, whichever is the less.

(6) Any amount required to be apportioned under this section shall be apportioned between the individuals concerned in such proportions as may be agreed between them or, in default of agreement, in proportion to the length of the periods for which the child in question is resident with them respectively in the year preceding the year of assessment; and where the proportions are not so agreed, the apportionment shall be made by the Commissioner.

(7) For the purposes of this section an individual shall not be regarded as entitled to relief under section 18 for any year of assessment in connection with the same child as another individual if there is another child in connection with whom he, and he is alone, is entitled to relief under that section for that year.

*Deceased persons.*

20.—(1) In any case where—

(a) any person dies during the year immediately preceding a year of assessment and such person would but for his death have been chargeable to tax for that year of assessment, or

(b) any person dies during the year of assessment as respects which no assessment has been made on him, or a person dies within 2 years after the expiration of such a year of assessment,

the personal representative of that person shall be liable to and charged with the payment of the tax with which that person would have been chargeable, and shall be answerable for doing all such acts, matters and things as that person would if he were alive be liable to do under this Ordinance.

(2) If, in a case falling within subsection (1)(a)—

(a) the personal representative distribute the deceased's estate before 1st January immediately following the death, and

(b) the rate of tax for the year of assessment has not been fixed at the date of distribution of the estate,

the personal representative shall pay the tax at the rate or rates in force at that date.

## CHAPTER II

### CORPORATION TAX

#### *The charge to corporation tax*

*The charge to corporation tax and exclusion of income tax.*

21.—(1) Corporation tax shall be charged on income of companies, and the enactments relating to corporation tax shall apply, for any corporation tax year beginning on or after 1st January 1996.

(2) Section 28 applies to determine (amongst other things) the first accounting period for the purposes of corporation tax of any company which is within the charge to income tax immediately before the coming into force of this section.

(3) The provisions of this Ordinance relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—

(a) the company is resident in the Falkland Islands, or

(b) the income is, in the case of a company not so resident, within the chargeable income of the company as defined for the purposes of corporation tax by section 30(2).

(4) Subject to the provisions of the enactments relating to corporation tax, where a company resident in the Falkland Islands receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax).

(5) References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(6) A company shall not be entitled to a repayment of income tax by virtue of subsection (2) above or to set off any amount of income tax under subsection (4) above except on a claim made in that behalf and effect shall also be given to any other exemption from income tax conferred by the corporation tax legislation which calls for repayment of tax by means of a claim.



*Basis of assessments,  
and chargeable income.*

22.—(1) Except as otherwise provided by this Ordinance, corporation tax for any corporation tax year shall be charged on a company on the full amount of its income for that year, wherever the income arises and whether or not it is received in or transmitted to the Falkland Islands, without any other deduction than is authorized by this Ordinance.

(2) The amount of a company's income for a corporation tax year shall be determined by reference to accounting periods of the company and where an accounting period of a company falls in more than one corporation tax year, the amount chargeable shall, where necessary and after making any deduction authorized by this Ordinance, be apportioned between those years.

(3) A company shall be chargeable to corporation tax on income accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the income accrued to it directly; and a company shall be chargeable to corporation tax on income arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on income accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those income.

*Computation of income:  
application of income  
tax principles.*

23.—(1) Except as otherwise provided by this Ordinance, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include so much of any enactment as makes special provision for individuals in relation to matters referred to in subsection (1) above, and in particular does not include sections 12 to 21 of this Ordinance.

(3) Without prejudice to the generality of subsection (1) above, any enactment which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(4) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax—

(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the enactments relating to corporation tax, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose, references in any enactment applying to both taxes to a relief from or charge to income tax, or to a specified enactment relating to

income tax, shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding enactment relating to corporation tax.

*Accounting periods.*

24.—(1) This section has effect in relation to corporation tax for the purpose of determining when an accounting period of a company begins and ends, and has effect subject to section 28.

(2) An accounting period of a company begins, unless the Commissioner otherwise approves, whenever—

(a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the Falkland Islands or acquiring a source of income, or otherwise; or

(b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for the purposes of corporation tax on the occurrence of the first of the following—

(a) the expiration of 12 months from the beginning of the accounting period;

(b) an accounting date of the company or the end of any period for which the company does not make up accounts;

(c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;

(d) the company beginning or ceasing to be resident in the Falkland Islands;

(e) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of corporation tax a company resident in the Falkland Islands, if not otherwise within the charge to corporation tax, comes within the charge to corporation tax at the time when it commences to carry on business.

(5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) shall apply with reference to the accounting date of such one of the trades as the Commissioner may determine.

(6) Notwithstanding anything in subsections (1) to (5) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up and thereafter, subject to section 26, an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

(7) For the purposes of subsection (6), a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding-up petition if no such resolution has previously been passed and a winding-up order is made on the petition, or the doing of any other act for a like purpose in the case of a winding up otherwise

than under the Companies Act 1948 in its application to the Falkland Islands.

*Rates of corporation  
tax and time for  
payment of tax.*

25.—(1) The chargeable income of a company shall be charged to tax at the following rates—

(a) in the case of a company trading through a branch or agency in the Falkland Islands, on its chargeable income computed in accordance with section 30, at the rate of 32.5 per cent; and

(b) in the case of any other company—

(i) on any part of its income which the company pays to any person not ordinarily resident or company not resident in the Falkland Islands, at the rate of 32.5 per cent; and

(ii) on all other income, whether distributed or undistributed, at the rate of 25 per cent.

(2) Subject to section 28, corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of 8 months from the end of that accounting period (whether or not the tax has been assessed).

*Tax on company in  
liquidation.*

26.—(1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsection (3) below, corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed for the penultimate year by an Ordinance passed before the completion of the winding-up.

(3) If, before the affairs of the company are completely wound up, the rate mentioned in subsection (2) above has been fixed for the final year, that subsection shall have effect in relation to that rate as if for the references to the penultimate year there were substituted references to the final year.

(4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.

(5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 24(6).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 24(6) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.

(7) Where the winding-up commenced before the company's final year, subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

*Filing of accounts etc.*

27.—(1) Subject to section 28, a company which is chargeable to corporation tax for any corporation tax year by reference to an accounting period shall deliver to the Commissioner the accounts of the company for the period of account which is or includes whole or any part of that accounting period within 9 months of the end of that period of account or such longer period as the Commissioner may allow.

(2) The reference in subsection (1) above to the accounts of a company—

(a) if the company is required by the Companies Act 1948 as it applies in the Falkland Islands or by the Companies Act 1985 (whether as it applies in the United Kingdom or elsewhere) to prepare accounts for that period of account, is a reference to those accounts together with any documents annexed to those accounts;

(b) in any other case, is a reference to accounts which give a true and fair view of the company's affairs and its profit and loss for that period of account.

(3) The Commissioner may, if he thinks fit, extend the period for delivery of accounts by any company.

(4) The Commissioner may by notice require a company to submit such other information as may be specified in the notice, and the company shall comply with the notice within 60 days of the date of service of the notice.

(5) Subject to the provisions of this Ordinance, a company shall make any claim, election or disclaimer under or for the purposes of this Ordinance relating to the company's liability to corporation tax for any period by notice delivered to the Commissioner together with the accounts of the company referred to in subsection (1) above, or by notice delivered later which shall include any necessary amendments to the accounts, but (notwithstanding any other provision of this Ordinance) the company may not in any case make such a claim, election or disclaimer after an assessment for that period has been made except with the consent of the Commissioner.

*Transitional provisions  
for companies within  
charge to income tax  
before 1.1.96.*

28.—(1) This section applies in relation to any company which is within the charge to income tax for the year of assessment 1996 in respect of the income of a period ending on an accounting date of the company falling in the year of assessment 1995.

(2) In any case where a company is within the charge to income tax for the year of assessment 1996, the company's first accounting period for the purposes of corporation tax shall begin at the end of the company's last accounting period as respects which the company was within the charge to income tax for that year (notwithstanding that the accounting period begins before 1st January 1996), and an accounting period of the company beginning in 1995 shall not end by virtue only of the company's coming within the charge to corporation tax.

(3) In relation to the year 1995, if the company has more than one accounting period ending in the year 1995, the company shall be within the charge to corporation tax for the corporation tax year 1996 in respect of each such accounting period other than the first.

(4) In relation to any company to which this section applies—

(a) corporation tax charged on the income for an accounting

period ending in the corporation tax year 1996 (or if subsection (2) above applies, ending in 1995) shall be due and payable on the day following the expiry of the period of 8 months following the end of that year or the day found under section 25(2), whichever is the later;

(b) corporation tax charged on the income of an accounting period ending in the corporation tax year 1997 shall be due and payable on the day following the expiry of the period of 7 months following the end of that year or the day found under section 25(2), whichever is the later;

(c) corporation tax charged on the income of an accounting period ending in the corporation tax year 1998 shall be due and payable on the day following the expiry of the period of 6 months following the end of that year or the day found under section 25(2), whichever is the later;

and so on for subsequent accounting periods, subject to subsection (5).

(5) Subsection (4) shall not apply in relation to the company for determining the day for payment of tax charged on the income of an accounting period if the day as found under that subsection is the same as that found under section 25(2), or as respects any later period.

(6) Any reference in this Ordinance (however expressed) to the requirements of section 25 as to the time within which corporation tax is due and payable includes, where appropriate, a reference to the requirements of subsection (4) above.

(7) A company to which this section applies shall not be in breach of section 27(1) if it delivers the accounts required by that section—

(a) where the period of account in question is the company's first as respects which it is within the charge to corporation tax, before the expiry of the period of 18 months beginning with the end of that period;

(b) where the period of account in question is the company's second as respects which it is within the charge to corporation tax, before the expiry of the period of 12 months beginning with the end of that period.

(8) In any case where subsection (7) above applies the Commissioner may, if he thinks fit, extend the period within which the company is required by that subsection to deliver its accounts.

(9) Any reference in this Ordinance (however expressed) to the requirements of section 27 as to the time within which accounts are to be delivered includes, where appropriate, a reference to the requirements of subsection (7) above (read with subsection (8)).

*Interest on tax paid late, and penalties for late filing of accounts etc. and late payment of tax.*

29.—(1) Interest shall be due on any corporation tax (including ACT) remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(2) A company which does not deliver its accounts for an accounting period within the time allowed by section 27 ("the due time") shall be liable—

(a) if the accounts are delivered not more than 3 months after the due time, to a penalty of £100;

(b) if the accounts are delivered more than 3

months after the due time, to a penalty of £200;

(c) if the accounts are delivered more than 6 months but not more than 12 months after the due time and any corporation tax for the period is unpaid at the time immediately before the accounts are delivered, to a penalty (in addition to any other penalty) equal to 10 per cent. of that unpaid tax;

(d) if the accounts are delivered more than 12 months after the due time and any corporation tax for the period is unpaid on the day immediately following the end of that 12 month period, to a penalty (in addition to any other penalty) equal to 20 per cent. of that unpaid tax.

(3) In any case where a company does not deliver its accounts within the due time for any 3 consecutive accounting periods, subsection (2) above shall apply as respects the third accounting period—

(a) with the substitution in paragraph (a) of "£500" for "£100", and

(b) with the substitution in paragraph (b) of "£1,000" for "£200".

(4) Any penalty to which a company may be liable under subsection (2) above is in addition to any liability to which the company may also be subject under subsection (1) above as respects the payment of interest on tax remaining unpaid after the date on which it is due.

(5) Any company which fails to comply with a notice under section 27(4) shall be liable—

(a) if the company is not more than 3 months late in complying with the requirements of section 27(4), to a penalty of £100;

(b) in any other case, to a penalty of £200.

*Companies not resident  
in Falkland Islands.*

30.—(1) A company not resident in the Falkland Islands shall not be within the charge to corporation tax unless it carries on a business in the Falkland Islands through a branch or agency but, if it does so, it shall, subject to any exceptions provided for by the enactments relating to corporation tax, be chargeable to corporation tax on all its chargeable income wherever arising.

(2) For purposes of corporation tax the chargeable income of a company not resident in the Falkland Islands but carrying on a business there through a branch or agency shall be any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this subsection shall not include distributions received from companies resident in the Falkland Islands).

### CHAPTER III ADVANCE CORPORATION TAX, FRANKED INVESTMENT INCOME AND TAX CREDITS *Advance corporation tax and franked investment income*

*ACT and qualifying  
distributions.*

31.—(1) Where a company resident in the Falkland Islands makes a distribution in an accounting period as respects which the company is within the charge to corporation tax it shall be liable to pay an amount of corporation tax ("ACT") in accordance with subsection (2) below.

(2) Subject to section 34, ACT shall be payable on an amount equal to the amount or value of the distribution, and shall be so payable at a rate which shall be fixed by the fraction—

$$\frac{I}{100-I}$$

where I is the percentage at which income tax at the lower rate is charged for the year of assessment which coincides with that corporation tax year.

(3) The provisions of this Ordinance as to the charge, calculation and payment of corporation tax (including provisions conferring any exemption) shall not be construed as affecting the charge, calculation or payment of ACT, and the enactments relating to corporation tax shall apply for the purposes of ACT whether or not they are for the time being applicable for the purposes of corporation tax other than ACT.

*Interpretation of  
Chapter III.*

32.—(1) In this Chapter—

"ACT" means advance corporation tax, that is to say, corporation tax payable in accordance with section 31;

"franked investment income" means income of a company resident in the Falkland Islands which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);

"franked payment" means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made;

"surplus ACT" has the meaning given by section 33(2);

"surplus of franked investment income" means any such excess as is mentioned in section 34(3) (calculated without regard to franked investment income which by virtue of subsection (4) of that section cannot be used to frank distributions);

"tax credit" means a tax credit under section 46;

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

(2) References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 34(4).

(4) References in this Chapter to an amount of income on which corporation tax falls finally to be borne are references to the amount of those income after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those income, including deductions and reliefs which under any provision are treated as reducing them for

those purposes.

*Set-off of ACT against liability to corporation tax.*

33.—(1) ACT paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(2) Where in the case of any accounting period of a company there is an amount of surplus ACT, the company may, within 2 years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in any of its accounting periods beginning in the 6 years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be required, be repaid accordingly.

In this subsection "surplus ACT", in relation to any accounting period of a company, means ACT which cannot be set against the company's liability to corporation tax for that period because the company has no income charged to corporation tax for that period or because of section 130(3).

(3) Where in the case of any accounting period of a company there is an amount of surplus ACT which has not been dealt with under subsection (2) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in the next accounting period.

(4) Effect shall be given to subsections (1) and (3) above as if on a claim in that behalf by the company and, for that purpose, accounts or other information submitted to the Commissioner in pursuance of section 27 containing particulars of ACT or surplus ACT which falls to be dealt with under those subsections shall be treated as a claim.

(5) For the purposes of this section the income of a company charged to corporation tax for any period shall be taken to be the amount of its income for that period on which corporation tax falls finally to be borne.

(6) Nothing in subsection (2) above shall be construed as authorising any amount of ACT to be set off against a company's liability to income tax.

(7) This section has effect subject to the following provisions of this Chapter.

*Calculation of ACT where company receives franked investment income.*

34.—(1) Where in any accounting period a company receives franked investment income the company shall not be liable to pay ACT in respect of qualifying distributions made by it in that period unless the amount of the franked payments made by it in that period exceeds the amount of that income.

(2) If in an accounting period there is such an excess, ACT shall be payable on an amount which, when the ACT payable thereon is added to it, is equal to the excess.

(3) If the amount of franked investment income received by a company in an accounting period exceeds the amount of the franked payments made by it in that period the excess shall be carried forward to the next accounting period



and treated for the purposes of this section (including any further application of this subsection) as franked investment income received by the company in that period.

(4) Franked investment income shall not be used to frank distributions of a company (that is to say, used in accordance with this Chapter so as to relieve the company from, or obtain repayment of, ACT for which the company would otherwise be liable) if the amount of the tax credit comprised in it has been paid under section 46(2); and no payment shall be made under that subsection in respect of the tax credit comprised in franked investment income which has been so used.

*Set-off of losses against  
surplus of franked  
investment income.*

35.—(1) Where a company has a surplus of franked investment income for any accounting period—

(a) the company may, on making a claim for the purpose, require that the amount of the surplus shall for the purpose of setting off trading losses against income under section 108(1) be treated as if it were a like amount of income chargeable to corporation tax; and

(b) this section shall apply to reduce the amount of the surplus for purposes of section 34(3); and

(c) the company shall be entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

(2) Where a company makes a claim under this section for any accounting period, the reduction falling to be made in income of that accounting period shall be made, as far as may be, in income chargeable to corporation tax rather than in the amount treated as income so chargeable under this section.

(3) Where—

(a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a business; and

(b) in a later accounting period the franked payments made by the company exceed its franked investment income;

then (unless the company has ceased to carry on the business or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 108(2), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of—

(i) the excess referred to in paragraph (b) above; and

(ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier accounting period.

(4) A claim under this section shall be made within the time limit that would, by virtue of section 108(6), be applicable in the case of a claim under section 108(1) in respect of the losses in question.

(5) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier

accounting period; and for the purposes of subsection (3) above franked investment income which by virtue of section 34(4) cannot be used to frank distributions of a company shall be left out of account.

*Set-off of loss brought forward.*

36.—(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 35, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 108(2); and the following subsections shall have effect where the company makes a claim under this section for any accounting period.

(2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.

(3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(4) Section 35(3) shall apply in relation to the claim.

(5) A claim under this section shall be made before the expiry of the period of 6 years from the end of the accounting period for which the claim is made.

(6) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

*Further provisions relating to claims under section 35 or 36.*

37.—(1) Without prejudice to section 35(5) or 36(6), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.

(2) Where in consequence of a claim under section 35 or 36 for any accounting period a company is entitled to payment of a sum in respect of tax credit—

- (a) an amount equal to that sum shall be deducted from any ACT which apart from this subsection would fall, under section 33, to be set against the company's liability to corporation tax for the next accounting period; and
- (b) if that amount exceeds that ACT or there is no such ACT, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

*Calculation etc. of ACT on change of ownership of company.*

38.—(1) This section applies if—

- (a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or

- (b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Sections 33, 34 and 40 to 45 shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the income of the company charged to corporation tax for the accounting period (as defined in section 33(5)) shall be apportioned between those parts.

(3) ACT paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall not be treated under section 33(3) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(4) Advance corporation tax paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall not be treated under section 33(2) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(5) Sections 109(4), (7) and (8) and 110 shall apply also for the purposes of this section and as if in section 110(3) the reference to the benefit of the losses were a reference to the benefit of ACT.

*Charge of ACT at previous rate until new rate fixed, and changes of rate.*

39.—(1) If, at the beginning of any corporation tax year, the rate at which income tax is to be charged for the appropriate year of assessment has not been determined then, subject to subsection (2) below, ACT in respect of distributions made in that corporation tax year shall be payable and may be assessed according to the rate of ACT fixed for the previous corporation tax year.

(2) Subsection (1) above does not apply with respect to any distribution made in a corporation tax year after—

- (a) the date on which the income tax rate or rates for the appropriate year of assessment is or are fixed; or
- (b) 5th August in that year, whichever is the earlier.

(3) If a rate of ACT for any corporation tax year is not fixed, under section 31(2) or any other enactment, or if ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

(4) In subsections (1) and (2) above "the appropriate year of assessment", in relation to a corporation tax year, means the year of assessment which coincides with that corporation tax year.

(5) Where the rate of advance corporation tax for any corporation tax year differs from the rate last fixed—

- (a) any advance corporation tax payable in respect of a

distribution made in that year on or before 5th April shall be calculated according to the rate last fixed, and this Chapter and section 46 shall accordingly have effect in relation to the distribution as if the rate for that year were the same as the rate last fixed;

(b) if a distribution is made on or before 5th April in an accounting period which extends beyond 5th April in that year and another distribution is made, or franked investment income is received, in that period after that date, then—

(i) the company's liability for advance corporation tax,

(ii) the amount of any such tax, and

(iii) the amount of any surplus of franked investment income,

for that accounting period, shall be determined under sections 34 and 40 to 45 as if the part of the accounting period ending with, and the part of it beginning after that date were separate accounting periods.

#### *Payment of ACT.*

40.—(1) Subject to the following provisions of this section and sections 41 to 45, where a company makes a distribution in respect of which it is liable to pay ACT, the ACT shall be due and payable 30 days after the end of the calendar month in which the distribution is made, whether or not the ACT has been assessed, and the following provisions of this section shall have effect to determine the amount of ACT payable.

(2) Where subsection (1) above applies and the company has in that month made a franked payment, the company shall make a return to the Commissioner before the expiry of the period of 30 days following that month of—

(a) the franked payments made by it in that month, and

(b) any franked investment income received by it in that month, and ACT shall be payable by the company for that month on an amount equal to the amount of the franked payments made in that month less the amount of any franked investment income received by it in that month.

(3) For the purposes of subsection (2) above the company may include in the amount of the franked investment income received by it in the month any franked investment income not previously set against franked payments made by the company before the beginning of the month in question, but this subsection shall not be taken to permit a company to include in any return under this section any payment made or income received before the company came within the charge to corporation tax.

(4) Subject to section 44(2), ACT in respect of franked payments required to be included in a return under this section shall be due at the time by which the return for that period is to be made, and ACT so due shall be payable without the making of any assessment.

(5) ACT which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.

(6) If it appears to the Commissioner that there is a franked payment which ought to have been and has not been included in a return, or if the

Commissioner is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any ACT due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

*Receipt of franked investment income after payment of ACT.*

41.—(1) This section shall have effect where—

(a) a return has been made of franked payments made in any return period falling within an accounting period and ACT has been paid in respect of those payments; and

(b) the company receives franked investment income after the end of the return period but before the end of the accounting period.

(2) The company shall make a return under section 40 for the return period in which the franked investment income is received whether or not it has made any franked payments in that period, and, subject to subsection (3) below, shall be entitled to repayment of any ACT paid (and not repaid) in respect of franked payments made in the accounting period in question.

(3) If no franked payments were made by the company in the return period for which a return is made by virtue of subsection (2) above the amount of the repayment shall not exceed the amount of the tax credit comprised in the franked investment income received; and in any other case the repayment shall not exceed the amount of the tax credit comprised in so much of that franked investment income, if any, as exceeds the amount of the franked payments made in that return period.

*Claims for set-off in respect of franked investment income received by a company.*

42.—(1) Where under section 40 or 41 franked investment income received by a company falls to be taken into account in determining—

(a) whether ACT is payable or repayable, or

(b) the amount of ACT which is payable or repayable,

the inclusion of that franked investment income in the appropriate return shall be treated as a claim by the company to have it so taken into account, and any such claim shall be supported by such evidence as the Commissioner may reasonably require.

(2) Where a claim has been made under subsection (1) above proceedings for collecting ACT which would fall to be discharged if the claim were allowed shall not be instituted pending the final determination of the claim, but this subsection shall not affect the date when the ACT is due.

(3) When the claim is finally determined any ACT underpaid in consequence of subsection (2) above shall be paid.

(4) Where proceedings are instituted for collecting ACT assessed, or interest on ACT assessed, under any provision of this Chapter, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the ACT charged by the assessment or of interest thereon, until the claim has been finally determined.

(5) When the claim is finally determined any ACT overpaid in consequence of subsection (4) above shall be repaid.

(6) References in this section to proceedings for the collection of ACT include references to proceedings by way of distraint for ACT.

*Transitional provisions for companies within charge to tax on commencement.*

43. ACT payable in respect of any distribution made by a company before 1st January 1996 in an accounting period as respects which the company is within the charge to corporation tax shall be due and payable on 1st February 1996 and section 40(2) shall apply in relation to any franked payment made by a company in any such accounting period to require the return relating to that payment to be submitted on or before 1st February 1996.

*Distributions which are not payments and payments of uncertain nature.*

44.—(1) This section applies to—

- (a) any distribution which is not a payment; and
- (b) any payment in respect of which the company making it would be liable to pay ACT if, but only if, it amounted to or involved a distribution and it is not in the circumstances clear whether or how far it does so.

(2) No amount shall be shown in respect of the distribution or payment under section 40(2), and section 40(4) shall not apply to the payment of ACT in respect of the distribution.

(3) Particulars of the distribution or payment shall be given separately in the return for the return period in which it is made and if, apart from that distribution or payment, no franked payment is made in that period, a return containing those particulars shall be made for that period under section 40.

(4) Any ACT payable in respect of the distribution or payment shall be assessed on the company and shall be so assessed without regard to any franked investment income received by the company but—

- (a) relief shall be given from the ACT assessed (by way of discharge) to the extent, if any, to which that ACT exceeds the ACT that would have been payable if the amount of the franked payment comprising the distribution or payment, calculated on its amount or value shown in the assessment, had been included in the return under section 40(2) and the ACT had been calculated in accordance with section 40(2); and

(a) for the purposes of the application of section 40(3) to any subsequent return period, the amount of that franked payment shall be taken to be the amount so calculated.

*Assessments and due date of ACT.*

45.—(1) The enactments relating to corporation tax which make provision as to the time within which an assessment may be made, shall, so far as they refer or relate to the accounting period for which an assessment is made, or the accounting period to which an assessment relates, apply in relation to an assessment to ACT notwithstanding that the assessment may relate to a month or other period which is not an accounting period.

(2) ACT assessed on a company shall be due within 14 days after the issue of the notice of assessment (unless due earlier under section 40(4)).

(3) Subsection (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when ACT is due under

section 40(4).

(4) On the determination of an appeal against an assessment, any ACT overpaid shall be repaid.

(5) Where more than one amount of ACT is assessable on a company, it may all be included in one assessment if the ACT so included is all due on the same date (whether or not it is all assessable under the same provision).

*Tax credits and Falkland Islands company distributions*

*Tax credits for certain recipients of qualifying distributions.*

46.—(1) Where a company resident in the Falkland Islands makes a distribution and the person receiving the distribution is another such company or a person resident in the Falkland Islands, not being a company, the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made.

(2) For the purposes of this Ordinance any such distribution in respect of which a person is entitled to a tax credit shall be treated as representing income equal to the aggregate of the amount of the distribution and the amount of the credit, and income tax shall be charged on that aggregate in accordance with the provisions of this Ordinance.

(3) Subject to section 34(4), a company resident in the Falkland Islands which is entitled to a tax credit in respect of a distribution may claim to have the amount of the credit paid to it if—

- (a) the company is wholly exempt from corporation tax or is only not exempt in respect of trading income; or
- (b) the distribution is one in relation to which express exemption is given, whether specifically or by virtue of a more general exemption from tax, under any provision of this Ordinance.

(4) A person, not being a company resident in the Falkland Islands, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income for the year of assessment in which the distribution is made and where the credit exceeds that income tax, to have the excess paid to him.

(5) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of this Ordinance is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether he is entitled to a tax credit in respect of it shall be determined by reference to where he, and not the actual recipient, is resident).

*Falkland Island company distributions not chargeable to corporation tax.*

47. Except as otherwise provided by this Ordinance, corporation tax shall not be chargeable on distributions of a company resident in the Falkland Islands nor shall any such distribution be taken into account in computing income for corporation tax.

*Tax credits for non-residents.*

48.—(1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part II by virtue of section 152(3) in respect of any year of assessment shall be entitled to a tax credit in respect of any

qualifying distribution received by him in that year to the same extent as if he were resident in the Falkland Islands.

(2) Where a distribution is income of, or of the government of, any sovereign power or of any international organisation, that power, government or organisation shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 46(1).

In this subsection "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Governor stating any fact relevant to that question shall be conclusive evidence of that fact.

*Taxation of certain recipients of distributions.*

49. Where in any year of assessment the income of any person, not being a company resident in the Falkland Islands, includes a distribution in respect of which that person is not entitled to a tax credit—

- (a) an assessment shall not be made on that person in respect of income tax at the lower rate on the amount or value of the distribution;
- (b) that person's liability under any assessment made in respect of income tax at a higher rate on the amount or value of the distribution or on any part of the distribution shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at that higher rate;
- (c) the amount or value of the distribution shall be treated as income which is not chargeable at the lower rate.

*Information relating to distributions.*

50.—(1) A company which makes a distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

*Taxation of dividends prior to introduction of corporation tax.*

51.—(1) Where a company registered in the Falkland Islands pays a dividend to a shareholder in a year of assessment and section 31 does not apply in relation to that dividend, the shareholder shall be entitled to a tax credit equal to one-quarter of the dividend in relation to that year of assessment, but no credit shall be allowed unless the income of the company out of which the dividend is paid suffered tax under the provisions of this Ordinance.

(2) In computing the shareholder's chargeable income for tax purposes the amount of the dividend and the tax credit shall be added to the other income of the shareholder.

(3) There shall be deducted from the amount of tax assessed on the shareholder for the year of assessment in which the dividend was paid an amount equal to the amount of the tax credit and, should the net amount of tax then payable be less than the amount of the tax credit, the difference shall be refunded to him.



CHAPTER IV  
MISCELLANEOUS PROVISIONS

*Exemptions.*

- 52.—(1) There shall be exempt from tax—
- (a) the emoluments of the Governor;
  - (b) the income of any local authority in so far as such income is not derived from a business carried on by the local authority;
  - (c) the income of any ecclesiastical, charitable or educational institution or trust of a public character;
  - (d) the emoluments payable to members of the permanent Consular Services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
  - (e) any emoluments paid out of United Kingdom Government funds by way of remuneration to—
    - (i) any person serving in Her Majesty's Armed Forces;
    - (ii) any person in the service of Her Majesty in a civil capacity under Her Government in the United Kingdom;
  - (f) wound and disability pensions granted to members of Her Majesty's Armed Forces;
  - (g) gratuities granted to members of Her Majesty's Armed Forces in respect of war services;
  - (h) in so far as relates to income received for the provision of services connected with the defence of the Falkland Islands, any person being an institution, corporation or contractor to Her Majesty's Government in the United Kingdom notified to the Commissioner by the Governor as being entitled to exemption under this paragraph;
  - (i) the income of any statutory or registered friendly society;
  - (j) any grant made from the public revenue of the Falkland Islands in respect of any person under the age of 26 years, who is receiving full-time instruction at a recognized educational establishment outside the Falkland Islands;
  - (k) the income of the Falkland Islands Development Corporation or any company wholly owned by the Falkland Islands Development Corporation;
  - (l) interest receivable in respect of any funds deposited in an interest-bearing account maintained at a bank or branch of a bank in the Falkland Islands or with a registered co-operative society;
  - (m) any allowance paid to any elected member of the Legislative Council under the provisions of the Elected Councillors' Allowances Ordinance 1990 by reference to an annual rate;
  - (n) any allowance paid to a public officer in addition to his salary which the Commissioner is satisfied is paid to that public officer in order to enable him to meet the increased expenses incurred or to be incurred by him and arising wholly or mainly by virtue of the fact that he is required to perform the duties of his office outside the Falkland Islands;
  - (o) allowances paid under the Family Allowances Ordinance 1960 or any allowances substituted therefor;

- (p) maintenance payments other than any maintenance payment falling within section 7(1)(h);
- (q) any sum paid by way of bounty under the Falkland Islands Defence Force Ordinance 1991 to a member of the Falkland Islands Defence Force.

(2) Subsection (1)(c) above does not apply to any income derived by any such institution or trust as is mentioned in that paragraph from a business carried on by it unless the profits are applied solely to the purposes of the institution or trust and either—

- (a) the business is carried on in the course of the actual carrying out of a primary purpose of the institution or trust; or
- (b) the people working in the business are wholly or mainly the beneficiaries of the institution or trust.

(3) The Governor may by proclamation published in the *Gazette* provide that interest payable on any loan charged on the public revenue of the Falkland Islands shall be exempt from tax, either generally or only in respect of interest payable to persons not resident in the Falkland Islands; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

(4) Except where with the context otherwise requires, nothing in this section shall be construed as exempting in the hands of the recipients any dividends, interest, bonuses, salaries or wages paid wholly or partly out of income which is exempt from tax under subsection (1).

*Other allowable deductions.*

53.—(1) In computing a person's chargeable income for any period there shall be deducted from the person's income all outgoings and expenses wholly and exclusively incurred by him during that period in the production of the income, including—

- (a) sums payable by him by way of interest upon any money borrowed by him, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;

and any other deduction prescribed by rules made under this Ordinance.

(2) An amount shall not be deducted under subsection (1) if it is deductible under section 89(1).

*Deductions not allowed.*

54. Subject to any contrary provision of this Ordinance, no deduction in respect of—

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the

income;

- (g) interest paid under section 10(2) or 30(1) and any civil penalty paid under this Ordinance;
- (h) any amounts paid or payable in respect of tax imposed in a country or territory outside the Falkland Islands (but without prejudice to Part VII);
- (i) any amount paid or payable under section 5 of the Medical Services Levy Ordinance 1979;

shall be allowed in computing a person's chargeable income.

*Partnerships.*

55.—(1) In computing for any chargeable period the chargeable income of any person carrying on a business in partnership, his income from the partnership for any period shall be deemed to be the share in the income of the partnership to which he was entitled for that period (such income being ascertained in accordance with the provisions of this Ordinance).

(2) The partner's income from a partnership for a chargeable period shall be included—

- (a) in the case of a corporate partner, in the company accounts delivered in accordance with section 27 for that period;  
or
- (b) in any other case, in his return of income for that period.

(3) The precedent partner shall, when required by the Commissioner, make a return to the Commissioner—

- (a) of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance, and
- (b) of the names and addresses of the other partners in the firm together with the amount of the share of the partnership income to which each partner was entitled for period to which the return relates.

(4) In this section "precedent partner" means in relation to any partnership, the partner who is resident or ordinarily resident in the Falkland Islands and—

- (a) who is first named in the agreement of partnership; or
- (b) if there is no agreement, whose name is or is the first in the usual name of the partnership;

but for the purposes of this definition any partner who would apart from this provision be the precedent partner shall be disregarded if he is not an active partner.

(5) In any case where none of the partners is resident or ordinarily resident in the Falkland Islands, the Commissioner may require the return to be made by any attorney, agent, manager or factor of the partnership who is resident in the Falkland Islands.

(6) Any person who fails to comply with a requirement of the Commissioner under subsection (3) or (5) above shall be liable—

- (a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;
- (b) in any other case, to a penalty of £200.

*Royalties.*

56.—(1) Notwithstanding anything to the contrary in any other provision of this Ordinance, royalties arising in the Falkland Islands and paid to a person not resident in the Falkland Islands shall be subject to tax at the rate of 10 per cent. of the gross amount of the royalties.

(2) For the purpose of this section "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and rights to variable or fixed payments as consideration for the working of or the right to work mineral or mineral oil deposits sources and other natural resources.

(3) Tax charged under this section shall be payable by and recoverable from the person paying the royalty and shall be paid to the Commissioner within 30 days of the date of payment of the royalty.

(4) Interest shall be due on any such tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(5) Any person who is liable to make a payment in accordance with subsection (3) shall within 30 days of the date on which the royalty is paid give notice to the Commissioner that he is so liable, and the Commissioner may prescribe the form by which the notice is to be given.

(6) Any person who fails to comply with subsection (5) above commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

## PART III

## LIFE ASSURANCE, PENSION SCHEMES, ANNUITIES ETC

## CHAPTER I

## GENERAL PROVISIONS

*"Approved schemes"  
and other definitions.*

57.—(1) In this Part, except in so far as the context otherwise requires—  
"approved"—

(a) in relation to a scheme, means approved by the Commissioner in accordance with this Part; and

(b) in relation to arrangements, means made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme;

but does not refer to cases in which approval has been withdrawn;

"employee" includes—

(a) in relation to a company, any officer or director of the company and any other person taking part in the management of the affairs of the company, and

(b) past and future employees,

and related expressions shall be construed accordingly;

"member", in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

"pension" includes an annuity;

"personal pension arrangements" means arrangements made by an

individual in accordance with a personal pension scheme;  
 "personal pension scheme" means a scheme whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme;

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, but does not include any benefit payable solely on the disablement or death of the employee by accident occurring during his employment;

"retirement benefits scheme" means a scheme for the provision of relevant benefits;

"scheme" includes a deed, agreement, series of agreements or other arrangements providing for relevant benefits for or in respect of one or more employees;

"administrator", in relation to any scheme, means the person resident in the Falkland Islands who is responsible for the management of the scheme.

(2) For the purposes of this Part the cash equivalent of a benefit in kind is—

(a) the amount which would be the annual value of the benefit under section 7 if it were chargeable under that section, or

(b) if that benefit is not a prescribed benefit for the purposes of section 7, such amount as, in the opinion of the Commissioner, may fairly and reasonably be taken to be the cash equivalent of the benefit,

treating, in either case, any sum made good by the recipient as made good by the employee.

(3) In this Part any reference to the provision for employees of an employer of relevant benefits under a scheme includes a reference to provision made in pursuance of a contract made by the scheme administrator or the employer or the employee with another person, and any reference to payments under a scheme includes a reference to payments in accordance with such a contract.

(4) An application for approval under this Part shall be made in such form and manner and within such time limits as the Commissioner may prescribe, and shall be accompanied by such information as may be so prescribed.

*Meaning of "relevant earnings".*

58.—(1) References in this Part to relevant earnings shall be construed in accordance with this section.

(2) In relation to premiums or contributions paid by an individual under a policy of life assurance or personal pension arrangements, "relevant earnings" means—

(a) any earned income (including any amount which is deemed to be earned income) of his for the year of assessment in question, less

(b) the amount of any deductions, other than a deduction under

this Part or under Chapter I of Part II in respect of the individual or the individual's wife, which fall to be made from that earned income in computing for the purposes of income tax his chargeable income for that year, but does not include any relevant benefit or any amount paid on account of a person's disablement.

(3) In relation to contributions made by an employee or his employer to a retirement benefits scheme, "relevant earnings" means the earned income of that employee arising from his employment with that employer.

(4) In the case of a married couple —

(a) if the husband makes a claim under section 59 or 61 in respect of any payment made by him, then, whether or not an election for separate assessment is in force under section 13(4), in computing his relevant earnings for the purposes of that claim, there shall be disregarded any earned income of the wife;

(b) if the wife makes any payment within section 59(1) or 61(1) or makes a contribution to a scheme within section 60(1)—

(i) if such an election is not in force, the husband may claim relief in respect of that payment but for this purpose the wife's relevant earnings shall be deemed to be his (and any earned income of his shall be disregarded);

(ii) if such an election is in force, the wife may claim relief in respect of the payment (by reference to her own relevant earnings).

(5) Sums received by an individual on account of the termination of an employment or the alteration in any of the terms and conditions of his employment are not income within subsection (2) above.

## CHAPTER II TAX RELIEF

### *Life assurance premiums*

*Deduction in respect of  
life insurance.*

59.—(1) Any person who pays in any year a premium under a policy of insurance on his own life or on the life of his spouse shall, on a claim being made, be allowed a deduction in computing his chargeable income for the year of assessment following that year of an amount equal to the annual amount of that premium.

(2) A deduction shall be not be allowed under this section in respect of any amount in so far as it exceeds an amount equal to 35 per cent. of that person's relevant earnings.

(3) In any case where a person is entitled to relief under this section and to relief under section 60 or 61, a deduction shall not be allowed under this section in so far as aggregates of the amounts claimed under this section and section 60 or 61 exceeds an amount equal to 35 per cent. of his relevant earnings.

(4) In the case of a married couple where the husband makes more than one claim under this section for the same year of assessment, subsections (3) and (4) above shall apply with any necessary modifications separately in relation to each claim.

*Retirement benefit schemes*

*Retirement benefit schemes.*

60.—(1) This section has effect as respects—

- (a) any approved retirement benefit scheme which is shown to the satisfaction of the Commissioner to be established under irrevocable trusts; or
- (b) any other approved retirement benefits scheme as respects which the Commissioner, having regard to any special circumstances, directs that this section shall apply.

(2) In computing an employee's chargeable income for a year of assessment, any contribution paid by him under the scheme in the year preceding that year shall, on a claim, be allowed to be deducted from his relevant earnings.

(3) The amount allowed to be deducted by virtue of subsection (2) above in respect of contributions paid by an employee in any year (whether under a single scheme or under two or more schemes) shall not exceed 20 per cent. of his relevant earnings for that year.

(4) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of the scheme shall not be chargeable to income tax (if it otherwise would be).

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Commissioner is satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(6) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Commissioner is satisfied that, the underwriting commissions are applied for the purposes of the schemes and would, but for this subsection, be chargeable to tax otherwise than as trading income.

(7) Any sum paid by an employer by way of contribution under the scheme shall for the purposes of income tax or corporation tax be allowed to be deducted as an expense incurred in the chargeable period in which the sum is paid.

(8) The amount of an employer's contributions in respect of any employee which may be deducted under subsection (7) above shall not exceed—

- (a) in the case of an ordinary annual contribution, 35 per cent. of the employee's relevant earnings for the chargeable period in question;
- (b) in the case of any other contribution—
  - (i) £25,000, or
  - (ii) 35 per cent. of the aggregate of employee's relevant earnings for that chargeable period and the preceding 6 chargeable periods; whichever is the lower; or such higher amount as the Commissioner may allow.

*Personal pension schemes*

*Members' contributions, and payments under schemes.*

61.—(1) Where contributions are paid in any year by an individual under approved personal pension arrangements made by him then, subject to the provisions of this Part—

- (a) in computing his chargeable income for the year of assessment following that year an amount equal to the aggregate of those contributions or to so much of that aggregate as does not exceed the maximum permitted deduction for that year shall be deducted from any relevant earnings of his; and
- (b) in so far as the amount of the contributions paid in that year (aggregated with any amounts carried forward under this provision from an earlier year) exceeds the maximum permitted deduction for that year, the excess shall be carried forward and treated as if it were a contribution paid by the individual under the arrangements in the next year.

(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year, means an amount equal to 35 per cent. of his relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the individual for that year.

(3) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of approved personal pension arrangements shall not be chargeable to income tax (if it otherwise would be).

(4) Where relief under subsection (1) above for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under this section for that or any subsequent year as are appropriate.

(5) In any case where a person is entitled to relief for any year of assessment under subsection (1) above and to relief under section 60, a deduction shall not be allowed under this section in so far as the aggregate of the amounts claimed under this section and that section exceeds the aggregate of an amount equal to 20 per cent. of his relevant earnings for the purposes of that section and an amount equal to 35 per cent. of his relevant earnings for the purposes of this section less those relevant earnings.

(6) In the case of a married couple where the husband makes more than one claim under this section for the same year of assessment, subsections (4) and (5) above shall apply with any necessary modifications separately in relation to each claim.

(7) Where relief under this section is claimed and allowed for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of this Ordinance for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

*Employer's  
contributions and  
personal pension  
income etc.*

62.—(1) Where contributions are paid by an employer under approved personal pension arrangements made by his employee, those contributions shall not be regarded as remuneration of the employee for the purposes of this Ordinance.

(2) Income derived by a person from investments or deposits held by him



for the purposes of an approved personal pension scheme shall be exempt from income tax.

*Carry-forward of relief*

*Carry-forward of relief.*

63.—(1) Where—

(a) an individual's chargeable income of any year includes relevant earnings from any business or employment carried on or held by him, and

(b) there is an amount of unused relief for the year of assessment following that year,

relief may be given under this Part up to the amount of the unused relief, in respect of so much of any contributions paid by him under an approved scheme in any of the 6 years following that year as exceeds the amount permitted to be deducted for that year under this Part.

(2) In this section, any reference to an amount of unused relief for any year of assessment is to an amount which could have been deducted from the individual's relevant earnings under this Part if—

(a) the individual had paid contributions under an approved scheme in the year preceding that year, or

(b) any such contributions paid by him in that preceding year had been greater.

(3) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.

(4) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than 6 years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment—

(a) that amount shall not be available for giving relief by virtue of this section for any of the 6 years following that year, but

(b) the individual may, within the period of 6 months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be given, up to that amount, in respect of so much of any contributions paid by him under an approved scheme within that period as exceeds the amount permitted to be deducted under this Part from his income for the year in which they are paid; and to the extent to which relief in respect of any contributions is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(5) In this section—

(a) "a relevant assessment to tax" means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings, and

(b) "an approved scheme" includes a policy within section 59.

CHAPTER III  
CHARGE TO TAX IN CERTAIN CASES  
*Retirement benefit schemes*

*Non-approved schemes:  
payments by employers.*

64.—(1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme within subsection (2) below, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency)—

(a) the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for the purposes of income tax to be income of that employee for that year of assessment and assessable to tax accordingly; and

(b) where the payment is made under such an insurance as is mentioned in section 59, relief, if not otherwise allowable, shall be given to that employee under that section in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance under which the payment is made had been made with him.

(2) Subsection (1) above applies to any retirement benefits scheme other than a scheme for the time being approved for the purposes of this Part or a scheme set up by a government outside the Falkland Islands for the benefit, or primarily for the benefit, of its employees.

(3) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(4) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.

*Non-approved schemes:  
taxation of benefits  
received.*

65.—(1) Where in any chargeable period a person receives a benefit provided under a retirement benefits scheme to which section 64(1) applies, tax shall be charged in accordance with the provisions of this section.

(2) The recipient of the benefit shall be charged to tax for that period in an amount determined in accordance with subsection (3) below.

(3) The amount to be charged to tax is—

- (a) in the case of a cash benefit, the amount received, and
- (b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(4) In any case where the benefit is chargeable to income tax under this section and under another provision of this Ordinance—

- (a) if the amount chargeable to income tax apart from this section is less than the amount which would be chargeable to tax under this section the amount chargeable to tax under this

section shall be reduced by the amount chargeable to tax apart from this section;

- (b) if paragraph (a) does not apply, tax shall not be charged under this section in the case of the benefit.

(5) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum—

- (a) which is deemed to be the income of a person by virtue of section 64(1), and

- (b) in respect of which that person has been assessed to tax;

and for this purpose the provision of a benefit shall be presumed not to be attributable to the payment of such a sum unless the contrary is shown.

*Repayment of  
employee's  
contributions.*

66.—(1) Subject to the provisions of this section, tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the repayment is made under a scheme which is or has at any time been an approved scheme within section 60.

(2) Where any repayment is chargeable to tax under this section—

- (a) it shall be added to the chargeable income of the employee for the year of assessment following the year in which the payment is made, or

- (b) if the employee elects, amounts equal to the contributions (if any) made in the year of assessment in which the repayment is made and in each of the preceding 6 years shall be added to the income of the employee in each of those years and charged to tax accordingly, and if the repayment exceeds the aggregate of those amounts an amount equal to the excess shall be added to his chargeable income for the year following the year in which the repayment is made.

(3) An election under subsection (2) above may not be made more than 2 years after the end of the year in which the payment is made, and all adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(4) Subsection (1) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an approved scheme within section 60).

(5) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

*Commutation of  
pension.*

67.—(1) Where a retirement benefits scheme which is or has at any time been an approved scheme contains a rule allowing a payment in commutation of the whole or part of an employee's pension, and any pension is commuted, whether wholly or not, under the rule, income tax shall be charged on the amount by which the sum receivable exceeds one-quarter of the total value as at the time the sum is paid of the benefits to be provided for the employee under the scheme.

(2) Where any amount is chargeable to tax under this section the administrator of the scheme shall be charged to income tax on that amount.

(3) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

(4) In applying subsection (1) above—

- (a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Commissioner in applying section 73; and
- (b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

*Payments out of surplus funds of retirement benefits schemes.*

68.—(1) Any payment made to or for the benefit of an employee or to his personal representatives by way of a return of surplus funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 60 shall be treated as income of that employee for the year in which it is made (whether or not he is the recipient).

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, an amount equal to the cash equivalent of whatever is transferred shall be treated as income of the employee for the year in which the transfer took place.

*Unauthorised payments under retirement benefit schemes to or for employees.*

69.—(1) In any case where—

- (a) a payment is made to or for the benefit of an employee, otherwise than in course of payment of a pension, and
- (b) the payment is made out of funds which are held for the purposes of a retirement benefit scheme which is an approved scheme, and
- (c) the payment is not expressly authorised by the rules of the scheme,

the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) Any payment chargeable to tax under this section shall not be chargeable to tax under section 66 or 67.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

*Payments to employers.*

70.—(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 60 then—

- (a) if the scheme relates to a business carried on by the employer, the payment shall be treated for the purposes of the enactments relating to income tax or corporation tax as a receipt of that business receivable when the payment falls due or on the last day on which the business is carried on by the employer, whichever is the earlier;
- (b) if the scheme does not relate to such a business, the employer shall be charged to tax on the amount of the payment as the income of the employer.

This subsection shall not apply to a payment which fell due before the scheme became an approved scheme within section 60.

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, the value of whatever is transferred shall be taken to be equal to its cash equivalent.

#### *Personal pension schemes*

##### *Unauthorised payments.*

71.—(1) Where any payment within subsection (2) below is made—

- (a) out of funds which are or have been held for the purposes of a personal pension scheme which is or has at any time been approved; and
  - (b) to or for the benefit of an individual who has made personal pension arrangements in accordance with the scheme,
- that individual, whether or not he is the recipient of the payment, shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) A payment is within this subsection if—

- (a) it is not expressly authorised by the rules of the scheme; or
- (b) it is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorised by the rules of the scheme or by the arrangements when the scheme, or as the case may be the arrangements, were last so approved.

(3) This section applies to a transfer of assets or other transfer of money's worth as it applies to a payment, and in relation to such a transfer the reference in subsection (1) above to the amount of the payment shall be read as a reference to the value of the transfer.

##### *Contributions under unapproved personal pension arrangements.*

72. Where contributions are paid by an employer under personal pension arrangements made by his employee then, if those arrangements are not approved arrangements and the contributions are not otherwise chargeable to income tax as income of the employee, the contributions shall be regarded for all the purposes of income tax as emoluments of the employment chargeable to income tax.

### CHAPTER IV

#### APPROVAL OF SCHEMES

##### *Retirement benefit schemes*

##### *Conditions for approval of retirement benefit schemes.*

73.—(1) Subject to subsections (2) and (3) below, the Commissioner shall not approve any retirement benefits scheme for the purposes of this Part unless the scheme satisfies all of the following conditions—

- (a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to the employee or to the widow, widower, children or dependants or personal representatives of the employee;
- (b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;
- (c) that there is a person resident in the Falkland Islands who

will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Part;

- (d) that the employer is a contributor to the scheme;
- (e) that the scheme is established in connection with some trade or undertaking carried on in the Falkland Islands.

(2) The Commissioner shall not approve any retirement benefits scheme which provides for a lump sum payment on the death of a member if the lump sum exceeds the greater of the following amounts—

- (a) £100,000;
- (b) an amount equal to 4 times the annual remuneration of the member at the time of his retirement or, if he dies before retirement, at the time of his death.

(3) The conditions set out in subsections (1) and (2) above are referred to below as "the prescribed conditions".

(4) The Commissioner may, if he thinks fit having regard to the facts of a particular case, and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Part notwithstanding that it does not satisfy one or more of the prescribed conditions.

(5) If in the opinion of the Commissioner the facts concerning any scheme or its administration cease to warrant the continuance of his approval of the scheme, he may at any time by notice to the administrator withdraw his approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of his approval), as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, any approval given as regards the scheme before the alteration shall not apply after the date of the alteration unless the alteration has been approved by the Commissioner.

(7) Subsections (8) to (10) below apply where the Commissioner is considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

- (a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Part, and
- (b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Commissioner in order for him to decide whether to give approval for the purposes of this Part.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

*Personal pension schemes*

*Requirements as to  
scope of benefits and  
other conditions.*

74.—(1) The Commissioner shall not approve a personal pension scheme which makes provision for any benefit other than—

- (a) the payment of an annuity satisfying the conditions in section 75;
- (b) the payment to a member of a lump sum satisfying the conditions in section 76;
- (c) the payment after the death of a member of an annuity satisfying the conditions in section 77;
- (d) the payment on the death of a member of a lump sum satisfying the conditions in section 78(1) or (2).

(2) Subsection (1) above shall not prevent the approval of a scheme which makes provision for insurance against a risk relating to the non-payment of contributions.

(3) The Commissioner shall not approve a personal pension scheme unless it makes provision for the making, acceptance and application of transfer payments which in the opinion of the Commissioner is appropriate.

(4) The Commissioner shall not approve a personal pension scheme which permits the acceptance of contributions other than—

- (a) contributions by members;
- (b) contributions by employers of members.

(5) The Commissioner shall not approve a scheme unless it makes provision for ensuring—

- (a) that the aggregate of contributions made by an employee and by his employer in a year of assessment does not exceed 50 per cent. of the employee's relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the employee for that year; and
- (b) that any excess is repaid to the employer.

*Annuity to member.*

75.—(1) Subject to subsection (2) below, the annuity must not commence before the member attains the age of 50 or after he attains the age of 75.

(2) The annuity may commence before the member attains the age of 50 if—

- (a) it is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted; or
- (b) the Commissioner is satisfied that his occupation is one in which persons customarily retire before that age.

(3) Subject to subsection (4) below, the annuity must be payable to the member for his life.

(4) The annuity may continue for a term certain not exceeding 10 years, notwithstanding the member's death within that term; and for this purpose an

annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the member and before expiry of that term, on the happening of any of the following—

- (a) the marriage of the annuitant;
- (b) his attaining the age of 18;
- (c) the later of his attaining that age and ceasing to be in full-time education.

(5) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

*Lump sum to member.*

76.—(1) The lump sum—

- (a) must be payable only if the member so elects on or before the date on which an annuity satisfying the conditions in section 75 is first payable to him under the arrangements made in accordance with the scheme; and
- (b) must be payable when that annuity is first payable.

(2) The lump sum must not exceed one quarter of the total value, at the time it is paid, of the benefits provided for by the arrangements made by the member in accordance with the scheme.

(3) The right to payment of the lump sum must not be capable of assignment or surrender.

*Annuity after death of member.*

77.—(1) The annuity must be payable to the surviving spouse of the member, or to a person who was at the member's death a dependant of his.

(2) The aggregate annual amount (or, if that amount varies, the aggregate of the initial annual amounts) of all annuities to which this section applies and which are payable under the same personal pension arrangements shall not exceed—

- (a) where before his death the member was in receipt of an annuity under the arrangements, the annual amount (or, if it varied, the highest annual amount) of that annuity; or
- (b) where paragraph (a) does not apply, the highest annual amount of the annuity that would have been payable under the arrangements to the member (ignoring any entitlement of his to commute part of it for a lump sum) if it had vested on the day before his death.

(3) Subject to subsections (4) to (8) below, the annuity must be payable for the life of the annuitant.

(4) Where the annuity is payable to the surviving spouse of the member and at the time of the member's death the surviving spouse is under the age of 60, the annuity may be deferred to a time not later than—

- (a) the time when the surviving spouse attains that age; or
- (b) where the member's annuity is payable to the surviving spouse for a term certain as mentioned in section 75(5) and the surviving spouse attains the age of 60 before the time when the member's annuity terminates, that time.



(5) The annuity may cease to be payable on the marriage of the annuitant.

(6) Where the annuity is payable to the surviving spouse of the member, it may cease before the death of the surviving spouse if—

- (a) the member was survived by one or more dependants under the age of 18 and at the time of the member's death the surviving spouse was under the age of 45; and
- (b) at some time before the surviving spouse attains that age no such dependant remains under the age of 18.

(7) Where the annuity is payable to a person who is under the age of 18 when it is first payable, it must cease to be payable either—

- (a) on his attaining that age; or
- (b) on the later of his attaining that age and ceasing to be in full-time education,

unless he was a dependant of the member otherwise than by reason only that he was under the age of 18.

(8) The annuity may continue for a term certain not exceeding 10 years, notwithstanding the original annuitant's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the original annuitant and before the expiry of that term, on the happening of any of the following—

- (a) the marriage of the annuitant to whom it is payable;
- (b) his attaining the age of 18;
- (c) the later of his attaining that age and ceasing to be in full-time education.

(9) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

*Lump sum on death of member.*

78.—(1) The lump sum—

- (a) must be payable only if no annuity satisfying the conditions in section 75 or 77 has become payable; and
- (b) subject to subsection (2) below, must represent no more than the return of contributions together with reasonable interest on contributions or bonuses out of profits.

(2) To the extent that contributions are invested in units under a unit trust scheme, the lump sum referred to in subsection (1) above may represent the sale or redemption price of the units.

## CHAPTER V TRANSITIONAL PROVISIONS

*Commissioner's discretion to allow continuation of existing relief.*

79. The Commissioner may if he thinks fit permit relief from tax to be given as if this Ordinance had not been enacted in relation to—

- (a) premiums paid on or after 1st January 1994 under any policy of life assurance made before that date; and
- (b) contributions made after that date under schemes for the provision of relevant benefits to or in respect of persons who were members of the scheme before that date.

PART IV  
PAYMENTS ON ACCOUNT OF TAX BY EMPLOYEES

*Amounts to be deducted  
from earned income etc.*

80.—(1) Subject to subsections (1) to (6) below, every person before making any payment to which this subsection applies to an employee or former employee of his in any year of assessment shall—

- (a) deduct from the payment such sum as he is required to deduct by the POAT regulations, and
- (b) account to the Commissioner for all sums so deducted in the manner and at the time or times required by the POAT regulations.

(2) Subject to subsections (4) and (5) below, subsection (1) above applies to any payment of any sum which is earned income of the employee or former employee but only in respect of sums paid by an employer to any of his employees exclusively related to and arising out of a contract of service or expired contract of service (in writing or not) between the employer and the employee, whether paid by way of remuneration or otherwise.

(3) No deduction is required to be made from any payment of any pension or annuity (voluntary or otherwise) by virtue of subsection (1) above unless the person making the payment has reason to believe that the total amount of such payments when aggregated with other earned income paid by him or any other person on his behalf to the recipient will in the year in question exceeds £4,400 or such other higher amount prescribed by the POAT regulations.

(4) Subsection (1) above does not apply—

- (a) in relation to any remuneration paid to a person not ordinarily resident in the Falkland Islands (and whether or not any part of that remuneration is paid in or subsequently transferred to the Falkland Islands) by an employer who is not resident in the Falkland Islands;
- (b) in relation to any pension or annuity paid by a person not resident in the Falkland Islands (and whether or not any part of that pension is paid in or subsequently transferred to the Falkland Islands).

(5) Subject to subsection (4) above, subsection (1) above applies—

- (a) where the employee is resident and ordinarily resident in the Falkland Islands, and does not perform his duties under the contract of service wholly outside the Falkland Islands, in relation to earned income paid to the employee in that year;
- (b) where the employee is not resident or, if resident, then not ordinarily resident in the Falkland Islands, only in relation to earned income paid to the employee in respect of duties under the contract of service performed in the Falkland Islands in that year, whether or not that earned income is paid to him in the Falkland Islands; and
- (c) where the employee is resident in the Falkland Islands (whether ordinarily resident or not), only in relation to earned income received in the Falkland Islands in a year of assessment—
  - (i) being earned income either for that year or any earlier year in which he was resident in the Falkland Islands, and

(ii) in respect of any earlier period of employment under a contract of service with that employer.

*Provisions  
supplementary to  
section 80.*

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

(a) a person who is a public officer is deemed to be an employee employed under a contract of service with the Crown, and

(b) a director of a company is an employee of that company; and any reference in this Part to an employee, an employer, employment or a contract of service shall be construed accordingly.

(2) For the purposes of this Part, any payment to which this Part would apply if made to the employee in question shall be deemed to have been paid to the employee if it is paid to another person by the employer at the request or by authority of the employee or by order of any court, whether by reason of the employee's incapacity or otherwise.

(3) In any case where a person who was an employee of an employer has died and the employer makes a payment of a pension or annuity or any other payment to the deceased's widow, widower, personal representative or dependants, this Part (apart from this subsection) shall have effect as if any reference to an employee were or included (as the context requires) a reference to the widow, widower, personal representative or dependants of the deceased person.

(4) Any contract, agreement or arrangement whatsoever between an employer and any other person inconsistent with the obligation of the employer under section 80(1) is, to the extent of the inconsistency, void.

(5) Any sum required by the POAT regulations to be deducted from any payment, but not paid to the Commissioner as required by such regulations, shall be recoverable from the employer by the Commissioner as a civil debt; and the Senior Magistrate shall have jurisdiction to try and determine any action brought by the Commissioner by virtue of this subsection and to make any order that the Supreme Court could have made in civil proceedings in that court in respect of that sum, and notwithstanding that the amount claimed would otherwise be beyond his jurisdiction.

(6) Any sum not paid to the Commissioner in accordance with the POAT regulations shall bear interest in favour of the Crown on the sum for the time being remaining unpaid, before as well as after any judgment, at the rate of 3 per cent. per annum over the base lending rate, and subsection (5) above shall also apply in respect of such interest.

(7) Nothing in subsection (5) shall operate so as to prevent proceedings being brought in the Supreme Court, but if so brought subsection (6) shall apply in respect of interest claimed.

*Liability of employer  
with respect to sums  
deducted etc.*

82.—(1) It shall be a defence to any action brought by an employee against his employer to recover any sum which the employer is obliged to deduct under section 80(1) for the employer to show that he was obliged to deduct that sum, and a certificate of the Commissioner that the employer was so obliged to deduct any sum shall, as between employer and employee, be conclusive in accordance with its tenor.

(2) As between an employee and the Commissioner or the Crown, any sum deducted by his employer under section 80(1) shall be deemed to have been paid by the employee to the Commissioner on account of his liability to pay income tax, and irrespective of whether the employer has accounted to the Commissioner for such deduction or not.

(3) If any sum deducted in accordance with section 80 is lost, mislaid or destroyed before it is received by the Commissioner, the employer and not the Commissioner or the Crown shall bear the loss; and, accordingly, the employer in such an event remains liable to pay the same to the Commissioner.

(4) An employer shall within 7 days of the expiration or determination of an employee's contract of service, or, if the employee is a former employee paid a pension or annuity, or the employee continues in the employer's employment, within 7 days of 31st December, furnish to the employee a certificate of the total amount deducted under section 80(1) up to the relevant date, and shall send a copy of the certificate to the Commissioner.

(5) The certificate referred to in subsection (4) shall contain the following information—

- (a) the name of the employer and his principal place of business in the Falkland Islands;
- (b) the full name of the employee and, if known, his address;
- (c) the aggregate amount of all the income, in money, gross of all deductions, of the employee under that employer during the year in question or (where appropriate) up to the date of the certificate; and
- (d) the aggregate amount of deductions from that income made by that employer during the year in question under section 80(1).

(6) In subsections (4) and (5), "relevant date" means the date of determination or expiration of the employee's contract of service in the year in question or, in the case of a contract of service which continues thereafter, 31st December in that year.

*Payments on account of  
tax: application.*

83.—(1) For the avoidance of doubt, it is hereby declared that sums deducted in accordance with section 80(1)—

- (a) are not income tax, but are on account of the liability to income tax, whether determined or yet to be determined, of the employee in respect of whom they are made, and
- (b) may be applied at any time by the Commissioner in payment or reduction of that liability in respect of any year of assessment other than a year which has not begun at that time.

(2) Where an employee is liable to income tax for any year of assessment preceding the year in which the sum is deducted, and the amount of that liability has been determined, the Commissioner shall apply such sums so that any such liability in respect of an earlier year of assessment is wholly discharged before any such sums are applied in satisfaction (or partial satisfaction) of any such liability in respect of any later year of assessment.

*Repayment of sums  
deducted.*

84. If an individual who is resident or ordinarily resident in the Falkland Islands satisfies the Commissioner, by his return of income or otherwise, that the

deductions made under section 80(1) from his earned income for any year of assessment exceed the aggregate of—

- (a) his liability to income tax in respect of that earned income; and
- (b) any outstanding liability of his to tax in respect of any preceding year of assessment,

the Commissioner shall repay to him the excess without undue delay.

*The POAT regulations.*

85.—(1) In this Part "the POAT regulations" means regulations under this section.

(2) The Governor may make regulations prescribing the sums which an employer is, under section 80(1), required to deduct from payments to any employee of that employer in any year of assessment, and such regulations shall—

- (a) relate the sums to be deducted to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee who is ordinarily resident in the Falkland Islands does not exceed the likely liability of that employee for income tax in that year (but, nevertheless, the regulations shall not be invalid merely because, for any reason, they fail to achieve that result);

- (b) prescribe the amounts to be deducted in respect of any pay period in respect of any employee who is resident in the Falkland Islands, having regard either—

- (i) to that employee's gross earnings from that employment during the calendar year to date; or

- (ii) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this paragraph "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods;

- (c) prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under section 80(1).

(3) Regulations under this section—

- (a) shall exempt from liability to suffer deduction the earnings of any employee of an employer (not being a pensioner or annuitant of that employer) who has not worked for that employer—

- (i) in the case of weekly paid employees at least 15 hours during that pay period and who has not worked 84 hours in aggregate during that pay period and the 3 pay periods preceding that pay period;

- (ii) in the case of monthly paid

employees, at least 60 hours during the month constituting the pay period; and

- (b) may provide for other exemptions from deductions under section 80(1); and
- (c) may prescribe different rates of deductions in respect of employees who are resident in the Falkland Islands and those who are not.

(4) Regulations under this section shall not require deductions to be made from any payment which is not a payment of earned income.

(5) Regulations under this section may provide for any other matter necessary or convenient to be prescribed in the regulations, and in particular but without prejudice to the generality of the foregoing the regulations may—

- (a) make provision with respect to the preservation and production to employees of records and other information relating to deductions,
- (b) make provision with respect to the confidentiality of information, and
- (c) prescribe acts or omissions which shall be offences punishable with imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both such imprisonment and fine.

*Bankruptcy and liquidation.*

86. If an employer—

- (a) being an individual, is adjudicated bankrupt, or
- (b) being a company, has a winding-up order made in respect of it and is insolvent,

then, notwithstanding any other provision of law, sums deducted under section 80(1) from the earned income of the employees of that employer and not paid to the Commissioner by that employer shall rank in priority to all debts which are not secured debts of the employer and shall be discharged in full before any other unsecured debts, preferred or unpreferred, of the individual or company may rank for dividend or otherwise be paid in whole or in part.

*Non-resident employees.*

87.—(1) In any case where, in accordance with this Part, an amount—

- (a) has been deducted from the earned income for a year of assessment of an employee who is not, or not ordinarily, resident in the Falkland Islands for the whole of that year, and
- (b) has been applied in payment or reduction of the liability to income tax of that employee for that year,

the amount deducted shall, subject to subsection (2), be deemed for all purposes to be the amount of income tax due for that year in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(2) Subsection (1) shall not prevent the Commissioner from repaying the whole or any part of an amount deducted in any year of assessment to the employee in accordance with section 84 if the employee submits a return of income for that year before the end of the year immediately following that year.

(3) In any case where, before the commencement of this Ordinance—

- (a) an amount has been deducted in accordance with sections

32A to 32F of the Income Tax Ordinance from the earned income for any year of assessment of an employee who was not, or not ordinarily, resident in the Falkland Islands for the whole of that year, and

- (b) the liability of that employee to income tax for that year has not been finally determined,

the amount deducted shall, subject to subsection (4), be deemed for all purposes to be the amount of income tax due for that year in respect of that earned income and, accordingly, the employee may not assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(4) If the employee makes a claim in the prescribed form before such date as may be prescribed for the purposes of this subsection, the Commissioner may repay the whole or any part an amount deducted as mentioned in subsection (3) above if having regard to the claim, and any other information available, he is satisfied that a repayment would be just and equitable.

(5) Subsections (1) to (4) above shall not apply in any case where in the opinion of the Commissioner the amount deducted in any year of assessment is less than the liability to income tax of the employee for that year.

*Criminal penalties.*

88. Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner commits an offence and shall be liable on conviction to a fine not exceeding level 4 on the standard scale.

## PART V

### TAXATION OF BUSINESSES

#### CHAPTER I

#### *General provisions*

*Deductions allowable.*

89.—(1) Subject to the following provisions of this Chapter, in computing the income of a business for any relevant accounting period there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period for the purposes of the business, including—

- (a) sums payable by way of interest upon borrowed money where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income;
- (b) rent paid for any land or buildings occupied for the purposes of the business;
- (c) any sum expended for repair of premises, plant and machinery employed in the business or for the renewal, repair or alteration of any implement, utensil or article so employed;
- (d) subject to subsection (4) below, bad and doubtful debts incurred in any business;

and any other deduction prescribed by rules made under this Ordinance.

(2) Bad and doubtful debts incurred in any business may be deducted under subsection (1) above from income arising in the relevant accounting period notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period if but only if—

- (a) they have been proved to the satisfaction of the Commissioner to have become bad during that period or, in the case of a doubtful debt, to the extent that it is estimated to the satisfaction of the Commissioner to have become bad during that period, and

(b) the Commissioner is satisfied that all steps that ought reasonably to have been taken to recover the debts have in fact been taken;  
and all sums recovered during the period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the business for that period.

(3) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed or prescribed under this section.

*Entertainment expenses.*

90. Any item of expenditure incurred in entertainment by a person carrying on a business shall be wholly disallowed in ascertaining the profits of the business unless the Commissioner is satisfied that it was reasonably incurred for the purpose of that business.

*Special provisions relating to insurance companies.*

91.—(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) In any case where the gains or profits of an insurance company (other than a life insurance company) accrue in part outside the Falkland Islands, the gains or profits on which tax is chargeable for a chargeable period shall be ascertained by—

- (a) taking the gross premiums and interest and other income received or receivable in the Falkland Islands (less any premiums returned to the insured and premiums paid on re-insurances), and
- (b) deducting from the balance so arrived at, a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the relevant accounting period, and
- (c) adding thereto a reserve similarly calculated for unexpired risks outstanding at the beginning of the relevant accounting period, and
- (d) from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

(3) Subject to subsection (4) below, the gains or profits of a life insurance company, whether mutual or proprietary, on which tax is payable shall be the investment income less the management expenses (including commission).

(4) Where such a company received premiums outside the Falkland Islands, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Falkland Islands bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

*Special provisions relating to shipowners.*

92.—(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) The gains or profits of the business of a shipowner, shall, if he



produces or causes to be produced to the Commissioner a certificate issued by a tax authority outside the Falkland Islands, be taken to be a sum bearing the same ratio to the sums payable in respect of fares or freight for passengers, goods, or mails shipped in the Falkland Islands as his total profits for the relevant accounting period shown by that certificate bear to the gross earnings for that period.

(3) If the gains or profits of a shipowner have for the purpose of tax in the Falkland Islands been computed on any basis other than the ratio of the gains or profits shown by the tax authority's certificate and an assessment has been made accordingly, the shipowner shall upon production of such a certificate at any time within 2 years from the end of the chargeable period to which the assessment refers be entitled to such adjustment as may be necessary to give effect to the said certificate and to have any tax paid in excess refunded.

(4) In this section any reference to a certificate issued by a tax authority is a reference to a certificate issued by the taxing authority of the place in which the principal place of business of the shipowner is situated stating—

- (a) that the shipowner has furnished to the satisfaction of that authority an account of the whole of his business; and
- (b) the ratio of the gains or profits for the relevant accounting period as computed according to the tax law of that place (after deducting interest on any money borrowed and employed in acquiring the gains and profits) to the gross earnings of the shipowner's fleet or vessel for that period.

(5) In this section "shipowner" means an owner or charterer of ships whose principal place of business is situated outside the Falkland Islands.

*Management fees.*

93.—(1) Notwithstanding anything to the contrary in the other provisions of this Ordinance, management fees and any such sums paid or credited to or for the benefit of a person who at the time of payment or credit is not resident or ordinarily resident in the Falkland Islands for the management of or supervision in connection with the carrying on of a business to the extent that such fees, payments or credits do not constitute reimbursement of expenditure which is—

- (a) deductible under any provision of this Ordinance in computing the chargeable income of the business, and
- (b) incurred in relation to the fees, payments or credits by the person receiving them,

shall bear tax at the rate of 15 per cent.

(2) In this section "management fees" means payments of any kind to any person, other than to an employee of the person making the payments, for or in respect of the provision of industrial, scientific or commercial advice, or management or technical services, or similar services or facilities.

(3) Tax chargeable by virtue of this section shall be payable by and recoverable from the person paying the fees or making the payments or credits and shall be paid to the Commissioner within 30 days of the date of payment of the fees or of making the payments or credits.

(4) Interest shall be due on any such tax remaining unpaid after the date on which it is due at the rate of 3 per cent. per annum over base lending rate.

(5) Any person who is liable to make a payment in accordance with subsection (3) shall within 30 days of the date on which the fees or payments or

credits are paid give notice to the Commissioner that he is so liable, and the Commissioner may prescribe the form by which the notice is to be given.

(6) Any person who fails to comply with subsection (5) above commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

*Excess benefits in kind,  
and remuneration of  
non-resident directors.*

94.—(1) Where—

- (a) in any relevant accounting period an employer carrying on a business provides a benefit which is a prescribed benefit to or in respect of any employee of his employed in that business in that period, and
- (b) the prescribed value of that benefit (or aggregate values if more than one is provided to the employee) exceeds the employee's remuneration or a prescribed percentage of his remuneration, or exceeds such other amount as may be prescribed,

an amount equal to the amount of that excess shall be treated as a trading receipt of the business for that period.

(2) In subsection (1) above "remuneration", in relation to any accounting period of any business, means earned income of an employee which as respects his employment in that business in that period falls within section 80(2) and any amount which by reason of that employment—

- (a) is for the year of assessment beginning in that accounting period chargeable to tax by virtue of rules made under section 7, or
- (b) is otherwise treated as his income in that period for the purposes of income tax.

(3) The Governor in Council may make rules for the purposes of subsection (1) above which shall not come into effect unless they are confirmed by the Legislative Council at the meeting next following publication of the rules.

(4) In the case of any company—

- (a) any of the directors of which is non-resident, and
- (b) more than 50 per cent. of the issued ordinary shares in which is held by its directors,

the deduction permitted to be made in respect of any such director's remuneration from the company's profits and gains arising in an accounting period during which any director is non-resident shall not exceed—

- (i) 15 per cent. of the company's chargeable income derived from the business in that accounting period (computed before making any deduction in respect of the remuneration of the directors) or

(ii) £7,500,

whichever is the greater, so however that the deduction shall in no case exceed £15,000.

(5) For the purposes of subsection (4)—

- (a) shares are held by a director if they are held by the director himself or by any person connected with him; and
- (b) "non-resident" means not resident in the Falkland Islands.

(6) Subsection (4) does not apply in relation to the remuneration of any

director if that remuneration (after making any deduction permitted by any provision of this Ordinance apart from this section) is chargeable income in the hands of the director.

*Augmented deduction of training expenses.*

95.—(1) Where the Commissioner is satisfied—

- (a) that any expenditure has reasonably been incurred by a person carrying on a business on the training or education of a person employed or intended to be employed in that business; and
- (b) that the training or education was incurred for the purpose of improving the value of that person as an employee in that business or of fitting him (if not already employed) for employment in the business,

the Commissioner shall, in addition to the actual amount of that expenditure, allow a further sum equal to one-half of that amount to be deducted from the profits of the business.

(2) For the purposes of subsection (1)—

- (a) a sole owner of and any partner in any business shall be taken to be employed, as an employee, in that business, and
- (b) "training or education" does not include education at any school, college, institution or establishment however described which a person attends for the purpose of non-vocational education below the tertiary education level.

*Relief for pre-trading expenditure.*

96.—(1) Where a person incurs expenditure for the purposes of a business before he commences to carry on that business, then subject to subsection (2) he shall be deemed for all the purposes of income tax and corporation tax, to have incurred that expenditure on the first day on which he commences to carry on that business.

(2) Relief under subsection (1) shall be given on a claim but the Commissioner may disallow any claim for the relief in any case where he is satisfied that the expenditure was not incurred in good faith for the purposes of the business.

(3) Subsection (1) above does not apply where the business was commenced before 1st January 1994.

*Certain payments of interest not deductible.*

97.—(1) Any payment of interest by a company on or after 1st July 1993 in respect of securities issued by the company—

(a) where the securities are held by a non-resident company and either—

(i) that company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of the issuing company, or

(ii) another non-resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both companies; or

(b) where—

(i) the securities are held by a non-resident company, and

(ii) a resident company directly owns less than 90 per cent. of the share capital of the issuing company and another resident company owns (directly or indirectly) not less than 75 per cent. of the ordinary share capital of both the issuing company and the company holding the securities,

shall not be deductible in ascertaining the chargeable income of the company unless the Commissioner directs the company that the payment may be deducted.

(2) In this section—

"non-resident company" means a company which is not resident in the Falkland Islands;

"resident company" means a company which is resident in the Falkland Islands, and

"securities" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

## CHAPTER II DEPRECIATION ALLOWANCES

*Initial and writing  
down allowances:  
general provisions.*

98.—(1) In ascertaining the chargeable income of any person carrying on a business, there shall, subject to subsection (2) below, be made initial and writing-down allowances and balancing allowances and charges in accordance with this Chapter.

(2) A person may elect not to take the benefit of the whole or part of any allowance or deduction to which he is entitled under this Chapter.

(3) Effect shall be given to any allowance and deduction authorized by this Chapter on a claim being made in that behalf by the person entitled to the allowance or deduction.

(4) Effect shall be given to any balancing charge under this Chapter by treating the amount of the charge as a trading receipt of the business concerned.

(5) In this Chapter—

"basis period" in relation to a chargeable period, means the period on the income of which income tax or corporation tax for that chargeable period falls to be computed;

"building" does not include land;

"expenditure", in relation to the acquisition of a capital asset, means, subject to subsection (5) below, the amount spent on the provision of that asset by the person claiming the depreciation deduction, reduced by the amount of any grant, subsidy or contribution towards that cost made by any other person or authority, but any amount spent on the provision of a building does not include the cost or value of the land on which it is built; and

"written-down value", in relation to a capital asset, means the amount of the expenditure incurred in acquiring the asset less the sum of any initial and writing-down allowances

made in respect of the asset for all earlier chargeable periods.

(6) In any case where—

- (a) a person claims an allowance under this Chapter as respects an asset the expenditure on the acquisition of which was incurred in a chargeable period earlier than the period in which the asset it first used for the purposes of a business, and
- (b) the asset was used for other purposes before first being using for the purposes of the business, and
- (c) the market value of the asset at the time it is first so used is less than the expenditure on its acquisition actually incurred by that person,

then, for the purposes of this Chapter, the expenditure on the acquisition of the asset shall be taken to be equal to the market value of that asset at the time it is so first used.

*Initial allowances and writing-down allowances for capital expenditure.*

99.—(1) Where in the basis period for a chargeable period a person carrying on a business incurs expenditure in the acquisition of any capital asset mentioned in any of subsections (3) to (7) below which is or is to be used for the purposes of the business, in computing that person's chargeable income for that and subsequent chargeable periods there shall be allowed, subject to subsection (2) below, an initial allowance or writing-down allowances in that and subsequent chargeable periods (or both) in accordance with the subsection in question.

(2) An allowance shall not be made under this section in any chargeable period in respect of a capital asset acquired for use in a business unless the asset is used during the basis period for that chargeable period for the purposes of that business.

(3) If the asset is any machinery and plant (including for this purpose ships and motor vehicles but not aircraft)—

- (a) an initial allowance of up to 100 per cent. of the expenditure shall be made;
- (b) if the full 100 per cent. initial allowance is not claimed under paragraph (a), in subsequent periods a writing-down allowance of 25 per cent. per annum of the written-down value of the asset shall be made.

(4) If the asset is an aircraft, a writing-down allowance of 25 per cent. per annum of the written-down value of the asset shall be made.

(5) If the asset is—

- (a) an industrial building used for the purpose of productive manufacturing or processing, or
  - (b) a commercial or agricultural building, or
  - (c) any building used for the purposes of mining or fishing,
- an initial allowance of up to 50 per cent. of the expenditure and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(6) If the asset is a hotel building, an initial allowance of up to 50 per cent. and a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made.

(7) Subject to subsection (8), if the asset is any other building, a writing-down allowance of 10 per cent. per annum of the written-down value of the asset shall be made, and, notwithstanding any provision to the contrary in this Ordinance, the excess of sale proceeds or insurance recoveries over the written-down value of a building which is occupied as a residence shall not give rise to a balancing charge.

(8) In the case of a building used as residential accommodation, an allowance shall not be made under subsection (7)—

- (a) except as provided by subsection (9), where the building is occupied by the person claiming the allowance or by a person connected with that person;
- (b) except as provided by subsection (9), where the building is occupied by a major shareholder of the person claiming the allowance or by a person connected with such a shareholder;
- (c) except as provided by subsection (10), where the freehold title or lease out of which the tenancy or occupation of the building derives passes to the ownership of any person other than the person who originally incurred the expenditure involved in the construction of the building.

(9) Subsection (8)(a) and (b) do not apply where the Commissioner is satisfied that the building is or is to be occupied principally for agricultural purposes.

(10) Subsection (8)(c) does not apply where the Commissioner is satisfied—

- (a) that the new owner is engaged in the business of agriculture; and
- (b) that the building is or is to be occupied principally for agricultural purposes.

(11) In any case where a building is or is to be used for more than one purpose, this section shall apply in relation to each part separately and such apportionment of expenditure shall be made as between the different parts as is in the opinion of the Commissioner just and equitable.

*Interpretation of section 99.*

100. For the purposes of section 99—

"industrial building" includes—

- (i) a warehouse;
- (ii) any building used for the purpose of a transport or dock undertaking;
- (iii) any other building used for industrial purposes except any building occupied as a residence;
- (iv) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is an industrial building by virtue of paragraphs (i), (ii) or (iii) above;

"commercial building" includes—

- (i) a shop;
- (ii) a restaurant or café;
- (iii) an office;

(iv) any other building which is not an industrial building, an agricultural building, hotel, house or other dwelling if, and only if, the Commissioner is satisfied that it is bona fide being used principally for the purposes of a business operated with a view to the realization of profit;

(v) works involved in preparing, cultivating, tunnelling or levelling land prior to or in connection with the construction or re-erection of a building which is a commercial building by virtue of paragraph (i), (ii), (iii) or (iv) above;

"agricultural building" does not include any office or any shop on a farm settlement or any storehouse unless used solely to store agricultural produce;

"major shareholder", in relation to any company, means a person who is, or who together with any person connected to him is, the beneficial owner of 25 per cent. or more of the issued share capital of the company carrying voting rights at general meetings of the company.

*Balancing charges and allowances.*

101.—(1) This section applies where, during the basis period for a chargeable period ("the relevant period"), any of the following events occurs in relation to a capital asset in respect of which a writing-down allowance has been made to any person carrying on a business ("the owner")—

- (a) the asset ceases to belong to him; or
- (b) that person loses possession of the asset in circumstances where it is reasonable to assume that the loss is permanent; or
- (c) the asset ceases to exist as such (as a result of destruction, dismantling or otherwise);
- (d) the asset begins to be used wholly or partly for purposes which are other than those of the business; or
- (e) the business is permanently discontinued.

(2) Where subsection (1) above applies in relation to any asset—

- (a) if there are no sale, insurance, salvage or compensation moneys or those moneys are less than the written-down value of the asset, there shall be allowed in computing the owner's chargeable income for the relevant period a deduction equal to that value or, as the case may be, the excess of that value over those moneys;
- (b) if the sale, insurance, salvage or compensation moneys exceed the written-down value of the asset, a balancing charge shall be made on an amount equal to the excess for the relevant period.

(3) Subsection (2) shall have effect in relation to any sale or other disposition of any asset where the parties are not at arm's length and the consideration for the disposition is less than the market value of the asset as if the asset had been disposed of at market value.

(4) Where (by virtue of subsection (3) or otherwise) the moneys referred to in subsection (2) exceed the expenditure in respect of which the writing-down allowance was made, the amount of the excess shall be disregarded for the

purposes of that subsection.

*Assets transferred on  
transfer of business.*

102.—(1) In any case where—

- (a) on or after 1st January 1995, a business is transferred by an individual, either alone or in partnership, to a company, and
- (b) the transfer includes the transfer of an asset used in that business as respects which an allowance under this Chapter has been made to or disclaimed by the transferor, and
- (c) section 107 applies to the transfer,

then, whether or not the transferor makes a claim under that section and whether or not such a claim is allowed, the transferor may elect that the provisions of this section shall apply in relation to that asset.

(2) Section 101 shall not apply in relation to the transfer of the asset but all such allowances and charges shall be made to and on the transferee under and in accordance with this Chapter as would have fallen to be made if the transferor had continued to carry on the business.

(3) Subject to subsection (4) below, an election under subsection (1) above shall be made by notice which shall be irrevocable, and where more than one asset is transferred, the transferor may make an election under this section with respect to all or any of those assets.

(4) An election under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer.

(5) All such adjustments shall be made as may be necessary in consequence of an election being made under this section, whether by way of assessments to tax on the company or by repayment or discharge of tax or otherwise.

*Apportionment of sale  
etc. receipts.*

103.—(1) This section applies in any case where a capital asset in respect of which a writing-down allowance has been made has been sold or destroyed together with or at the same time as any other property and—

- (a) the consideration received on the sale or the insurance recoveries is a sum which relates to all the property sold or the insurance recoveries is a sum which relates to all the property destroyed or the subject of the claim under the relevant insurance contract;
- (b) the total consideration received on the sale has by agreement or arrangement between the parties been apportioned between the various items sold at the same time by the same vendor to the same purchaser, and whether by or under the same contract or under separate contracts, or similarly insurance recoveries have been apportioned between insured and insurer.

(2) In any case falling within paragraph (a) of subsection (1)—

- (a) the Commissioner may agree with the former and new owners the apportionment of the sum referred to in that paragraph between the various items of property to which it relates;
- (b) if no such agreement is reached, the Commissioner may



apportion the sum referred to in subsection (1)(a) between the various items of property to which it relates.

(3) In any case falling within paragraph (b) of subsection (1), the Commissioner may—

- (a) agree with the parties an apportionment of the sale consideration or insurance recoveries between the various items of property, or
- (b) if he considers that that apportionment would (if agreed by him) afford an unjust tax advantage to the new owner or former owner, apportion the sale consideration or the insurance recoveries between the various items of property in accordance with his view of the true value of such items.

(4) The values attributed to any items of property in accordance with this section shall apply for the purposes of this Chapter both in relation to the new owner and (as to the operation of section 101(2)(b)) in relation to the former owner.

(5) The Commissioner shall give notice to the persons affected of any apportionment made or agreed by him in pursuance of this section.

*Transitional provisions.*

104.—(1) Where a person is, on the coming into force of this Ordinance, entitled to an allowance or deduction under paragraph 3 of the Seventh Schedule of the Income Tax Ordinance, that allowance shall continue to be made in accordance with the provisions of that Ordinance and not in accordance with this Chapter.

(2) Section 101 shall not apply in any case where a capital asset in respect of which a wear and tear or a depreciation allowance has been made under the Sixth or Seventh Schedule of the Income Tax Ordinance is sold, scrapped or destroyed at a time falling after after 31st December 1992 but before 1st July 1993 during a period which as respects the year of assessment 1995 is the relevant accounting period, but in such a case—

- (a) if the amount of the sale proceeds or insurance recoveries is less than the written-down value, there shall be made a deduction for the year of assessment 1995 equal to the amount of the deficiency;
- (b) if the amount of the sale proceeds or insurance recoveries exceeds the written-down value, the amount of the excess, a balancing charge shall be made on an amount equal to that excess or to the total amount of all wear and tear and depreciation allowances made, if less.

### CHAPTER III

#### LOSS RELIEF FOR BUSINESSES

*Restrictions on loss relief.*

105.—(1) Effect shall be given to this Chapter by a claim but a claim may not be made in respect of a loss sustained in any business unless the business was being carried on, during the period in which the loss was sustained, on a commercial basis and with a view to the realisation of profits.

(2) Relief shall not be given in respect of the same loss or the same portion of a loss under more than one provision of this Ordinance.

*Carry forward of business losses for individuals.*

106.—(1) Where a loss is sustained in any period of account of a business carried on (either alone or in partnership) by any person who is within the charge to income tax for the relevant year of assessment in respect of that business and the loss cannot be wholly set off against that person's income from other sources chargeable to tax for the same year, the amount of the loss shall, to the extent to which it is not set off against his income from other sources chargeable to tax for the same year, be carried forward and (so long as he continues to carry on the business)—

(a) shall be set off against the profits of that business arising in the following period of account, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment following the relevant year,

and so on for subsequent years in succession until the amount of such loss is exhausted.

(2) A company may make a claim under this section in respect of a loss sustained in a period—

(a) as respects which the company was within the charge to income tax; or

(b) as respects which the company was exempt from tax by virtue of the Special Exemption Ordinance,

notwithstanding that the company is, as respects subsequent periods, within the charge to corporation tax.

(3) A claim may not be made under this section more than 6 years after the end of the period of account in which the loss was incurred.

(4) In this section "the relevant year of assessment", in relation to a period of account, is the year of assessment for which income arising in that period is chargeable to income tax.

*Allowance of business losses for individuals in cases of transfer of business.*

107.—(1) In any case where—

(a) a business carried on by an individual, either alone or in partnership, is transferred to a company and in consideration for the transfer the company issues shares in the company to that individual, and

(b) prior to the transfer a loss was sustained in the course of carrying on the business but not set off against the profits of the business, and

(c) the amount of the loss has not been and is not being set against any other income of the individual (either in that year or any earlier year),

then, subject to subsections (2) to (7) below, in computing his chargeable income for any year of assessment following the year in which the transfer takes place, the individual may set against any dividend he receives in respect of those shares in the immediately preceding year of assessment, an amount equal to the amount of that loss.

(2) The Commissioner may disallow any claim under subsection (1) above if in all the circumstances of the case he is of the opinion that it should not be allowed.

(3) Subject to subsection (7) below, where a business is transferred as

mentioned in subsection (1), the acquiring company may not deduct any losses suffered in the course of the business prior to the date of the transfer from the profits of the business accruing on or after that date or from any other profits or income.

(4) Subject to subsection (5) below, a claim for relief under subsection (1) shall be irrevocable and have effect in relation to all losses sustained in the business by the individual not otherwise set off against any income of the individual.

(5) A claim for relief under subsection (1) above shall be made before the expiry of the period of 6 years beginning with the date of the transfer and shall have effect for all years of assessment beginning after the date of the transfer.

(6) All such adjustments shall be made as may be necessary in consequence of a claim being made under this section, whether by way of repayment or discharge of tax or otherwise.

(7) If a claim is not made by the individual under this section or such a claim is disallowed, the company to which the business is transferred may make a claim to set off the amount of the losses sustained in the business before the transfer in accordance with section 108, and that section shall apply in relation to any such loss as if it had been sustained in the business immediately after the transfer was effected; but—

(a) a claim shall not be allowed by virtue of this subsection unless the individual has consented, in writing, to the claim being made; and

(b) the individual may not make a claim under subsection (1) after giving his consent for the purposes of paragraph (a) above.

*Loss relief for companies.*

108.—(1) Where, in any accounting period, a company carrying on a business incurs a loss in the business the company may make a claim requiring that the loss be set off for the purposes of corporation tax against income of that accounting period.

(2) Where in any accounting period a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any income of the company in succeeding accounting periods; and where such a claim is made (and so long as the company continues to carry on the business) the amount of the loss, or so much of that amount as cannot, on a claim (if made) under subsection (1) above, be set off against income of an earlier accounting period—

(a) shall be set off against the profits of that business arising in the following accounting period, and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income from other sources arising in that period;

and so on for subsequent accounting periods in succession until the amount of such loss is exhausted.

(3) The amount of a loss incurred in a business in an accounting period shall be computed for the purposes of this section in the same way as business income from the business in that period would have been computed.

(4) For the purposes of this section "business income" means, in relation

to any business, the income which falls or would fall to be included in respect of the business in the total profits of the company.

(5) In this section references to a company carrying on a business refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(6) A claim under subsection (1) above may only be made within the period of 2 years immediately following the accounting period in which the loss is incurred or within such further period as the Commissioner may allow.

(7) A claim under subsection (2) above must be made within 6 years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of 6 years.

*Change in ownership of company: disallowance of trading losses.*

109.—(1) If—

(a) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

relief shall not be given under section 108 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a trade" includes--

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or

(b) a major change in customers, outlets or markets of the trade; and this section applies even if the change is the result of a gradual process which began outside the period of 3 years mentioned in subsection (1)(a) above.

(5) Where relief in respect of a company's losses has been restricted under this section then, in applying the provisions of Chapter II of this Part about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made under that Chapter for any chargeable period of the company before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership

were sufficient to give effect to the allowance or deduction.

(6) In applying subsection (5) above it shall be assumed that any profits are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(7) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than 3 years after), an assessment to give effect to the provisions of this section shall not be out of time if made within 6 years from that time, or the latest of those times.

(8) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by the Commissioner given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities or of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

*Rules for ascertaining  
change in ownership of  
company.*

110.—(1) For the purposes of section 109 there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than 3 years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;

- (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of section 109, any gift of shares, shall be left out of account.

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 109, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

(4) Where section 109 has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of section 109 if—

- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
- (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(7) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(8) For the purposes of this section—

- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
- (b) the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies shall be determined in accordance with subsections (5) to (11) of section 163; and
- (c) "shares" includes stock.

(9) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

## CHAPTER IV

### GROUP RELIEF

*Surrender of relief  
between members of  
groups.*

111.—(1) Subject to and in accordance with this Chapter, relief for trading losses and other amounts eligible for relief from corporation tax may be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief" in accordance with subsection (5) below.

(2) In this Chapter any reference to a company is a reference to a body corporate resident in the Falklands Islands.

(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.

A claim made by virtue of this subsection is referred to as a "group claim".

(4) Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.

(5) If in any accounting period the surrendering company has incurred a loss in carrying on a business, the amount of the loss may be set off for the purposes of corporation tax against the total income of the claimant company for its corresponding accounting period.

## (6) A payment for group relief—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any of the purposes of the enactments relating to corporation tax be regarded as a distribution;

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

*Corresponding  
accounting periods.*

112.—(1) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

(a) the amount which may be set off against the total income of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity); and

(b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity);  
where—

A is the length of the period common to the two accounting periods;

B is the length of the accounting period of the surrendering company; and

C is the length of the corresponding accounting period of the claimant company.

*Companies joining or  
leaving group.*

113.—(1) Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group, then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that—

(a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further



break under this subsection); and

- (b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and
- (c) the amount of total income for the true accounting period of the company against which group relief may be allowed in accordance with section 112(5) is also apportioned to the component accounting periods;

and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(3) Where the one company is the surrendering company and the other company is the claimant company—

- (a) references in subsection (1) above and section 112 to accounting periods shall be construed in accordance with subsection (2) above (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);
- (b) references in section 112 to income, and amounts to be set off against the income, shall be construed in accordance with subsection (2) above, (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).

(4) In subsections (1) and (2) above "arrangements" means arrangements of any kind whether in writing or not.

(5) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that the two companies are connected with each other.

*Exclusion of double allowances.*

114.—(1) Without prejudice to section 105, relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

(3) Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and—

- (a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 113, and
- (b) there is a part of the surrendering company's accounting

period during which none of those claimant companies is a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.

(5) Subject to subsection (6) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and—

(a) all the claims so made are admissible only by virtue of section 113(2) and (3), and

(b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(6) If claims falling within subsection (5) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.

*Group relief by way of substitution for loss relief.*

115.—(1) Group relief may be given in respect of a loss notwithstanding that relief has been given in respect of it under section 108.

(2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 108.

(3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the Commissioner notice of consent to surrender relating to the loss.

(4) For the purposes of this section relief under section 108 shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

*Claims.*

116.—(1) A claim for group relief for an accounting period of a company, or the withdrawal of such a claim, may not be made if—

(a) the company has been assessed to corporation tax for the period, and

(b) the assessment has become final and conclusive.

(2) Subsection (1) above shall not apply in the case of a claim, or withdrawal of a claim, made before the end of 2 years from the end of the period.

(3) Subject to subsections (4) and (5) below, a claim for an accounting period of a company, or the withdrawal of such a claim, may not be made after the end of 6 years from the end of the period.

(4) Where under subsections (2) and (3) above a claim, or withdrawal of a claim, may not be made after a certain time, it may be made within such further time as the Commissioner may allow.

(5) A claim for an accounting period of a company, or the withdrawal of such a claim, may be made after the end of 6 years from the end of the period if—

(a) the company has been assessed to corporation tax for the period before the end of 6 years from the end of the period,

(b) the company has appealed against the assessment, and

(c) the assessment has not become final and conclusive.

(6) A claim for an accounting period of a company, or withdrawal of such a claim, may not be made under subsection (5) after the end of 6 years and 3 months from the end of the period.

(7) A claim, or withdrawal of a claim, shall be made by being included in the accounts and other information submitted by the company in accordance with section 27 for the period for which the claim is made.

(8) A claim may be made for less than the full amount available.

(9) A claim, other than one under subsection (5) above, shall be for an amount which is quantified at the time the claim is made.

(10) A claim under subsection (5) above shall be expressed to be conditional, as to the amount claimed, on, and only on, the outcome of one or more relevant matters specified in the claim, and for the purposes of this subsection a matter is relevant if it is relevant to the determination of the assessment of the claimant company to corporation tax for the period for which the claim is made.

*Requirements as to  
consent of surrendering  
companies.*

117.—(1) A group claim shall require the consent of the surrendering company.

(2) Consent to surrender shall be of no effect unless, at or before the time the claim is made, notice of consent is given by the consenting company to the Commissioner.

(3) Notice of consent to surrender, in the case of consent by the surrendering company, shall be of no effect unless it contains the following particulars—

(a) the name of the surrendering company;

(b) the name of the company to which relief is being surrendered;

(c) the amount of relief being surrendered;

(d) the accounting period of the surrendering company to which the surrender relates.

(4) A claim shall be of no effect unless it is accompanied by a copy of the notice of consent to surrender given for the purposes of this paragraph by the surrendering company.

(5) In the case of consent to surrender by the surrendering company, consent which relates to relief which is the subject of more than one claim under section 116(5) shall be of no effect unless it specifies an order of priority in relation to the claims.

*Recovery of excess relief.*

118.—(1) If the Commissioner discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax in the amount which ought in his opinion to be charged.

(2) Subsection (1) above is without prejudice to the making of an assessment under section 135 and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

(3) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to a claim or the withdrawal of a claim.

(4) An assessment under this paragraph shall not be out of time if it is made—

- (a) in the case of a claim, within one year from the date on which an assessment of the claimant company to corporation tax for the period for which the claim is made becomes final and conclusive, and
- (b) in the case of the withdrawal of a claim, within one year from the date on which the claim is withdrawn.

*Interpretation of Chapter IV.*

119.—(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) In this Chapter—

- "claimant company" has the meaning given by section 111(1);
- "group claim" means a claim for group relief made by virtue of section 111(3);
- "group relief" has the meaning given by section 111(1); and
- "surrendering company" has the meaning given by section 111(1).

(3) For the purposes of this Chapter—

- (a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;
- (b) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and
- (c) "trading company" means a company the business of which

consists wholly or mainly in the carrying on of a trade or trades.

(4) In applying for the purposes of this Chapter the definition of "75 per cent. subsidiary" in section 163 any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) References in this Chapter to a company apply only to bodies corporate resident in the Falkland Islands; and in determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—

- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
- (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or
- (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(6) Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—

- (a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits the subsidiary company available for distribution, and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution on a winding-up.

## PART VI

### TAX AVOIDANCE

*Transactions between associated persons.*

120.—(1) Subject to the provisions of this section, where any property is sold on or after 1st July 1993 and—

- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control, and
- (b) the property is sold at a price ("the actual price") which is either--

- (i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length ("the arm's length price"), or

- (ii) greater than the arm's length price,

then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.

(2) Subsection (1) above shall not apply--

(a) in any case where--

(i) the actual price is less than the arm's length price, and

(ii) the buyer is resident and carrying on a business in the Falkland Islands, and

(iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that business for tax purposes; or

(b) in any case where--

(i) the actual price is greater than the arm's length price, and

(ii) the seller is resident and carrying on a business in the Falkland Islands, and

(iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that business for tax purposes; or

(c) in relation to any other sale, unless the Commissioner so directs.

(3) Where a direction is given under subsection (2)(c) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

*Information for purposes of section 120, and appeals.*

121.—(1) The Commissioner may, by notice given to any body corporate, require it to give to the Commissioner, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Commissioner--

(a) to be, or to be connected with, a transaction with respect to which the Commissioner might give a direction under section 120; or

(b) to be relevant for determining whether such a direction could or should be given in any case; or

(c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm's length.

(2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

(3) Where, in the case of a transaction with respect to which it appears to the Commissioner that a direction under section 120 might be given--

(a) one of the parties is a body corporate resident outside the Falkland Islands more than 50 per cent. of the ordinary share capital of which is owned by a body corporate ("the parent body") resident in the Falkland Islands; and

(b) more than 50 per cent. of the ordinary share capital of the other party is owned by the parent body or the parent body is the other party,

the Commissioner may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.

(4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the Falkland Islands over which the parent body has control, it appears to the Commissioner, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Commissioner shall direct that the parent body need not comply with the requirement.

(5) If, on an application under subsection (4) above, the Commissioner refuses to give a direction under that subsection, the parent body may, by notice given to the Commissioner within 30 days after the refusal, appeal to the Tribunal who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

(6) Where it appears to the Commissioner that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 120 might be given, then, for the purpose of assisting the Commissioner to determine whether such a direction should be given, an officer of the Income Tax Office specifically authorised in that behalf by the Commissioner may, at any reasonable time, on production if so required of his authority--

- (a) enter any premises used in connection with the business carried on by that body of persons in the course of which the transaction or transactions were effected,
- (b) inspect there any books, accounts or other documents or records whatsoever relating to that business which he considers it necessary for him to inspect for that purpose, and
- (c) require any such books, accounts or other documents or records to be produced to him there for inspection.

(7) An officer's authority for entering any premises under subsection (6) above shall state his name and the name of the body of persons carrying on the business in connection with which the premises are used.

*Provisions supplementary to sections 120 and 121.*

122.—(1) Nothing in section 120 shall be construed as affecting the operation of Chapter II of Part V.

(2) Section 120 shall be disregarded in determining for the purposes of section 152 what, if any, profits are produced by a business.

(3) For the purposes of sections 120 and 121 a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

(4) For the purposes of sections 120 and 121 "control", in relation to a body corporate, means the power of a person to secure--

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

(5) In determining whether any person (alone or with others) has control over a body of persons--

(a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;

(b) there may also be attributed to him any rights or powers of a person with whom he is connected including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.

(6) Sections 120, 121 and this section shall, with the necessary adaptations, have effect in relation to—

(a) lettings and hirings of property, grants and transfers of rights, interests or licences, and

(b) providing business facilities whether by way of making loans or guaranteeing debts or other liabilities to third parties or by the provision of any other kind of business facility whatsoever,

as they have effect in relation to sales, and the references in those sections to sales, buyers and prices shall be deemed to be extended accordingly.

*Transfer of property to evade taxation.*

123. Any person who reduces his income by the transfer or assignment of any real or personal, movable or immovable property to any member of his family shall nevertheless be liable to be taxed as if such transfer or assignment had not been made, unless the Commissioner is satisfied that such transfer or assignment was not made for the purpose of evading the whole or any part of any tax imposed under this Ordinance.

*Tax payable before departure from Falkland Islands, etc.*

124.—(1) If the Commissioner has reason to believe that any person who has been assessed to tax may leave the Falkland Islands before the tax becomes payable without having paid such tax, he may by notice to that person demand payment of the tax within the period specified in the notice.

(2) Tax demanded by notice under subsection (1) shall be payable at the end of the specified period and, in default of payment and unless security for payment thereof be given to the satisfaction of the Commissioner, shall be recoverable forthwith in the manner prescribed by section 142(3).

(3) If the Commissioner has reason to believe that tax on any chargeable income may not be recovered, he may at any time and as the case may require—

(a) by notice require any person to make a return and to furnish particulars of any chargeable income within the specified period;

(b) make an assessment on that person in the amount of the



income returned, or if default is made in making such return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;

- (c) by notice to the person assessed require security for the payment of the tax assessed to be given to his satisfaction.

(4) If the Commissioner has reason to believe that tax on any income which will become chargeable to such tax (assuming tax to be chargeable on that income), may not be recovered he may at any time—

- (a) by notice to the person by whom the tax would be payable determine a period ("the tax period") for which tax shall be charged and require such person to render within the specified period returns and particulars of the income for the tax period;

- (b) make an assessment upon the person in the amount of the income returned, or if default is made in making a return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;

and an assessment under this subsection shall be made at the rate of tax imposed by the last preceding proclamation.

(5) Notice of any assessment made in accordance with the provisions of subsection (3) or (4) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subsection (3) or (4)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in accordance with section 142(3).

(6) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under subsection (3) or (4) shall have the rights of objection and appeal conferred by sections 136 and 139 and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(7) Subsections (3) or (4) are without prejudice to the powers of the Commissioner under section 135.

(8) In this section "specified period", in relation to any notice, means such period as may be specified in the notice.

(9) This section applies in relation to assessments made before as well as after the coming into force of this section, and in relation to tax for chargeable periods beginning before the coming into force of this section.

*Company migration.*

125.—(1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the Falkland Islands.

(2) The requirements of this subsection are satisfied if the company gives to the Commissioner—

- (a) notice of its intention to cease to be resident in the Falkland Islands specifying the time ("the relevant time") when it intends so to cease;

- (b) a statement of the amount which, in its opinion, is the amount

- of tax which is or will be payable by it in respect of periods beginning before that time; and  
 (c) particulars of the arrangements which it proposes to make for securing the payment of that tax.

(3) The requirements of this subsection are satisfied if—

- (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and  
 (b) those arrangements as so made are approved by the Commissioner for the purposes of this subsection.

(4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Tribunal whose decision shall be final.

(5) If any information furnished by the company for the purpose of securing the approval of the Commissioner under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Commissioner under that subsection, any resulting approval of the Commissioner shall be void.

(6) In this section and section 126 any reference to the tax payable by a company includes a reference to—

- (a) any amount which it is liable to pay under the POAT regulations made under section 85;  
 (b) any tax which it is liable to pay under section 56 or 93.

(7) In this section and section 126 any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.

(8) In this section and section 126 any reference to a provision of this Ordinance shall be construed, in relation to any time before the commencement of that provision as a reference to the corresponding enactment repealed by this Ordinance.

*Penalties for failure to  
 comply with section  
 125.*

126.—(1) If a company fails to comply with section 125 at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.

(2) If, in relation to a company ("the migrating company"), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 125 at any time and either—

- (a) that person is a person to whom subsection (3) below applies;  
 or  
 (b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that subsection applies,

that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.

(3) This subsection applies to the following persons, namely—

- (a) any company which has control of the migrating company; and
- (b) any person who is a director of the migrating company or of a company which has control of the migrating company.

(4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above—

- (a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and
- (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 125 was to his knowledge such an act.

(5) References in this section to a company failing to comply with section 125 are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the Falkland Islands.

(6) In this section "director", in relation to a company, includes—

- (a) any person managing, or who is a member of the body managing, the affairs of the company (by whatever name called),
- (b) any person (other than a person advising in a professional capacity) in accordance with whose directions or instructions the other directors are accustomed to act; and
- (c) any person who, or who together with any connected person, beneficially owns, directly or indirectly, at least 20 per cent. of the ordinary share capital of the company.

PART VII  
DOUBLE TAXATION RELIEF

*Double taxation relief arrangements.*

127.—(1) If the Governor in Council by order declares—

(a) that arrangements specified in the order have been made with the Government of any territory outside the Falkland Islands with a view to affording relief from double taxation in relation to income tax or corporation tax or any tax of a similar character imposed by the laws of that territory, and

(b) that it is expedient that those arrangements should have effect,

the arrangements shall have effect in relation to income tax and corporation tax notwithstanding anything to the contrary in any enactment.

(2) Any order made under this section may be revoked by a subsequent order.

(3) The Governor in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

*Limit on credit: general provisions.*

128.—(1) This section shall have effect where, under double taxation relief arrangements, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in the Falkland Islands.

(2) In subsections (3) to (7) below and sections 129 and 130—

"foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed, and

"tax" means income tax or corporation tax chargeable under this Ordinance.

(3) A credit shall not be allowed against tax for any chargeable period unless the person entitled to the income is resident in the Falkland Islands for that period, but subject to that, the amount of tax chargeable in respect of the income shall, on a claim being made in that behalf, be reduced by the amount of the credit.

(4) In computing the amount of the income—

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the tax chargeable depends on the amount received in the Falkland Islands, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income;

(c) where the income includes a dividend and, under the arrangements, foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of credit;

but notwithstanding anything in paragraphs (a) to (c) above a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds

the credit therefor.

(5) Where—

(a) the double taxation relief arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(6) Any claim for an allowance by way of credit under this section for any chargeable period shall be made not later than two years after the end of that period, and in the event of any dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

(7) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the Falkland Islands or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made whether in the Falkland Islands or elsewhere, as are material in determining whether any and if so what credit falls to be given.

*Limit on credit: income tax.*

129.—(1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between—

(a) the amount of tax which would be chargeable (before allowance of any credit under this Part) on the total income of that person, and

(b) the amount of tax which would be so chargeable on the total income of that person less the income in respect of which the credit is to be allowed.

(2) Without prejudice to subsection (1), the total credit to be allowed to a person for any chargeable period for foreign tax under this Part shall not exceed the total tax payable by him for that period.

(3) Paragraphs (a) and (b) of section 128(4) (but not the remainder of that subsection) shall apply to the computation of total income for the purpose of subsection (1) above, and shall so apply in relation to all income in the case of which credit falls to be given for foreign tax under double taxation relief arrangements.

*Limit on credit: corporation tax.*

130.—(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income ("the relevant income") shall not exceed the corporation tax attributable to the relevant income, determined in accordance with subsection (2) below.

(2) The amount of corporation tax attributable to the relevant income shall be treated as equal to such proportion of the amount of that income as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income for the accounting period in which the income arises ("the relevant accounting period").

(3) Where in accordance with section 33 any ACT falls to be set against the company's liability to corporation tax on its income for the relevant accounting period—

- (a) so far as that liability relates to the relevant income it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income as determined in accordance with subsection (2) above; and
- (b) the amount of ACT which may be set against that liability, so far as it relates to the relevant income, shall not exceed the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income.

*Unilateral tax credit.*

131.—(1) Where any person resident or ordinarily resident in the Falkland Islands proves that he had paid, by deduction or otherwise, overseas tax on any part of his income which arises from a source outside the Falkland Islands and which is also chargeable to Falkland Islands tax, he shall be entitled to a credit against such Falkland Islands tax equal to the overseas tax or the Falkland Islands tax on that part of his income whichever is the less.

(2) For the purposes of this section—

"overseas tax" means an income tax or corporation tax or tax of a similar character imposed by the laws of any territory outside the Falkland Islands other than a territory with the Government of which arrangements have been made which have effect under section 127; and

"income arising from a source outside the Falkland Islands" does not include, in the case of income from an employment, such part of that income as constitutes remuneration for services actually performed in the Falkland Islands.

(3) For the purpose of calculating the amount of any credit under this section, the provisions of sections 128, 129 and 130 shall apply as if references in those sections to double taxation relief arrangements were references to this section and as if references to foreign tax were references to overseas tax.

*Disclosure of information.*

132.—(1) Where any arrangements have effect by virtue of section 127, the obligation as to secrecy imposed by section 158 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(2) Without prejudice to subsection (1) above, where, under any law in force in any territory outside the Falkland Islands, provision is made for the allowance of relief from tax on income in respect of the payment of tax in the Falkland Islands, the obligation as to secrecy imposed by section 158 shall not prevent the disclosure to the authorized officers of the Government in that part of the Commonwealth of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from tax on income in that part of the Commonwealth.

PART VIII  
ASSESSMENTS, APPEALS, COLLECTION,  
REPAYMENT OF TAX, OFFENCES AND PENALTIES

*Assessments to income tax and corporation tax*

*Assessments to income tax.*

133.—(1) The Commissioner shall assess every person chargeable to income tax for any year of assessment as soon as is reasonably practicable after the expiration of the time allowed to such person for the delivery of his return under section 11 for that year.

- (2) Where a person has delivered his return the Commissioner may—  
(a) accept the return and make an assessment accordingly; or  
(b) refuse to accept the return, and, to the best of his judgment, determine the amount of the chargeable income of that person and assess him accordingly.

(3) Where a person has not delivered a return for any year within the time permitted and the Commissioner is of the opinion that he is chargeable to income tax for that year, he may, according to the best of his judgment, determine the amount of the chargeable income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(4) In any case where a person has been required to lodge accounts and other information with the Commissioner under section 11, any reference above to his return includes a reference to any such accounts and information.

(5) An assessment under this section for any year of assessment may not be made after the end of the period of 6 years immediately following that year.

*Assessments to corporation tax.*

134.—(1) The Commissioner may assess any company chargeable to corporation tax for a corporation tax year before the expiry of the period of 6 years immediately following that year.

(2) Where a company has delivered accounts for an accounting period and any other information which the Commissioner may require, the Commissioner may—

- (a) accept the accounts and other information and make an assessment accordingly; or  
(b) refuse to accept the accounts or other information and, to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly.

(3) Where a person has not delivered accounts for an accounting period within the time permitted and the Commissioner is of the opinion that he is chargeable to corporation tax for that period, he may, according to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly; but such an assessment shall not affect any

liability otherwise incurred by the company by reason of its failure or neglect to deliver a return.

(4) Where it appears to the Commissioner that the beginning or end of an

accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding 12 months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either--

- (a) the Commissioner on further facts coming to his knowledge sees fit to revise it; or
- (b) on an appeal to the Tribunal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the accounting periods, and there shall be made such other assessments for any such periods or any of them as might have been made at the time the assessment appealed against was made.

(5) An assessment under this section for any corporation tax year may not be made after the end of the period of 6 years immediately following that year.

(6) This section has effect subject to any other provision of this Ordinance making provision with respect to assessments to corporation tax.

*Additional assessments.*

135.—(1) Where it appears to the Commissioner that any person chargeable to tax for any chargeable period has been assessed at a less amount than that which ought to have been charged, the Commissioner may, according to the best of his judgment, assess the additional amount of tax not charged by the earlier assessment and, in the case of income tax, interest shall be due as if the tax had been charged in the earlier assessment.

(2) The provisions of this Ordinance relating to notices of assessment, appeals and other proceedings under this Ordinance shall apply to any additional assessment under this section and to the tax charged under the assessment.

(3) An additional assessment under this section may not be made more than 2 years after the date on which the original assessment was made.

*Notices of assessment and objections to and amendments of assessments.*

136.—(1) Where an assessment is made on any person under section 133, 134 or 135, the Commissioner shall give notice of it to the person as soon as is reasonably practicable after it is made, stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under this section; and a notice under this subsection is referred to in this Ordinance as a notice of assessment.

(2) Any person who is given a notice of assessment may by notice to the Commissioner object to the assessment.

In this section "the person assessed" means the person or company to whom a notice of assessment is given.

(3) A notice under subsection (2) ("a notice of objection") shall state precisely the grounds on which the person assessed objects to the assessment.

(4) A notice of objection shall be made within two months from the date of the service of the notice of assessment to which it relates but the Commissioner shall, if satisfied that owing to any reasonable cause (whether absence from the Falkland Islands or sickness or any other cause) the person assessed was prevented from making the application within the 2 months allowed, extend that



period to such longer period as may be reasonable in the circumstances.

(5) On receipt of a notice of objection the Commissioner shall reconsider the assessment and may require the person assessed—

- (a) to furnish such particulars as the Commissioner may require with respect to that person's income, and
- (b) to produce all books or other documents in his custody or under his control relating to such income.

(6) The Commissioner may summon any person whom he has reasonable grounds for believing to be able to give evidence respecting the assessment to attend before him, and may examine such person on oath or otherwise, but a person shall not be required to give any evidence under this subsection which he could not be compelled to give in an action in the Supreme Court.

(7) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Commissioner the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon that person.

(8) The person assessed may not appeal against the assessment under section 139 unless—

- (a) he has given notice of objection to the assessment under this section, and
- (b) the Commissioner has completed his reconsideration of the assessment under this section.

*Burden of proof.*

137. The burden of proof of exemption from or abatement of the tax levied under this Ordinance shall lie on the party claiming the exemption or abatement.

*Appeals to the Tax Appeal Tribunal*

*Tax Appeal Tribunal.*

138.—(1) There shall continue to be a Tax Appeal Tribunal ("the Tribunal") constituted in accordance with this section to exercise functions conferred upon it by this Ordinance.

(2) The Tax Appeal Tribunal shall have at least 5 and not more than 7 members appointed by the Governor.

(3) A person who is—

- (a) an elected member of the Legislative Council; or
- (b) a public officer in any public office in the Finance Department,

is not qualified to be appointed as a member of the Tribunal and any person who, under this subsection, is not qualified to be appointed as a member of the Tribunal ceases, if he is already a member of the Tribunal, to hold office as such immediately he ceases to be qualified under this subsection to be appointed to be a member of the Tribunal.

(4) A member of the Tribunal who has, or whose partner, spouse or child has, any direct interest in any matter falling to be considered by the Tribunal shall not take any part in the consideration of that matter by the Tribunal, and shall declare that interest if he is present at a meeting of the Tribunal at which the matter is considered and withdraw from such a meeting during the Tribunal's consideration of that matter.

(5) No business shall be transacted (except to adjourn) by the Tribunal unless at least 3 of its members are present, but the Tribunal may otherwise act notwithstanding a vacancy for the time being in its members.

A member of the Tribunal who has declared an interest shall not be counted as being present for the purposes of this subsection.

(6) The Governor shall appoint one of the members of the Tribunal to be the Chairman and, subject to subsection (7), the Chairman shall preside at all meetings of the Tribunal at which he is present.

(7) Where the Chairman is, by virtue of subsection (4), unable to take part in consideration of a matter or is absent from the meeting of the Tribunal, the members of the Tribunal present (where appropriate, after withdrawal of the Chairman) shall elect one of their members to preside at that meeting or for so much of it as the Chairman is absent.

*Appeals to the Tribunal.*

139.—(1) Any person aggrieved—

- (a) by an assessment of liability to tax or entitlement to repayment of tax already paid or of entitlement to repayment of any sum already paid on account of tax;
- (b) by a decision of the Commissioner with respect to person's entitlement to the benefit of a deduction, allowance or relief under this Ordinance or the Income Tax Ordinance;
- (c) by a decision that a person is or was at any time resident or ordinarily resident or not resident in the Falkland Islands for the purposes of this Ordinance or the Income Tax Ordinance ;
- (d) by a decision that any income of a person is, for the purposes of this Ordinance or the Income Tax Ordinance, unearned income or, as the case may be, earned income; or
- (e) by any other decision of the Commissioner under this Ordinance or the Income Tax Ordinance,

may, subject to section 136, appeal to the Tribunal in accordance with this section.

(2) An appeal may not be brought under subsection (1) against—

- (a) a requirement to file a return of income;
- (b) a requirement to produce any accounts or other information relating to a business;
- (c) a requirement to pay interest on any tax unpaid or paid late;
- (d) a decision to take proceedings for the recovery of any tax alleged to be due and unpaid; or
- (e) a decision to prosecute for any offence under this Ordinance or the Income Tax Ordinance;
- (f) a decision to require payment of a penalty under this Ordinance or the Income Tax Ordinance.

(3) For the purposes of subsection (1), "person aggrieved" means—

- (a) the person directly affected by the decision in question, or, where he is deceased, his personal representative;
- (b) in relation to a bankrupt, his trustee in bankruptcy or, where there is none, the Official Receiver or person acting as Official Receiver in relation to the bankrupt's estate;
- (c) in relation to the estate of a deceased person, the deceased person's personal representative;
- (d) in relation to a settlement of property, the trustees for the

time being of that settlement; and  
(e) in relation to a person under an incapacity—

(i) if that person is a minor, his parents or either of them or any other person who is his guardian;

(ii) if that person suffers from a mental incapacity, the person who has been appointed by the Supreme Court as his receiver or, if there be none, any person appearing to the Tribunal to have a sufficient interest in his welfare; and

(iii) in relation to a company in the course of being wound up, the liquidator.

(4) Notice of appeal under this section must be sent or delivered to the Clerk to the Tribunal within 21 days of the date on which the decision of the Commissioner under section 136 relating to the assessment or decision in question is notified to the appellant or such longer period as the Commissioner, in his discretion, may allow.

In relation to an appeal against any assessment or decision under the Income Tax Ordinance this subsection shall have effect with the omission of the words from "the decision" to "relating to" and with the substitution of "42" for "21".

(5) Notice of appeal shall specify the decision or decisions the subject of the appeal, the appellant's grounds of appeal and whether the appellant requests an oral hearing of the appeal by the Tribunal or whether he is content for the appeal to be dealt with by written representations.

(6) Schedule 1 to this Ordinance shall have effect with respect to appeals under this section.

(7) On consideration of any written representations made in accordance with Schedule 1, or at the hearing if one is held, the Tribunal may allow the appellant to put forward any ground not specified in the notice of appeal, and take it into consideration.

(8) On receiving a notice of appeal under this section, the Clerk to the Tribunal shall transmit a copy of it to the Commissioner.

*Clerk to the Tribunal.*

140.--(1) The Governor shall appoint a public officer to be the Clerk to the Tribunal.

(2) The duties of the Clerk shall be—

(a) to have custody of the records at the Tribunal;

(b) to receive notices of appeal and written representations in connection with any appeal;

(c) to keep minutes of all meetings of the Tribunal;

(d) to notify the parties to any appeal to the Tribunal of the determination of the appeal by Tribunal and the reasons for that determination;

(e) any other duty imposed on him by this Ordinance; and

(f) any other duty, not inconsistent with this Ordinance, imposed on him by the Chairman of the Tribunal.

*Postponement of tax on appeal.*

141.—(1) This section applies to an appeal to the Commissioner against—

- (a) an assessment to income tax;
- (b) an assessment to corporation tax.

(2) Except as otherwise provided by the following provisions of this section, the tax charged by the assessment shall be due and payable as if there had been no appeal.

(3) If the appellant has grounds for believing that he is overcharged to tax by the assessment, he may, by notice given to the Commissioner within 30 days after the date of the issue of the notice of assessment, apply to the Commissioner for a determination of the amount of tax the payment of which should be postponed pending the determination of the appeal.

A notice of application under this subsection shall state the amount by which the appellant believes that he is overcharged to tax and his grounds for that belief.

(4) An application under subsection (3) above may be made more than 30 days after the date of the issue of the notice of assessment if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the assessment.

(5) If, after any determination of the amount of tax the payment of which should be so postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, by notice given to the other party at any time before the determination of the appeal, apply to the Commissioner for a further determination of that amount.

A notice of application under this subsection shall state the amount by which the applicant believes that the amount previously determined has become excessive or, as the case may be, insufficient and his grounds for that belief.

(6) An application under subsection (3) or (5) above shall be heard and determined in the same way as the appeal; and where any such application is heard and determined by the Commissioner, that shall not preclude him from hearing and determining the appeal or any application or further application under subsection (5) above.

(7) The amount of tax the payment of which shall be postponed pending the determination of the appeal shall be the amount (if any) in which it appears to the Commissioner, having regard to the representations made and any lawful evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged to tax.

(8) In the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (4) above, or under subsection (5) above, any tax the payment of which is not postponed or which ceases to be postponed shall be due and payable—

(a) where the tax concerned is income tax for any year of assessment—

(i) 30 days after the date of the determination, or

(ii) 90 days after the date of the assessment, or

(iii) 1st August in that year,

whichever is the later;

(b) where the tax concerned is corporation tax, 30 days after the date of the determination;

and any tax overpaid shall be repaid.

(9) If the appellant and the Commissioner come to an agreement, whether in writing or otherwise, as to the amount of tax the payment of which should be postponed pending the determination of the appeal, the like consequences shall ensue under subsection (8) above as would have ensued if the Commissioner had made a determination to that effect under subsection (7) above on the date when the agreement was come to, but without prejudice to the making of a further agreement or of a further determination under that subsection.

(10) Where an agreement is not in writing—

- (a) subsection (9) above shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice given by the Commissioner to the appellant or by the appellant to the Commissioner, and
- (b) the reference in that subsection to the time when the agreement was come to shall be construed as a reference to the time of the giving of the notice of confirmation.

(11) On the determination of an appeal against an assessment, the date on which any income tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be shall be due and payable—

(a) where the tax concerned is income tax—

(i) 30 days after the date on which the Commissioner issues to the appellant a notice of the total amount payable in accordance with of that determination, or

(ii) 90 days after the date of the assessment,

whichever is the later;

(b) where the tax concerned is corporation tax, 30 days after the date of issue of the notice referred to in paragraph (a)(i);

and any tax overpaid shall be repaid.

(12) Interest shall be due on any tax repaid in accordance with subsection (8)(b) or (11)(b) above at the rate of 2 per cent. per annum under base lending rate.

#### *Collection of tax and interest on late tax*

##### *Collection of tax and interest on tax.*

142.—(1) The Commissioner shall from time to time deliver to the collector lists of the names and addresses of persons assessed to tax, together with the amount payable by each person, and it shall be the duty of the collector to take all reasonable steps to ensure the payment of all assessed tax.

(2) In any case where notice of an objection or of an appeal has been given, collection of tax shall be subject to the provisions of sections 133 to 141.

(3) Without prejudice to any other provision of this Ordinance, tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or any collector in his official name with full costs of suit from the person charged therewith as a debt due to the Crown.

(4) In any case where tax which has been assessed remains unpaid after the date on which it was due, the Commissioner or any collector appointed under

this Ordinance shall serve a demand note upon the person liable to pay the tax for the amount of the tax remaining unpaid together with the amount of interest due, and if payment is not made within 30 days from the date of the service of such demand note, the collector may proceed to enforce payment in accordance with Schedules 2 and 3 to this Ordinance.

(5) Where a demand note is served under subsection (4) above, the interest shall be recoverable in respect of the period after as well as before the service of the note and it is sufficient, in relation to a period falling after the date of the demand note, for it to state that interest is payable as specified in section 10(2) or 29(1), as the case may be.

(6) Any penalty under this Ordinance for which no other means of recovery is provided shall be treated as if it were an amount of assessed tax due at the time a notice issued by the Commissioner specifying the amount of the penalty is served on the person in default and—

(a) the Commissioner may not issue any such notice more than 6 years, or in the case of fraud more than 20 years, after the default in respect of which the penalty is due occurred or, if it occurred over a period of time, after the end of that time; and

(b) any person issued with a notice under this subsection may appeal to the Tribunal against the notice within 21 days of the date of service of the notice and section 139(5) to (8) and Schedule 1 shall apply.

#### *Repayment of tax*

##### *Repayment of income tax.*

143.—(1) If it is proved to the satisfaction of the Commissioner on a claim made by any person that he has paid income tax, by deduction or otherwise, for any year of assessment without the making of an assessment in excess of the amount with which he is properly chargeable, that person shall be entitled to have the excess refunded to him.

(2) Every claim for repayment under this section shall be made within 6 years from the end of the year of assessment to which the claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(4) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any chargeable period as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

##### *Refund of overpayments of corporation tax.*

144.—(1) If, with respect to any accounting period—

(a) a company has paid an amount of corporation tax without the making of an assessment; and

(b) the company has grounds for believing that the amount paid exceeds the company's probable liability for corporation tax,

the company may by notice to the Commissioner make a claim for the repayment to the company of the amount of that excess; but a claim may not be made under this subsection after an assessment to corporation tax for the period becomes final or, if there is no assessment, after the expiry of the period of 6 years beginning with the end of the accounting period in question.

(2) A notice under subsection (1) above shall state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above, and the Commissioner shall repay the amount claimed if he is satisfied that the claim is justified.

(3) If, apart from this subsection, a claim would fall to be made under subsection (1) above at a time when the company concerned has appealed against an assessment to corporation tax for the period in question but that appeal has not been finally determined, that subsection shall have effect as if for the words from "make a claim" to "excess" there were substituted "apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending a determination of the company's liability for the accounting period in question"; and such an application shall be determined in the same way as the appeal.

(4) Where on an appeal against an assessment to corporation tax a company makes an application under section 136(3) or (5), that application may be combined with an application under subsection (1) above.

(5) Interest shall be due on any amount repaid under this section at the rate of 2 per cent. per annum under base lending rate.

#### *Offences and penalties*

##### *Penal provisions relating to fraud, etc.*

145.—(1) This section applies in any case where a person wilfully and with intent to evade or to assist any other person to evade tax—

- (a) omits from a return of income any income which should be included; or
  - (b) makes any false statement or entry in any return of income; or
  - (c) gives any false answer, whether orally or in writing to any question or request for information asked or made in accordance with this Ordinance; or
  - (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records; or
  - (e) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance;
- and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned ~~commits an offence and~~ shall be liable on conviction to a fine not exceeding level 2 on the standard scale.

(3) In any case falling within subsection (1) above, the person concerned ~~shall be liable to a penalty equal to treble the amount of tax for which he is liable under this Ordinance for the chargeable period in respect of or during which the offence was committed.~~

(4) ~~Whereas in any proceedings under this section it is proved that any~~

false statement or entry is made in any return of income by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

*Penalties for failure to make returns, making incorrect returns etc.*

146.—(1) The following provisions of this section shall apply where a person without reasonable excuse—

- (a) fails to make a return or to give any notice or information in accordance with the requirements of this Ordinance; or
- (b) makes an incorrect return by omitting or understating any income which he is required to include in a return of income; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership;

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding level 7 on the standard scale.

(3) In any case falling within subsection (1) above where no other civil penalty is provided, the person concerned shall be liable to a penalty equal to double the amount of tax which—

- (a) in a case falling within subsection (1)(a) above, is payable by that person for the accounting period to which the return or notice or information related, or
- (b) in any case, has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

*Penalties for offences.*

147. A person convicted of an offence under this Ordinance for which no other penalty is provided is liable on conviction to a fine not exceeding level 5 on the standard scale.

*Saving for other criminal proceedings.*

148. The provisions of this Ordinance shall not affect any criminal proceedings, except that a person shall not be prosecuted more than once for the same offence.

*Prosecutions etc. to commence within 6 years.*

149.—(1) Any prosecution against any person for the commission of any offence against the provisions of this Ordinance shall not be brought unless it is commenced in the chargeable period in which the offence is or is alleged to have been committed or before the expiry of the period of 6 years beginning with the end of that chargeable period.

(2) Subject to any contrary provision, proceedings for recovery of any penalty under this Ordinance for any act or omission shall not be commenced after the expiry of the period of 6 years beginning with the end of the chargeable period in which the act or omission is or is alleged to have been done or not to have been done.



**PART IX**  
**GENERAL AND SUPPLEMENTARY PROVISIONS**  
*Agents, trustees and others*

*Appointment and duties  
of agent.*

150.—(1) In this section—

- "agent" means a person appointed as such under subsection (2);
- "appointment notice" means a notice issued by the Commissioner under subsection (2) appointing an agent;
- "moneys" includes salary, wages and pensions payments and any other remuneration whatsoever;
- "principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, in his discretion, by notice addressed to any person—

- (a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from that other person; and
- (b) specify the amount of that tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the 12 months following the date of the notice, be held by him for, or due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, give notice to the Commissioner of that fact, and the notice must set out in full the reasons for his inability so to comply.

(5) The Commissioner may—

- (a) accept a notice under subsection (4) and cancel or amend the appointment notice accordingly; or
- (b) if he is not satisfied by the reasons set out in the notice, issue a notice to the agent rejecting the agent's notice.

(6) Unless and until notice is given by an agent under subsection (4)—

- (a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and
- (b) he may not assert the lack of such moneys as a defence in any proceedings for the collection or recovery of such tax.

(7) For the purposes of this section, the Commissioner may by notice at any time require any person to furnish him within a reasonable time, not being less than 30 days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or due by him to, any other person from whom tax is due.

(8) Where an agent fails to pay any amount of tax specified in his appointment notice within 30 days—

- (a) of the date of service of the notice on him; or
- (b) of the date on which any moneys come into his hands for, or become due by him to, his principal,  
*whichever is the later; and—*
  - (i) he has not given notice under subsection (4); or

(ii) he has given notice under that subsection but the notice has been rejected by the Commissioner,

the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

(9) An agent who has made any payment of tax under this section shall for all purposes be deemed to have made the payment with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of such payment made against all proceedings, civil or criminal, and all process, judicial or extra-judicial, notwithstanding any provision to the contrary in any written law, contract or agreement.

*Appointment of agent in the United Kingdom.*

151.—(1) For the purpose of facilitating the assessment to income tax or corporation tax of the chargeable income of persons residing in the United Kingdom, the Governor may appoint an agent in the United Kingdom who—

- (a) shall make enquiries on behalf of the Commissioner in respect of any person who applies to be dealt with through such agent, and
- (b) shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Ordinance, and
- (c) shall forward to the Commissioner the accounts and computations upon which his report is based.

(2) If it appears to the Commissioner that any error has occurred in the accounts or computation referred to in subsection (1)(c), he may refer the report back for further consideration.

(3) Nothing in this section shall prevent an appeal in accordance with Part VIII of this Ordinance.

*Agent of person residing out of the Falkland Islands.*

152.—(1) A person not resident in the Falkland Islands ("a non-resident person"), whether a British subject or not, shall be assessable and chargeable in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as the non-resident person would be assessed and charged if he were resident in the Falkland Islands and in the actual receipt of such income.

(2) A non-resident person who—

- (a) is present in the Falkland Islands at any time during a year immediately preceding a year of assessment, and
- (b) does not make a claim under subsection (3) below,

shall be entitled, in computing his chargeable income for that year of assessment, to make a deduction under any of sections 14(1), 15(1) and 16(1) and (2), but not under any other provision of Chapter I of Part II or Chapter II of Part III.

(3) In the case of any non-resident person who makes a claim under this subsection, the total amount of the deductions to be allowed to him under those Chapters shall not exceed an amount which would reduce the tax payable by him below the amount which bears the same proportion to the amount which would

be payable by him if he were chargeable to tax on his total income from all sources, including income which is not subject to tax under this Ordinance, as the amount of his income subject to tax bears to such total income from all sources.

(4) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable or chargeable in the name of the attorney, factor, agent, receiver, branch, or manager.

(5) Where—

(a) a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to—

(i) the close connection between the resident person and the non-resident person, and

(ii) the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business,

then the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(6) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is so chargeable.

The amount of the percentage shall in each case be determined having regard to the nature of the business.

(7) In any case where an assessment is made under subsection (6) above, the provisions of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged.

(8) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker or general commission agent or other agent is not an authorized person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (5) to (7), in respect of gains or profits arising from sales or transactions carried through such a broker or agent.

(9) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of subsections (5) to (7) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(10) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the Falkland Islands by the non-resident person—

- (a) the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner, or in the case of an appeal, to the Tribunal to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold who has bought from the manufacturer or producer direct, and
- (b) on proof to the satisfaction of the Commissioner (or Tribunal) of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

*Trustees etc. of  
incapacitated persons.*

153. A receiver appointed by the court, trustee, guardian, curator, or committee having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to income tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

*Managers of companies  
etc.*

154.—(1) Everything required to be done by a company under this Ordinance shall be done by the company through the proper officer of the company.

(2) Tax due and payable by a company under this Ordinance may (without prejudice to any other means of recovery) be recovered from the proper officer of the company who may retain out of any money coming into his hands on behalf of the company sufficient sums to pay that tax and so far as he does not have sufficient sums, shall be entitled to be indemnified by the company in respect of any liability imposed on him under this section.

(3) For the purposes of this section "the proper officer" means—

- (a) if a liquidator has been appointed for the company, the liquidator;
- (b) if a liquidator has not been appointed, the secretary or person acting as secretary of the company or such other person as is authorised to act as the proper officer of the company;
- (c) if neither paragraph (a) nor paragraph (b) applies, the treasurer or person acting as treasurer of the company.

*Responsibility of  
trustees and others.*

155.—(1) The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable on that income.

(2) Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance, or belonging to any other person who is chargeable in respect thereof, or who

would be so chargeable if he were resident in the Falkland Islands and not an incapacitated person shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period specified in the notice a list signed by him containing—

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the income belongs, and
- (c) such other information as the notice may request being information which the Commissioner requires for the purposes of this Ordinance;

and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list.

*Indemnification of representatives.*

156. Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

*Residence of companies and individuals*

*Residence of companies and individuals.*

157.—(1) In determining for the purposes of this Ordinance the place of residence of a company, its place of registration or incorporation, whether in the Falkland Islands or not, shall be regarded as immaterial and its place of residence shall be determined by relation to the abode of the central management and control of the company's business.

(2) In this Ordinance any reference to a person who is ordinarily resident in any place is a reference to a person who is habitually resident in that place except for such absence therefrom as seems to the Commissioner to be of a temporary nature.

(3) In this Ordinance any reference to an individual who is resident in the Falkland Islands in any year of assessment is a reference to a person—

- (a) who is actually in the Falkland Islands for 183 days or more in that year; or
- (b) who arrives in the Falkland Islands in that year with the intention of establishing his permanent residence in the Islands; or
- (c) who is permanently resident in the Falkland Islands in that year but who leaves the Islands before the end of that year.

*Disclosure of information*

*Official secrecy.*

158.—(1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information and returns relating to the income or items of income of any person as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Justice of the Peace.

(2) Every person having possession of or control over any documents, information or returns relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

- (a) other than a person to whom he is authorized by the Governor to communicate it; or
- (b) otherwise than for the purpose of this Ordinance, commits an offence.

*Disclosure of information.*

159.—(1) Subject to subsection (2), the Commissioner may require any public officer or any officer in the employment of any public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer.

(2) A person shall not by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy, but section J9 shall be disregarded for the purposes of this subsection.

(3) The Commissioner may by notice require any employer, agent, contractor or other person within such time as may be specified in the notice, make a return for any chargeable period containing—

- (a) the names and addresses of all persons employed by that person for the whole or any part of that period; and
- (b) the payments and allowances made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the period does not (or is not expected to) exceed £800;
- (c) the names and addresses of all persons with whom he has entered into a contract for the performance of any work, or for delivery of any produce or goods, in the course of that chargeable period, and the amount advanced or paid in respect of such contract either in cash or in goods or merchandise; and
- (d) such other information as may be specified in the notice being information which is in the opinion of the Commissioner necessary for the purposes of this Ordinance.

(4) A return under subsection (3) above shall be made to the Commissioner and any person who fails to comply with a notice under that subsection shall be liable—

- (a) if the person is not more than 3 months late in complying with the requirements of subsection (3), to a penalty of £100;
- (b) in any other case, to a penalty of £200.

(5) An employer, agent, contractor, or other person shall not be liable to any penalty for omitting from any such return the name or address of any person employed by him and not employed in any other employment if it appears to the Commissioner, on enquiry, that such person has no chargeable income.

(6) For the purposes of this section—

- (a) in any case where an employer, agent, contractor or other person is a body of persons, the manager or other principal officer of the body shall be deemed to be the employer, and
- (b) any director of a company, or person engaged in the management of a company, shall be deemed to be an employee of the company.

*Miscellaneous provisions*

*Rules.*

160.—(1) The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance, and rules made under this section may, in particular, make provision—

- (a) any such matters as are authorized by this Ordinance to be prescribed otherwise than by the Commissioner;
- (b) as to the apportionment of deductions or allowances under this Ordinance—

- (i) where an individual becomes resident or ordinarily resident or ceases to be so resident in the Falkland Islands during the year preceding the year of assessment, or

- (ii) where an individual's personal circumstances change during such year (for example, on marriage, death or separation from his spouse), or

- (iii) where it otherwise appears that apportionment of deductions or allowances would be appropriate;

- (c) for the method of calculating or estimating the deductions allowed or prescribed under section 14, 53 and 89.

(2) Rules made under this section shall be published in the Gazette and shall come into operation on such publication or at such other time as may be named in such rules.

(3) If any person fails to comply with or contravenes the provisions of any rule made under this Ordinance he commits an offence.

(4) All rules made under this Ordinance shall be judicially noticed.

*Time limit for making claims.*

161. Subject to any provision of this Ordinance prescribing a longer or a shorter period, a claim under this Ordinance shall not be allowed unless it is made within 6 years from the end of the chargeable period to which it relates.

*Earned income and unearned income.*

162.—(1) In this Ordinance references to earned income and to unearned income shall be construed in accordance with this section.

(2) In this Ordinance "earned income" means, in relation to any individual—

- (a) any income arising in respect of any remuneration from any office or employment held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office or employment, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and

- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and

- (c) any income which is immediately derived by the individual from the carrying on or exercise by him of his business either as an individual or, in the case of a partnership, as a partner personally acting in the partnership; and
  - (d) any voluntary pension of an individual,
- and for the purposes of this subsection "remuneration" includes any payment in respect of any holidays or leave accrued due, overtime, or terminal bonus or gratuity or any other payment made by an employer to an employee or former employee or for or on account of employment.

(3) Any reference in this Ordinance to earned or unearned income does not include—

- (a) any income in respect of which income tax is not payable by virtue of section 12, or
- (b) any income which is exempt from income tax by virtue of section 52 or by virtue of any provision of the Taxes and Duties (Special Exemptions) Ordinance 1987, or
- (c) any income which is exempt from income tax by virtue of any arrangements having effect under section 127.

(4) An annuity payable under approved personal pension arrangements (within the meaning of Part III) shall be treated as earned income of the annuitant.

(5) Subsection (4) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

(6) Any pension paid under any retirement benefit scheme which is approved or is being considered for approval under Part III shall, unless the Commissioner otherwise directs, be treated as earned income of the recipient.

(7) A daily allowance payable under the Elected Councillors' Allowances Ordinance 1990 shall be treated as earned income of the recipient.

(8) In cases where the income of a wife is deemed to be the income of the husband, any reference in subsection (2) to the individual includes either the husband or the wife.

(9) Subject to subsection (3) above, for the purposes of this Ordinance, "unearned income" means any income which is not by virtue of subsections (2) to (8) above earned income and which is not, by virtue of any other provision of this Ordinance, to be treated as earned income.

(10) The provisions of this section are without prejudice to any other provision of this Ordinance directing income to be treated as earned income.

#### *Subsidiaries.*

163.—(1) For the purposes of this Ordinance a body corporate shall be deemed to be—

- (a) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
- (b) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.

(2) In subsection (1)(a) and (b) above "owned directly or indirectly" by



a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section—

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series—

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any 2 bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own

that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where—

- (a) each of 2 or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

- (a) directly, or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
- (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

(11) In this section "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

#### *Connected persons.*

164.—(1) For the purposes of this Ordinance, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor and with any person who is connected with such an individual, and for the purposes of this subsection—

"settlement" includes any disposition, trust, covenant, agreement or arrangement; and

"settlor", in relation to a settlement, means any person by whom the settlement is made (whether directly or indirectly).

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

- (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section—

- (a) "company" includes any body corporate or unincorporated association, but does not include a partnership;
- (b) "relative" means brother, sister, ancestor or lineal descendant.

*Meaning of "control".*

165. For the purposes of this Ordinance, "control", in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

*Errors etc. in assessments and notices.*

166.—(1) An assessment, warrant or other proceeding purporting to be made in accordance with this Ordinance shall not be quashed, or be declared void or voidable, for want of form, or be affected by reason of a mistake, defect or omission in it if it is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is identified by the name by which he is usually or generally known.

(2) An assessment shall not be impeached or affected—

- (a) by reason of a mistake therein as to—

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of tax charged; or

(b) by reason of any variance between the assessment and the notice of assessment,

unless the notice of assessment was not duly served on the person intended to be charged, or did not contain, in substance and effect, the particulars on which the assessment was made.

*Service of notices.*

167. Any notice given under this Ordinance by the Commissioner may be served on a person either personally or by being sent by registered post to his last known business or private address, and shall if sent by registered post be deemed to have been served not later than the tenth day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

*Signature of notices.*

168.—(1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by a person appointed by him for that purpose.

(2) Any notice under this Ordinance to any person requiring him to furnish particulars to the Commissioner, or any notice under this Ordinance requiring the attendance of any person or witness before the Commissioner, shall be personally signed by the Commissioner or by a person duly authorized by him.

(3) Any other notice given by the Commissioner under this Ordinance shall be valid if the signature of the Commissioner or of such person appears on it either printed or in manuscript.

(4) A signature appearing on any notice and purporting to be the signature of any person so appointed or authorized shall be taken to be the signature of that person unless and until the contrary is shown.

(5) The production of any document under the hand of the Commissioner or of any person appointed by him purporting to be a copy of or extract from any return or assessment shall in the Tribunal, all courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all courts shall in all proceedings take judicial notice of the signature of the Commissioner and of any person appointed by him.

*Repeals.*

169.—(1) The enactments specified in Part I of Schedule 4 to this Ordinance are hereby repealed to the extent specified in column 3 of that Schedule.

(2) The Rules specified in Part II of Schedule 4 are hereby revoked to the extent specified in column 3 of that Schedule.

**SCHEDULES**

## Section 139

**SCHEDULE 1****TAX APPEALS***Interpretation*

## 1. In this Schedule—

"the Chairman" means the Chairman of the Tax Appeal Tribunal;

"the Clerk" means the Clerk to the Tax Appeal Tribunal;

"the Tribunal" means the Tax Appeal Tribunal.

*Written representation appeals*

2.—(1) Where the Commissioner receives a copy of a notice of appeal under section 139 which does not request an oral hearing, the Commissioner shall, before the expiry of the period of 21 days beginning with the date of receipt of the copy notice, or such later period as the Chairman may permit, send to the Clerk his own written representations with respect to the appeal, supporting the decision or decisions appealed against in general and responding to the grounds of appeal in particular.

(2) The Clerk shall send a copy of any representations of the Commissioner made in accordance with sub-paragraph (1) above to the appellant together with a notice informing the appellant that he may submit his own representations to the Tribunal before the expiry of the period of 21 days beginning with the date of the notice, or such later period as the Chairman may permit.

(3) The Clerk shall send copies of any representation received in accordance with sub-paragraph (2) above to the Chairman and to the Commissioner.

## (4) If it appears to the Chairman that—

(a) the written representations of the appellant raise any fresh ground of appeal (that is to say, which is not raised in the appellant's original notice of appeal),

(b) the fresh ground has been anticipated in the Commissioner's own written representations, so that no injustice to the Commissioner is likely to result if he is not offered the opportunity of making further written representations,

the Chairman shall cause the Clerk to notify the Commissioner that the Commissioner may, in relation only to the fresh grounds of appeal specified in the notice, submit such further written representations to the Clerk before the expiry of the period of 14 days beginning with the date of the notice, or such later period as the Chairman may permit.

(5) On receiving any further written representations of the Commissioner submitted in accordance with sub-paragraph (4), the Clerk shall send copies of them to the Chairman and to the appellant but, unless the Chairman for special reason otherwise directs, the appellant shall not have the right to submit any further written representations on his own behalf.

(6) The Clerk shall ensure that the appeal is considered by the Tribunal as soon as reasonably possible after the expiry of the period or periods during which representations may be made under the preceding provisions of this paragraph.

## (7) The Clerk shall send to every member of the Tribunal—

(a) a copy of the notice of appeal and of all written representations received in accordance with this paragraph relating to the appeal;

(b) notice of the date on and time and place at which the appeal will be considered by the Tribunal.

## (8) The Tribunal shall not, on consideration of an appeal under this section—

(a) consider any representations other than written representations submitted in accordance with this paragraph;

- (b) permit any person other than a member of the Tribunal or the Clerk to be present.

(9) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(10) As soon as reasonably convenient the Clerk shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

#### *Oral appeals*

3.—(1) Where the appellant's notice of appeal under section 139 requests an oral hearing, the Clerk shall give notice of the date on which and time and place at which the hearing will begin—

- (a) to every member of the Tribunal;
- (b) to the appellant; and
- (c) to the Commissioner.

(2) At the hearing, the appellant and the Commissioner may appear and be heard in person or by any other person appointed by or on behalf of the appellant or Commissioner to act in that behalf before the Tribunal; and in the following provisions of this paragraph any reference to the appellant or the Commissioner shall be construed accordingly.

(3) The following procedural rules shall apply for the conduct of the hearing—

- (a) the appellant shall be heard first and then the Commissioner shall be heard in reply;
- (b) the appellant and the Commissioner shall each have the right to call witnesses or to produce written evidence as part of their case, and any witness who gives oral evidence may be cross-examined by the other party;
- (c) the Commissioner may not call or produce any evidence or speak in reply to the appellant's case until the appellant's witnesses have completed their evidence and any written evidence he wishes to produce has been produced;
- (d) if the Commissioner calls witnesses or produces written evidence after the close of the case for the appellant, the appellant shall have the right (if he wishes) to address the Tribunal for a second time.

(4) After the Tribunal has heard the parties to the appeal, the Tribunal shall require the parties (and any witnesses they may have called) to withdraw, and shall then consider its decision in the appeal.

(5) The Clerk shall make a sufficient note of—

- (a) the address or addresses of the parties, and
- (b) any oral evidence given to the Tribunal.

(6) The Tribunal shall not require any evidence given to it during the hearing of an appeal to be given on oath or affirmation.

(7) The Tribunal shall not permit any person other than—

- (a) the members of the Tribunal hearing the appeal;
- (b) the parties, their representatives and their witnesses; and
- (c) the Clerk to the Tribunal,

to be present during the hearing of an appeal under this paragraph.

(8) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(9) As soon as reasonably convenient the Clerk to the Tribunal shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other

member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

*Notification of determination of appeal: further appeal on point of law*

4.—(1) As soon as possible after the determination of the appeal has been signed, the Clerk shall transmit a copy of it to the appellant and to the Commissioner.

(2) The appellant and the Commissioner may appeal against the determination of the Tribunal to the Supreme Court on a point of law.

(3) An appeal under this paragraph shall be lodged by the appellant or the Commissioner in triplicate with the Registrar of the Supreme Court within 28 days of the receipt by the appellant or the Commissioner (as the case may be) of the notice of the Tribunal's determination; and the notice of appeal shall—

- (a) specify the point of law in question;
- (b) the reasons for alleging that in relation to that point of law, that the Tribunal was in error.

(4) On determination of an appeal under this paragraph, the Supreme Court may—

- (a) correct any immaterial informality or error in the determination of the Tribunal which it is satisfied can be made without injustice to the parties;
- (b) quash or vary the determination of the Tribunal in such manner as it considers appropriate; and
- (c) make any other order it considers appropriate in the circumstances of the case (including, without prejudice to the generality of the foregoing, an order as to the costs of the appeal to the Supreme Court).

(5) The Chief Justice may make rules in relation to the procedure of the Supreme Court in appeals under this paragraph, but until such rules are first made, and subject to the foregoing provisions of this paragraph, the procedure on such appeals shall as nearly as possible be that on civil appeals to the Supreme Court.

*Commissioner to give effect to decisions on appeal*

5.—(1) Subject to sub-paragraph (2), the Commissioner shall take such steps and do such things as are necessary to give effect to the determination of the Tribunal on an appeal to it.

(2) Sub-paragraph (1) does not apply where the Commissioner has appealed or intends to appeal in accordance with this Schedule to the Supreme Court against the determination of the Tribunal, but in such a case the Commissioner shall not seek to enforce payment of any tax until or unless the determination of the Tribunal is quashed or varied to the relevant extent by the Supreme Court, if to so would be inconsistent with the determination of the Tribunal.

(3) The Commissioner shall, so far as it affects him, take all such steps and do all such things as are necessary to give effect to any order of the Supreme Court on an appeal under this Schedule.

*Supplementary provisions*

6.—(1) A member of the Tribunal is not personally liable in respect of anything done or omitted by him in good faith in the course of his functions as such a member.

(2) The Tribunal has no power to award to any person any costs of an appeal to it.

(3) For the avoidance of doubt, it is hereby declared that section J9 applies to all members of the Tribunal and to the Clerk in the performance of their functions as such.

(4) Neither the bringing of an appeal to the Tribunal nor the bringing of a further appeal from the Tribunal to the Supreme Court shall (otherwise than by reason of the manner

of determination of that appeal or further appeal) have effect—

- (a) to postpone any liability to pay any tax except in accordance with section 141;
- (b) to excuse any person from payment of interest on any tax overdue or abate that interest; or
- (c) to excuse any person from any penalty otherwise payable under this Ordinance.

Section 142.

## SCHEDULE 2

### PROCEEDINGS FOR THE RECOVERY OF TAX

#### *Notice to be given to tax defaulters*

1.—(1) The Commissioner shall on such days in each year as the Governor in Council may direct cause to be inserted in 3 consecutive issues of the Gazette a notice to the effect that warrants will be issued for the recovery of all tax together with interest, penalties and fines due thereon which remain unpaid after such day as may be specified in the notice.

(2) The specified day shall not be earlier than one month from the first publication of the notice and publication in accordance with this section shall be sufficient notice to all tax defaulters.

#### *Warrants against goods, power to sell lands, etc.*

2.—(1) The collector shall, on such day in each year as the Governor in Council may direct, issue to any person whom he may employ as bailiff for this purpose ("the bailiff") warrants directing and authorizing him to make a levy upon the goods of all defaulters for the payment of tax, interest, penalties and fines unpaid in the previous year.

(2) The collector may issue another warrant or warrants directed to any bailiff to recover any tax, interest, penalties or fines still outstanding and due from a defaulter named in a warrant previously issued by him.

(3) This paragraph is without prejudice to the power of the Financial Secretary under paragraph 10 below, to proceed to sell or issue a praecipe authorizing the sale of any land or house chargeable with the unpaid taxes, interest, penalties or fines together with any expenses of the collector in respect of anything done to recover the unpaid taxes, interest, penalties or fines at any time.

#### *Withdrawal of execution and institution of proceedings before magistrate*

3. Notwithstanding that the name of a person in default in the payment of any tax, interest, penalties or fines shall have been included in a list to any warrant or praecipe authorizing a levy, the Financial Secretary may, at his discretion, at any time that the tax, interest, penalty or fine remains unpaid, to cause the warrant or praecipe to be suspended as against the defaulter and instead to apply to the magistrate for a summons directing the defaulter to attend before the magistrate, at such time as may be specified in the summons, to show cause why he should not be ordered to pay the amount unpaid as a judgment debt, and the magistrate may in his discretion issue the summons and cause the same to be served.

#### *Order of magistrate for payment of unpaid sums*

4. If a summons is issued under paragraph 3 above, the magistrate may on the hearing of the summons order the defaulter to pay into court the amount of the unpaid tax, interest, penalties or fines, and such costs and expenses as may have been incurred, or to order him to pay into court any part of such amount which the magistrate may deem the defaulter able to pay or arrange for paying, within 7 days of the order or within such extended time as may be determined by the magistrate, either as a lump sum or by instalments.



*Imprisonment for failure to obey order*

5.—(1) If a person summoned under paragraph 3 above fails to comply with the summons without lawful excuse or if he fails to comply with an order under paragraph 4 above, the magistrate may commit him to prison for a term not exceeding 6 weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term).

(2) Committal shall not be ordered under this paragraph unless the magistrate is satisfied that the person in default either has, or has had since the date of the order, the means to pay the sum in respect of which he is in default, and has refused or neglected, or refuses or neglects, to pay that sum.

(3) Proof of the means of the person making default may be given in such manner as the magistrate thinks just and, for the purposes of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the magistrate has summary jurisdiction in criminal matters, and such debtor and witnesses may be examined on oath.

(4) Every order of committal under this paragraph shall be issued, obeyed and executed in manner similar to commitments by the magistrate in the exercise of his summary jurisdiction in criminal cases.

(5) Imprisonment in pursuance of an order under this paragraph shall not satisfy or extinguish the judgment debt.

*Debtor paying whole of amount ordered to be paid*

6. In the event of the defaulter paying the whole of the amount ordered to be paid in pursuance of this Schedule the magistrate shall remit to the Treasury the amount so paid, deducting such part thereof as may represent the court costs.

*Proceedings by way of distress*

7.—(1) For the purpose of levying any distress the bailiff shall execute a warrant issued to him by the collector according to the tenor thereof, and such warrant shall be in the form set out in Part I of Schedule 3.

(2) On payment of the tax, interest and fines and expenses, the bailiff shall give acquittances under his hand to the persons who pay the same on numbered (counterfoil) receipt forms with which the bailiff shall be supplied by the collector, and shall pay over to the Treasury all money received by him under this Ordinance.

*Sale of goods levied on and disposal of proceeds*

8.—(1) When any goods or chattels are distrained on, they shall, after due notice given in the Gazette, be sold by the bailiff at public auction in such a manner as is usual in sales under executions issuing out of the Magistrate's Court.

(2) Until the sale, the goods shall remain in the custody of the bailiff by whom the levy is made.

(3) The money arising from the sale shall be paid over by the bailiff to the Treasury after deducting therefrom all reasonable and necessary charges and expenses attending the levy and sale which may be allowed by the Financial Secretary; and these proceeds of sale shall be applied by the Financial Secretary towards satisfaction of the unpaid tax, interest, penalties, fines and expenses and the surplus (if any) shall be restored on demand to the owner of the goods distrained.

(4) Sub-paragraphs (1), (2) and (3) above shall have effect subject to the following provisions—

(a) tools of trade, bedding and wearing apparel amounting in all to the value of £250 shall be exempted from execution;

- (b) after a levy it shall be lawful for the owner of the goods seized to redeem the goods at any time before the time appointed for the sale by paying to the bailiff the full amount of the tax, interest, penalties and fines thereon, together with all costs and expenses incurred in relation thereto by the date of such payment;
- (c) if at such public auction there shall be no bids sufficient to cover the tax, interest, penalties, fines, costs and expenses, the unsold goods shall become the property of Her Majesty for the use of the Government of the Falkland Islands.

#### *Bailiff's fees*

9.—(1) The bailiff's fees which may be included in a claim of levy under a warrant may be in such sum and according to such scale as is fixed from time to time by the Governor in Council.

(2) All such fees shall be paid by the persons in default against whom warrants are issued, and the Governor in Council may award to any bailiff such proportion thereof as he shall think fit.

#### *Execution against land or houses*

10.—(1) If the amount of the tax and interest, penalties due and recoverable from a person in default and of the fines, costs and expenses relating to any unpaid tax, interest or penalties have not been, or in the opinion of the Financial Secretary cannot be, raised by the sale of that person's goods, the Financial Secretary may put up for sale either the whole of any lands or houses in the Falkland Islands to which that person is beneficially entitled, or such part thereof as in the discretion of the Financial Secretary may be selected and marked off as sufficient to realize the required amount.

(2) In default of satisfaction of the debt by any such sale, then if the lands or houses charged with the payment of unpaid tax or interest had passed out of the possession of the defaulter before the date of the said sale and consequently such last-mentioned lands or houses had not been levied as aforesaid, the Financial Secretary may in the last instance proceed to levy and sell the lands or houses last mentioned.

(3) The Financial Secretary may issue a praecipe to levy the tax by the sale of the lands or houses therein mentioned, which praecipe shall be in the form set out in Part II of Schedule 3.

#### *Notice to be served on defaulter before sale of realty*

11.—(1) Before proceeding with the sale of any land or house in accordance with this Schedule, the Financial Secretary or the officer conducting the sale shall serve or cause to be served on the person in default a notice in the form set out in Part III of Schedule 3, and unless the Financial Secretary or that officer specially sanctions service by post or by some other means, any such notice shall be served personally on the person in default.

(2) Whenever the Financial Secretary or the officer have reason to believe that the person in default is avoiding service of the notice, or that neither he nor his authorized agent can be found, the Financial Secretary or officer may order the notice to be affixed in some conspicuous manner to the property with respect to which the praecipe to levy has been issued.

(3) The server or bailiff serving any such notice personally shall endeavour to explain its purport fully to the person upon whom it is served.

(4) The bailiff or server of such notice shall write on it the date when it is served by him, and shall enter upon a counterfoil of the notice or on some other record the date and manner of service and the place where it was made.

(5) Any person duly served but failing to comply with the notice within the time and in the manner prescribed commits an offence and shall be liable on summary conviction to a fine

not exceeding level 2 on the standard scale unless he prove either that, before the notice was served, he had paid the tax or fine, or that no tax or fine was or is due from him.

*Property vests in Crown on abortive sale*

12.—(1) When the whole of any land or any house in respect of which levy has been made, has been offered for sale and no bid made for it equal to or in excess of the tax, interest, penalties, fines, costs and charges thereon, that land or house shall be liable to forfeiture at the discretion of the Governor in Council.

(2) The Financial Secretary shall cause to be served on the person in default a notice that such land or house is liable to forfeiture within one month from the date of the service of the notice, if the amount due be not paid, and no land or house shall be forfeit in pursuance of this paragraph unless such a notice has been served.

(3) When any land or house has been declared by the Governor in Council to be forfeit, the same shall vest in Her Majesty, her heirs and successors for the use of the Government of the Falkland Islands.

(4) The Financial Secretary shall forward to the Registrar of the court for the purposes of registration a statement in such form as may be prescribed by the Commissioner for the purposes of this paragraph, which shall contain the particulars of the land or house, the name of the person in default, the amount due, the date of abortive sale, and the date of the service of the notice of liability to forfeiture.

(5) The registration of the statement shall constitute an indefeasible title.

*Conditions of sale*

13. In all cases of the sale of lands or houses under this Ordinance the following shall be the conditions of sale—

1. The purchaser buys at his own risk as to the provisions of the law necessary to authorize the sale having been complied with. Those who intend to purchase shall be allowed access to all documents which show that such provisions have been complied with.

2. The purchaser shall not require any proof (beyond a copy of the notice of assessment and the praecipe with the list of defaulters' notices with service) of the identity of the contents, dimensions, or other particulars of the property offered for sale with that advertised.

3. The highest bidder for each lot shall be the purchaser. Should any dispute arise as to any bidding, the property may again be put up for sale.

4. The reserve price shall be the amount of the tax, interest, penalties, fines, costs and charges remaining unpaid.

5. The advance on the bidding may be declared by the officer conducting the sale on putting up the specific lot. No bid shall be retracted without the consent of that officer.

6. Immediately after the sale, the purchaser shall pay to the Financial Secretary, or to the officer who conducts the sale, a deposit of his bid, and the balance within 7 days thereafter. In default of payment of the deposit, the property shall be offered for sale immediately and any subsequent bid by the person who has made default as aforesaid, shall be ignored or refused. If the purchaser fails to complete his purchase within 7 days, the deposit shall be forfeited and the property shall be re-offered for sale, when any deficiency on the first bid may be recovered from the first bidder as a debt.

7. Except in special cases to which the Governor may give his sanction, conveyances for lands, tenements and hereditaments will only be executed on the prescribed form.

8. Conveyances will not be executed until one month has elapsed from the date of sale, and during this period the right is reserved for the Governor to cancel the sale.

*Effect of execution sales with regard to title*

14.—(1) Any sale of any land or any house charged with the payment of unpaid tax, interest, penalties, fines or expenses shall, subject to the provisions of this paragraph and provided that the other provisions of this Ordinance have been duly complied with, operate to confer on the purchaser an indefeasible title thereto, free from all encumbrances, and that title shall be the right, title, and interest therein of the person in default in respect of that tax or other sum.

(2) A purchaser shall not have, nor be capable of granting, any title to any land, house or goods purchased in accordance with this Ordinance, if the purchase is made with the intention of defrauding any creditor, or as agent or trustee for the person in default, or for his wife or family.

(3) Any such sale to the person in default shall be void.

(4) Any person having a charge or debt by way of specialty or otherwise upon any property of the person in default may pay the tax, interest, penalties, fines, costs and expenses payable in accordance with this Ordinance by that person, and shall be entitled to add the moneys thus paid to such charge or debt, and thereupon the increased charge or debt shall bear the same interest and may be enforced and recovered in the same manner as the original charge or debt.

*Form of conveyance*

15. Where any land or house is sold in accordance with this Ordinance, the Chief Executive shall execute and deliver on completion a conveyance to the purchaser in the form set out in Part IV of Schedule 3.

*Disposal of surplus proceeds of sale*

16.—(1) Any surplus moneys arising on any sales under this Ordinance, after payment of the tax, interest, penalties, fines and costs, shall be paid by the Financial Secretary to the owner of the property sold, if known; and if not known, then they shall be at the disposal of the Governor in Council on the application of any person entitled, for 6 years from the day of sale, after which they shall be appropriated to the Consolidated Fund.

(2) If the Financial Secretary has notice that any person other than the owner of the property sold has a claim to the whole or any part of those surplus moneys, either by way of mortgage or other legal encumbrance, the Financial Secretary may give notice to the owner stating that the moneys or some specified part the moneys will be paid to the claimant, mortgagee, or encumbrancer, unless the owner informs the Financial Secretary within 10 days from the date of service of the notice that he does not admit the claim.

(3) If no reply is received from the owner to the notice within the time permitted, the surplus moneys, or so much of them as may have specified in the notice may be paid to the claimant by the Financial Secretary.

(4) If the owner denies the claim, then the Financial Secretary shall pay the surplus moneys to the Registrar of the Supreme Court, to be placed by the Registrar to the credit of an account in court to abide the settlement by the court of the question as to what person is entitled to them.

(5) The Financial Secretary shall not be held responsible for any payment made by him in accordance with this paragraph.

*Claims by third parties*

17.—(1) If any person (other than the person in default) claims that he is the owner of any goods or lands which are levied upon as belonging to a party in default he or any solicitor on his behalf may file an affidavit in the Supreme Court—

(a) specifying which of the goods or lands he claims as his property;

(b) stating full particulars of his title thereto; and  
(c) stating the value of the property,  
and a person making a claim under this paragraph is referred to as "the claimant".

(2) If the claimant either at the time of or subsequent to the filing of the affidavit, gives security by bond with two sureties (such bonds being hereby exempted from stamp duty) to the satisfaction of the Registrar of the Supreme Court in a sum of £1,000, conditioned to secure—

- (a) first, either the total amount of taxes, interest, penalties, fines, costs, and expenses unpaid or such part thereof as may be equivalent to the value of the property claimed; and
- (b) secondly, all costs of the legal proceedings incidental to the determination of the claim,

the Registrar shall notify the Financial Secretary to discontinue his levy upon such of the goods and lands as are specified in the affidavit until the determination of the claim.

#### *Abandonment of levy*

18. At any time within 7 days after receipt of the notification to discontinue the levy, the Financial Secretary may abandon the levy altogether, and if he does so, shall notify the Registrar and the claimant that the levy is wholly withdrawn and that no further legal proceedings will take place.

#### *Determination of claim*

19.—(1) If notice of abandonment is not given by the Financial Secretary under paragraph 12, the Registrar shall set the matter down for trial at the next sitting of the Supreme Court (Summary Jurisdiction) held not later than two weeks subsequent to security being so given.

(2) At the hearing, the issue shall be whether or not the claimant has made out his title to the goods or lands specified in the affidavit, and whether the value thereof has been correctly stated in the affidavit; and, upon the issues being determined, the court shall order the bond to be enforced or cancelled, as the case may be.

(3) In proceedings brought under this paragraph—

- (a) the defendant shall be, in the case of goods being claimed, the bailiff by whom the levy was made, and in the case of lands being claimed, the Financial Secretary, and
- (b) all steps may be taken and things done as in ordinary cases before the court, except that an order for costs shall not be made against the defendant unless the court is of the opinion that he has been guilty of wilful neglect or misconduct.

## SCHEDULE 3

## WARRANTS AND OTHER FORMS

## PART I

## WARRANT TO LEVY

Under the Taxes Ordinance of the Falkland Islands

By Financial Secretary of the Falkland Islands

To a bailiff appointed by the said Financial Secretary in this behalf.

WHEREAS the several persons named in the list attached to this Warrant are respectively liable in respect of tax, interest or fines to pay the several amounts set opposite their names respectively in such list;

AND WHEREAS default has been made in payment of the same;

YOU are therefore hereby enjoined and required to make demand of the several sums mentioned in the said list from the persons liable therefor or on the premises charged with the assessment, as the case may require, and upon payment thereof, to give acquittances under your hand unto the several persons who shall pay the same; and if any sum or sums remain unpaid after demand duly made by you then you are hereby enjoined and required to levy upon each and every of the persons named in the list such sums of money as shall be sufficient to pay the amount set opposite to the names of such persons in the said list together with the cost attending any levy and any sale thereon or any and all other proceedings consequent thereon. And of your proceedings herein you are forthwith to make your return to me.

Given under my hand at Stanley, Falkland Islands, the day of 19

Financial Secretary

## PART II

## PRAECIPE TO LEVY BY SALE OF LAND OR HOUSE

Under the Taxes Ordinance of the Falkland Islands

By the Financial Secretary of the Falkland Islands

To

WHEREAS the lands or houses of the several persons named in the list to this Warrant attached are respectively liable under the Taxes Ordinance for the several amounts set opposite their respective names:

AND WHEREAS the lands or houses named in the said list are likewise respectively liable for the amount aforesaid whether or not the persons named are in possession thereof:

AND WHEREAS default has been made in payment of the said amounts,

YOU are therefore hereby enjoined and required to levy upon and sell the lands of which the several persons named in the said list are possessed, or a sufficient part thereof, to satisfy the amounts set opposite their respective names as aforesaid together with the costs attending any such levy and sale and all other proceedings consequent thereon.

AND in default of satisfaction thereby, then, if the persons named are not now in possession of the lands or houses named in the said list, you are hereby enjoined and required to levy upon the lands or houses last mentioned. And of your proceedings herein you are to make returns to me at the end of every calendar month commencing from the date hereof until your

final return which you are to make to me on or before the thirtieth day of April next.

Given under my hand at Stanley, Falkland Islands, the                      day of                      19

Financial Secretary

### PART III

#### NOTICE TO DEFAULTER

Under the Taxes Ordinance of the Falkland Islands

TAKE NOTICE that you are hereby required to fill in the following form with the statements and information thereby required, to sign the same and to deliver it within 7 days from the date of the service thereof to the Officer in charge of the Treasury.

AND FURTHER TAKE NOTICE that in default of your delivering such form duly filled in and signed as aforesaid, you will commit an offence and on conviction thereof be liable to a fine not exceeding level 2 on the standard scale.

#### FORM

Do you admit that you owe £.....  
for tax and £..... for interest, fines or penalties in  
respect of .....

If the whole of the above-mentioned amount is not  
owing by you, state how much is owing by you.

If the above-mentioned amount or any part thereof  
is not owing by you, but is owing by some other  
person, state the name of that other person.

Have you any right, title or interest in the following  
properties? If you have, state the nature of your  
interest therein:

.....  
.....  
.....  
.....

State any reason you may have for claiming that  
your property may not be sold to satisfy the  
amount due by you.

Dated this day of

Financial Secretary

Served by me on the                      day of                      19

Bailiff or Server

## PART IV

## INDENTURE

THIS INDENTURE made the                      day of                      19                      between the Governor of the Falkland Islands of the one part ("the Governor") and ("the Grantee") of the other part

WITNESSETH that in consideration of the sum of  
paid by the Grantee to the Crown (the receipt whereof is hereby acknowledged) the Governor doth, pursuant to and in exercise of the powers in him vested by the laws of the said Falkland Islands relating to income tax and corporation tax, hereby grant to the Grantee ALL THAT

EXCEPTING AND RESERVING to the Crown, out of the grant hereby intended to be made, all the rights, liberties and benefits in respect of the said land and every portion thereof reserved to the Crown under and by virtue of section 28 of the Land Ordinance.

To hold the said hereditaments unto and to the use of the Grantee in fee simple.

IN WITNESS whereof the Governor hath hereunto set his hand and seal the day and year above written.

Signed sealed and delivered by the  
said (Governor) in L.S.  
the presence of

Section 169.

## SCHEDULE 4

## REPEALS

PART I  
ORDINANCES

Chapter	Short title	Extent
1939 c.32.	Income Tax Ordinance 1939	The whole Ordinance.
1990 c.2	Elected Councillors' Allowances Ordinance 1990	In section 3, in subsection (2) the words "shall not be chargeable to income tax in the hands of the recipient and" and in subsection (3) the words "the Income Tax Ordinance and".
1991 c.26.	Falkland Islands Defence Force Ordinance 1991	In section 53(1) the second sentence.

PART II  
RULES

Number	Title	Extent
	Income Tax Rules	Rules 1 to 7.
	Income Tax (Exemption) Order 1966	The whole Order.



Provision of Ordinance	Derivation
1	-
2(1)	-
(2)	1939 s.2
(3)	New
(4)	1939 s.32A(5)
(5)	New
3	New
4	1939 s.2
5	1939 s.87
6	1939 s.90
7	1939 s.5
8	1939 s.6, 7, 23(4)
9	1939 s.21(1)
10	1939 s.54, 55(a)
11	1939 s.33
12	1939 s.24
13	1939 s.20
14	1939 s.10(1),(2),(3)(f)
15	1939 s.15(4),(3)
16	1939 s.15(1), 14(1),(2)
17	1939 s.16
18	1939 s.15A; 1993 s.5
19	1939 s.15B; 1993 s.5
20	1939 s.31
21-23	New
24	1939 s.2(2A)-(2E)
25	1939 s.21(2)
26,27,28,29	New
30(1)	New
(2)	1939 s.2(1A)
31-50	New
51	1939 s.22
52	1939 s.8

## TABLE OF DERIVATIONS

Provision of Ordinance	Derivation
53	1939 s.10(3),(4)
54	1939 s.12
55	1939 s.35
56	1939 s.32I
57	New
58	1939 s.17
59	1939 s.17
60-79	New
80(1)	1939 s.32C(1)
(2)	1939 s.32A(2),(4)
(3)	1939 s.32B(2),(3)
(4)	1939 s.32A(4)
81(1)	1939 s.32A(3)
(2)	1939 s.32A(6)(a)
(3)	1939 s.32A(6)(b)
(4)-(7)	1939 s.32C(2)-(5)
82	1939 s.32D
83	1939 s.32F
84	1939 s.32G(1)
85	1939 s.32E
86	1939 s.32H
87,88	New
89	1939 s.10(3)(a),(b)-(e),(g)
90	1939 s.12A
91	1939 s.18(a),(b)
92	1939 s.18(c)-(f)
93	1939 s.32J
94	1939 s.19
95	1939 s.12B
96	New
97	1939 s.12C; 1993 s.4
98	1939 s.11, Sch.6 §1,2; Sch.7 §1
99	1939 Sch.6 §2,3(c),4(a); Sch.7 §2,3A(a)

Provision of Ordinance	Derivation
100	1939 Sch.7 §5
101	1939 Sch.6 §6A-6D; Sch.7 §5A-5D
102	New
103	1939 Sch.6 §7; Sch.7 §6
104	1939 Sch.6 §4,5; Sch.7 §3,4,5
105	New
106	1939 s.13
107,108,109, 110	New
111-119	New
120	1939 s.26A; 1993 s.6
121	1939 s.26B; 1993 s.6
122	1939 s.26C; 1993 s.6
123	1939 s.88
124	1939 s.59
125, 126	New
127	1939 s.49
128	1939 s.50(1),(2),(5),(7),(9),(10)
129	1939 s.50(3),(4),(6)
130	New
131	1939 s.50A
132	1939 s.49(3),52
133	1939 s.38
134	New
135	1939 s.39
136	1939 s.42
137	1939 s.82
138	1939 s.3A
139	1939 s.3C
140	1939 s.3B
141	New
142	1939 s.53, 57, 55(b),(c)

Provision of Ordinance	Derivation
143	1939 s.58
144	New
145	1939 s.85A
146	1939 s.85(1)
147	1939 s.84
148	1939 s.86
149	1939 s.83, 85(2)
150	1939 s.56A
151	1939 s.41
152	1939 s.26
153	1939 s.25
154	1939 s.29
155	1939 s.27, 28
156	1939 s.30
157	1939 s.2(1),(1A)
158	1939 s.4
159	1939 s.34
160	1939 s.89
161	New
162	1939 s.32B(1)
163	New
164	New
165	New
166	1939 s.44
167	1939 s.37
168	1939 s.36, 45
169	-
Schedule 1	1939 ss.3D-3H
Schedule 2	1939 ss.60-80

Provision of Ordinance	Derivation
Schedule 3	
Part I	1939 1st Schedule
Part II	1939 2nd Schedule
Part III	1939 3rd Schedule
Part IV	1939 4th Schedule
Schedule 4	-

Provision of 1939 Ordinance	Destination Provision of 1994 Ordinance
1	-
2(1)	2, 14(6)
(1A)	157(1),(2)
(1B)	30(2),(3)
(1C)	22
(2)	162
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3A	138
3B	140
3C	141
3D	Sch.1 §2
3E	Sch.1 §3
3F	Sch.1 §4
3G	Sch.1 §5
3H	Sch.1 §6
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Provision of 1939 Ordinance	Destination Provision of 1994 Ordinance
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15(1)	16(1)
(2)	- (Repealed)
(3)	15(2),(4)
(4)	15(1)
16	17
17(a)	59,58-
(b)	- (Not reproduced)
18(a),(b)	91
(c),(d),(e),(f)	92
19	94
20	13
21(1)	9
(2)	27
(3)	-(Not reproduced)
22	51
23(a)-(c)	27
(d),(2),(3)	11(3),(4)
(4)	8(4)
24	12, 157
25	153
26	152
26A	120
26B	121
26C	122
27	155(1)
28	155(2)
29	154(1)
30	156
31	20
32	- (Not reproduced)

Provision of 1939 Ordinance	Destination Provision of 1994 Ordinance
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(2)	80
(3)	-
(4)	80
(5)	2
(6)	81(2),(3)
(7)	53(1)(h)
32B(1)	162(2)
(2),(3)	80(3)
32C(1)	80(1)
(2)-(5)	81(4)-(7)
32D	82
32E	85
32F	83
32G(1)	84
(2)	- (Not reproduced)
32H	86
32I	55
32J	93
33	11
34	158
35	54
36	168(1)-(4)
37	167
38	133(1)-(4)
39	135
40	- (Not reproduced)
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42	136
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45	168(5)



## TABLE OF DESTINATIONS

Provision of 1939 Ordinance	Destination Provision of 1994 Ordinance
46-48	- (Repealed)
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(3),(4)	132(1),(3)
50	128, 129
50A	131
51	- (Not reproduced)
52	133(2)
53	142
54	10(1)
55	142
56	- (Not reproduced)
56A	150
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**The Offshore Minerals Ordinance 1994 (No. 16 of 1994).**

# The Offshore Minerals Ordinance 1994

(No: 16 of 1994)

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ELIZABETH II



Colony of the Falkland Islands

**DAVID EVERARD TATHAM, C.M.G.,**  
*Governor.*

## The Offshore Minerals Ordinance 1994

(No: 16 of 1994)

To repeal the Continental Shelf Ordinance 1991; to replace it so as to make further and better provision for the exploration and exploitation of minerals in the Continental Shelf and other controlled waters of the Falkland Islands and for matters connected with or relating to the foregoing matters.

*(assented to: 23rd November 1994)*  
*(commencement: in accordance with section 1)*  
*(published: 9th December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

### PART I

#### INTRODUCTORY

##### *Short title, Commencement and Interpretation*

1.(1) This Ordinance may be cited as the Offshore Minerals Ordinance 1994.

*Short title and  
commencement.*

(2) This Ordinance shall come into force on such day as the Governor may appoint by notice published in the Gazette.

(3) The Governor may exercise his powers under subsection (2) so as to appoint, by one or more notices so published, differing days for the coming into force of different provisions of this Ordinance.

(4) Any reference in any provision of this Ordinance to the coming into force of this Ordinance shall be construed as a reference to the day appointed under this section for the coming into force of that provision.

2.(1) In this Ordinance, unless the context otherwise requires -

*Interpretation.*

"clauses of the licence" has the meaning given by section 7(3);

"company" includes any body corporate;

"concession owner" has the meaning given by subsection (2) of this section;

"the continental shelf" has the meaning ascribed to that phrase for the purposes of international law in the first recital to Proclamation No.1 of 1991;

"contravene" includes a failure to comply;

"controlled pipe-line" has the meaning given by section 38(1);

"controlled waters" means any or all of the following -

(a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limits of the territorial sea;

(b) any designated area of the continental shelf; and

(c) such inland waters as may be prescribed for the purposes of this paragraph by Order made by the Governor;

"designated area" has the same meaning as it has in Proclamation No. 1 of 1991;

"director" includes -

(a) any person who occupies in relation to a company the position of director, by whatever name called;

(b) a shadow director;

(c) in the case of a body corporate incorporated other than in the Falkland Islands or under the laws of the Falkland Islands, any person, including a member of a managing board or committee, (however the managing board or committee is described) who occupies in relation to the body corporate a position analogous to that of a director of a company incorporated under the laws of the Falkland Islands; and

(d) where the affairs of a body corporate, whether incorporated in the Falkland Islands or under the laws of the Falkland Islands or not, are managed by the members of the body corporate, in relation to such management (but not otherwise) any of its members engaged in managing its affairs;

and "shadow director", for the purposes of paragraph (b) of this definition means any person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act;

"document" includes information recorded in any form and, in relation to any information recorded otherwise than in legible form, any reference in this Ordinance to its production includes reference to producing a copy of the document in legible form;

"enactment" -

(a) in relation to any Act or statutory instrument of the United Kingdom, includes every provision of such an Act or such statutory instrument; and

(b) in relation to any Ordinance or subsidiary legislation of the Falkland Islands, includes every provision of such an Ordinance or such subsidiary legislation;

"exploit", in relation to any mineral, means to do anything which, by virtue of this Ordinance, can only lawfully be done under the authority of, and in accordance with the conditions of, a production licence, and "exploitation" has a corresponding meaning;

"exploration licence" means a licence granted under section 6 authorising the holder to search for a mineral or minerals;

"explore", in relation to any mineral, means to search or explore for any mineral and without prejudice to the generality of the foregoing, includes -

(a) field observations, geological and geophysical investigations and the use of remote sensing techniques;

(b) the obtaining of any sample; and

(c) any other operation which may be authorised by an exploration licence and which is not, in relation to any mineral, the exploitation of that mineral;

"Governor" means the Governor or other officer for the time being administering the Government of the Falkland Islands acting after consultation with the Executive Council except in any case where the Constitution authorises or requires him to act otherwise than after such consultation where it shall mean the Governor acting in his discretion;

"the inland waters" means waters within the Falkland Islands other than tidal waters and parts of the sea;

"inspector" means an inspector appointed under section 29 of this Ordinance;

"installation" includes -

(a) any floating structure or device maintained on a station by whatever means; and

(b) in such cases and subject to such exceptions as may be prescribed by Order, any apparatus or works which are by virtue of section 38(1) to be treated as associated with a pipe or a system of pipes for the purposes of Part IV of this Ordinance,

but subject to paragraph (b) of this definition, does not include any part of a pipe-line within the meaning of that definition;

"installation manager" has the meaning given by section 25(3);

"licensee" means any person -

(a) to whom a licence under this Ordinance has been granted; or

(b) to whom a licence was granted under section 4 of the repealed Ordinance where that licence continues to have effect as if it had been granted under section 6 of this Ordinance;

"mineral" means any substance, other than water, and whether that substance is in solid, liquid or gaseous form, formed by or subject to geological process and being in or on the seabed of or in the subsoil of the controlled waters;

"offshore installation" means any installation which is or has been maintained, or is intended to be established, for the carrying on of a relevant offshore activity;

"Order" means any Order made under any provision of this Ordinance;

"model clauses" and "the model clauses" mean a model clause or model clauses prescribed by regulations made under section 7;

"this Ordinance" means this ordinance as from time to time amended and includes a reference to any subsidiary legislation made under this Ordinance;

"notice" means notice in writing;

"owner", in relation to an offshore installation means the person who has registered the installation pursuant to regulations requiring such registration, or if there is no such person, or if no such regulations have for the time being been made or have effect, the person for the time being having the management of the installation, or of its main structure;

"person" includes a body corporate, an unincorporated body of persons and a partnership;

"personal injury" includes any disease and any impairment of a person's physical or mental condition and any fatal injury;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in any strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"pipe-line" and "pipe-line works" have the meaning given by section 38(1);

"prescribed" means prescribed by regulations under this Ordinance;

"regulations" means regulations made under any provision of this Ordinance;



"relevant offshore activity" means any of the following activities which is carried on from, by means of or on an installation which is maintained in the water -

(a) the exploration for or exploitation of minerals in the bed of or in the subsoil of the controlled waters;

(b) the storage of gas in the bed or subsoil of the controlled waters or in any structure affixed to the bed or subsoil of the controlled water or in the subsoil of the controlled waters;

(c) the conveyance of things by means of a pipe or system of pipes, constructed or placed on, in or under the bed of or in the subsoil of the controlled waters;

(d) the provision of accommodation for persons who work in on or from an installation which is or has been maintained or is intended to be established for the purpose of the carrying on an activity falling within paragraph (a), (b) or (c) or this paragraph;

except that an activity which would otherwise be a "relevant offshore activity" by reason of paragraphs (a), (b), (c), or (d) of this definition is not such an activity to the extent that it is an activity carried on from an installation which is connected with dry land by a permanent structure providing access at all times and for all purposes and that the provisions of subsection (3) shall have effect for the purpose of the application of this definition;

"the repealed Ordinance" means the Continental Shelf Ordinance 1991;

"Secretary of State" means Her Majesty's Secretary of State for Foreign and Commonwealth Affairs;

"statutory instrument" has the same meaning as it has for the purposes of the Statutory Instruments Act 1946; and

"subsidiary legislation" means any Order or regulation made under this or any other Ordinance.

(2) Subject to subsection (3), a person who whether as a licensee or otherwise, has the right to exploit any mineral in any area, or to store gas in any area and to recover gas so stored, shall be a "concession owner" for the purposes of this Ordinance in relation to any offshore installation if, at that time, he carries on any relevant offshore activity on, by means of or from that installation.

(3) The fact that an installation has been maintained for the carrying on of an activity falling within the definition of "relevant offshore activity" in subsection (1) shall be disregarded if, since it was last so maintained the installation -

(a) has been outside controlled waters; or

(b) has been maintained for the carrying on of any activity which does not fall within that definition:

(4) Except where the context otherwise requires, any reference in this Ordinance to an enactment, whether of the Falkland Islands or of the United Kingdom, shall include a reference to -

(a) any enactment for the time being replacing that enactment, and whether by way of re-enactment or otherwise; and

(b) any enactment for the time being amending or modifying that enactment

(5) Subject to this Ordinance, Part XI of the Interpretation and General Clauses Ordinance 1977 ("the 1977 Ordinance") shall, subject to the provisions of subsection (1), apply in relation to enactments of the United Kingdom applied as law of the Falkland Islands by any provision of this Ordinance as it does in relation to imperial enactments (within the meaning given to "imperial enactments" by section 3(1) of the 1977 Ordinance) which have been applied or adopted as law of the Falkland Islands.

(6) Where any word or expression is defined in subsection (1), that definition shall extend to the grammatical variations and cognate expressions of that word or expression.

(7) In this Ordinance

(a) words and expressions used in the masculine gender include the female gender and the neuter gender;

(b) words and expressions used in the neuter gender include the masculine gender and the female gender; and

(c) words and expressions used in the singular include the plural and vice versa.

(8) Subject to this Ordinance, the Interpretation and General Clauses Ordinance 1977 applies in relation to this Ordinance and to expressions used in this Ordinance.

## PART II

## EXPLORATION FOR AND EXPLOITATION OF MINERALS

*Prohibition of exploration for or exploitation of minerals*

3.(1) It is unlawful for any person to explore for or exploit any mineral in the controlled waters or in the sea-bed or subsoil thereof unless he does so under and in accordance with the terms and conditions of a licence granted under this Ordinance or having effect as if granted under this Ordinance

*Prohibition of exploration for and exploitation of minerals in the controlled waters.*

(2) This section does not bind the Crown.

4.(1) A licence granted under section 4 of the repealed Ordinance shall with effect from the commencement of this Ordinance have effect as if it were as an exploration licence granted under section 6 of this Ordinance upon the same terms and conditions as it was granted.

*Licences granted under repealed Ordinance to have effect as if granted under this Ordinance.*

(2) In subsection (1), the reference to the terms and conditions of a licence includes a reference to any model clauses incorporated in that licence by virtue of the provisions of the Petroleum Survey (Model Clauses) Regulations 1992.

*S.R. & O. No.25 of 1992.*

*Application for and grant of licences*

5.(1) For the purposes of this Ordinance there shall in relation to the exploration for and exploitation of minerals be the following kinds of licences -

*Kinds of licences.*

(a) exploration licences; and

(b) production licences.

(2) An exploration licence shall authorise the licensee in accordance with its terms, to search for the mineral or minerals specified therein in the sea-bed and subsoil of or under the area or areas of the controlled waters specified in the licence but shall not authorise the licensee, unless the contrary is stated in the licence -

(a) to bore for any mineral in the course of exploration; or

(b) to get any mineral in the course of exploration,

and, in any case, an exploration licence shall not authorise the licensee to get any mineral in any greater quantity or for any purpose other than is incidental to exploration for that mineral.

(3) A production licence shall authorise the licensee in accordance with its terms to search and bore for, and get, the mineral or minerals specified in the licence in the sea-bed and subsoil under the area or areas of the controlled waters specified in the licence.

6.(1) Subject to this Ordinance, and with the consent of the Secretary of State, the Governor may on behalf of Her Majesty, grant to any person a licence of a kind provided for by section 5(1) of this Part in respect of the whole or part of the area to which that person's application for that kind of licence relates. *Grant of licences.*

(2) Any such licence shall be granted for such consideration as the Governor with the consent of the Secretary of State may determine, and upon such other terms and conditions as the Governor, with the approval of the Secretary of State, sees fit to grant the licence.

(3) The Governor shall, as soon as may be after granting a licence under this section, publish notice of the fact in the Gazette stating the name of the licensee and the situation of the area in respect of which the licence has been granted.

7.(1) The Governor shall, before granting any licence under section 6 in respect of any mineral, under this section make regulations approved by the Secretary of State in relation to that mineral prescribing - *Model clauses regulations to be made.*

(a) the manner in which and the persons by whom applications for licences under that section may be made; *(24 & 25 Geo 5, c.36 s.6).*

(b) the fees to be paid on such applications;

(c) the conditions as to the size and shape of areas in respect of which licences may be granted;

(d) model clauses which shall, unless he, with the approval of the Secretary of State sees fit to exclude them in any particular case, be incorporated in any such licence,

and different regulations may be made under this section -

(i) for different kinds of licence, or

(ii) different kinds of mineral.

(2) Regulations made under this section shall not be revoked amended or replaced without the consent of the Secretary of State.

(3) A reference in this Ordinance to "the clauses of the licence" is a reference to the model clauses incorporated in a licence pursuant to regulations made under this section together with any conditions imposed, in addition to any such model clauses, on the grant of the licence or otherwise in accordance with this Ordinance.

8. Notwithstanding the definition of "mineral" in section 2(1), all minerals falling within the definition of "petroleum" in section 2(1) shall for all purposes of sections 6, and 7 be treated as if they were a single mineral.

*Petroleum to be a single mineral for the purposes of sections 6 and 7.*

9.(1) It shall be the general duty of the Governor in the exercise of his powers -

*General duty of the Governor in relation to licensing powers. Power to alter conditions of licence.*

(a) under section 6, to grant licences;

(b) under section 7, to make regulations prescribing model clauses; and

(c) otherwise under this Ordinance,

*(cf 1964, c.29, s.1(6) applying 8 & 9 Geo.6, c.19, s.1(1)).*

to secure the effective and co-ordinated development of petroleum and other minerals in the seabed and subsoil of the controlled waters, but nothing in this subsection shall be construed as placing upon the Governor any obligation to grant any licence under section 6 to any person.

(2) The Governor may, with the approval of the Secretary of State and with the consent of the licensee, amend, vary, add to or augment the conditions of a licence he has granted under section 6.

10. Any person who -

*Offences in relation to licences for exploration for or exploitation of minerals.*

(a) explores for or exploits any mineral in the controlled waters when he is not authorised by a licence issued under, or having effect as if issued under section 6 of this Ordinance to do so;

(b) for the purpose of obtaining such a licence (for himself or for another) knowingly or recklessly makes a statement which is false in a material particular; or

(c) fails to comply with such provisions of any regulations as may be prescribed for the purposes of this section;

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) In any proceedings for an offence under paragraph (a) or (c) of subsection (1), it shall be a defence for the accused to prove that he took all reasonable precautions to avoid the commission of the offence.

11.(1) Subject to this section no person shall, without the consent in writing of the Governor -

*Requirement of consent for certain works in controlled waters.*

(a) deposit any object or material on the sea-bed of the controlled waters;

(b) construct, alter or improve any works on, under or over any part of the controlled waters; or

(c) remove any object or materials from the sea-bed or subsoil of the controlled waters,

*(cf 1964 c.29 s.4 applying provisions of Geo.6, 12, 13 & 14).*

if the operation (whether while being carried out or subsequently) causes or is likely to result in an obstruction or danger to navigation.

(2) Subsection (1) -

(a) does not apply where the person carries out the operation pursuant to a consent granted by or pursuant to the clauses of a licence granted under section 6;

(b) does not apply to the construction, alteration or improvement of any works more than fifty feet below the surface of the sea in connection with the getting of minerals; and

(c) has effect without prejudice to the provisions of this Ordinance relating to submarine pipe-lines or the abandonment of installations (but no consent under subsection (1) is required where the consent in writing of the Governor has been obtained pursuant to any such provisions).

(3) The Governor may, as a condition of considering an application for consent under this section, require to be furnished with such plans and particulars of the proposed operation as he considers necessary; and on receipt of any such application he may -

(a) cause notice of the application to be published, and of the time within which and the manner in which objections thereto may be made, to be published in such manner as he may consider appropriate for informing persons affected thereby, and

(b) before granting his consent, may, if he thinks fit, appoint a Commission of Inquiry to enquire into the matter under the provisions of the Commissions of Inquiry Ordinance and report to him thereon and shall take such report into account in determining whether or not to consent to the proposed operation and, if he decides to consent to it, upon what conditions, if any.

*(Cap. 12 Laws of  
the Falkland Islands  
(1950 Edition)).*

(4) If the Governor (and, if appropriate, after taking into account any report made to him pursuant to subsection (3)), considers that any operation in respect of which his consent is required under this section will cause or is likely to result in obstruction or danger to navigation he shall either -

(a) refuse his consent; or

(b) grant his consent subject to such conditions as he thinks fit, having regard to the nature and extent of the obstruction or danger which appears to him would otherwise be caused or be likely to result.

(5) A consent of the Governor under this section may be given so as to continue in force, unless renewed, only if the operation for which consent is given is begun or completed within such period as may be specified in the consent, and any renewal of such consent may be limited in a similar manner, and any condition subject to which the Governor has given his consent -

(a) shall subject to paragraph (d), either remain in force for a specified period or remain in force without limit of time;

(b) shall (in addition to binding the person to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies or enjoys any works to which the consent relates;

(c) may, if the condition related -

(i) to the provision of lights, signals or other aids to navigation, or

(ii) to the stationing of guard ships in the vicinity of the works in question or the taking of any other measures for the purpose of, or in connection with, controlling the movement of ships in the vicinity of those works,

be varied by the Governor in the interests of the safety of navigation (whether or not the operation has been completed) in such manner as he thinks fit for the purpose of enhancing the effectiveness of any such aids or measures as are mentioned in subparagraph (i) or (ii) of this paragraph; and

(d) may, if the Governor thinks fit, be varied or discharged by him.

12.(1) Where at any time after the Governor has given his consent for an operation falling within section 11(1) ("the relevant consent"), it appears to him -

*Supplementary  
to section 11.*

(a) that any danger to navigation has arisen by reason of -

*(12, 13 & 14 Geo 6,  
c. 74 s. 36A).*

(i) any substantial damage to any works to which that consent relates; or

(ii) any other substantial and unforeseen change in the state or position of any such works, and

(b) that it is urgently necessary to do so in the interests of safety or navigation,

he may, by notice served on the person to whom the consent was given, impose on that person such requirements as he thinks fit with respect to any of the matters referred to in subsection (2) of this section.

(2) Those matters are -

(a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and

(b) the stationing of guard ships in the vicinity of those works.

(3) Where the person on whom a notice is served under subsection (1) of this section fails to comply with any requirements of the notice within 24 hours beginning with the time when it is served on him or as soon after that period as is reasonably practicable, the Governor may make such arrangements as he thinks fit for the purpose of securing that those requirements are implemented.

(4) Where under subsection (3) of this section the Governor makes any such arrangements, he shall be entitled to recover the cost, as certified by the Financial Secretary, of making those arrangements from such one or more of -

(a) the person to whom the relevant consent was given, and

(b) any other person who is, in accordance with section 11 (5) (b), bound by any condition subject to which that consent was given,

as he thinks fit.

(5) Once the requirements of a notice under subsection (1) of this section have been complied with by the person on whom it was served, or implemented in accordance with arrangements made by the Governor under subsection (3) of this section, those requirements shall, subject to subsection (6) of this section, be treated as conditions subject to which the relevant consent was given.

(6) Paragraphs (a) and (d) of section 11(5) shall not apply to such requirements; but if it appears to the Governor (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, he shall revoke them by notice served on the person to whom the relevant consent was given.

(7) Where the Governor has served a notice under subsection (1) of this section in respect of any particular circumstances, subsection (5) of this section shall not preclude him from serving a further notice under subsection (1) of this section in respect of those circumstances.

(8) A notice may be served by the Governor under subsection (1) of this section whether or not -

(a) the operation in question has been completed, or

(b) any condition was imposed by him, on giving the relevant consent, with respect to any of the matters referred to in subsection (2) of this section.

*Offences.*

13.(1) Any person who -

(a) carries out any operation in contravention of section 11(1), or

(b) fails to comply with any condition subject to which any consent of the Governor has been given under that section,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) Where a person is bound by any condition subject to which any such consent has been given under that section but is not the person to whom the consent was given, then, for the purposes of subsection (1) of this section, he shall not be taken to have failed to comply with the conditions unless -



(a) he has been served by the Governor with a notice requiring him to comply with the condition within such period (not being less than thirty days) as may be specified in the notice; and

(b) he has failed to comply with the conditions within that period.

(3) Without prejudice to any proceeding under subsection (1) or (2), where any person has, in contravention of section 11 -

(a) deposited any object or material on the sea-bed of the controlled waters, or

(b) constructed, altered or improved any works in the controlled waters; or

(c) failed to comply with any condition subject to which any consent of the Governor has been given under section 11,

the Governor may serve a notice on that person requiring him, within such period (not being less than thirty days) as may be specified in the notice, to remove the works or to make such alterations therein as may be so specified or to remove the object or materials, as the case may be, or, if it appears to the Governor urgently necessary to do so, may himself remove or alter the works or remove the object or materials.

(4) If within the period specified in any notice under subsection (3) the person served fails to comply with it, the Governor may himself remove or alter the works or remove the object or materials specified in the notice.

(5) Where under either subsection (3) or (4) the Governor removes or alters any works or removes any object or materials, he shall be entitled to recover the cost, as certified by the Financial Secretary, from the person by whom the works were constructed, altered or improved, or the object or materials was or were deposited.

#### *Environmental protection*

14.(1) Schedule 1 to this Ordinance shall have effect so as to impose upon Operators strict liability for loss or damage in the circumstances and in the events provided for by that Schedule.

*Strict liability  
for certain loss or  
damage etc.*

(2) In this section and in Schedule 1 to this Ordinance, "Operator" means any licensee and any concession owner.

*(1989 c.21, s.12  
and Schedule)*

15.(1) Without prejudice to the generality of his powers under -

*Orderly payment for  
environmental damage.*

(a) section 6(2), to impose terms and conditions on the grant of a licence; and

(b) section 7, to make regulations prescribing model clauses,

it is declared that the Governor may exercise those powers so as to require a licensee to effect and maintain in being throughout the term of the licence such policy or policies of insurance approved by the Governor or be party to such an arrangement in respect of the licensee's obligations, in the events provided for by Schedule 1 of this Ordinance or otherwise arising to pay damages or compensation or make re-imbursement to any person as the Governor sees fit.

(2) In subsection (1) and (3) "such an arrangement" means an arrangement having an effect similar so far as is reasonably practicable, to the application of the arrangements afforded by the Offshore Pollution Liability Agreement as amended from time to time by the parties thereto or such other arrangement of a similar kind to that the arrangements afforded by that Agreement as the Governor may approve.

(3) Where a licensee is party to such an arrangement but the provisions of that arrangement do not provide for payment in relation to all of the obligations referred to in subsection (1) of this section, the Governor may exercise either of the powers referred to in that subsection so as to require the licensee to effect and maintain in being a policy or policies of insurance approved by the Governor in relation to the remainder of those obligations.

(4) In subsection (2), "the Offshore Pollution Liability Agreement" means the agreement of that name applying in relation to the Offshore Pollution Liability Association Limited (a company incorporated under the laws of England with liability limited by guarantee and members of which are companies engaged in offshore petroleum exploration and exploitation operations and activities).

16.(1) In this section, "the 1971 Act" means the Prevention of Oil Pollution Act 1971 in the manner and so far as it applies to the Falkland Islands by virtue of the Prevention of Oil Pollution Act (Overseas Territories) Order 1982, but as if section 3 of the 1971 Act (which was not applied to the Falkland Islands by the said Order) had been so applied in terms corresponding to those of subsections (2) and (3) of this section.

*Oil pollution from certain operations.*

(2) If any oil to which section 1 of the 1971 Act applies, or any mixture containing such oil, is discharged into any part of the sea -

(a) from a pipe-line; or

(b) (otherwise than from a ship) as the result of any operation for the exploration of the sea-bed and subsoil or the exploitation of their natural resources in a designated area,

then, subject to the provisions of the 1971 Act, the owner of the pipe-line or, as the case may be, the person carrying on the operations commits an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(3) A person convicted of an offence under subsection (2) is liable on conviction of that offence to a fine without limit.

*Application of criminal and civil law*

17.(1) The Governor may by Order made with the consent of the Secretary of State provide that, in such cases and subject to such exceptions as may be prescribed by the Order, any act or omission which - *Application of criminal law.*

(a) takes place on, under, or above an installation to which this section applies or any waters within 500 metres of any such installation; and

(b) would, if taking place in the Falkland Islands constitute an offence under the law of the Falkland Islands,

shall be treated for the purposes of that law as taking place in the Falkland Islands.

(2) The Governor may by Order made with the consent of the Secretary of State provide that in such cases and subject to such exceptions as may be prescribed by the Order, a police officer shall on, under or above any installation in waters to which this section applies or any waters within 500 metres of such an installation have all the powers, protection and privileges which he has under the law of the Falkland Islands.

(3) Subsection (2) has effect without prejudice to any other enactment or rule of law affording any power, protection or privilege to police officers or constables.

(4) Proceedings for anything that is an offence by virtue of an Order under this section may be taken, and the offence may be treated as having been committed, in the Falkland Islands.

(5) The waters to which this section applies are -

(a) the territorial sea; and

(b) waters in the designated area.

(6) This section applies to installations notwithstanding that they are for the time being in transit.

18.(1) The Governor may by Order made with the consent of the Secretary of State -

*Application of  
civil law (1982 c.23  
s.23).*

(a) provide that in such cases and subject to such exceptions as may be prescribed by the Order, questions arising out of acts or omissions taking place on, under or above waters to which this section applies in connection with any activity mentioned in subsection (2) shall be determined in accordance with the law of the Falkland Islands; and

(b) make provision for conferring jurisdiction with respect to such questions on courts in the Falkland Islands.

(2) The activities referred to in subsection (1) are -

(a) activities connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of waters to which this section applies or the subsoil beneath it; and

(b) without prejudice to the generality of paragraph (a) of this subsection, activities carried on from, by means of or on, or for the purposes connected with, installations to which subsection (3) applies.

(3) This subsection applies to offshore installations (as defined in section 2(1) of this Ordinance by reference to the carrying on of a relevant offshore activity (as defined in section 2(1)) and as section 2(3) has effect in relation to that definition).

(4) Any jurisdiction conferred on any court under this section is without prejudice to any jurisdiction exercisable apart from this section by that or any other court.

(5) The waters to which this section applies are -

(a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limit of the territorial sea; and

(b) waters in the designated area.

(6) This section applies to installations notwithstanding that they are for the time being in transit.

#### *Miscellaneous matters*

19. The Governor may by Order in Council made with the consent of the Secretary of State apply the Wireless Telegraphy Act 1949 and any regulations made thereunder (with such modifications and exceptions as may be specified in such Order) to any installation in waters to which an Order under section 18 applies and any waters within 500 metres of an installation.

*Wireless  
telegraphy.*

*(cf 1964 c.29 s.6)*

20. The Governor may by Order in Council made with the consent of the Secretary of State apply the Radioactive Substances Act 1960 to any installation in an area or part to which an Order under section 18 applies and waters within 500 metres of such an installation and may by an Order under this section modify the provisions of that Act in their application to such an installation or waters.

*Radioactive  
substances.*

21. Section 3 (punishment for damaging cables) of the Submarine Telegraph Act 1885 in its application to the Falkland Islands and Article IV and paragraph 1 of Article VII (liability to pay compensation for damage to cables and for loss of gear sacrificed to avoid such damage) of the Convention set out in the Schedule to that Act (which by virtue of section 2 of that Act has the force of law) shall apply in relation to all submarine cables under the high seas (and not only to those to which that Convention applies) and to pipe-lines under the high seas; and the said section 3 shall be construed as referring to telephonic as well as telegraphic communication, and, in relation to high-voltage power cables and to pipe-lines, as if the words "in such manner" to the end of subsection (1) were omitted.

*Submarine cables  
and pipelines.*

*(1964 c.29, 2.8(1)).*

### PART III

## SAFETY, HEALTH AND SAFETY AT WORK ETC

### CHAPTER 1: OFFSHORE INSTALLATIONS

22.(1) This section and sections 23 to 29 apply to offshore installations in the controlled waters and the definitions of -

*Application of this Part.*

(a) "installation";

*(cf. 1971 c.61 s.1).*

(b) "offshore installation";

(c) "relevant offshore activity" (in relation to offshore installations),

(all of which are contained in section 2(1)) and

(d) the provisions of section 2(3) (which excepts in certain circumstances installations which would otherwise be offshore installations by reason of the definitions referred to in paragraphs (a) (b) and (c) of this section from the operation of those definitions)

shall have effect for the purpose of determining which installations are offshore installations for the purposes of this Part.

(2) Section 38(1) has effect for the purpose of bringing apparatus or works associated with a pipe or system of pipes within the definition of "installation" in section 2(1) (and thus, by virtue of subsection (1) of this section, within the operation of this Chapter).

(3) In this Chapter, any reference to the manager of an offshore installation is to be construed except in so far as the context otherwise requires as a reference to the person for the time being in charge of the installation and appointed as required by paragraph (a) or (b) of section 25(1).

#### *Matters as to which regulations may be made*

23.(1) The Governor may with the consent of the Secretary of State make regulations for the registration of offshore installations.

*Registration of offshore installations.  
(1971, c.61 s.2).*

(2) Regulations under this section may make provision -

(a) for all matters relevant to the maintenance of a register of offshore installations;

(b) without prejudice to paragraph (a) of this subsection, for the cases in which an installation is to be or may be exempted from registration, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemptions or of any conditions attached thereto, the persons by whom and manner in which applications in connection with any registration or exemption are to be made, and the information and evidence to be furnished in connection with any such application;

(c) for the marking or other means of identification of any installation, whether registrable or exempted from registration;

(d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;

(e) for requiring the payment of fees in connection with the making of applications under the regulations, the issue of certificates or other matters;

(f) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto; and

(g) for other incidental matters.

24.(1) The Governor may with the consent of the Secretary of State make regulations -

*Construction and  
survey regulations  
for offshore  
installations.*

(a) requiring offshore installations to be certified by such persons and in such manner as may be provided by the regulations to be, in respect of such matters affecting safety as may be so provided, fit for the purpose or purposes specified by the regulations;

*(1971, c.61 s.3)*

(b) imposing requirements as to the survey, testing and inspection of installations or parts of installations or parts of installations in respect of matters covered or required to be covered by a certificate of fitness;

(c) imposing any prohibition or restriction as respects installations or parts of installations which, in any respect, fail to comply with any provisions of the regulations.

(2) Regulations under this section may make provision -

(a) for the issue of certificates of fitness, and the custody, surrender, production or display of the certificates or copies of them;

(b) for requiring the payment of fees in connection with the making of applications under the regulations, the carrying out of surveys or tests, the issue of certificates or other matters;

(c) for matters arising out of the termination or modification of any certificate of fitness;

(d) for any other incidental matters.

(3) It shall be the duty of the owner of the offshore installation, and of the installation manager and of every person who, in relation to the installation is a concession owner to ensure that the provisions of regulations under this section are complied with, and, if regulations under this section are contravened in any respect in relation to an installation when it is within controlled waters, the owner of the offshore installation, the installation manager and every person who, in relation to the installation, is a concession owner commits an offence and is liable on conviction of that offence to a fine without limit.

*Managers of offshore installations*

25.(1) Every offshore installation, so long as it is in controlled waters shall be under the charge of a person appointed to be or act as manager, and the owner of the installation shall appoint to be installation manager - *Managers of offshore installations.*

*(1971 c.61, s.4)*

(a) a person who, to the best of the knowledge and belief of the owner, has the skills and competence suitable for the appointment, and

(b) another or others to act where necessary in place of the installation manager,

and shall inform the Governor of any appointment under this subsection by giving notice in the prescribed form and containing the prescribed particulars.

(2) The Governor may, with the consent of the Secretary of State, make regulations prescribing requirements to be fulfilled as respects an installation manager appointed under paragraph (a) or paragraph (b) of subsection (1) of this section, including requirements as to qualifications, experience, health or age; and the regulations may make different provision for managers of different types of installations or managers whose responsibilities differ in other respects, and different provision for managers appointed under the said paragraphs (a) and (b) respectively.

(3) The owner may, under paragraph (a) of subsection (1) of this section, appoint two or more persons to be managers in rotation, and the persons appointed under paragraph (b) of that subsection shall act where necessary in place of any of them.

(4) If at any time the owner is satisfied that an installation manager appointed in pursuance of subsection (1) of this section does not have the requisite skills and competence, he shall terminate the appointment as soon as practicable, and shall give the Governor notice in the prescribed form of the action taken by him.

(5) It shall be the duty of the owner, in order to ensure that the installation manager appointed under paragraph (a) of subsection (1) of this section is on the installation when it is manned, from time to time to place a person so appointed on the installation, and to ensure that he remains there until relieved, or so long as it is manned.

(6) If the owner fails to comply, or to ensure compliance, with the provisions of this section, he commits an offence and is liable on conviction to a fine not exceeding £100,000.

(7) The operation of the foregoing provisions of this section may be excluded in whole or in part by regulations made by the Governor under this subsection, with the approval of the Secretary of State, or in relation to any particular installation by direction given by the Governor, with the approval of the Secretary of State, in such manner and to such persons as the Governor considers appropriate.

26.(1) The manager of an offshore installation shall not be absent from the installation at any time when it is manned, except in the case of sudden sickness or other cause beyond his control, or for other sufficient reason, and a person failing to comply with this subsection commits an offence and is liable on conviction of that offence to a fine not exceeding £10,000.

*Managers of offshore installations: further provisions.*

*(1971. c.61, s.5).*

(2) Except as otherwise provided by this Part, the manager of an offshore installation shall have in relation to it general responsibility for matters affecting safety, health or welfare, the maintenance of order and discipline, and for the discharge of that responsibility shall exercise authority over all persons in or about the installation, except that his authority does not extend to any matter for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(3) If a person subject to the authority of the manager of an offshore installation wilfully disobeys a lawful command given to him by the manager in the exercise of that authority, he commits an offence and is liable on conviction of that offence to a fine not exceeding £1,000.

(4) The manager of any offshore installation shall not permit the installation to be used in any manner, or permit any operation to be carried out on or from the installation, if the seaworthiness or stability of the installation is likely to be endangered by its use in that manner or by the carrying out of that operation or by its being carried out in the manner proposed, and it shall be the duty of the owner of the installation to ensure that the provisions of this subsection are complied with by the installation manager.

(5) If an installation manager or owner fails to comply, or ensure compliance, with subsection (4) he commits an offence and is liable on conviction of that offence to a fine without limit.

(6) Where at an offshore installation there is an emergency or apprehended emergency endangering the seaworthiness or stability of the installation or otherwise involving a risk of death or serious personal injury, the installation manager may take or require to be taken any such measures as are necessary or expedient to meet or avoid the emergency, and no regulation or condition having effect by virtue of this Part shall apply to prohibit or restrict the taking of any such measures by virtue of this subsection.

(7) If the installation manager has reasonable cause to believe that it is necessary or expedient for the purpose of securing the safety of any offshore installation or persons in or about it, or maintaining order and discipline among those persons, the installation manager may cause those persons to be put ashore in the Falkland Islands; and where any of those persons has done or is about to do any act endangering or likely to endanger the safety of the persons in or about it or the maintenance of order and discipline among those persons, or the installation manager with reasonable cause suspects him of having done or being about to do any such act, the installation manager may take or cause to be taken such other reasonable measures against him, by restraint of his person or otherwise, as the installation manager thinks necessary or expedient, except that this subsection does not extend to any matters for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(8) A person shall not be kept under restraint by virtue of subsection (7) for longer than 24 hours unless -

(a) the intention is that he shall be put ashore in the Falkland Islands in accordance with that subsection at the earliest possible opportunity; and



(b) within those twenty-four hours or as soon as practicable afterwards notice of his having been kept under restraint and of the reasons for it is sent to the prescribed authority in the Falkland Islands.

(9) The manager of an offshore installation shall notify the owner as soon as practicable of any event which occurs at the installation and which the owner is by any regulation or condition having effect by virtue of this Part required to notify to the Governor, and if a person fails to comply with this subsection he commits an offence and is liable on conviction of that offence to a fine not exceeding £5,000.

(10) The operation of the foregoing provisions of this section may be excluded in whole or in part in relation to any class or description of installation by regulations made by the Governor under this subsection with the approval of the Secretary of State, or in relation to any particular installation by directions given by the Governor, with the approval of the Secretary of State, in such manner and to such persons as the Governor considers appropriate.

*Safety regulations as to offshore installations*

27.(1) The Governor may with the consent of the Secretary of State make regulations for the safety, health and welfare of persons on offshore installations in controlled waters, and generally, and whether or not by supplementing the preceding sections of this Part, for the safety of such installations and the prevention of accidents on or near them.

*Safety regulations  
as to offshore installations.*

*(1971 c.61, s.6).*

(2) The regulations may have effect as respect -

- (a) persons whether or not present in the course of their employment;
- (b) the transport of persons and things to and from an installation;
- (c) vessels, aircraft or hovercraft in the neighbourhood of an installation;
- (d) vessels on which accommodation is provided for persons who work on or from installations; and
- (e) any operation or work whether on or near an installation, or in the water, or on or below the shore or bed of the sea or other waters.

(3) Without prejudice to the generality of the preceding provisions of this section, the regulations may provide for any of the matters set out in Schedule 2 to this Ordinance, and may contain such supplemental or incidental provisions as appear to the Governor to be expedient.

(4) The Governor may appoint as inspectors to discharge the functions conferred by regulations, and generally to assist the Governor in the execution of the foregoing provisions of this Part, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient.

## CHAPTER 2: PIPE-LINES

### *Safety and inspection of pipelines*

28.(1) The Governor may by regulations make such provision as he considers appropriate for the purpose of securing the proper construction and safe operation of pipe-lines, preventing damage to pipe-lines, preventing damage to pipe-line works; and, without prejudice to the generality of the preceding provisions of this subsection, regulations in pursuance of this subsection may include provision with respect to the use of any aircraft, vessel, vehicle, structure, plant, equipment or other thing for the purposes of any pipe-line works and with respect to the movement of and the precautions to be taken on or in connection with any of those things which are used for the purposes of any pipe-line works or are in the vicinity of a pipe-line or pipe-line works.

*Safety etc. of  
pipe-lines (1975, c.74,  
s.26).*

(2) In subsection (1) of this section "pipe-line works" means works of any of the following kinds, namely -

- (a) assembling or placing a pipe-line or length of pipe-line;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipe-line or length of pipe-line;
- (c) changing the position of or dismantling or removing a pipe-line or length of pipe-line;
- (d) opening the bed of the sea for the purposes of works mentioned in the preceding paragraphs, tunnelling or boring for those purposes and other works needed for or incidental to those purposes;
- (e) works for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line, and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line.

(3) References in subsection (1) and (2) are to a controlled pipe-line but shall be construed as excluding -

- (a) the equipment of a vessel or vehicle; and
- (b) any apparatus and works associated with a pipe or system of pipes and prescribed for the purposes of this paragraph.

29.(1) The Governor may appoint, as inspectors to assist him in the execution of this Chapter of this Part ("the relevant provisions") such number of persons appearing to him to be qualified for the purpose as he considers appropriate from time to time.

*Inspectors etc.  
(1975, c.74, s.27).*

(2) Provision may be made by regulations with respect to the powers and duties of inspectors appointed in pursuance of the preceding subsection and of any other persons acting on the directions of the Governor in connection with the execution of the relevant provisions and with respect to the facilities to be accorded to such inspectors and other persons; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in exercise of that power may include provisions as to -

- (a) powers to inspect pipe-lines;
- (b) powers to enter upon premises, vessels and installations used or intended to be used in connection with a pipe-line or with activities relating to a pipe-line or a proposed pipe-line;
- (c) powers to inspect and test equipment and, in special circumstances, to dismantle, test to destruction or take possession of articles of equipment;
- (d) powers to require, in connection with the inspection of a pipe-line, the carrying out of procedures and the conduct of tests and, in special circumstances, the shutting down of the pipe-line or the discontinuance of the conveyance of things through the pipe-line;
- (e) powers exercisable in case of immediate or apprehended danger;
- (f) powers to require the conveyance of persons and things to and from, and the provision for persons of reasonable accommodation and means of subsistence while they are on or in transit to or from, any vessel or installation;
- (g) duties of persons to keep and produce records and to furnish information.

(3) Provision may also be made by regulations with respect to the notification of and the holding of public inquiries into accidents connected with pipe-lines; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in the exercise of that power may include provisions as to -

- (a) powers of entry and inspection for the purposes of an inquiry;
- (b) powers for such purposes of summoning witnesses to give evidence or produce documents, of taking evidence on oath and of administering oaths or requiring the making of declarations;
- (c) the making by the Governor of payments to a person holding an inquiry, to any assessor appointed to assist him and to any witness at an inquiry;
- (d) the persons by whom and the manner in which the costs of an inquiry, including the remuneration of a person holding the inquiry, are to be defrayed.

(4) The provision as to costs in pursuance of paragraph (d) of the preceding subsection may include -

- (a) provision for the payment of any costs out of money appropriated by the Legislative Council;
- (b) provision requiring any costs to be defrayed by any person who appears to the person holding the inquiry to be responsible in any degree for the accident in question by reason of any act or default of the first-mentioned person or of any servant or agent of his.

(5) References to a pipe-line in the preceding provisions of this section are to a controlled pipe-line.

### CHAPTER 3: SAFETY ZONES

#### *Establishment of safety zones*

30.(1) The Governor may, by Order made with the consent of the Secretary of State, provide that the following provisions of this section shall have effect, but otherwise they shall not have effect.

*Automatic  
establishment of  
safety zones.*

(2) Subject to subsection (1) and to subsections (4) and (5), there shall be a safety zone around any installation which, or part of which, is in the controlled waters if -

*(1987, c.12, s.21).*

(a) it is stationed there so that any of the activities mentioned in subsection (3) may be carried out on, from or by means of it, or

(b) it is being assembled at a station where it is to be used for such a purpose, or

(c) it remains or is being dismantled at a station where it has been used for such a purpose.

(3) The activities referred to in subsection (2) are -

(a) the exploitation or exploration of mineral resources in or under the shore or bed of the controlled waters;

(b) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored;

(c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters;

(d) the provision of accommodation for persons who work on or from an installation satisfying the condition in paragraph (a), (b) or (c) of subsection (2).

(4) Subsection (2) shall not apply to an installation in respect of which an order under section 31 has effect, or to one which -

(a) is connected with dry land by a permanent structure providing access at all times and for all purposes, or

(b) does not project above the sea at any state of the tide.

(5) The Governor may by Order made with the consent of the Secretary of State exclude any installation of any description from the operation of subsection (2), and may do so generally or by reference to specified activities or locations or in any other way.

(6) A safety zone established by subsection (2) shall extend to every point within 500 metres of any part of the installation (ignoring any moorings) and to every point in the water which is vertically above or below such a point.

(7) A safety zone established by subsection (2) may extend to waters outside the controlled waters.

31.(1) The Governor may by order made with the consent of the Secretary of State establish a safety zone around any installation which, or part of which, is stationed in the controlled waters, or is being assembled or dismantled in such waters. *Special orders. (1987, c.12, s.22).*

(2) The area of a safety zone established by an Order under this section shall be defined in the Order and may extend outside the controlled waters, but shall not extend to any point which would be outside a zone defined in accordance with subsection (6) of that section.

(3) An order under this section may be made in anticipation of an installation's arriving at its station, so as to come into force when it does so.

#### *Offences in relation to safety zones*

32.(1) Where by virtue of an Order under section 30 or 31 there is a safety zone around an installation, no vessel shall enter or remain in the zone except - *Safety zones: offences.*

(a) in the case of a safety zone established by an Order under section 31, in accordance with that Order; or *(1987, c.12, s.23).*

(b) in that or in any other case, in accordance with regulations made by the Governor.

(2) If a vessel enters or remains in a safety zone in contravention of subsection (1) then, subject to subsection (3), its owner and its master each commit an offence and are liable on conviction of that offence to a fine without limit.

(3) It is a defence for a person charged with an offence under this section to prove that the presence of the installation or the existence of the safety zone was not, and would not on reasonable enquiry have become, known to the master.

(4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person has also committed that offence and is liable to be proceeded against and punished accordingly.

(5) In this section, "vessel" includes a hovercraft, submersible apparatus (within the meaning of section 16(2) of the Merchant Shipping Act 1974) and an installation in transit; and "master" -

(a) in relation to a hovercraft, means the captain;

(b) in relation to submersible apparatus, means the person in charge of the apparatus;

(c) in relation to an installation in transit, means the person in charge of the transit operation.

33.(1) For the purposes of this Chapter -

(a) any floating structure or device maintained on a station by whatever means, and

(b) any apparatus or works treated as associated with a pipe or system of pipes by section 38 of this Ordinance (but not anything else within the definition of pipe-line in that section),

shall be taken to be an installation.

*Safety zones: supplementary.*

*(1987, c.12, s.24(1) and (3)).*

## (2) Sections 30 to 32 -

(a) so far as they apply to individuals apply to them *whether or not they are British citizens or British dependent territories citizens*; and

(b) so far as they apply to bodies corporate apply to them *whether or not they are incorporated in the Falkland Islands*.

## CHAPTER 4: GENERAL

*Provisions as to civil and criminal liability*

## 34.(1) This section has effect as respects -

(a) a duty imposed by any foregoing provision of this Part;

(b) a duty imposed on any person by any provision of regulations or other subsidiary legislation made under any or for the purpose of any preceding provision of this Part which expressly applies the provisions of this section.

*Civil liability  
for breach of statutory  
duty.*

*(1971, c.61, s.11).*

(2) Breach of any such duty shall be actionable so far, and only so far, as it causes personal injury, and references in section 1 of the Fatal Accidents Act 1846, as it applies in the Falkland Islands, to a wrongful act, neglect or default shall include references to any breach of a duty which is so actionable.

(3) Subsection (2) is without prejudice to any action which lies apart from the foregoing provision of this Part.

(4) Neither section 35, nor any defences afforded by regulations which afford, in respect of any description of offence created by those regulations, such defence as may be specified by those regulations, shall afford a defence in any civil proceedings, whether brought by virtue of this section or not.

(5) So far as the provisions of this section impose a liability on a concession owner, those provisions and the other provisions of this Part to which they relate shall bind the Crown, and accordingly, for the purposes of those provisions, and of any regulations or conditions having effect under those provisions, persons in the service of the Crown shall be taken to be employed whether or not they would be apart from this section, except that this subsection shall not give any right of action to a person as being a member of the armed forces of the Crown.

(6) Nothing in subsection (5) shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Ordinance.

35.(1) In proceedings for an offence under section 24, 25 or 26, it shall be a defence for the accused to prove -

*Special defence  
in criminal proceedings  
under sections 24, 25  
or 26.*

(a) that he used all due diligence to enforce the execution of Chapter 1, and of any relevant regulation made under Chapter 1; and

*(1971, c.61, s.9(3)).*

(b) that any relevant contravention was committed without his consent, connivance or default.

(2) Proceedings for any offence under Chapter 1 may be taken and the offence may for all incidental purposes be treated as having been committed in the Falkland Islands.

#### CHAPTER 5: REPLACEMENT OR MODIFICATION OF FOREGOING PROVISIONS OF THIS PART

##### *Application of Part I of Health and Safety at work etc. Act 1974*

36.(1) The Governor may, with the consent of the Secretary of State, by Order apply the provisions of the Offshore Safety Act 1992 to the Falkland Islands, with such modifications and exceptions as the Governor, with the consent of the Secretary of State, thinks fit, so that Part I of the Health and Safety at Work etc. Act 1974 applies to things and matters to which Chapters 1 to 4 of this Part relates as they do to the matters and things which, by virtue of its provisions, the Offshore Safety Act 1992 applies the said Part I of the Health and Safety at Work etc. Act 1974, but with such modifications and exceptions, in relation to the provisions of the said Part I of the Health and Safety at Work etc. Act 1974, as may be stated in such an Order.

*Application for  
certain purposes of  
Part I of the Health  
and Safety at work  
Act etc. 1974.*

(2) The Governor may by an Order under this subsection -

(a) repeal or modify some or all of the provisions of Chapters 1 to 4 of this Part and any other provision of this Ordinance so far only as it relates to those provisions in such manner and to such extent as may appear to the Governor to be necessary or expedient; and

(b) apply all or any regulations made under section 15(1) of the Health and Safety at Work etc. Act 1974 (with such modifications and exceptions as may be stated in the Order) which apply to such things and matters as the Offshore Safety Act 1992 relates to the corresponding things or matters to which Chapters 1 to 4 of this Part relate (and, in particular, but without prejudice to the generality of the foregoing, the Governor may by such an Order apply with such modifications and exceptions as he thinks fit, the provisions of the Offshore Installations (Safety Case) Regulations 1992).

(3) For the purposes of this section and any Order under this section Chapters 1 to 4 of this Part, together with the provisions of Part VI of this Ordinance so far as they relate to powers to make regulations and or to offences under those Chapters shall be taken to correspond with the United Kingdom legislation mentioned in section 1(3) of the Offshore Safety Act 1992.

(4) Without prejudice to subsection (1), the Governor may by an Order under this subsection made with the consent of the Secretary of State apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 and any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in relation to -

(a) oil refineries

(b) pipe-lines within the wider definition given in subsection (5); and

(c) gas (as defined in subsection (5));

and, if they are within the Falkland Islands, notwithstanding that they are not within the controlled waters and notwithstanding that (even if they are within the controlled waters) in the circumstances of the case, they would not fall within the provisions of Chapters 1 to 4 of this Part.

(5) For the purposes of subsection (4) and this subsection -

(a) "oil refinery" includes any installation for processing petroleum products (and for the purposes of this paragraph "petroleum products" means the following substances produced from or indirectly from crude, that is to say fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point));

(b) "pipe-line" (in substitution for the meaning referred to in section 2(1) of this Ordinance) means any pipe (together with any apparatus or works associated therewith) or a system of pipes designed or constructed or in fact used -

(i) for or in connection with the conveyance of any mineral or gas from or to or over upon in or under an offshore installation for from to an oil refinery or within an oil refinery

(ii) for or in connection with any offshore installation (and whether or not in connection with the conveyance of any mineral or gas);

(iii) for or in connection with the refining of petroleum products at any oil refinery or otherwise in an oil refinery (regardless of the purpose for which the pipe is designed or constructed or in fact used);

(but apparatus and works are, for the purposes of this paragraph to be treated as associated with a pipe, or system of pipes if and only if -

(aa) they are apparatus for inducing or facilitating the flow of any thing through the pipe or, as the case may be, through the system or any part thereof;

(bb) they are valves, value chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the pipe or system;

(cc) they are apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (aa) or of any such works as are mentioned in paragraph (bb);

(dd) they are apparatus for affording protection to the pipe or system; or

(ee) they are a structure for the exclusive support of a pipe or system); and



(c) "gas" means any gas derived from natural strata (including gas originating outside the Falkland Islands and the controlled waters), but does not include such gas in the course of supply (whether by pipes or otherwise) by a public utility or in containers in which it is intended to be supplied to members of the public or other retail consumers.

37.(1) If an Order has been or is about to be made under section 36, the Governor, with the consent of the Secretary of State, may -

*Supplementary  
to section 36.*

(a) enter into an agreement or arrangement with the Health and Safety Executive established by the Health and Safety at Work etc. Act 1974 for and relating to the exercise by the Executive on behalf of the Crown in the Falkland Islands of the like functions in the application of Part I of that Act under section 36 as it has under that Part in the United Kingdom and the United Kingdom's continental shelf;

(b) make such Order as it appears necessary to him or expedient to make to give effect in the law of the Falkland Islands to any agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Health and Safety Executive in the performance of any functions under and by virtue of such an agreement or arrangement as is referred to in subsection (1), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except in so far as may be permitted by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

#### PART IV

#### SUBMARINE PIPE-LINES

##### *Interpretation*

38.(1) Except where the context otherwise requires, in this Part of this Ordinance "pipe-line" means a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system; and for the purposes of this Part of this Ordinance the following apparatus and works and no other shall be treated as associated with such a pipe or system -

*Interpretation  
of Part IV.*

*(1975, c.74, s.33).*

(a) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;

(b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;

(c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;

(d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding paragraphs;

(e) apparatus for the transmission of information for the operation of the pipe or system;

(f) apparatus for the cathodic protection of the pipe or system; and

(g) a structure used or to be used solely for the support of a part of the pipe or system.

and "controlled pipe-line" means so much of any pipe-line as is in, over or under controlled waters.

(2) The Governor may by Order under this subsection provide that a part of a pipe-line, specified in the Order shall be treated for the purposes of this Part of this Act, except this subsection, as a pipe-line.

(3) For the purposes of this Part of this Ordinance, "owner" in relation to a pipe-line and "proposed owner" in relation to a proposed pipe-line, mean the person designated for the time being as the owner of the pipe-line, or as the case may be as the proposed owner of the proposed pipe-line, by an Order made by the Governor, and an Order designating a person as the proposed owner of a proposed pipe-line may also contain provision for him to be designated as the owner of the pipe-line in question at a time designated by or under the Order, but the Governor -

(a) shall, before designating a person in pursuance of this subsection, give him an opportunity of being heard in respect of the matter; and

(b) shall, if a person designated in pursuance of this subsection requests the Governor in writing to cancel the designation, consider the request and, if the Governor considers it appropriate to do so, give that person an opportunity of being heard by a person appointed by the Governor in connection with the request.

(4) The Governor may by order revoke any order made in pursuance of subsection (2) or (3) of this section.

(5) Except where the context otherwise requires, in this Part of this Ordinance the following expressions have the following meanings -

"authorisation" means an authorisation required by section 39 of this Ordinance;

"construction", in relation to a pipe-line, includes placing and cognate expressions shall be construed accordingly;

"heard" means heard on behalf of the Governor by a person appointed by him for the purpose;

"holder", in relation to an authorisation, means the person to whom the authorisation was issued;

"pipe-line", in relation to an application for a works authorisation means the proposed pipe-line in respect of which the application is made; and

"works authorisation" means an authorisation for works for the construction of a pipe-line or for such works and for the use of the pipe-line.

(6) For the purposes of this Part of this Ordinance, works at any place in, under or over controlled waters for the purpose of determining whether the place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line are not works for the construction of a pipe-line.

(7) Any reference in this Part of this Ordinance to a contravention of a provision of that Part or of regulations made or directions given by virtue of the Part includes a reference to a failure to comply with that provision.

(8) Any reference in this Part of this Act, except this subsection, to that Part includes a reference to Schedule 3 to this Ordinance.

(9) This Part of this Ordinance, so far as it applies to individuals or bodies corporate, applies to them notwithstanding that they are not British citizens or British dependent territories citizens or, as the case may be, are not incorporated under the law of the Falkland Islands.

#### *Construction and use of pipe-lines*

39. No person shall execute in, under or over any controlled waters any works for the construction of a pipe-line, unless he is authorised by the Governor in writing to do so.

*Control of construction and use of pipe-lines in controlled waters.*  
(1975, c. 74, s. 20).

40.(1) The provisions of Part I of Schedule 3 to this Ordinance shall have effect with respect to applications for and notices of works authorisations, and the provisions of Part II of that Schedule shall have effect with respect to notice of other authorisations.

*Authorisations for pipe-lines.* (1975, c. 74, s. 21).

(2) The Governor shall not issue an authorisation except to a body corporate.

(3) An authorisation in respect of a controlled pipe-line may contain such terms as the Governor thinks appropriate including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms as to -

(a) the duration of the authorisation, including the method of ascertaining its duration;

(b) the persons or kinds of persons who are authorised to execute the works in question or to use the pipe-line or are so authorised if the Governor consents to the execution of the works or the use of the pipe-line by them;

(c) in the case of a works authorisation, the route of the pipe-line, the boundaries within which any works may be executed in pursuance of the authorisation, the design and capacity of the pipe-line or of part of it and the steps to be taken to avoid or reduce interference by the pipe-line with fishing or with other activities connected with the sea or the sea-bed and subsoil;

(d) the things authorised to be conveyed by the pipe-line;

(e) the steps to be taken for the purpose of ensuring that funds are available to discharge any liability for damage attributable to the release or escape of any thing from the pipe-line;

(f) the transactions relating to the pipe-line which are not to be entered into, and the other things relating to the pipe-line which are not to be done, without the consent of the Governor;

(g) the persons who may be permitted to acquire an interest in the pipe-line and who may not be permitted to retain such an interest;

(h) the operation of the pipe-line, including the methods by which it is to be operated and the person by whom it may be operated;

(i) the information to be furnished in respect of the pipe-line; and

(j) the giving by the Governor, with respect to the matters specified by the authorisation, of directions which shall have effect as terms of the authorisation.

(4) Except in a case where the Governor considers that there are special circumstances by reason of which the duration of an authorisation should be limited, the terms as to its duration which are included in an authorisation shall provide for its duration to be unlimited unless the authorisation ceases to be in force by virtue of the following provisions of this Part of this Ordinance.

(5) Where a works authorisation contains a term requiring that the capacity of the controlled pipe-line to which it relates or of any part of the pipe-line shall be greater than that proposed in the application for the authorisation or requiring that any of the route of the pipe-line shall be different from that so proposed then, subject to section 42(4) of this Ordinance, the Governor may serve on the holder of the authorisation, and on any other person who made representations to the Governor that the capacity proposed as aforesaid should be greater or that any of the route so proposed should be different, a notice -

(a) specifying the sums or the method of determining the sums which the Governor considers should be paid to the holder by the other person for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the term;

(b) requiring the other person to make, within the period specified in that behalf in the notice, arrangements which the Governor considers are appropriate for the purpose of securing that those sums will be paid to the holder if he constructs the pipe-line or a relevant part of it in accordance with the term or satisfies the Governor that he will so construct it;

(c) providing that the holder may, if such arrangements are not made by the other person within that period, elect in the manner specified in the notice that -

(i) the term shall have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the other person, and

(ii) the provisions included in the notice by virtue of the following paragraph shall cease to have effect; and

(d) authorising the holder, if he satisfies the Governor that the pipe-line or a relevant part of it has been or will be constructed in accordance with the term, to recover those sums from the other person.

41.(1) If in the case of a controlled pipe-line it appears to the Governor, on the application of a person other than the owner of the pipe-line -

*Compulsory increase in the capacity of pipe-lines.*

(a) that the capacity of the pipe-line can and should be increased by modifying apparatus and works associated with the pipe-line; or

*(1975, c. 74, s. 22).*

(b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line;

then, subject to section 42(5) of this Ordinance, the Governor may, after giving to the owner of the pipe-line an opportunity of being heard about the matter, serve on the owner and the applicant a notice -

(i) specifying the modification which the Governor considers should be made in consequence of the application;

(ii) specifying the sums or the method of determining the sums which the Governor considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modification;

(iii) requiring the applicant to make, within a period specified in that behalf in the notice, arrangements which the Governor considers appropriate for the purpose of securing that those sums will be paid to the owner if he carries out the modifications of satisfies the Governor that he will carry them out;

(iv) requiring the owner, if the applicant makes those arrangements within the period aforesaid, to carry out the modifications within a period specified in that behalf in the notice; and

(v) authorising the owner, if he satisfies the Governor that he has carried out or will carry out the modifications, to recover those sums from the applicant.

(2) References in the preceding subsection to modifications include, in the case of modification of any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.

(3) It is hereby declared that for the purposes of section 39 of this Ordinance a notice in pursuance of this section requiring a person to carry out modifications authorises him to carry out the modifications; but nothing in Schedule 3 to this Ordinance shall apply to such a notice.

42.(1) If a person applies to the Governor for a notice in pursuance of this section which secures to the applicant a right to have conveyed by a controlled pipe-line of which he is not the owner, quantities specified in the application of things which are of a kind so specified and which the pipe-line is designed to convey, the Governor shall consider the application and, before he considers it, to give to the owner of the pipe-line and the applicant -

*Acquisition by persons of rights to use pipe-lines belonging to others.*

*(1975 c. 74, s. 23).*

(a) notice that he proposes to consider it; and

(b) an opportunity, after the expiration of the period of twenty-one days beginning with the date of service of the notice, of being heard with respect to the application.

(2) Where after considering an application in pursuance of the preceding subsection the Governor is satisfied that, if he served notice in accordance with the following subsection in consequence of the application, the pipe-line in question could be operated in accordance with the notice without prejudicing the efficient operation of it for the purpose of conveying, on behalf of its owner, the quantities and qualities which the owner requires or may reasonably be expected to require of the things which may be conveyed by it in pursuance of an authorisation (or, if no authorisation for the use of the pipe-line is required by section 39 of this Ordinance, of the things which the pipe-line is designed to convey), the Governor may serve such a notice on the owner and the applicant.

(3) A notice served in pursuance of the preceding subsection may contain such provisions as the Governor considers appropriate for all or any of the following purposes, namely -

- (a) for securing to the applicant, without prejudicing the efficient operation of the pipe-line for the purpose mentioned in subsection (2), the right to have conveyed by the pipe-line the quantities specified in the application of the things so specified;
- (b) for securing that the exercise of the right is not prevented or impeded;
- (c) for regulating the charges which may be made for the conveyance of things by virtue of the right;
- (d) for securing to the applicant the right to have a pipe-line of his connected to the pipe-line by the applicant or the owner;

and such a notice may also authorise the owner to recover from the applicant payments by way of consideration for any such right of such amounts as may be specified in the notice or determined in accordance with provisions in that behalf contained in the notice.

(4) Where the Governor proposes to serve a notice in pursuance of subsection (5) of section 40 of this Ordinance on a person other than the holder of the relevant authorisation, he shall before doing so give that person an opportunity of making an application in pursuance of subsection (1) of this section in respect of the proposed pipe-line to which the authorisation relates; and subsections (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line and the owner of it there were substituted references to the proposed pipe-line and the proposed owner of it.

(5) Where the Governor proposes to serve a notice in pursuance of subsection (1) of the preceding section on a person other than the owner of the relevant pipe-line, it shall be his duty before doing so to give that person particulars of the modifications which he proposes to specify in the notice and an opportunity of making an application in pursuance of subsection (1) of this section in respect of the pipe-line; and subsection (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line there were substituted references to the pipe-line as it would be with those modifications.

(6) The use of a pipe-line by any person in accordance with a right secured to him by virtue of this section is not a contravention of section 39 of this Ordinance; but a person to whom a right is so secured shall not be entitled to assign the right to any other person.

**43.(1) An authorisation shall cease to be in force -**

*Termination  
of authorisations.*

(a) in the case of an authorisation which does not contain terms providing for its duration to be unlimited, on the expiration of the period of its duration as specified by or ascertained under the terms of the authorisation unless it has previously ceased to be in force by virtue of the following provisions of this subsection; or

*(1975, c.74, s.24).*

(b) if the holder and the Governor agree in writing that the authorisation, is to cease to be in force at a particular time during its currency, at that time; or

(c) if the Governor serves a notice on the holder in pursuance of -

(i) the duty imposed on the Governor by the following subsection, or

(ii) the provisions of subsection (4) of this section,

at the time specified in the notice.

(2) If it appears to the Governor that the execution of works authorised by a works authorisation (disregarding the execution of any of the works which he considers should be disregarded for the purposes of this subsection) has not been begun at the expiration of -

(a) the period of three years beginning with the date when the authorisation is expressed to come into force; or

(b) such longer period beginning with that date as the Governor has, on the application of the holder, specified in a notice served for the purposes of this paragraph on the holder during the said period of three years,

the Governor shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

(3) The Governor shall not serve notice in pursuance of an application made by virtue of paragraph (b) of the preceding subsection unless -

(a) he is satisfied that notice of the application has been served on -

(i) the persons on whom, in pursuance of Schedule 3 to this Ordinance, notice was served of the application in consequence of which the relevant authorisation was issued or on such of those persons as the Governor considers appropriate in the circumstances, and

(ii) such other persons, if any, as he considers appropriate in the circumstances; and

(b) he has considered any representations about the application made by virtue of the said paragraph (b) which were made to him in writing, during such a period as he considers reasonable, by any of the persons as to whom he is satisfied as mentioned in the preceding paragraph.

(4) If the Governor is of opinion, after giving the holder of an authorisation an opportunity of making representations in writing to him about the matter and considering any such representations then made by the holder, that the holder -

(a) has contravened a term of the authorisation; or

(b) has contravened any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance, was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the authorisation relates,

the Governor may serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice; but the Governor shall not serve such a notice on the holder in consequence of a contravention if the Governor considers that, having regard to the nature and consequences of the contravention and to any previous contravention, it would be unreasonable to terminate the authorisation in consequence of the contravention and that the holder has taken adequate steps to prevent similar contraventions in future.

44.(1) When an authorisation ceases to be in force the controlled pipe-line to which it relates shall, by virtue of this subsection, be transferred to and vest in the Crown free from encumbrances, except that nothing in this subsection prejudices any right conferred by a notice served in respect of the pipe-line in pursuance of section 42 of this Ordinance.

*Vesting of pipe-lines on termination or subsequent issue of authorisation.*

(2) Where the Governor proposes to issue an authorisation to any person in respect of a pipe-line vested in the Crown by virtue of subsection (1) he may agree with that person, on terms which may include provision for the making of payments by that person to the Governor, that the authorisation is to include a statement that this subsection applies to the authorisation; and where an authorisation includes such a statement the pipe-line to which the authorisation relates shall, by virtue of this subsection and at the time specified in that behalf in the authorisation, be transferred to and vest in the holder of the authorisation subject to any interest or right then subsisting in respect of the pipe-line by virtue of subsection (1).

*(1975, c.74, s.25).*

45.(1) Any person who -

*Enforcement.  
(1975, c.74, s.28).*

(a) contravenes any provision of section 39 of this Ordinance; or

(b) contravenes any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the notice relates in a case where no authorisation for the use of the pipe-line is required by section 39 of this Ordinance; or

(c) makes a statement which he knows is false in a material particular, or recklessly makes a statement which is false in a material particular, for the purpose of inducing the Governor -

(i) to issue any authorisation; or



(ii) to agree in pursuance of section 43(1)(b) of this Ordinance that an authorisation is to cease to be in force; or

(iii) to specify a period in pursuance of section 43(2)(b) of this Ordinance; or

(iv) not to serve a notice in pursuance of section 43(4) of this Ordinance,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) If a person executes any works in contravention of section 39 of this Ordinance the Governor may at any time serve on him a notice requiring him to comply with one or both of the following requirements, namely -

(a) to remove such of the works as are specified in the notice as works to be removed;

(b) to take, in respect of such of the works as are specified in the notice as works which the Governor considers are unsafe, such steps as are specified in the notice as steps which the Governor considers are needed in order to make the works safe.

(3) It shall be the duty of the recipient of a notice in pursuance of the preceding subsection to comply with the notice within the period specified in that behalf in the notice; and if he fails to perform that duty the Governor may comply with the notice on his behalf and recover from him any expenses reasonably incurred in doing so.

(4) If a person executes any works in contravention of section 39 of this Ordinance and the Governor considers that it is urgently necessary to do such things in relation to the works as he could have required that person to do by a notice in pursuance of subsection (2) of this section, the Governor may do those things and recover from that person any expenses reasonably incurred in doing so.

(5) The fact that any thing is done or omitted -

(a) by the recipient of a notice served in pursuance of subsection (2) of this section for the purpose of complying with the notice; or

(b) by the Governor in pursuance of subsection (3) or (4) of this section,

shall not relieve him from liability for any damage which is attributable to the act or omission and for which he would have been liable had the act or omission not been authorised by this section; but the Governor shall be entitled to recover from the person who executed the works in question the amount of any damages which, in consequence of the works, are paid by the Governor by virtue of this subsection.

46.(1) Breach of a duty imposed on any person by a provision of regulations which are made in pursuance of this Part of this Ordinance and which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury; and references in section 1 of the Fatal Accidents Act 1846 to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

*Civil liability  
for breach of  
statutory duty.  
(1975, c. 74, s. 30).*

(2) Nothing in the preceding subsection prejudices any action which lies apart from the provisions of that subsection.

(3) A defence to a charge which is available by virtue of regulations made under this Ordinance in relation to any provision of this Part creating the offence charged shall not be a defence in any civil proceedings which are brought either in pursuance of this section or otherwise.

(4) For the purposes of subsection (1) of this section any such regulations as are mentioned in that subsection shall bind the Crown, and references in those regulations to employees shall for those purposes include persons in the service of the Crown.

## PART V

### ABANDONMENT OF OFFSHORE INSTALLATIONS

47.(1) In this Part

*Interpretation  
of Part V.*

(a) "abandonment programme" has the meaning given by section 48;

*(1987, c.12, s.16)*

(b) "offshore installation" has the meaning given by section 2(1); and

(c) "submarine pipe-line" means a pipe-line within the meaning given by section 38(1) which is in, under or over the controlled waters.

(2) This Part applies -

(a) so far as it applies to individuals, applies to them whether or not they are British citizens or British dependent territories citizens.

(b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of the Falkland Islands.

(3) Any reference in any provision of this Part to a provision of this Ordinance includes a reference to any provision which, by virtue of any Order or regulation made or having effect by virtue of section 36, for the time being replaces that provision and where a provision of this Ordinance referred to in a subsequent provision of this Part has been modified by such or any such regulation the reference to it includes a reference to that provision as so modified.

48.(1) The Governor may by written notice require -

*Preparation of  
programmes.*

(a) the person to whom the notice is given, or

*(1987, c.12, s.1)*

(b) where notices are given to more than one person, those persons jointly,

to submit to the Governor a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or submarine pipe-line (an "abandonment programme").

(2) A notice under subsection (1) shall either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Governor may direct.

(3) A notice under subsection (1) may require the person to whom it is given to carry out such consultations as may be specified in the notice before submitting an abandonment programme.

(4) An abandonment programme -

- (a) shall contain an estimate of the cost of the measures proposed in it;
- (b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;
- (c) if it proposes that an installation or pipe-line be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.

(5) A person who submits an abandonment programme to the Governor under this section shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(6) The Governor may exercise his powers under this section notwithstanding that an abandonment programme has previously been submitted for the installation or pipe-line in question, but only if he rejected that programme under section 51 or has withdrawn his approval of it under section 54.

49.(1) A notice under section 48(1) shall not be given to a person in relation to the abandonment of an offshore installation unless at the time when the notice is given he is within any of the following paragraphs -

*Persons who may  
be required to submit  
programmes.*

(a) the person who has registered the installation pursuant to section 23 of this Ordinance (or, if appropriate, that section modified, amended or replaced as may be under section 36) or, if there is no such person, the person having the management of the installation or of its main structure;

*(1987, c.12, s.2).*

(b) a person who is a concession owner in relation to the installation for the purposes of this Ordinance, or who was a concession owner for those purposes when a relevant offshore activity was last carried on from, by means of or on the installation;

(c) a person outside paragraphs (a) and (b) who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within paragraph (b);

(d) a person outside paragraphs (a) and (c) who owns any interest in the installation otherwise than as security for a loan;

(e) a company which is outside paragraph (a) to (d) but is associated with a company within any of those paragraphs.

(2) A notice under section 49(1) shall not be given to a person in relation to the abandonment of a submarine pipe-line unless at the time when the notice is given he is within any of the following paragraphs -

(a) a person designated as the owner of the pipe-line by an Order made by the Governor in pursuance of section 38(3) of this Ordinance;

(b) a person outside paragraph (a) who owns any interest in the whole or substantially the whole of the pipe-line, otherwise than as security for a loan;

(c) a company which is outside paragraphs (a) and (b) but is associated with a company within one of those paragraphs.

(3) The Governor may by written notice require a person appearing to the Governor to be within any of the paragraphs of subsection (1) or (2) to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice believes to be within any of those paragraphs in relation to the installation or pipe-line concerned.

(4) A person who without reasonable excuse fails to comply with a notice under subsection (3) commits an offence.

(5) For the purposes of this section, one company is associated with another if one of them controls the other or a third company controls both of them; and one company controls another if it possesses or is entitled to acquire -

(a) one half or more of the issued share capital of the company,

(b) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company,

(c) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders, or

(d) such rights as would, if the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders,

or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes.

(6) In determining whether, by virtue of subsection (5), one company controls another, the first-mentioned company shall be taken to possess -

(a) any rights and powers possessed by a person as nominee for it, and

(b) any rights and powers possessed by a company which it controls (including rights or powers which such a company would be taken to possess by virtue of this paragraph).

50.(1) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to an offshore installation to a person within paragraph (d) or (e) of section 49(1) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a), (b) or (c) to ensure that a satisfactory abandonment programme will be carried out.

*Section 48  
notices: supplementary  
provisions. (1987,  
c.12, s.3).*

(2) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to a submarine pipe-line to a person within paragraph (b) or (c) of section 49(2) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a) to ensure that a satisfactory abandonment programme will be carried out.

(3) Subsections (1) and (2) shall not apply if there has been a failure to comply with a notice under section 48(1) or if the Governor has rejected a programme submitted in compliance with such a notice.

(4) The Governor shall not give a notice to a person under section 48(1) without first giving him an opportunity to make written representations as to whether the notice should be given.

(5) Where the Governor has given notice under section 48(1) in relation to an installation or pipe-line, he may at any time before the programme required by it is submitted withdraw the notice or give (subject to the preceding provisions of this section) a further notice under section 48(1) (whether in substitution for or in addition to any notice already given); and if he does so he shall inform the recipients of any other notices which have been given in relation to that installation or pipe-line and not withdrawn.

(6) Neither the withdrawal of a notice given under section 48(1) nor the giving of a further notice shall relieve the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices).

51.(1) The Governor may either approve or reject a programme submitted to him under section 48. *Approval of programmes.*

(2) If he approves a programme, the Governor may approve it with or without modifications and either subject to conditions or unconditionally. *(1987, c.12, s.4).*

(3) Before approving a programme with modifications or subject to conditions, the Governor shall give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions.

(4) If he rejects a programme, the Governor shall inform the persons who submitted it of his reasons for doing so.

(5) The Governor shall act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

52.(1) If a notice under section 48(1) is not complied with, or if the Governor rejects a programme submitted in compliance with such a notice, the Governor may himself prepare an abandonment programme for the installation or pipe-line concerned. *Failure to submit programmes.*

*(1987, c.12, s.5).*

(2) With a view to exercising his powers under subsection (1) of this section, the Governor may by written notice require any of the persons to whom notice was given under section 48(1) to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified.

(3) A person who without reasonable excuse fails to comply with a notice under subsection (2) commits an offence.

(4) The Governor may recover from any of the persons to whom a notice was given under section 48(1) any expenditure incurred by the Governor in preparing an abandonment programme under this section, and any fee that would have been payable on the submission of a programme by those persons.

(5) A person liable to pay any sum to the Governor by virtue of subsection (4) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(6) The rate of interest payable in accordance with subsection (5) shall be a rate determined by the Governor to be comparable with commercial rates.

(7) Where the Governor prepares an abandonment programme under this section, he shall inform the persons to whom notice was given under section 48(1) of its terms; and when he has done so, the following provisions of this Part of this Ordinance shall have effect as if the programme had been submitted by those persons and approved by the Governor.

53.(1) Where the Governor has approved a programme submitted to him under section 48 -

*Revision of  
programmes.*

(a) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject, and

*(1987, c.12, s.6).*

(b) either he or any of those persons may propose that any person who by virtue of section 55 has a duty to secure that the programme is carried out shall cease to have that duty, or that a person who does not already have that duty shall have it (either in addition to or in substitution for another person).

(2) In the case of a proposal of the kind mentioned in subsection (1)(b), any person who would if the proposed change were made have a duty to secure that the programme is carried out must be a person who -

(a) if the programme relates to an offshore installation, is within paragraph (a), (b) (c), (d) or (e) of section 49(1) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the installation, and

(b) if the programme relates to a submarine pipe-line, is within paragraph (a), (b) or (c) of section 49(2) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the pipe-line.

(3) The Governor shall not propose that a person who is or has been within paragraph (d) or (e) (but no other paragraph) of section 49(1) or paragraph (b) or (c) (but not paragraph (a)) of section 49(2) shall have a duty to secure that a programme is carried out unless it appears to the Governor that a person already under that duty has failed or may fail to discharge it.

(4) A proposal under subsection (1) shall be made by written notice given -

(a) if the proposal is the Governor's to each of the persons by whom the programme was submitted, and

(b) in any other case, to the Governor;

and a person giving notice to the Governor shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(5) Where the Governor has made a proposal under subsection (1) (a), he shall give an opportunity to make written representations about it to each of the persons who submitted the programme.

(6) Where a proposal has been made under subsection (1)(b), the Governor shall give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made -

(a) have a duty to secure that the programme is carried out, or

(b) cease to have that duty.

(7) The Governor shall determine whether a change proposed under subsection (1) is to be made and shall then give notice of his determination, and of his reasons for it, to -

(a) every person who, before the determination was made, had a duty to secure the carrying out of the programme, and

(b) any person who has that duty as a result of the determination.

(8) Where the Governor determines that a change proposed in accordance with this section shall be made, this Part of this Ordinance shall thereafter have effect as if the programme had been approved by the Governor after being submitted under section 48 with the alterations, or as the case may be by the persons, specified in the determination.

54.(1) The Governor may at the request of one or more of the persons who submitted an abandonment programme withdraw his approval of the programme.

*Withdrawal of approval*

(2) If a request under subsection (1) is made by some but not all of the persons who submitted the programme, the Governor shall give the others an opportunity to make written representations as to whether his approval should be withdrawn.

*(1987, c.12, s.7).*

(3) The Governor shall after determining whether to withdraw his approval of an abandonment programme give notice of his determination to each of the persons who submitted the programme.

55. Where an abandonment programme is approved by the Governor, it shall be the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with.

*Duty to carry out programmes.  
(1987, c.12, s.8).*

56.(1) If an abandonment programme approved by the Governor is not carried out or a condition to which the approval is subject is not complied with, the Governor may by written notice require any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be so specified.

*Default in carrying out programmes.*

*(1987, c.12, s.9).*

(2) A person who fails to comply with a notice given to him under subsection (1) commits an offence unless he proves that he exercised due diligence to avoid the failure.

(3) If a notice under subsection (1) is not complied with, the Governor may carry out the remedial action required by the notice, and may recover any expenditure incurred by him in doing so from the person to whom the notice was given.

(4) A person liable to pay any sum to the Governor by virtue of subsection (3) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(5) The rate of interest payable in accordance with subsection (4) shall be a rate determined by the Governor to be comparable with commercial rates.

57.(1) At any time after the Secretary of State has given a notice under section 48(1) to any person and before he has approved an abandonment programme for the installation or pipe-line concerned, he may by written notice require that person within such time as may be specified in the notice -

*Financial  
resources.*

*(1987, c.12, s.10).*

(a) to provide such information relating to the financial affairs of that person, and

(b) to supply copies of such documents relating to those affairs,

as may be so specified.

(2) In order to satisfy himself that a person who has a duty to secure that an abandonment programme is carried out will be capable of discharging that duty, the Governor may at any time by written notice require that person, within such time as may be specified in the notice -

(a) to provide such information, and

(b) to supply copies of such documents,

as may be so specified.

(3) A person who -

(a) without reasonable excuse fails to comply with a notice under subsection (1) or subsection (2), or

(b) in purported compliance with such a notice provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular,

commits an offence.

(4) If the Governor is not satisfied that a person will be capable of discharging the duty imposed on him by section 55, he may by written notice require that person to take such action as may be specified in the notice within such time as may be so specified.

(5) The Governor shall not give notice to a person under subsection (4) without first giving him an opportunity to make written representations as to whether the notice should be given.

(6) A person who fails to comply with a notice under subsection (4) commits an offence unless he proves that he exercised due diligence to avoid the failure.

58.(1) The Governor may make regulations relating to the abandonment of offshore installations and submarine pipe-lines.

*Regulations.  
(1987, c.12, s.11).*



(2) Without prejudice to the generality of subsection (1), regulations under this section may -

- (a) prescribe standards and safety requirements in respect of the dismantling, removal and disposal of installations and pipe-line;
- (b) prescribe standards and safety requirements in respect of anything left in the water in cases where an installation or pipe-line is not wholly removed;
- (c) make provision for the prevention of pollution;
- (d) make provision for inspection, including provision as to the payment of the costs of inspection;
- (e) make provision as to the determination of the amount of any fees that are payable to the Governor under this Part of this Ordinance.

(3) The provisions of subsection (2) are without prejudice to the general powers of the Governor in relation to regulations under this Ordinance provided in Part VI of this Ordinance.

59. A person who commits an offence under section 49, 52, 56 or 57 is liable on conviction of that offence to a fine without limit.

*Offences under  
Part V.  
(1987, c. 12, s. 12).*

60.(1) If any person is aggrieved by any of the acts of the Governor mentioned in subsection (2) and desires to question its validity on the ground that it was not within the powers of the Governor or that the relevant procedural requirements had not been complied with, he may within 42 days of the day on which the act was done make an application to the Supreme Court under this section.

*Validity of  
Governor's acts.  
(1987, c. 12, s. 14).*

(2) The acts referred to in subsection (1) are -

- (a) the giving of a notice under section 48(1);
- (b) the approval of a programme under section 51;
- (c) the rejection of a programme under section 51;
- (d) a determination under section 53;
- (e) a determination under section 54; and
- (f) the giving of a notice under section 57(4).

(3) If on an application under this section the Supreme Court is satisfied that the act in question was not within the powers of the Governor or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the Supreme Court may quash the act.

(4) Except as provided by this section, the validity of any of the acts of the Governor referred to in subsection (1) of this section shall not be questioned in any legal proceedings whatsoever.

(5) In this section "the relevant procedural requirements" -

(a) in relation to the giving of a notice under section 48(1), means the requirements of section 50(4);

(b) in relation to the approval of a programme under section 51, means the requirements of section 51(3);

(c) in relation to the rejection of a programme under section 51, means the requirements of section 51(4);

(d) in relation to a determination under section 53, means the requirements of section 53(5), (6) and (7);

(e) in relation to a determination under section 54, means the requirements of section 54(2); and

(f) in relation to the giving of a notice under section 57(4) means the requirements of section 57(5).

## PART VI

### MISCELLANEOUS AND GENERAL

#### *Gas*

61.(1) In this section -

*Liquefaction  
of natural gas*

(a) "offshore natural gas" means natural gas won under the authority of a licence granted under section 6 of this Ordinance, but does not include gas derived from offshore crude otherwise than as a by-product of crude stabilisation;

*(cf. 1976, c.76,  
s.9).*

(b) "offshore crude" means crude liquid petroleum won from any place in offshore waters and whether within the controlled waters or not;

(c) "crude stabilisation" means the treating of offshore crude to enable it to be safely stored or transported.

(2) The Governor's consent is required for offshore natural gas to be subjected in the Falkland Islands to any process of liquefaction which results in the production of liquid methane or ethane.

(3) The Governor's consent under subsection (2) may be given either with reference to particular cases or by an Order or Orders of general application made under this subsection.

(4) A specific consent given to any person under subsection (2) (that is to say a consent given to him otherwise than by an Order of general application) may be expressed

(a) to be irrevocable;

(b) to be revocable in the manner and in the circumstances specified in that consent

(c) may, subject to paragraph (b) (as to revocation) be expressed to be -

(i) so as to be valid for a period specified in that consent, or

(ii) so as to be valid indefinitely.

(5) A general consent (that is to say by Order of general application) may be granted in any manner in which by virtue of paragraphs (a) and (c) of subsection (2) a specific consent may be granted and, in relation to any person undertaking liquefaction of offshore natural gas pursuant thereto, shall be revocable in the manner and in the circumstances specified in the Order but, on the application of any person the Governor may by Order under this subsection provide that in respect of that person and in relation to such liquefaction of offshore natural gas at such place or site as is specified therein, the general consent shall be irrevocable or irrevocable for such period as is specified in that Order.

(6) The Governor by Order under this subsection may make such provision -

(a) as to the construction, inspection and safety of operations at installations for the liquefaction of offshore natural gas;

(b) as to the health and safety at work of persons working at, or present at such installations, (which shall include power to apply with such modifications and exceptions as may be specified in such an Order Part I of the Health and Safety at Work etc. Act 1974 and any regulations made thereunder);

(c) as to the health and safety of persons living or working in the vicinity of any such installation;

(d) for the purpose of preventing or reducing the risk of accidental emission of methane or ethane into the atmosphere;

(e) for the protection of the environment (including flora or fauna) from damage by reason of the operation of any such installation;

(f) for imposing strict liability on the operator of any such installation as to such matters as may be specified therein,

as the Governor considers necessary or expedient, and any such Order may confer power upon the Governor to make regulations as to any matter as to which the Order could be made or for any purpose connected with the Order, including the creation of offences punishable in any manner specified in such regulations, in relation to the operation, construction and safety of such installations or as to the safety, health and welfare of persons working therein or living or working in the vicinity of such installations.

62.(1) In this section "gas" means gas -

(a) won under the authority of a licence granted under section 6; or

(b) derived from offshore crude (including gas derived as a product of crude stabilisation)

*Flaring of  
offshore natural  
gas.*

*(cf. 1976. c.76,  
s.12).*

(2) Subject to subsection (3) the consent of the Governor is required for gas to be disposed of (whether at source or elsewhere) by flaring or by releasing it unignited into the atmosphere.

(3) Disposal of offshore natural gas does not require consent under this section if -

- (a) it is permitted under the conditions of a licence granted under section 6;
- (b) it is of refinery tail gas produced in refining crude liquid petroleum (and "refining" does not, for the purposes of this subsection, include the treatment of crude for the sole purpose of enabling it to be safely stored or transported); or
- (c) it is necessary in order to comply with a requirement imposed under this Ordinance or any other enactment.

(4) The Governor's consent under this section -

- (a) may be given either with reference to a particular case or cases or by an Order under this subsection of general application;
- (b) may (whether given with reference to a particular case or cases or by Order of general application) be made subject to conditions which, without prejudice to the generality of the conditions which may be imposed, may be framed by reference to the quantities of offshore natural gas to be disposed of.

(5) A person who -

- (a) requires consent under this section for the disposal of gas by flaring or release into the atmosphere;
- (b) without such consent or in contravention of the conditions of a consent of a kind mentioned in subsection (4)

disposes of gas by flaring it or releasing it into the atmosphere, commits an offence unless by virtue of the regulations made under this subsection he is excused in the circumstances of the particular case.

(6) A person who commits an offence under subsection (5) is liable on conviction of that offence to a fine without limit.

*Planning permission*

63.(1) For the sake of avoidance of doubt it is hereby declared that nothing in -

- (a) any licence granted under section 6;
- (b) any licence granted under section 11;
- (c) any authorisation to which section 40 relates;
- (d) any approval under section 61 or section 62

*Saving in  
respect of  
planning law.*

shall have effect so as to excuse the person to whom it is granted or given or who for the time being has or shares (and whether directly or indirectly) the benefit of the licence, authorisation, approval or consent, from any obligation under or requirement of or made under the Planning Ordinance 1991 which, apart from that licence, authorisation approval or consent, would have been an obligation or requirement he would have been bound in law to comply with or to perform.

(2) Without prejudice to the generality of the meaning of the words "obligation under or requirement of or made under the Planning Ordinance 1991" those words include -

- (a) any obligation to seek and obtain planning permission for development (within the meaning given by that Ordinance); and
- (b) any obligation to comply with the conditions of any planning permission granted under that Ordinance.

*Environmental impact assessments and environmental impact statements*

64.(1) For the purposes of this section -

*Environmental  
impact assessments  
and environmental  
impact statements.*

(a) "an application" means an application to the Governor for any authority, dispensation, exemption, licence or permission for or in relation to any thing (including the exploration for or exploitation of any mineral and the abandonment or proposed abandonment of any offshore installation), any process (including the liquefaction of gas and the refining of petroleum) or works (including the enlargement or alteration of or of the capacity or capability of any offshore installation) which the Governor has authority to grant under any provision of this Ordinance or which is required under the conditions lawfully imposed by the Governor on the grant of any authority, dispensation, exemption, licence or permission which the Governor has granted under this Ordinance to any person and "applicant" has a corresponding meaning;

(b) "environment" includes -

- (i) the environment of the controlled waters and its dependent or associated ecosystems;
- (ii) the littoral and sub-littoral environment and its dependent or associated ecosystems;
- (iii) the atmospheric environment;
- (iv) the terrestrial environment in the Falkland Islands and its dependent or associated ecosystems and public amenity in relation to any persons residing in the Falkland Islands,

and without prejudice to the generality of the foregoing includes all matters related to marine, atmospheric or terrestrial pollution by any substance whatsoever and all matters mentioned in Schedule 4 as matters as to which information may be required in an environmental impact statement.

(c) "environmental impact assessment" means an assessment commissioned by the Governor under subsection (2);

(d) "environmental impact statement" means a statement prepared by or on behalf of the applicant pursuant to a requirement made by the Governor under subsection (3) and dealing with all, or such as the Governor may require of the matters mentioned in paragraph 2 of Schedule 4.

(2) The Governor may, if he considers that the environment might be substantially affected were he to grant an application, cause an environmental impact assessment to be prepared and submitted to him by such person or persons as the Governor directs and in relation to the likely adverse and beneficial effects upon the environment if the application were to be granted, and Schedule 4 shall have effect as to the matters to be dealt with by an environmental impact assessment.

(3) In the circumstances in which the Governor, may under subsection (2) himself commission an environmental impact assessment, the Governor may additionally or instead by notice in writing served upon the applicant require the applicant to submit to the Governor an environmental impact statement.

(4) Subject to section 65(3) where the Governor has commissioned an environmental impact assessment under subsection (2) or required the applicant under subsection (3) to submit an environmental impact statement, the Governor shall defer consideration of the application in accordance with section 65(4).

(5) This section has effect without prejudice to any power of the Governor under any other provision of this Ordinance to require the applicant to furnish an environmental impact statement.

(6) Schedule 4 has effect as to the information which may be required to be contained in an environmental impact assessment or environmental impact statement.

65.(1) Whenever the Governor commissions an environmental impact assessment under section 64(2), the Governor shall -

*Provisions as to notifications in relation to environmental impact assessments and environmental impact statements.*

(a) notify the person or persons commissioned to prepare that assessment of -

(i) the matters with which that assessment is to deal;

(ii) the period of time (which shall not exceed three months) within which the assessment is to be delivered to the Governor; and

(iii) of any other requirements the Governor sees fit to make in relation to the formal contents of the assessment;

(b) notify the applicant of -

(i) the fact that he has commissioned an environmental impact assessment;

(ii) the matters notified under sub-paragraphs (i), (ii) and (iii) of paragraph (a);

(c) publish a notice in the Gazette of -

(i) the application in relation to which he has commissioned it; and

(ii) the matters notified under subparagraphs (i), (ii) and (iii) of paragraph (a).

(2) A notice to the applicant under section 64(3) shall -

(a) state the reasons for the Governor requiring the environmental impact statement;

(b) specify the matters with which the environmental impact statement shall deal and these may -

(i) require the applicant to state the applicant's intentions as to the protection of the environment;

(ii) require the applicant to state the likely beneficial or adverse impact in the applicants's view, if the proposed proposals the subject of the application were carried out; and

(iii) require the applicant to state his proposals (if any) as to measures to be taken by the applicant or on the applicants behalf to prevent or lessen any adverse impact on the environment; and

(iv) require the applicant to deal with the statement with any other matter mentioned in Schedule 6; and

(v) state the period within which the statement is to be delivered to the Governor.

(3) The Governor shall not exercise his powers under section 64(3) so as to require the applicant to furnish an environmental impact statement if -

(a) the applicant has furnished an environmental impact statement under section 33 of the Planning Ordinance 1991 in connection with an application for planning permission relating to the same or substantially the same matter; or

(b) the applicant has voluntarily furnished an environmental impact statement with or in connection with his application,

but the Governor may treat an environmental impact statement so furnished by the applicant as if it had been furnished pursuant to a requirement made by the Governor under section 64(3).

(4) Whenever the Governor has commissioned an environmental impact assessment or required the applicant to furnish an environmental impact statement he shall not decide upon the application until he has considered the environmental impact assessment or environmental impact statement and any written representations the Governor has received in relation to them pursuant to section 66.

66.(1) Whenever the Governor receives an environmental impact assessment commissioned by him under section 64(2) he shall -

(a) serve a copy of it upon the applicant;

(b) notify the applicant that the applicant may within such period as is specified in the notification (not being less than 28 days) make written representations to the Governor in relation to the contents of and any recommendations contained in the environmental impact assessment,

*Further action  
in relation to  
environmental impact  
assessments and  
environmental impact  
statements.*

and the Governor shall not decide upon the application without having taken into account any written representations of the applicant made pursuant to that notification.

(2) Whenever the Governor receives an environmental impact statement from the applicant pursuant to a requirement under section 64(3) or pursuant to section 65(3) treats an environment impact statement previously furnished by the applicant as if it had been furnished pursuant to such a requirement the Governor may, if he thinks fit, publish the environmental impact statement in such manner as he thinks fit and invite any person who wishes to do so to make within 42 days written representation to him in relation to the contents of the environmental impact statement and, in particular as to the applicant's intentions stated therein as to the protection of the environment.

(3) Whenever the Governor receives any written representations pursuant to subsection (2) of this section, he shall serve a copy of them upon the applicant and shall inform the applicant that he may make written representations to the Governor in reply within 28 days of such service and that the Governor will take any such written representations in reply into account in deciding upon the application.

67.(1) The Governor, when dealing with an application in relation to which the applicant has furnished an environmental impact statement (and whether pursuant to a requirement under section 71(3) or otherwise), may require the applicant to provide such further information as the Governor may specify concerning any matter which is required to be, or may be, dealt with in the environmental impact statement.

*Further  
information and  
evidence.*

(2) The Governor may in writing require an applicant to produce such evidence as he may reasonably call for to verify any information in the applicant's environmental impact statement.

(3) For the purposes of section 65(4) and 66(2), further information furnished pursuant to subsection (1) of this section and evidence furnished pursuant to subsection (2) of this section shall be treated as forming part of the applicant's environmental impact statement.

#### *Diving operations*

68.(1) The Governor may make regulations in relation to diving operations -

*Regulations as  
to diving operations.*

(a) carried on in the controlled waters in connection with pipe-lines or works associated with pipe-lines in the controlled waters;

(b) carried on in the controlled waters in or in connection with other offshore installations or proposed offshore installations.

(2) Subsection (1) has effect without prejudice to the exercise by the Governor of any other power under this Ordinance, which might have effect so as to enable him to make such regulations.

(3) The powers of the Governor under subsection (1) to make regulations include power by such regulations to apply, with modifications and exceptions specified in regulations so made -

(a) the Submarine Pipe-lines (Diving Operations) Regulations 1976; and

(b) the Diving Operations at Work Regulations 1981, as amended by the Diving Operations at Work (Amendment) Regulations 1992.



*General provisions in relation to offences*

69.(1) The Magistrate's Court and the Summary Court shall each have jurisdiction to try and determine all offences under this Ordinance.

*Jurisdiction  
of the courts.*

(2) The Magistrate's Court on convicting a person of an offence under this Ordinance may sentence that person to pay a fine up to the maximum amount provided by this Ordinance in respect of that offence, but the Summary Court shall not on convicting a person of an offence under this Ordinance order him to pay a fine of an amount greater than -

(a) (subject to an Order under Subsection (3) of this section) £50,000; or

(b) the maximum fine provided by this Ordinance in respect of that offence, whichever be the less

(3) The Governor may by Order under this subsection substitute an increased sum for the sum of £50,000 appearing in paragraph (a) of subsection (2).

70.(1) All offences under this Ordinance shall be tried summarily.

*Procedure in  
respect of offences.*

(2) Subject to section 69 and section 72, the general law of the Falkland Islands in respect of the powers and procedure of the Magistrates' Court and of the Summary Court respectively in and in connection with the offences tried summarily shall apply in and in connection with proceedings in respect of offences under this Ordinance commenced in those courts.

71.(1) Any proceedings in respect of an offence under this Ordinance shall be commenced within three years from the date on which it is alleged to have been committed and if a court on trying an alleged offence is not satisfied that the offence was committed within the period of three years preceding the commencement of the proceedings, the court shall dismiss the proceedings.

*Limitation on  
commencement of  
proceedings for  
offences.*

(2) For the purposes of subsection (1), proceedings shall be taken as having been commenced in respect of the accused in question on the date on which the complaint or information by or on behalf of the prosecutor alleging the offence by the accused was delivered to the court.

72.(1) Any provision of this Ordinance which provides that on conviction of an offence to which that provision relates the offender is to be liable to pay a fine without limit shall have effect so as to enable the convicting court, subject to subsection (2) and (3) of this section -

*Fines without  
limit.*

(a) in the case of the Summary Court, to order the offender to pay a fine of an amount not exceeding the maximum amount which that court is by virtue of section 69(2) and (3) for the time empowered to order the offender to pay; and

(b) in the case of the Magistrate's Court, to order the offender to pay a fine of any amount it sees fit without any limitation on the maximum amount it may order the offender to pay by way of fine.

(2) Before ordering a person to pay a fine after convicting him of an offence under this Ordinance, the court shall inquire into and take into account the means of the offender to pay that fine, but if the offender refuses to furnish to the Court such information as to his means as the court may reasonably require or does not furnish that information within such reasonable period of time as the Court may order, the Court may order that person to pay such fine as if considers fit without regard to the preceding provisions of this subsection, but without prejudice to any power of the Court under any other law at any later time to reduce or remit that fine or any part of it upon the offender making application to it so to do and providing to the Court such evidence or information as to his means as the Court may reasonably require.

73. Where a body corporate has committed an offence under this Ordinance and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity he, as well as the body corporate, has committed that offence and shall be liable to be proceeded against and punished accordingly.

*Offences by  
bodies corporate:  
liability of  
directors and  
others.*

74.(1) No prosecution for an offence under this Ordinance shall be brought except by, or with the consent of, the Attorney General.

*Consent for  
prosecutions.*

(2) Subsection (1) has effect without prejudice to section 3 of the Territorial Waters Jurisdiction Act 1878 (which in certain cases requires the leave and certificate of the Governor in relation to prosecutions for offences committed within the territorial sea), but subsection (1) has effect in addition to that section.

#### *Subsidiary legislation*

75.(1) Any power conferred by any provision of this Ordinance to make any subsidiary legislation ("that power") shall be construed as including power at any later time -

*Subsidiary  
legislation: general  
provisions.*

(a) to revoke any subsidiary legislation made under that power or any provision of that subsidiary legislation;

(b) to replace any subsidiary made under that power with further subsidiary legislation made under that power; and

(c) where any subsidiary legislation is not wholly revoked, to amend, modify or augment any provisions of that subsidiary legislation not revoked by further subsidiary legislation made under that power,

but where a provision of this Ordinance provides that subsidiary legislation under it may only be made with the consent or approval of the Secretary of State, the like consent or approval is required in relation to any subsidiary legislation which does any of the things mentioned in paragraphs (a), (b) and (c) of this subsection.

(2) Where a provision of this Ordinance conferring power to make subsidiary legislation under it requires the consent or approval of the Secretary of State to the exercise of the power or to the provisions of the subsidiary legislation made under that power, and it is shown that subsidiary legislation was made under that power it shall be conclusively presumed that the required consent or approval was obtained before that subsidiary legislation was made.

(3) Any power conferred by this Ordinance to make any subsidiary legislation may be exercised -

(a) either in relation to all cases to which the power extends, or to all those cases subject to specified exception, or in relation to any specified case or classes of case; and

(b) so as to make, as respects the case in relation to which it is exercised -

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Ordinance;

(iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such incidental or supplemental provision in the orders or regulations as the Governor considers appropriate.

(4) Where any subsidiary legislation is expressed to be made under a particular provision of this Ordinance it shall be deemed also to be expressed to be made under any other provision of this Ordinance enabling it to be made.

(5) Any power contained in this Ordinance to make subsidiary legislation includes power by that subsidiary legislation to apply, with such modifications and exceptions as may be specified in that subsidiary legislation, the provisions of any statutory instrument made under any provision of any United Kingdom enactment corresponding to the provision of this Ordinance under which the subsidiary legislation is made.

76.(1) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by subsidiary legislation made under that power to provide by any provision of that legislation that a contravention of such provision or provisions of that subsidiary legislation as is or are specified by the first mentioned provision shall constitute an offence punishable by such fine, not exceeding £100,000, as is specified in relation to that contravention.

*Subsidiary legislation: creation of offences: provisions imposing civil liability.*

(2) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by any subsidiary legislation made under that power to provide that a person contravening such of its provisions as are specified by any provision of that subsidiary legislation shall be civilly liable to any person suffering loss by reason of that contravention.

77.(1) Any subsidiary legislation made under this Ordinance may prescribe forms to be used for the purposes specified in that subsidiary legislation and may prescribe fees of such amount as are therein specified and in or in connection with the matters mentioned in the subsidiary legislation.

*Forms, fees and costs.*

(2) Any subsidiary legislation providing for a public or other inquiry to be held into any matter may confer power upon the person or persons appointed to conduct that inquiry to order such person or persons as he or they think fit to pay such sum as he or they think fit or limited as may be specified therein in relation to the costs of conducting the inquiry (including the costs relating to the representation of other persons at or in relation to the inquiry) and may provide for the enforcement of any such order.

#### *Payments under this Ordinance*

78.(1) All payments made to the Governor under any provision of this Ordinance shall be paid into the Consolidated Fund.

*Payments to and by Governor.*

(2) All payments made by the Governor under any provision of this Ordinance shall be paid out of the Consolidated Fund.

(3) Where, by virtue of any provision of this Ordinance, the Governor is under an obligation to make a payment to any person, the amount of that payment, if not provided for by an Appropriation Ordinance, is charged upon the Consolidated Fund.

#### *Notices*

79.(1) Any notice or other communication authorised or required to be given by any provision of this Ordinance may be sent -

*Notices.*

(a) by post;

(b) or by electronic mail (including telephonic facsimile transmission); or

(c) delivered to the addressee;

(2) In the case of any notice or other communication sent by post within the Falkland Islands by any person to an addressee in the Falkland Islands, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the third business day following the day on which it is proved to have been posted.

(3) In the case of any notice or other communication sent by post where either the sender or the addressee are not within the Falkland Islands, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the tenth business day following the day on which it is proved to have been posted.

(4) In the case of any notice or other communication sent by electronic mail, it shall be deemed to have been received at nine in the morning on the business day following the day on which it is proved to have been received by the addressee's receiving equipment or, if earlier acknowledged by or on behalf of the addressee, at the time on the day the sender of the notice or communication received the acknowledgment.

(5) Where under the provisions of section 80(1)(a) or of regulations made under section 80(1)(b) an agent has been appointed and a notice or other communication has been posted, sent by electronic mail or delivered to that agent on account or in respect of the person appointing him pursuant to that section, that person shall be deemed to have received that notice or communication at the same time as he would, in accordance with the foregoing provisions of this section be taken to have received it if he himself were the agent he has appointed.

80.(1) The Governor may -

(a) by a condition of a licence under 6; or

(b) by regulations under this section,

*Appointment of  
person to receive  
notices.*

require any licensee who is not

(i) a living person ordinarily resident in the Falkland Islands;

(ii) a company incorporated under the laws of the Falkland Islands; or

(iii) a company registered under Part X of the Companies Act 1948 in its application to the Falkland Islands (foreign or overseas company to register and appoint agents for the service of process),

to appoint a person of a kind mentioned in sub-paragraph (i) as or its agent and so often as may be necessary to appoint another person in place of a person so appointed

(2) Where a company has -

(a) pursuant to Part X of the Companies Act 1948;

(b) pursuant to a condition of a licence under section 6; or

(c) pursuant to regulations made under subsection (1) of this section,

appointed a person for the purpose of accepting or receiving service of any notice or proceedings which might otherwise have been given to or served upon the licensee, any notice or communication under this Ordinance or process civil or criminal shall for all purposes be taken to have been duly served or given to the licensee if it is shown to have been served upon or given to the person appointed as mentioned in this subsection.

### *Repeal and saving*

81.(1) Subject to subsection (2) of this section, the Continental Shelf Ordinance 1991 is repealed.

*Repeal of the  
Continental Shelf  
Ordinance 1991:  
saving as to  
regulations.*

(2) Notwithstanding the repeal of the Continental Shelf Ordinance 1991, the Petroleum Survey (Model Clauses) Regulations 1992 (which were made under that Ordinance) shall continue to have effect as if they had been made under section 7 of this Ordinance.

## SCHEDULE 1 (Section 14)

### STRICT LIABILITY FOR CERTAIN LOSS OR DAMAGE ETC

1. Subject to subsequent paragraphs of this Schedule, an operator shall be strictly liable (that is to say liable in law without proof of negligence on his part being necessary so as to establish his liability) for -

(a) damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems arising from exploration or exploitation of minerals in the controlled waters, including payment in the event that there has been no restoration of the *status quo ante*;

(b) loss or impairment of an established use referred to in paragraph 7 of this Schedule and arising directly out of damage described in sub-paragraph (a) of this paragraph;

(c) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in sub-paragraph (a) of this paragraph;

(d) reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment and clean up and removal measures, and action taken to restore the *status quo ante* where exploration for or exploitation of minerals undertaken by the operator in the controlled waters result in or threaten to result in damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems.

2. An operator is not liable pursuant to paragraph 1 of this Schedule if the operator proves that the damage has been caused by (but only to the extent that the operator shows that it has been caused directly by) -

(a) an event constituting in all the circumstances of the controlled waters a natural disaster of an exceptional character which could not have been foreseen; or

(b) armed conflict or an act of terrorism directed against the activities of the operator and against no reasonable precautionary measures could have been effective.

3. If an operator proves that the damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, the operator is thereby relieved from its obligation by virtue of paragraph 1 of this Schedule to pay compensation in respect of the damage suffered by that party (but this paragraph does not affect any liability of the operator to pay compensation arising other than by virtue of paragraph 1 of this schedule.

4. Where compensation has been paid or is payable otherwise than by virtue of paragraph 1 of this schedule the operator shall be entitled to set-off against -

(a) any liability to pay compensation under paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation under any liability arising other than by virtue of paragraph 1 of this schedule;

(b) any liability to pay compensation otherwise than by virtue of paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation by virtue of paragraph 1 of this Schedule, but only if, and to the extent that, the earlier payment of compensation was in respect of the same damage.

5. Where more than one operator is liable to pay compensation by virtue of paragraph 1 to any party claiming compensation, subject to this Schedule, every operator is jointly and severally liable so to do but each operator is entitled to set-off against his own liability the amount of any compensation already paid by another operator in respect of the same damage to the same claiming party.

6. In this Schedule, "damage to the environment of the controlled waters or of the Falkland Islands" means any impact on the living or non-living components of the environment of the controlled waters or of the Falkland Islands or the ecosystems of the controlled waters or the Falkland Islands and includes harm to atmospheric, marine or terrestrial life, provided always that damage which, in all the circumstances, ought on any reasonable view to be regarded as negligible shall be deemed to be excluded from the foregoing definition.

7. The established uses referred to in sub-paragraph (b) or paragraph 1 are -

(a) the conservation, including rational use, of living resources of the controlled waters or of the Falkland Islands, and whether those living resources are marine, terrestrial or amphibious;

(b) tourism; and

(c) navigation and aviation.

8. Nothing in this Schedule shall have effect so as to relieve any operator of any liability in law he would have had if this Schedule had not been enacted.

*Protection of officers*

9. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Ordinance if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

**SCHEDULE 2 (Section 27(3))**

**SUBJECT MATTER OF REGULATIONS**

1.(1) Measures to ensure the safety of the installation, and of any other structures associated with the operations carried out from the installation.

(2) Measures to ensure safety when an installation or any part of an installation is being assembled or dismantled in the sea or other waters.

2. The movement of, and precautions to be taken by, vessels, aircraft and hovercraft in the neighbourhood of offshore installations.

3. Provisions as to the manner in which or occasions on which any operation or work is to be or may be carried out, or as to the safety or suitability of any place where it is carried out.

4.(1) Provisions as to the equipment, facilities or materials which are to be or may be supplied or used, whether the provision has reference to sufficiency, to suitability, to safety during use or while not in use, or to any other matter.

(2) The application of -

(a) the Anchors and Chain Cables Act 1967,

(b) the Employers' Liability (Compulsory Insurance) Act 1969,

subject to such modifications or extensions as may be prescribed by the regulations.

(3) Any provision corresponding to anything in the Acts mentioned in sub-paragraph (2) above.

5.(1) Limits on hours of employment in any specified operation or in any specified circumstances.

(2) The employment at installations of persons who are under the age of eighteen, or who have not received the prescribed instruction or training.

6. Training.

7. Emergency equipment and emergency procedures.

8.(1) Accidents, injuries and disease.

(2) Medical treatment and medical stores.

(3) Accommodation, provisioning and water.



*Inspectors and inquiries*

9. Powers and duties to be exercised by, and facilities to be accorded to, inspectors appointed by the Governor under section 27(4), and other persons acting at the direction of the Governor, and in particular -

- (a) powers to board, and to obtain access to all parts of, any offshore installation, to obtain information and to inspect and take copies from any log book or other document,
- (b) powers to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment,
- (c) powers to require, in connection with the survey or inspection of any installation, part of an installation or equipment, the carrying out of procedures and the conduct of tests by such person as may be prescribed by the regulations,
- (d) rights to require conveyance to and from any offshore installation, including conveyance of any equipment required by an inspector for testing, or any equipment of which he has taken possession in special circumstances,
- (e) duties to provide inspectors and others with reasonable accommodation and means of subsistence while on any offshore installation,
- (f) any powers exercisable in case of immediate or apprehended danger.

10.(1) Casualties or other accidents involving loss of life or danger to life, and in particular -

- (a) the making of special reports by inspectors, and
- (b) the holding of public inquiries.

(2) In the case of any public inquiry held in pursuance of regulations under the provisions referred to in paragraph 9 -

- (a) conferring on the person holding the inquiry, and any person assisting him in the inquiry, powers of entry and inspection,
- (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents,
- (c) powers to take evidence on oath and administer oaths or require the making of declarations,
- (d) authorising the Secretary of State to make payments to the person holding the inquiry to any assessor appointed to assist him and to witnesses summoned to the inquiry,
- (e) as to the persons by whom, and the manner in which, costs of any such inquiry, including the remuneration of the persons holding the inquiry, are to be defrayed.

(3) The provision as respects costs under sub-paragraph (2)(e) of this paragraph may include -

(a) provision for the treatment of any such costs as expenses of the Governor under this Ordinance -

(b) provision requiring any such costs to be defrayed by any person who appears to the person or persons holding the inquiry to be by reason of any act of default on his part or on the part of any servant or agent of his, responsible in any degree for the occurrence of the accident.

### *Supplemental*

11.(1) The keeping of an official log book, and of other records.

(2) The creation of any right to inspect, or take extracts from, any such records, and the admissibility in evidence of, or of certified extracts of, any such records.

12. The making of returns and the giving of information, and in particular the making of returns to the Registrar General of Shipping and Seamen of deaths, including presumed deaths; and the duties of the Registrar General as respects such returns.

13. The display and posting of copies of, or of digests of, sections 22 to 29 of this Ordinance and regulations made under sections 23, 24, 25 and 27 of this Ordinance.

14. The punishment of forgery or falsification of documents, and of other offences as respects forged or falsified documents, where the documents are, or purport to be, made under the purposes of the regulations.

15. The regulations may, in prescribing standards of safety, or in imposing other requirements, refer to, and make obligations depend on, the provisions of any recognised industrial code of practice for the time being in force.

**SCHEDULE 3 (Section 40(1), 41(3) and 43(3))**

**AUTHORISATION IN PURSUANCE OF SECTION 40(1)**

**PART I**

**WORKS AUTHORISATIONS**

1. Provision may be made by regulations as to the manner in which an application for a works authorisation is to be made and to the information to be included or furnished in connection with an application; and, without prejudice to the generality of the power to make regulations conferred by the preceding provisions of this paragraph, regulations in pursuance of this paragraph may require the payment of fees in connection with an application.

2. On receiving an application for a works authorisation, the Governor shall -

(a) decide whether the application is to be considered further or rejected;

(b) serve notice of his decision on the applicant and -

(i) if the Governor has decided that the application is to be considered further, he shall in that notice give to the applicant such directions as the Governor, for the purposes of paragraph 3 of this Schedule, considers appropriate, but

(ii) if the Governor has decided to reject the application, he shall in that notice include a statement of his reasons for doing so unless, having consulted the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state the reasons for the rejection of the application (and, that in case, the notice shall state that the Governor is of that view).

3. If the Governor has, in pursuance of paragraph 2 of this Schedule notified the applicant that the application is to be considered further, the applicant shall, in compliance with the directions of the Governor contained in that notice -

(a) publish in such manner as the Governor has directed in that notice, a notice which -

(i) contains such particulars of the applicant as the Governor has so directed;

(ii) states that representations with respect to the application may be made to the Governor within the period of 28 days beginning with the date of the first publication of the notice or within such longer period as the Governor may have directed in his notice to the applicant;

(iii) states where the map mentioned in sub-paragraph (b) of this paragraph may be inspected during the period within which written representations to the Governor may be made;

(b) secure that a map of such scale and containing such particulars as the Governor has directed in the notice to the applicant may be inspected by the public, free of charge between the hours of 10.00 a.m. to 4.00 p.m. on each day (Saturdays, Sundays and public holidays in the relevant place being excluded) and

(c) serve a copy of the notice (together, if the Governor has so directed, with a copy of the map) on such persons, if any, as the Governor has directed; and, in any case

(d) send a copy of the notice so published, together with a copy of the map, to the Governor,

and the Governor shall not further consider the application until -

(i) he is satisfied that the applicant has complied with sub-paragraphs (a), (b), (c) and (d) of this paragraph, and

(ii) the period for written representations to be made to the Governor, specified in the applicant's notice in accordance with sub-paragraph (b) (ii) of this paragraph, has expired.

4. Where the Governor has decided that an application for a works authorisation is to be considered further and is of opinion either -

(i) of his own initiative (except in relation to the purpose mentioned in paragraph 6(b) of this Schedule), or

(ii) in consequence of written representations made to him by the applicant or by any other person -

(a) that the route proposed for the pipe-line or part of it in the application should be altered in a particular manner for any of the purposes mentioned in paragraph 6 of this Schedule; or

(b) that the capacity proposed for the pipe-line or part of it in the application should be increased for any of the purposes mentioned in sub-paragraphs (b) to (e) of paragraph 6 to this Schedule,

the Governor shall, before deciding whether to issue an authorisation in consequence of the authorisation, serve notice of his opinion on the applicant and, where the opinion relates to an alteration of the route proposed for the pipe-line or part of it, on any persons whom the Governor considers are likely to be affected by the alteration or any person appearing to the Governor to represent such persons.

5. Where, in pursuance of paragraph 4 of this Schedule, the Governor serves notice of his opinion on any person, the Governor shall -

(a) where the notice is served on the applicant, give to the applicant an opportunity of being heard with respect to that opinion; and

(b) where the notice is served on any other person, state in that notice that representations in writing with respect to that opinion may be made to the Governor within a period which shall be stated in that notice,

and where a person is heard in pursuance of sub-paragraph (a) of this paragraph -

(i) the hearing shall be by a person or persons appointed by the Governor for the purpose of conducting the hearing and of reporting to the Governor or thereon; and

(ii) the Governor may give to such other persons as he thinks fit, if any, an opportunity to be heard at the hearing.

6. The purposes referred to in paragraph 4 of this Schedule are -

(a) the avoidance or reduction of danger to -

(i) navigation;

(ii) persons engaged in fishing;

(iii) vessels and equipment used for fishing;

(iv) some structure or equipment (which may be the pipe-line); or

(v) marine (including littoral) flora or fauna;

(b) where it appears to the Governor that persons other than the applicant wish to use the pipe-line, the facilitation of the use of the pipe-line by such persons;

(c) the avoidance or reduction of interference with -

(i) fishing;

(ii) exploration for or exploitation of mineral resources in the controlled waters or the sea-bed or subsoil thereof;

(iii) any other legitimate use of the controlled waters or the sea-bed or subsoil thereof;

(d) the international obligations of or relating to the Falkland Islands,

(e) any other purpose which the Governor considers proper,

and the Governor shall state the reasons for his opinion in any notice of his opinion served in pursuance of paragraph 4 of this Schedule, except that the Governor is not obliged to state any reason for his opinion which, after consultation with the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state.

**7. When the Governor -**

(a) is satisfied that the applicant for a works authorisation has complied with his obligation under paragraph 3 of this Schedule;

(b) has considered any representations relating to the application which were made to the Governor within the period specified in the notice published in accordance with sub-paragraph (a) of paragraph 3 to this Schedule (and, where a hearing has taken place in accordance with paragraph 5, conducted by a person or persons appointed by the Governor to receive oral representations, has also considered the report with relation thereto of the person or persons so appointed)

the Governor shall -

(i) decide whether to issue an authorisation; and

(ii) publish his decision in accordance with paragraph 8.

**8.(1) Where the Governor has decided not to issue a works authorisation -**

(a) the Governor shall serve a notice stating his decision on the applicant and on each person upon whom he directed a copy of the notice of the application to be served; and

(b) in the notice to the applicant stating his decision, the Governor shall also state the reason for it, except that the Governor need not state any reason which, after consultation with the Secretary of State and acting in accordance with his advice, he considers if would be contrary to the national interest to state.

**(2) Where the Governor has decided to issue a works authorisation -**

(a) the Governor shall serve a notice stating his decision -

(i) on the applicant, and

(ii) on each person who made representations to which sub-paragraph (b) of paragraph 8 of this Schedule relates;

(b) the Governor shall publish a copy of the notice in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

**9. When the Governor issues a works authorisation he shall -**

(a) serve on the persons (excepting the applicant) on whom notice of his decision to issue a works authorisation is required to be served by paragraph 8(2) of this Schedule, a further notice -

(i) stating that he has issued the authorisation;

(ii) stating the name and address of the person to whom it was issued;

(iii) stating such particulars as the Governor considers appropriate of the route of the pipe-line, the authorised capacity of it, the things authorised to be conveyed by it and the persons authorised to use it, and

(iv) containing such other information about the pipe-line (if any) as the Governor considers appropriate; and

(b) publish a copy of the notice served in pursuance of sub-paragraph (a) of this paragraph in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

## PART II

### OTHER AUTHORISATIONS

10. When the Governor issues an authorisation other than a works authorisation he shall publish in the Gazette and in any other publications (including the London Gazette) he considers appropriate a notice -

(a) stating that the authorisation has been issued;

(b) stating the name and address of the person to whom it has been issued; and

(c) containing such other information (if any) about the pipe-line as the Governor considers appropriate.

### SCHEDULE 4 (Section 64(6))

#### ENVIRONMENTAL IMPACT ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

1. An environmental impact assessment or statement comprises a document or series of documents providing, so as to assist the Governor to assess the likely impact upon the environment of the development proposed to be carried out, the information specified in paragraph 2 of this Schedule ("the specified information").

2. The specified information is -

(a) a description of the development proposed comprising information about the site or location and the design and size or scale of the development;

(b) the data necessary to identify and assess the main effects which the development is likely to have on the environment;

(c) a description of the likely significant effect, direct and indirect, on the environment of the development, explained by reference to its possible impact on such of the following as, in the circumstances of the case, are relevant -

human beings;  
 flora (marine and terrestrial);  
 fauna (marine and terrestrial);  
 the seabed and subsoil;  
 the soil;  
 water (salt or fresh);  
 the atmosphere and the quality of the air;  
 climate;  
 the seascape or landscape;  
 the inter-action between any of the foregoing;  
 material assets;  
 the cultural heritage;

(d) where significant effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and

(e) a summary in non-technical language of the information specified above.

3. An environmental impact assessment or statement may (and if the Governor so requires shall) include by way of explanation or amplification of any specified information, further information on any of the following matters -

(a) the physical characteristics of the proposed development, and the land-use requirements during the construction stage;

(b) the main characteristics of the production processes proposed, including the nature and quality of the materials to be used;

(c) the estimated type and quantity of any expected residues and emissions (including pollutants of water, air or soil and "greenhouse gases", and including noise, vibration, light heat and radiation) resulting from the proposed development when in operation;

(d) in the case of an environmental impact statement (in outline) the main alternatives (if any) studied by the applicant and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;

(e) the likely significant direct and indirect effects on the environment of the development proposed, which may result from -

(i) the use of natural resources;

(ii) any emission of pollutants, creation of nuisances, or elimination of waste;

(f) the forecasting methods used to assess any effect on the environment about which information is given under sub-paragraph (e); and

(g) any difficulties, such as technical deficiencies or lack of know-how, encountered in compiling any specified information,



and for the purposes of sub-paragraph (e) of this paragraph, "effects" includes secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

4. Where further information is included in an environmental statement pursuant to paragraph 3 above, a non-technical summary of that information shall also be provided.



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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## PROCLAMATION

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No. 2 of 1994

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I, **DAVID EVERARD TATHAM**, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor of the Falkland Islands, **IN EXERCISE** of my powers under section 35 of the Customs Ordinance and all other powers enabling me in that behalf **PROCLAIM** as follows -

### FIRSTLY

This Proclamation may be cited as the Import of Medicines Proclamation 1994 and comes into force on its publication in the *Gazette*;

### SECONDLY

This Proclamation relates to the importation into the Falkland Islands of medicines which are intended for retail sale and does not apply to or in respect of any other medicines whatsoever (including, in particular, and without prejudice to the generality of the foregoing, medicines imported by a person for his own use or in his household);

### THIRDLY

For the purposes of this Proclamation -

- (a) "medicine" means any substance or article (not being an instrument, apparatus or appliance) which is intended to be imported for use wholly or mainly for the purpose of being administered to one or more human beings for a medicinal purpose;
- (b) "medicinal purpose" means any one or more of the following purposes -
  - (i) treating or preventing disease;
  - (ii) diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
  - (iii) contraception;
  - (iv) inducing anaesthesia;
  - (v) otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily, and whether by way of terminating, reducing or postponing, or increasing or accelerating, the operation of that function or in any other way; and
- (c) "retail sale", in relation to a medicine, means the sale of the medicine to a person who buys it for the purpose of administering it or causing it to be administered to himself or another person.

### FOURTHLY

The importation of any medicine into the Falkland Islands for the purpose of the retail sale within the Falkland Islands of that medicine is prohibited unless the importation in question has been authorised in writing by the Chief Medical Officer.

### AND FIFTHLY

The Chief Medical Officer shall not refuse to grant a licence for the importation for retail sale of a medicine if he is satisfied that that medicine may lawfully be so sold in the United Kingdom other than under the supervision of a pharmacist ("pharmacist" for the purpose of this paragraph having the same meaning as it has for the purposes of the Medicines Act 1968 of the United Kingdom) and shall not refuse to grant a licence for such importation in relation to a medicine which may lawfully be so sold in the United Kingdom under the supervision of a pharmacist and without a prescription unless he considers that, in the circumstances of the Falkland Islands that medicine should not be sold retail, other than under such supervision, in the Falkland Islands.

Made this 12th day of December 1994

D. E. TATHAM,  
*Governor*



# THE FALKLAND ISLANDS GAZETTE Supplement

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The following are published in this Supplement —

- The Licensing Ordinance 1994, (No. 18 of 1994);**
- The Pool Betting Ordinance 1994, (No. 19 of 1994);**
- The Supplementary Appropriation (1994-1995) Ordinance 1994, (No. 20 of 1994);**
- The Evidence Ordinance 1994, (No. 21 of 1994);**
- The Wireless Telegraphy Ordinance 1994, (No. 22 of 1994);**
- The Media Trust Ordinance 1994, (No. 23 of 1994);**
- The Employment (Amendment) Ordinance 1994, (No. 24 of 1994);**
- The Old Age Pensions (Credit of Contributions) Ordinance 1994, (No. 25 of 1994);**
- Income Tax (Annual Values) Rules 1994, (S.R. & O. No. 17 of 1994);**
- The Taxes (Excess Benefits) Rules 1994, (S.R. & O. No. 18 of 1994).**

# The Licensing Ordinance 1994

(No: 18 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

#### PART I

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1. Short title and commencement.
2. Interpretation.

#### PART II

##### THE GENERAL LICENSING SYSTEM

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4. Licences granted under the repealed Ordinance: application of this Ordinance to premises licensed under repealed Ordinance.
5. Licensing justices.

##### *Grant of justices' licence*

6. Grant of justices' licence.
7. New licences.
8. Provisional grant of new licence.
9. Renewals.
10. Transfers.
11. Persons and premises disqualified for holding or receiving justices' licence.

##### *Protection orders*

12. Protection orders.
13. Supplementary provisions relating to protection orders.

##### *Control of licensing justices over structure of licensed premises*

14. Power to require structural alterations on renewal of on-licence.

15. Consent required for certain alterations to on-licensed premises.

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16. Revocation.

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17. Appeals.
18. Procedural provisions as to appeals.
19. Powers of Magistrate's Court on appeals.

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20. Fees.
21. Register of licences.
22. Convictions forfeitures and disqualifications to be entered in register.
23. Registration of owner, etc.
24. Notice of conviction of licence holder to be given to registered owner.
25. Inspection of register.
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27. Proof of justices' licence and provisions as to forgery thereof.
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## SALE AND SUPPLY OF INTOXICATING LIQUOR IN CLUB PREMISES

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29. Conditions for supply of intoxicating liquor by clubs.

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31. Qualifications for registration.
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- 40. Licensing of club premises.

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- 41. Prohibition of sale, etc of intoxicating liquor outside permitted hours.

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- 42. Permitted hours in licensed premises.

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- 45. Special hours certificates for licensed premises.
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- 49. Prohibition of consumption of intoxicating liquor outside general licensing hours at parties organised for gain.

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##### **RESTAURANTS AND GUEST HOUSES**

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54. Requirement of sitting accommodation for residential licence or residential and restaurant licence.

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71. Licence holder not to permit drunkenness, etc.

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74. Exclusion orders.

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76. Prohibition order.

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80. Offence in relation to constables.

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83. Other prohibited activities on licensed premises.

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Schedule 3

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Schedule 6

## ELIZABETH II



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Licensing Ordinance 1994

(No: 18 of 1994)

## An Ordinance

To make new provision in relation to the licensing and conduct of premises used for the sale of intoxicating liquor, in relation to the consumption of intoxicating liquor, the sale of tobacco and for the purposes connected with the foregoing purposes.

*(assented to: 12th December 1994)**(commencement: 1st January 1995)**(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

## PART I

## INTRODUCTORY

1. This Ordinance may be cited as the Licensing Ordinance 1994 and shall come into force on 1st January 1995. *Short title and commencement.*

2.(1) In this Ordinance, unless the context otherwise requires - *Interpretation.*

"bar" includes any place exclusively or mainly used for the sale and consumption of intoxicating liquor;

"canteen" means any premises which are not a mess, in the occupation of the Ministry of Defence, any of Her Majesty's armed services or of the Navy Army and Air Force Institute, and where intoxicating liquor is supplied under the authority of the Commander British Forces;

"club licence", in accordance with its context, means a licence of that description granted under the provisions of the repealed Ordinance or a justices' on-licence granted to a club;

"cider" includes perry;

"club premises" means premises which are occupied by the habitually used for the purposes of a club;

"court of summary jurisdiction" means either of the Summary Court and the Magistrate's Court;

"family proceedings" has the same meaning as it has in the Childrens Ordinance 1994;

"full age" means the age of twenty-one years;

"the general licensing hours" has the meaning given by section 42(5)(a);

"grant" in relation to a justices' licence includes a grant by way of renewal or transfer and "application" shall be construed accordingly;

"intoxicating liquor" means spirits, wine, beer, cider and any fermented, distilled or spirituous liquor but does not include -

(a) any liquor which is found on analysis of a sample thereof at any time to be of an original gravity not exceeding 1016 and of a strength not exceeding 1.2 per cent;

(b) perfumes;

(c) flavouring essences recognised by the Collector of Customs as not being intended for consumption as or with dutiable alcoholic liquor;

(d) spirits, wine or made-wine so medicated, as to be in the opinion of the Collector of Customs, intended for use as a medicine and not as a beverage;

"justices' licence" has the meaning given by section 3(1);

"legal practitioner" has the same meaning as it has under the Legal Practitioners Ordinance 1988;

"licensed premises" includes a reference to premises in relation to which an occasional licence is in force;

"mess" means a mess of members of Her Majesty's naval, military or air forces authorised by the Commander British Forces or other competent authority;

"music and dancing" includes live music, without dancing, and dancing (but not singing) to recorded music;

"occasional licence" means a licence granted under section 84;

"Part V licence" has the meaning given by section 52;

"permitted hours", in relation to any licensed premises, has the meaning given by section 42(5)(b), and in relation to a registered club means all hours whatever;

"prohibition order" means an order under section 76 of this Ordinance or section 26 of the repealed Ordinance;

"protection order" has the meaning give by section 12(1);

"registration certificate" means a certificate of registration of a club granted by the Summary Court under Part III of this Ordinance;

"residential licence" has the meaning given by section 53(2) of this Ordinance;

"restaurant licence" has the meaning given by section 53(1) of this Ordinance;

"residential and restaurant licence" has the meaning given by section 53(3) of this Ordinance;

"the repealed Ordinance" means the Licensing Ordinance (Chapter 38 of the Laws of the Falkland Islands 1950 Edition);

"publican's retail licence" means a licence of that description granted or renewed under the provisions of section 7 of the repealed Ordinance;

"secretary", in relation to a club, includes any officer of the club or other person performing the duties of the secretary and, in relation to a proprietary club where there is no secretary, the proprietor of the club;

"spouse" has the same meaning as it has in the Matrimonial Proceedings (Domestic Violence) Ordinance 1994;

"table meal" means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table;

"wholesale licence" means a licence of that description granted under section 3 of the repealed Ordinance.

(2) For the purposes of this Ordinance a person shall be treated as residing in any premises, notwithstanding that he occupies accommodation in a separate building, if he is provided with that accommodation in the course of a business of providing board and lodging for reward at those premises and the building is habitually used for the purpose by way of annex or overflow in connection with those premises and is occupied and managed with those premises.

(3) In this Ordinance -

(a) renewing a justices' licence means granting a justices' licence for any premises to the holder of a similar licence in force for those premises;

(b) transferring a justices' licence means granting it for any premises to a person in substitution for another person who holds or who has held a licence for those premises.

(4) Any reference in this Ordinance to the registered owner of premises shall be construed as a reference to any person whose name is for the time being entered in the register of licences maintained under section 21.

## PART II

### THE GENERAL LICENSING SYSTEM

3.(1) In this Ordinance "justices' licence" means a licence granted by the licensing justices under this Ordinance authorising the sale by retail of intoxicating liquor (and also, in the case of a licence granted to a club for club premises, for its supply to or to the order of members otherwise than by way of sale) and includes a Part V licence and an occasional licence. *Justices' licences.*

(2) In this Ordinance "justices' on-licence" and "justices' off-licence" means respectively -

(a) a justices' licence authorising sale for consumption either on or off the premises for which the licence is granted;

(b) a justices' licence authorising sale for consumption off those premises only.

(3) A justices' licence shall be in such form as is prescribed by regulations under this Ordinance and -

(a) in the case of a justices' on-licence may authorise the sale -

(i) of intoxicating liquor of all descriptions; or

(ii) of beer, cider and wine only; or

(iii) of beer and cider only or

(iv) of cider only; or

(v) of wine only;

(b) in the case of a justices' off-licence, may authorise the sale -

(i) of intoxicating liquor of all descriptions; or

(ii) of beer, cider and wine only.

4.(1) Subject to the payment of such fee as may be prescribed under subsection (3), a publican's retail licence which was in force immediately prior to the commencement of this Ordinance after such commencement (and unless it earlier ceases to have effect by virtue of any provision of this Ordinance including subsection (3)) continues in force and effect as if upon such commencement it had been granted as a justices' on-licence ceasing to have effect on 30th day of June next following the commencement of this Ordinance. *Licences granted under the repealed Ordinance: application of this Ordinance to premises licensed under repealed Ordinance.*

(2) Subject to the payment of such fee as may be prescribed under subsection (3), a wholesale licence that was in force immediately prior to the commencement of this Ordinance after such commencement (and unless it earlier ceases to have effect by virtue of any provision of this Ordinance including subsection (3)) continues in force and effect as if upon such commencement it had been granted as a justices' off-licence ceasing to have effect on 30th June next following the commencement of this Ordinance.

(3) The fees referred to in subsections (1) and (2) are those specified in the Schedule 1 to this Ordinance and if such fee as may be appropriate in relation to the licence in question has not then been paid by or on behalf of the holder of the publican's retail or, as the case may be, the wholesale licence, that licence shall cease to continue to have effect on the fifteenth day following the commencement of this Ordinance.

(4) Subject to the foregoing provisions of this section, all licences granted under the repealed Ordinance and held at the commencement of this Ordinance, all persons holding such a licence and all premises in respect of which such a licence was held shall, except where otherwise provided, be under and subject to the provisions of this Ordinance.

5.(1) Three or more justices of the peace, sitting as the Summary court, may exercise any of the powers conferred upon the licensing justices by this Ordinance. *Licensing justices.*

(2) The Senior Magistrate shall not be capable, as a justice of the peace, of constituting a member of the Summary Court for the purpose of the exercise by justices of the peace, sitting as the Summary Court, of any of the powers conferred upon licensing justices by this Ordinance.

(3) Nothing in the preceding provisions of this section applies to powers under this Ordinance expressed to be exercisable by a court of summary jurisdiction (that is to say, either by the Magistrate's Court or by the Summary Court).

#### *Grant of justices' licence*

6.(1) Licensing justices may grant a justices' licence to any such person, not disqualified under this or any other Ordinance for holding a justices' licence, as they think fit and proper. *Grant of justices' licence.*

(2) A justices' licence may be granted as a new licence or by way of renewal or transfer.

(3) A justices' licence granted by way of renewal shall be expressed to take effect on the 1st July next following the date on which it was granted, a justices licence granted by way of new licence or by way of transfer shall be expressed to take effect on the day it was granted and every justices' licence shall be expressed to expire on 30th June in the year next following the date on which it was granted.

(4) Schedule 2 to this Ordinance shall have effect with regard to the procedure to be followed in relation to applications for the grant of a justices' licence other than a grant by way of renewal or the grant of an occasional licence.

(5) Sections 7 to 10, 12 to 26 and 28 do not apply in respect of occasional licences.

7.(1) Subject to the provisions of Part V of this Ordinance, licensing justices granting a new justices' licence, other than a licence for the sale of wine alone may attach to it such conditions regarding the tenure of the licence and any other matters as they think proper in the interests of the public; but no payment may be required in pursuance of a condition imposed under this subsection. *New licences.*

(2) Licensing justices shall not grant a new justices' on-licence for premises unless the premises are in their opinion structurally adapted to the class of licence required.

(3) An application by the holder of a publican's retail licence or a wholesale licence for the grant of a justices' licence to have effect immediately on the expiry of the licence continued in force by the provisions of section 4(1) or (2) of this Ordinance shall be deemed not to be an application for a new licence.

(4) Except as provided by paragraph 6 of Schedule 2, the licensing justices shall not consider an application for a new justices' licence or the provisional grant of a new justices' licence until they are satisfied by evidence given on oath in open court that the notices required by paragraph 3 of Schedule 2 have been given in conformity with the requirements of that paragraph.

8.(1) Where licensing justices are satisfied, on application by a person interested in any premises which are -

*Provisional grant  
of new licence.*

(a) about to be constructed or in the course of construction for the purpose of being used as a house for the sale of intoxicating liquor (whether for consumption on or off the premises); or

(b) about to be altered or extended or in the course of alteration or extension for the purpose (whether or not they are already used for that purpose);

that the premises, if completed in accordance with plans deposited under this Ordinance, would be such that they would have granted a justices' on-licence or a justices' off-licence for the premises, they may make a provisional grant of such a licence for those premises.

(2) On an application by the holder of a provisional licence, licensing justices may consent to any modifications of the deposited plans where, in their opinion, the premises if completed in accordance with the modified plans, will be fit and convenient for their purpose.

(3) Licensing justices shall, after such notice has been given as they may require, declare a provisional grant to be final on being satisfied -

(a) that the premises have been completed in accordance with the plans deposited, or in accordance with those plans with modifications consented to under the preceding subsection; and

(b) that the holder of the provisional licence is not disqualified by this or any other Ordinance for holding a justices' licence and is in all other respects a fit and proper person to hold a justices' licence.

(4) Until a provisional grant has been declared final under subsection (3) of this section it shall not authorise the sale of intoxicating liquor upon any part of the premises or proposed premises to which it relates.

(5) If on an application for the provisional grant of a justices' licence the applicant deposits, instead of plans of the premises, a plan sufficient to identify the site of the premises together with such description of the premises as will give a general indication of their proposed site and character (with reference in particular to the sale of intoxicating liquor), then -

(a) the licensing justices shall deal with the application as if the site plan and description deposited instead where the deposited plans, and shall assume that the premises will be fit and convenient for their purpose; but



(b) any provisional grant of a licence made on the application shall become ineffective unless affirmed under subsection (6) of this section in pursuance of an application to the licensing justices made within the twelve months following the date of the grant.

(6) Where licensing justices made a provisional grant of a licence by virtue of subsection (5) of this section the holder of the provisional licence may apply for the grant to be affirmed, and shall give notice of the application and deposit plans, as if he were applying (otherwise than under that subsection) for the grant of the licence; and the licensing justices shall affirm the provisional grant if satisfied that the premises, if completed in accordance with the plans deposited, will be fit and convenient for their purpose.

9.(1) Licensing justices shall consider at a session of the Summary Court held during the second week in May of each year applications for the grant of justices' licences by way of renewal of licences which expire on the 30th June next following.

*Renewals.*

(2) If the volume of business before the licensing justices at the session of the Summary Court held in accordance with subsection (1) shall so require, the licensing justices may adjourn from day to day. In event that the licensing justices have not, by 31st May in the year in question, notified the holder of the renewal or refusal of the renewal of a justices' licence (other than one the renewal of which the holder has notified the clerk to the Summary Court that he does not intend to apply for) the holder may if he sees fit treat the renewal of the licence as having been refused on that day and appeal to the Magistrate's Court under section 17 as if such renewal had actually been refused.

(3) Unless the holder of a justices' licence or of a licence that takes effect as if it were a justices' licence and which expires on 30th June then next following notifies the clerk to the Summary Court in writing that he does not intend to apply for the grant of a justices' licence by way of renewal of that licence, he shall be deemed to have applied for that renewal and, if it is renewed, is liable to pay all fees payable on renewal of the licence.

(4) A person intending to oppose the renewal of a justices' licence or a licence which takes effect as if it were a justices' licence shall, not later than 30th April in the year in question, give notice in writing of his intention to the holder of the licence and to the clerk to the Summary court specifying in general terms the grounds of the opposition, and unless notice has been so given the licensing justices shall not entertain the objection.

(5) Evidence given on an application for the renewal of a justices' licence or in opposition thereto shall be given on oath but no evidence need be given if the renewal is not opposed unless the licensing justices otherwise direct.

10.(1) Licensing justices shall not grant a transfer of a justices' licence except in the following cases and to the following persons -

*Transfers.*

(a) where the holder of the licence has died, to his representatives or to the new tenant or occupier of the premises;

(b) where the holder of the licence becomes incapable through illness or other infirmity of carrying on business under the licence (and notwithstanding that the licence may have ceased to be in force before the transfer), to his assigns or to the new tenant or occupier of the premises;

(c) where the holder of the licence has been adjudged bankrupt or has made a voluntary arrangement with his creditors, or a trustee has been appointed under a deed of arrangement within the meaning of the Deeds of Arrangement Act 1914 for the benefit of the creditors of the holder of the licence, to the trustee of the bankrupt's estate or under the deed or to the supervisor of the voluntary arrangement or the new tenant or occupier of the premises;

(d) where the holder of the licence has given up or is about to give up, or his representatives have given up or are about to give up, occupation of the premises, to the new tenant or occupier of the premises or the person to whom the representatives or assigns have, by sale or otherwise, bona fide conveyed or made over the interest in the premises;

(e) where the occupier of the premises, being about to quit them, has wilfully given notice that he intends not to apply for renewal of the licence, to the new tenant or occupier of the premises;

(f) where the owner of the premises or some person on his behalf has been granted a protection order under section 12 of this Ordinance, to the owner or other person applying on his behalf.

(2) For the purposes of paragraph (d) of subsection (1), a person occupying premises for the purposes of carrying on business under a licence shall be treated as giving up occupation on his giving up the carrying on of the business, notwithstanding that he remains temporarily in occupation of the premises or part of them.

(3) The foregoing provisions of this section, except paragraphs (e) and (f) of subsection (1), shall apply in relation to the transfer of a provisional licence as if the licence were in force and shall, as so applying, be construed as if "occupation" included intended occupation, and similarly as respect other expressions.

(4) Except as provided by paragraph 6 of Schedule 2, the licensing justices shall not consider an application for the transfer of a justices' licence until they are satisfied by evidence given on oath in open court that the notices required by paragraph 3 of that Schedule have been given in conformity with the requirements of that paragraph.

11.(1) Without prejudice to -

(a) any provisions of this or any other Ordinance whereby a person may be disqualified for holding a justices' licence;

(b) the power of the licensing justices to refuse to grant (whether by way of new grant or by way of transfer or renewal) a justices' licence to any person on the ground -

(i) that the character of the applicant is such that, in the licensing justices' view, he is not a fit and proper person to hold such a licence;

(ii) in the case of an application for a renewal of a justices' licence, that the manner that the premises have been conducted during the period since a justices' licence was last renewed or transferred has been such that, in the licensing justices' view, the justices' licence in respect of the premises ought not to be renewed -

*Persons and premises  
disqualified for holding  
or receiving justices'  
licence.*

(aa) the following persons shall be disqualified for holding a justices' licence -

(i) every officer of the Supreme Court;

(ii) every undischarged bankrupt;

(iii) subject to subsection (3) upon whom every person, a period of imprisonment of more than twelve months in length has been imposed by any court of competent jurisdiction in the Commonwealth;

(iv) every person who at any time during the past twelve months has been the subject of a prohibition order;

(v) every person under the age of twenty-one years; and

(vi) every person of unsound mind;

(bb) premises shall be disqualified for receiving a justices' licence for twelve months reckoned from the date of the second forfeiture to occur of the forfeitures to which this sub-paragraph relates whenever within any period of two years two persons severally holding a justices' licence for the premises forfeit a justices' licence held for the premises; or

(2) A justices' licence purporting to be held by any person disqualified for holding a licence, or attached to premises disqualified for receiving a licence, shall be void.

(3) Nothing in subsection (1)(aa)(iii) shall apply in relation to a sentence of imprisonment imposed by any court outside the Falkland Islands in relation to any act or omission which, if that act or omission had been done or made in the Falkland Islands would not -

(i) have constituted an offence under the law of the Falkland Islands; or

(ii) if it constituted such an offence, under the law of the Falkland Islands be punishable by imprisonment.

#### *Protection orders*

12.(1) A person who proposes to apply for the transfer of a justices' licence for any premises may apply to a court of summary jurisdiction for the grant of an authority, in this Ordinance called a "protection order" to sell intoxicating liquor on the premises, and the court may grant the protection order if it is satisfied that the applicant is a person to whom the licensing justices could grant a transfer of the licence.

*Protection  
orders.*

(2) The authority conferred by a protection order in respect of any premises shall be the same as that conferred by the justices' licence in force (or last in force) for those premises; and, while the order is in force, the enactments relating to the sale of intoxicating liquor and to licensed premises (other than those relating to the renewal or transfer of licences or to protection orders) shall apply to the person granted the order as if he were the holder of that licence.

## (3) Where -

(a) a justices' licence for any premises is forfeited for the first time by virtue of a second or subsequent conviction under section 60 of this Ordinance;

(b) a justices' licence for any premises is forfeited by order of a court of summary jurisdiction made on complaint under section 15(3); or

(c) a justices' licence for any premises is forfeited by virtue of an order of any court under section 67(9); or

(d) the holder of a justices' licence for any premises becomes disqualified for holding a justices' licence by reason of being imprisoned as mentioned in section 11(1)(a)(iii) of this Ordinance,

a court of summary jurisdiction may grant a protection order to any owner of the premises or any other person authorised by an owner of the premises, notwithstanding the forfeiture or the previous licence holder's disqualification; but not more than one protection order may be granted under this subsection on any such forfeiture or disqualification.

(4) A protection order shall remain in force for a period of four months from the date on which it was granted, except that it shall cease to have effect before that time on the coming into force of a justices' licence granted by way of transfer of the licence for the premises or the coming into force of a further protection order for the premises.

13.(1) A protection order may be made for any premises as to supersede a previous protection order (other than one made under section 12(3) of this Ordinance), if the court making the order is satisfied that the person granted the previous protection order consents to its being superseded, or that he no longer proposes to apply for the transfer of the licence or is not qualified to do so, or that he is for any reason unable to carry on business under the protection order.

*Supplementary provisions relating to protection orders.*

(2) A court of summary jurisdiction to which application is made for a protection order may examine on oath the applicant or any other person giving evidence in connection with the application.

(3) A court of summary jurisdiction shall not grant a protection order unless the applicant has, not less than seven days before the application, given notice to the chief police officer or, in an urgent case has given the chief police officer such notice as the court considers to be reasonable.

*Control of licensing justices over structure of licensed premises*

14.(1) On an application for renewal of a justices' on-licence the licensing justices may require a plan of the premises to be produced to them and deposited with the clerk to the Summary Court, and on renewing such a licence the licensing justices may order that, within a time fixed by the order, such structural alterations shall be made in the part of the premises where intoxicating liquor is sold or consumed as they think reasonably necessary to secure the proper conduct of the business.

*Power to require structural alterations on renewal of on-licence.*

(2) The clerk to the Summary Court shall serve on the registered owner of the premises notice of any order made under this section.

(3) Where an order under this section to make structural alterations is complied with, the licensing justices shall not make a further such order within the five years following the making of the first-mentioned order.

(4) If the holder of the licence makes default in complying with an order under this section, he commits an offence and he commits a further offence for every day on which the default continues after the expiration of the time fixed by the order.

(5) A person convicted of an offence under this section shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

(6) The preceding provisions of this section apply also in relation to an application for the transfer of a licence.

15.(1) No alteration shall be made to premises for which a justices' on-licence is in force if the alteration -

*Consent required  
for certain alterations  
to on-licensed premises.*

(a) gives increased facilities for drinking in a public or common part of the premises; or

(b) conceals from observation a public or common part of the premises used for drinking;  
or

(c) affects the communication between the public part of the premises where intoxicating liquor is sold and the remainder of the premises or any street or other public way;

unless the licensing justices have consented to the alteration or the alteration is required by order of some lawful authority.

(2) Before considering an application for their consent under this section, the licensing justices may require plans of the proposed alteration to be deposited with the clerk to the Summary Court at such time as they may determine.

(3) If subsection (1) of this section is contravened, a court of summary jurisdiction may by order on complaint declare the licence to be forfeited or direct that within a time fixed by the order the premises shall be restored to their original condition.

(4) A person aggrieved by an order under subsection (3) of this section may appeal to the Supreme Court.

(5) In this section -

(a) "public part" means a part open to customers who are not residents or guests of residents;

(b) "common part" means a part open generally to all residents or to a particular class of them.

#### *Revocation of justices' licences*

16.(1) The licensing justices may revoke a justices' licence either of their own motion or on the application of any other person.

*Revocation.*

(2) The power to revoke a justices' licence under this section is exercisable on any ground on which licensing justices might refuse to renew a justices' licence or a justices' licence of that description.

(3) Licensing justices may only exercise the power conferred by this section if at least twenty-one days' notice in writing of the proposal to exercise the power, or as the case may be, to make the application, has been given to the holder of the licence and, in the case of a proposed application, to the clerk to the Summary Court, specifying in general terms the grounds on which it is proposed that the licence should be revoked.

(4) Evidence given for the purpose of proceedings under this section shall be given on oath.

(5) A decision under this section to revoke a justices' licence shall not have effect -

(a) until the expiry of the time for appealing against that decision; or

(b) if the decision is appealed against, until the appeal is disposed of.

### *Appeals*

17.(1) Subject to subsection (2) of this section, any person aggrieved by any of the following *Appeals.* decisions of licensing justices, that is to say -

(a) a decision granting or refusing to grant a new justices' licence;

(b) a decision refusing the renewal or transfer of a justices' licence;

(c) a refusal to declare a provisional grant final or to affirm a provisional grant or to give consent, on the application of the holder of a provisional licence to a modification of plans;

(d) the making of an order under section 14 of this Ordinance;

(e) the refusal of a consent required under 15 of this Ordinance;

(f) the revocation of a justices' licence; or

(g) any decision as to the conditions of a justices' licence,

may appeal to the Magistrate's Court against that decision.

(2) A person may not appeal against the grant of a justices' licence unless he has appeared before the licensing justices and opposed the grant; and no person may appeal against a refusal to attach conditions to a licence or to vary or revoke conditions previously attached, except the person (if any) whose application or request is required for the justices to have jurisdiction to attach or to vary or revoke the conditions.

(3) Where the holder of a justices' licence give notice of appeal against a refusal by licensing justices to renew that licence or a decision by the licensing justices to revoke it, the licensing justices or the Magistrate's Court may, on such conditions as they think fit or it thinks fit, order that the licence shall continue in force until the determination of the appeal notwithstanding that the appeal is not determined until after the date when the licence would otherwise cease to have effect.

18.(1) An appeal under section 17 of this Ordinance shall be commenced by notice of appeal given by the applicant to the clerk to the Summary Court within fourteen days of the decision appealed against.

(2) On an appeal against the grant of a justices' licence the applicant for the licence and not the licensing justices shall be the respondent, and notice of appeal must be given to him as well as the clerk to the Summary Court.

(3) On an appeal against a refusal to grant a justices' licence, or against a decision as to conditions given on the grant of a justices' licence, any person who appeared before the licensing justices and opposed the grant shall be the respondent in addition to the licensing justices.

(4) On an appeal against a decision to revoke a justices' licence, any person on whose application the licence was revoked shall be the respondent in addition to the licensing justices.

(5) On any appeal under section 17 of this Ordinance the clerk to the Summary Court shall transmit the notice of appeal to the clerk to the Magistrate's Court, and the appeal shall be entered and notice thereof given as in a case where the clerk to the Summary Court is required to transmit the notice of an appeal from the Summary Court; and section 109(1) of the Magistrate's Court Act 1980 in its application to the Falkland Islands shall apply accordingly with respect to the abandonment of the appeal.

(6) Where a person appears before licensing justices and opposes the grant of a justices' licence, his name and address shall be recorded by the clerk to the Summary Court and, in the event of an appeal against the refusal of the grant or against a decision as to condition given on a grant, shall be transmitted to the clerk to the Magistrate's Court with the notice of appeal.

(7) Where the same application to licensing justices gives rise to more than one appeal to the Magistrate's Court, the Senior Magistrate may give such directions as he thinks fit for the appeals to be heard together or separately, and where two or more appeals are heard together in the Magistrate's Court may deal with the costs of the appeal, so far as those costs are in its discretion, as if they were a single appeal.

(8) A justice shall not sit with the Senior Magistrate as an assessor or otherwise upon the hearing of an appeal under section 17 of this Ordinance from any decision in which the justice took part.

19.(1) The judgment of the Magistrate's Court on any appeal under section 17 of this Ordinance shall be final and no further appeal shall lie therefrom to any tribunal or authority.

*Powers of  
Magistrate's Court  
on appeals.*

(2) Where the Magistrate's Court allows an appeal against the revocation of a justices' licence which has been contained in force under section 17(4) of this Ordinance, it may order that, on payment of such fee as would have been payable if the justices had renewed the licence for a period expiring on 30th June next following the allowance of the appeal, the licence shall further continue in force until that date.

### *Fees and register*

20.(1) Subject to subsection (3) of this section, there may be charged by the clerk to the Summary Court and by the clerk to the Magistrate's Court such fees as may be provided for by Schedule 3 to this Ordinance. *Fees.*

(2) Schedule 3 may from time to time be replaced or amended by an Order made by the Governor under this subsection.

(3) This section shall not affect the court fees chargeable under the Magistrate's Courts Act 1980 in its application to the Falkland Islands or otherwise under any law of the Falkland Islands.

21.(1) The clerk to the Summary Court shall keep a register of licences in such form as may be prescribed by the Senior Magistrate, containing particulars of all justices' licences granted, the premises for which they were granted, the names of the owners of those premises, and the names of the holders of the licences. *Register of licences.*

(2) The register of licences shall be received in evidence of the matters required by this or any other Ordinance to be entered into it, and any document purporting to be certified by the clerk to the Summary Court to be a true copy of an entry in the register of licences kept by him shall be received in evidence of any such matters contained in the entry.

22.(1) The clerk to the Summary Court shall enter in the register of licence, in such form as may be prescribed by the Senior Magistrate, notice of any conviction of the holder of a justices' licence of an offence committed by him as such, including an offence against any written law of the Falkland Islands relating to the adulteration of drink; and the clerk of the court before whom the holder of a justices' licence is so convicted shall, if he is not the clerk to the Summary Court, forthwith send notice of conviction to the clerk. *Convictions forfeitures and disqualifications to be entered in register.*

(2) The clerk to the Summary court shall enter in the register of licences any forfeiture of a justices' licence, any disqualification of premises under any enactment and any other matter relating to the licences in the register.

(3) The provisions of this and the preceding section shall be in addition to those of any other enactment requiring entries to be made in the register of licences.

23.(1) Every person applying for a new justices' licence shall state the name of the person for the time being entitled to receive, either on his own account or as a mortgagee or other encumbrance in possession, the rack-rent of the premises for which the licence is granted; and the clerk to the Summary Court shall enter that name in the register of licences as the name of an owner of the premises, and shall endorse that name on the licence and on any further justices' licence granted for the premises granted by way of renewal or transfer. *Registration of owner, etc.*

(2) Whenever, to the knowledge of the person who is for the time being the holder of the licence for the premises, any change occurs in the person or persons who is or are for the time being entitled to receive the rack-rent of the premises, he shall within 28 days of becoming aware of the change give notice in writing containing sufficient particulars thereof to the clerk to the Summary court, who shall make such entries in the register as may be necessary in the circumstances of the case.



(3) The clerk to the Summary Court shall, on the application of any person whose name is not entered under the preceding provisions of this section, and who has an estate or interest in the premises, whether as owner, lessee or mortgagee, prior or paramount to that of the occupier, enter that person's name in the register as an owner of the premises, but where such an estate or interest is vested in two or more persons jointly, only one of those persons shall be registered as representing that estate or interest.

24.(1) Where the conviction of the holder of a justices' licence is entered in the register of licences under section 22(1) of this Ordinance, the clerk to the Summary Court shall serve notice of the conviction on the registered owner of the premises.

*Notice or conviction  
of licence holder  
to be given to  
registered owner.*

(2) Where the conviction of the holder of a justices' licence involves the disqualification of the licensed premises, the court before which the conviction takes place shall cause notice of the disqualification to be served on any registered owner of the premises who is not the occupier.

25.(1) The following persons shall be entitled at any reasonable time to inspect the register of licences on payment of the fee chargeable -

*Inspection of  
register.*

(a) any person whose name is entered upon the register of electors;

(b) any owner of licensed premises; and

(c) any holder of a justices' licence.

(2) Any police or customs officer shall, without payment, be entitled at any reasonable time to inspect the register of licences.

(3) In subsection (1), "the fee chargeable" means the fee specified for the purposes of that subsection in Schedule 3 to this Ordinance.

26. On an application for the grant of a justices' licence the licensing justices shall have regard to any entries in the register of licences relating to the person by whom, or for which, the licence is to be held.

*Duty of licensing  
justices to have  
regard to the  
entries in the  
register.*

#### *Miscellaneous*

27.(1) Any document purporting to be a justices' licence and -

*Proof of justices'  
licence and provisions  
as to forgery thereof.*

(a) to be signed by the majority of the justices present when the licence was granted, or

(b) to be sealed or stamped with an official seal or stamp affixed or impressed under the authority of the licensing justices and to contain a certificate signed by the clerk to the Summary Court verifying that authority,

shall be received in evidence.

(2) Any document purporting to be a copy of a justices' licence certified under the hand of the clerk to the Summary Court to be a true copy shall be received in evidence.

28.(1) On an application by the holder of a justices' on-licence or on the renewal or transfer of such a licence and at the request of the person applying for renewal or transfer, the licensing justices, if satisfied that the application or request is made with the consent of the registered owner, may vary the licence so as to add to the descriptions of intoxicating liquor so authorised to be sold on the licensed premises.

*Power to extend existing on-licence to additional types of liquor.*

(2) On the variation of a licence under this section the licensing justices shall have the like power to attach conditions as they would have if they were granting the licence (with the variation) as a new justices' on-licence, and any conditions attached may be in addition to or in substitution for any conditions previously attached to the licence.

### PART III

#### SALE AND SUPPLY OF INTOXICATING LIQUOR IN CLUB PREMISES

##### *Conditions for supply of intoxicating liquor by clubs*

29.(1) No intoxicating liquor shall on any clubs premises be supplied by or on behalf of the club to a member or guest, unless the club is registered under this Ordinance in respect of those premises or the liquor is supplied under the authority of justices' licence held by the club for the premises (but a club shall not be registered in respect of any premises in respect of which a justices' licence is held, neither shall a justices' licence be granted in respect of any premises in respect of which a club is registered under this Ordinance, nor shall a club be registered in respect of any premises if a justices' licence is held on behalf of that club in respect of any premises whatsoever).

*Conditions for  
supply of intoxicating  
liquor by clubs.*

(2) No intoxicating liquor shall, on any premises in respect of which a club is registered, be supplied by or on behalf of the club for consumption off the premises except to the member in person.

(3) Intoxicating liquor shall not be supplied by or on behalf of a registered club to a member or guest except at premises in respect of which the club is registered or any premises or place which the club is using on a special occasion for the accommodation of members and to which persons other than members and their guests are not permitted access; and at any premises or place other than the premises in respect of which the club is registered intoxicating liquor shall be so supplied only for consumption in the premises or place.

(4) A person supplying or authorising the supply of intoxicating liquor in contravention of subsection (1) of this section commits an offence and shall be liable on conviction of that offence to imprisonment for a term not exceeding six months, or to a fine not exceeding the maximum of level 4 on the standard scale, or to both, and a person supplying or obtaining intoxicating liquor in contravention of subsection (2) or (3) of this section commits an offence in respect of which he shall be liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(5) If intoxicating liquor is kept in any premises or place by or on behalf of a club for supply to members in contravention of this section, every officer of the club commits an offence unless he shows that it was so kept without his knowledge or consent and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

##### *Registered clubs*

30.(1) A club is registered, within the meaning of this Ordinance, in respect of any premises if and so long as it holds for those premises a certificate under this Part of this Ordinance of the Summary Court.

*Registration of  
clubs.*

(2) Subject to the provisions of this section and of section 37(4) of this Ordinance, a registration certificate shall have effect for twelve months, but may from time to time be renewed, and may at any time be surrendered by the club.

(3) Any renewal of a registration certificate shall be for one year from the expiry of the period for which the certificate was last issued or renewed.

(4) An application by a club for the issue or renewal of a registration certificate shall be made to the Summary Court and shall comply with the requirements of Schedule 4 to this Ordinance; and the provisions of Schedule 5 to this Ordinance shall have effect as regards the procedure for registration and related matters.

(5) Where an application for the renewal of a registration certificate is made not less than 28 days before the certificate is due to expire, the certificate shall continue in force until the application is disposed of by the Summary Court.

(6) Where an application is duly made in accordance with this Part of this Ordinance for the issue or renewal of a registration certificate, the Summary Court shall not, in the absence of an objection duly made in accordance with this Part of this Ordinance, refuse the application except as provided in the following provisions of this Ordinance; and the Summary Court shall state in writing the grounds of any refusal to issue or renew a registration certificate.

(7) Where, immediately before the commencement of this Ordinance, a club licence granted under the repealed Ordinance was held in respect of club premises, that licence shall after the commencement of this Ordinance and until 30th June next after that commencement and subject to this subsection have effect as if it were a certificate granted under this Part in respect of those premises but -

(a) such licence shall cease so to have effect on the fifteenth day after the commencement of this Ordinance if before that date there is not paid to the Financial Secretary the transitional continuation fee specified for the purpose in Schedule 1;

(b) subject to (a), where application is made under this Part on behalf of the club for a registration certificate in respect of the same premises as those to which the club licence relates and is refused such licence may under section 36(4) be continued in force after the 30th day of June next after the commencement of this Ordinance pending determination of any appeal against that refusal and as if that refusal had been a refusal to renew a registration certificate in respect of the same premises.

31.(1) A club shall only be qualified to receive a registration certificate (whether in the first instance or by way of renewal), if the issue of such a certificate would not cause a contravention of section 29(1) and under the rules of the club - *Qualifications for registration.*

(a) persons may not be admitted to membership or be admitted as candidates for membership to any of the privileges of membership, without an interval of at least two days between their nomination or application for membership and their admission; and

(b) persons becoming members without prior nomination or application may not be admitted to the privileges or membership without an interval of at least two days between their becoming members and their admission.

(2) A club shall be qualified to receive a registration certificate for any premises (whether in the first instance or by way of renewal), only if -

(a) it is established and conducted in good faith as a club and has not less than five members;

(b) intoxicating liquor is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club; and

(c) the purchase for the club, and the supply by the club, of intoxicating liquor (so far as not managed by the club in general meeting or otherwise by the general body of members) is managed by an elective committee, as defined by Schedule 6 to this Ordinance;

(d) no arrangements are or are intended to be made -

(i) for any person to receive at the expense of the club any commission, percentage or similar payment on or with reference to purchases of intoxicating liquor by the club;

(ii) for any person directly or indirectly to derive any pecuniary benefit from the supply of intoxicating liquor by or on behalf of the club to members or guests, apart from any benefit accruing to the club as a whole and apart also from any benefit which a person derives indirectly by reason of the supply giving rise or contributing to a general gain from the carrying on of the club; and

(e) no justices' licence is held in respect of the premises or any part of the premises.

(3) Subject to subsection (4) of this section, in determining whether a club is established and conducted in good faith as a club the Summary Court may have regard -

(a) to any arrangement restricting the club's freedom of purchase of intoxicating liquor; and

(b) to any provision in the rules, or arrangement, under which money or property of the club, or any gain from the carrying on of the club, is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;

(c) to the arrangements for giving members proper information as to the finances of the club, and to the books of accounts and other records kept to ensure the accuracy of that information; and to the nature of the premises occupied by the club.

(4) Where the rules of a club applying for the issue or renewal of a registration certificate conform with Schedule 6, the Summary Court shall assume, as regards any matters not raised by an objection duly made in accordance with this Part, that the club satisfied the conditions of paragraph (a) to (c) of subsection (2) and, in the case of a renewal, also the conditions of paragraph (d) of that subsection, except that the court may, if it sees fit, inquire whether there is any such arrangement or provision in the rules as is referred to in paragraph (a) or (b) of subsection (3), and, if so, whether it is such that the club ought not to be treated as established and conducted in good faith as a club.

32.(1) A registration certificate shall not be issued or renewed, not have effect, for premises disqualified by order under section 35 for use for the purposes of a registered club, nor for licensed premises, nor for premises which include or form part of premises so disqualified or licensed premises; but this subsection does not prevent the issue or renewal for any premises of a registration certificate to take effect on their ceasing to be, include or form part of premises so disqualified or licensed premises.

*Disqualification for and refusal of a club registration certificate.*

(2) The Summary Court may refuse an application for the issue or renewal of a registration certificate, if it is proved that a person who, if a certificate is granted, will or is likely to take any active part in the management of the club during the currency of the certificate, is not a fit person, in view of his known character as proved to the court, to be concerned in the management of a registered club.

(3) The Summary Court may refuse an application for the issue or renewal of a registration certificate if the premises or any premises including or forming part of them have been licensed premises within the twelve months preceding the making of the application but have ceased to be licensed premises by the forfeiture or revocation of the licence or by the refusal of an application to renew it.

33.(1) Objection to an application for the issue or renewal of a registration certificate for any premises may be made by the Attorney General, the chief police officer or by any person affected by reason of his occupation or interest in other premises and may be made on any one or more of the following grounds -

*Objection to and  
cancellation of  
registration certificate.*

(a) that the application does not give the information required by this Part or the information is incomplete or inaccurate, or the application is otherwise not in conformity with this Part;

(b) that the premises are not suitable and convenient for the purpose in view of their character and condition and the size or nature of the club;

(c) that the club does not satisfy the conditions of subsection (1) and (2) of section 31 or that the application ought to be refused under section 32;

(d) that the club is conducted in a disorderly manner for an unlawful purpose, or that the rules of the club are habitually disregarded as respects the admission of person to membership or in any other material respect;

(e) that the club premises or any of them (including premises in respect of which the club is not registered or seeking registration) are habitually used for an unlawful purpose, or for indecent displays, or as a resort of criminals or prostitutes, or that in any such premises there is frequent drunkenness, or there have within the preceding twelve months been illegal sales of intoxicating liquor, or persons not qualified to be supplied with intoxicating liquor there are habitually admitted for the purpose of obtaining it;

and the Summary Court, if satisfied that the ground of objection is made, may refuse the application and, in the case of an objection made on any of the grounds mentioned in paragraphs (a) to (c) of this subsection, shall do so unless the case of an objection made on the ground mentioned in paragraph (b) the court thinks it reasonable not to do so, having regard to any steps taken or proposed to be taken to remove the ground of objection.

(2) A complaint against a club for the cancellation of a registration certificate held by the club for any premises may be made in writing to the Summary Court by the Attorney General or the chief police officer, and may be made on any ground on which objection might be made under paragraph (c), (d) or (e) of the preceding subsection to an application for the renewal of the certificate; and the court is satisfied that on such an objection the application for renewal must or ought to be refused on that ground, shall cancel the certificate.

34.(1) Where a club applies for the issue of a registration certificate in respect of any premises, the chief police officer and any police officer authorised in writing by the chief police officer, the chief fire officer and any fire officer authorised in writing by the chief fire officer may, on at least 48 hours' notice to the person signing the application, and if the premises are not occupied by the club, to the occupier, may enter and inspect the premises at any reasonable time on any day, not more than 14 days after the making of the application, as may be specified in the notice.

*Inspection of  
premises before  
first registration.*

(2) If on application by the chief police officer or the chief fire officer to the Summary Court it appears to the court that after reasonable steps had been taken by or on behalf of the applicant to inspect the premises in good time under subsection (1) of this section, but it was not possible to do so within the time allowed, the court may extend the time allowed.

(3) Where a club applies for the renewal of a registration certificate in respect of different, additional or enlarged premises, the foregoing subsections shall have effect as if the application were, so far as relates to those premises, an application for the issue of a registration certificate.

(4) Any person obstructing a police officer or a fire officer in the exercise of any power conferred by this section commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

35.(1) Subject to the following provisions of this section, where a club is registered in respect of any premises, and the Summary Court cancels or refuses to renew the registration certificate for those premises on any ground mentioned in paragraph (c), (d) or (e) of section 33(1), the court may order that for the period specified in the order the premises shall not be occupied and used for the purpose of any registered club.

*Power to order  
disqualification  
of premises.*

(2) The period specified in an order under this section shall not exceed one year unless the premises have been subject to a previous order under this section, and shall not in any case exceed five years.

(3) At any time while an order under this section is in force, the Summary Court, on complaint being made by any person affected by the order, may revoke the order or vary it by reducing the period of disqualification specified in it.

(4) Any summons granted on a complaint under subsection (3) shall be served on the Attorney General and on the chief police officer.

36.(1) Where any alteration is made in the rules of a club registered in respect of any premises, the secretary of the club shall give written notice of the alteration to the chief police officer and to the Attorney General.

*Notification of  
alteration in  
rules of  
registered club.*

(2) If the notice required by this section is not given within 28 days of the alteration, the secretary commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

37.(1) Notwithstanding anything in any enactment, where a club is registered in respect of any premises, the sale and supply of intoxicating liquor to members of the club and their bona fide guests is permitted upon those premises at any time and the authority of a justices' licence is not required for such sale and supply.

*Sale of intoxicating  
liquor by registered  
clubs.*

(2) Part VII applies to premises in respect of which a club is registered under this Part as if those premises were premises in respect of which a justices' on-licence were in force and as if the officers of the club were joint holders of such a licence and the officers of the club shall be liable to prosecution and conviction of any offence and punishment in respect thereof under those sections in the same way and to the same extent as they would have been if the premises had been so licensed and they and each of them were a licensee under the licence and servants and agents of the club or officers of the club shall be so liable in the same way and to the same extent as they would be under that Part if they were the servants or agents of a licensee under a justices' on-licence held in respect of the same premises.

(3) Nothing in subsections (1) and (2) applies in respect of any premises belonging to a club and in respect of which a justices' licence is for the time being in force.

(4) Except that no condition inconsistent with subsection (1) of this section shall be imposed, the Summary Court, on the issue or renewal of a registration certificate for any premises may attach such conditions as it thinks fit.

38.(1) A club may appeal to the Magistrate's Court against any decision of the Summary Court refusing to issue or renew a registration certificate, or cancelling a registration certificate, or against any decision of the Summary Court as to the conditions of a registration certificate, or against any order of the Summary Court under section 36 of this Ordinance.

*Appeals to the  
Magistrate's Court.*

(2) Where the decision appealed against relates to two or more premises, the appeal may be brought in respect of any of those premises without others.

(3) Where the decision appealed against was given on an application to the Summary Court by the club, no person shall be made a party to the appeal except a person who appeared before the Summary Court to make an objection to or representations on such application, but any such person shall be a party to the appeal whether or not his objection related to the same premises as the appeal.

(4) Where the Summary Court refuses an application for the renewal of a registration certificate, that court or the Magistrate's Court may, on such conditions as it thinks fit, order that the certificate (as in force at the time of the application) shall continue in force pending the determination of an appeal against the refusal, or pending the consideration of the question of bringing such an appeal.

39.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for believing -

*Search warrants.*

(a) that there is ground for cancelling in whole or in part a registration certificate held by a club, and that evidence of it is to be obtained at the club premises or any of them; or

(b) that intoxicating liquor is sold or supplied by or on behalf of a club in a club premises for which the club does not hold a registration certificate or a justices' licence, or is kept in any club premises for sale and supply in contravention of this Part or any provision of this Ordinance applied by this Part;

he may issue a search warrant under his hand to a police officer authorising him at any time or times within one month from the date of the warrant to enter the club premises, or any of them, by force if need be, and search them and seize any documents relating to the business of the club.



*Licensing of club premises*

40.(1) Any justices' licence for club premises which is to be granted to a club, shall be taken out or granted in the name of one or more officers of the club nominated for the purpose by or on behalf of the club; and in relation to any premises for which a licence is so taken out or granted - *Licensing of club premises.*

(a) the rights and obligations of the holder of the licence under the enactments relating to the sale of intoxicating liquor and to licensed premises shall attach to the person or person in whose name or names the licence is, and those enactments shall apply as if he or they were, as holder or holders of the licence, in occupation of the premises;

(b) for the purposes of those enactments any supply of intoxicating liquor by or on behalf of the club to a member as such or to any person on the order of a member shall be treated as a sale of intoxicating liquor to the member and as a supply of the intoxicating liquor to the person to whom it is actually supplied by or on behalf of the club.

(2) Where a justices' licence granted for club premises is subject to conditions forbidding or restricting the sale of intoxicating liquor to non-members, the Summary Court may insert in the licence a provision relieving the holder or holders, if and so far as the court thinks fit in view of those conditions, from compliance with any provision of this Ordinance which requires notices to be displayed in or on licensed premises but does not apply to premises in respect of which a club is registered.

**PART IV**

**PERMITTED HOURS**

*Prohibition of sale, etc of intoxicating liquor outside permitted hours*

41.(1) Subject to the provisions of this Ordinance, no person shall, except during the permitted hours - *Prohibition of sale, etc of intoxicating liquor outside permitted hours.*

(a) himself or by his employee or agent sell or supply to any person in licensed premises any intoxicating liquor, whether to be consumed on or off the premises;

(b) consume in or take from the premises any intoxicating liquor.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale.

(3) This section applies in relation to intoxicating liquor sold in any premises under the authority of an occasional licence in the same way as it does in respect of premises licensed under a justices' on-licence.

*General provisions as to permitted hours*

42.(1) Subject to the following provisions of this Ordinance, the permitted hours in licensed premises are - *Permitted hours in licensed premises.*

- (a) on weekdays, except Fridays and Saturdays and Christmas Day, the hours from ten in the morning to eleven in the evening;
  - (b) on Fridays and Saturdays, except Christmas Day and Good Friday, the hours from ten in the morning to half past eleven in the evening;
  - (c) on Sundays, Christmas Day and Good Friday, twelve noon to two in the afternoon and seven in the evening to half past ten in the evening.
- (2) The permitted hours set forth in subsection (1) may be amended by Order made by the Governor under this subsection amending the said subsection (1).
- (3) In premises licensed only for the sale of intoxicating liquor for consumption off the premises the permitted hours on weekdays, other than Christmas Day and Good Friday, shall begin at seven in the morning but otherwise be the same as those specified in subsection (1).
- (4) The permitted hours under a Part V licence shall end on the evening of every day one half of an hour later than those applying under this section in respect of premises for which a justices' on-licence is held.
- (5) In this Ordinance -

(a) "the general licensing hours" means the hours specified in paragraph (a) to (c) of subsection (1); and

(b) references to "the permitted hours" shall, except in so far as the context otherwise requires, be construed in relation to any licensed premises as meaning the hours between which, by virtue of this Ordinance and any conditions attached to any justices' licence applying to those premises, intoxicating liquor can lawfully be sold or supplied in those premises.

#### *Exceptions*

43.(1) Where intoxicating liquor is supplied in any premises during the permitted hours, section 42 does not prohibit or restrict - *Drinking-up time and other exceptions.*

(a) during the first twenty minutes after the end of any period forming part of those hours, the consumption of the liquor on the premises, nor, unless the liquor was supplied or is taken away in an open vessel, the taking of the liquor from the premises; or

(b) during the first half hour after the end of such a period, the consumption of the liquor on the premises by persons taking meals there, if the liquor was supplied as an ancillary to their meals.

(2) Section 42 does not prohibit or restrict -

(a) the sale or supply to, or consumption by, any person of intoxicating liquor in any premises in which he is residing;

(b) the ordering of intoxicating liquor to be consumed off the premises, or the despatch by the vendor of liquor so ordered;

(c) the sale of intoxicating liquor to a trader for the purposes of his trade, or to a registered club for the purposes of the club; or

(d) the sale or supply of intoxicating liquor to any canteen or mess.

(3) Section 42 does not prohibit or restrict as regards licensed premises -

(a) the taking of intoxicating liquor from the premises by a person residing there; or

(b) the supply of intoxicating liquor for consumption on any premises licensed under a residential licence to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of intoxicating liquor by persons so supplied.

(4) In subsection (2), as it applies to licensed premises, and in subsection (3), references to persons residing on the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

#### *Special hours certificates*

44.(1) This section applies to licensed premises, or any part of such premises, during the time that there is in force for the premises a special hours certificate granted under the following provisions of this Part;

*Permitted hours  
where special hours  
certificate in  
force.*

(2) Subject to the following provisions of this section, the permitted hours on weekdays in any premises or part of premises to which this section applies shall extend to half past twelve in the morning following, except that -

(a) the permitted hours shall end at the time at which music and dancing end on any day on which music and dancing end earlier than half past twelve in the morning;

(b) the permitted hours shall not be extended by virtue of this section on any evening when music and dancing is not provided.

(3) Where the permitted hours are fixed by this section, section 43(1) shall apply to the consumption of liquor on the premises as if in paragraph (a) thereof half an hour were substituted for twenty minutes and paragraph (b) thereof were omitted.

(4) Where a special hours certificate for any premises or part of premises is limited to particular days in every week, this section does not affect the permitted hours in the premises on days on which the certificate does not apply.

45.(1) If, on an application made to the licensing justices with respect to licensed premises, the justices are satisfied -

*Special hours  
certificates for  
licensed premises.*

(a) that the premises are suitable for music and dancing or for the provision of entertainment by live music; and

(b) that the whole or part of the licensed premises is bona fide used, or intended to be used, for the purpose of providing for persons resorting to the premises music and dancing, or such entertainment, and substantial refreshment to which the sale of intoxicating liquor is ancillary,

the licensing justices may grant, with or without limitations, a special hours certificate for the premises or, if they are satisfied that part only of the premises is used or intended to be used as mentioned in paragraph (b) of this section, for that part.

(2) The licensing justices may grant a certificate under subsection (1) limited in any of the following ways -

(a) to particular days of the week;

(b) to particular periods of the year;

(c) so as to exclude any particular day or days of religious or national significance.

(3) Where a special hours certificate is subject to limitations under this section, the licensing justices may on the application of the licensee vary any limitation to which it is so subject.

(4) For the purposes of this Part, music is not provided for persons resorting to the premises or part of the premises in question by reproducing music which has been recorded (to which persons resorting to the premises may sing) but nothing in this subsection prevents the grant of a special hours certificate in respect of the provision of recorded music for dancing if the premises are structurally and otherwise suitable for dancing and bona fide used or intended to be used for that purpose.

(5) There is payable in relation to the grant a special hours certificate the fee specified in relation thereto in Schedule 3.

46.(1) At any time while a special hours certificate for any premises or part of any premises is in force, the chief police officer may apply to the licensing justices for the revocation of the certificate on the ground that, while the certificate has been in force -

*Revocation of  
special hours  
certificate.*

(a) the premises have not, or the part has not, been used as mentioned in section 44;

(b) a person has been convicted of having at those premises or that part committed an offence under section 41,

or that on the whole the persons resorting to the premises or part are there at time when the sale or supply of intoxicating liquor there is lawful by virtue only of the certificate, for the purpose of obtaining intoxicating liquor rather than for the purpose of dancing or the other enjoyment of music (including singing) or the obtaining of refreshments other than intoxicating liquor; and if the licensing justices are satisfied that the ground of the application is made out, they may revoke the licence.

(2) At any time while a special hours certificate for any premises or part of any premises is in force, the chief police officer may apply to the licensing justices for the revocation of the licence on the ground that the revocation is expedient by reason of the occurrence of disorderly or indecent conduct in the premises or the part thereof to which the certificate relates; and if the licensing justices are satisfied that the ground of the application is made out, they shall revoke the certificate.

47.(1) Subject to subsection (2), any person aggrieved by a decision of the licensing justices -

*Special hours  
certificates: appeals.*

- (a) not to grant a special hours certificate under section 45(1);
- (b) to revoke or not to revoke a special hours certificate on an application under section 46(1) or (2);
- (c) to attach or not to attach limitations under section 45(2);

may appeal to the Magistrate's Court against that decision.

(2) Only the Attorney General or the chief police officer may appeal against a decision not to revoke a special hours certificate under section 46(1) or (2).

(3) A person other than the appellant shall be a party to an appeal under this section if, and only if, he has appeared before the licensing justices and made representations in relation to the application to which the decision appealed against relates.

(4) The licensing justices shall have the same powers to make an order for the payment of costs on the abandonment of an appeal under this section as the Summary Court has on the abandonment of appeal to which section 109 of the Magistrate's Court Act 1980 in its application to the Falkland Islands relates.

48.(1) A court of summary jurisdiction may in respect of a special occasion, subject to this section, grant to the holder of a justices' on-licence an extension of permitted hours at the premises to which the licence relates.

*Extensions of permitted  
hours on special  
occasions.*

(2) The court shall not grant an extension of permitted hours under subsection (1) -

- (a) unless it is satisfied that the occasion is a special occasion in respect of which it is reasonable to grant such an extension;
- (b) unless such notice of the application has been given to the clerk to the court and to the chief police officer as the court thinks reasonable in all the circumstances (and unless the court for special reason decides otherwise in the circumstances of any particular case, seven days' notice shall be required).

(3) The chief police officer shall be entitled to be heard either in person or by his representative in objection to the grant of an extension of permitted hours under this section.

(4) There shall be payable in respect of every extension of permitted hours the fee specified in Schedule 3 in relation thereto.

(5) For the purposes of this section, a special occasion is an occasion -

- (a) which creates a potential demand for liquor by those participating in it;
- (b) which is not an occasion which regularly occurs or recurs throughout the year; and
- (c) is not a function which, while it may in itself have the character of a special occasion, is a kind of function which occurs with such frequency as to lose its special character,

and by way of example of the application of the foregoing rules, if the court sees fit, it may grant an extension of permitted hours in respect of Christmas Eve and New Year's Eve, but shall not do so in respect of every Friday evening or in respect of regularly occurring functions such as a weekly darts match (although, if it sees fit, it may do so on the occasion of the final of a darts competition).

#### *Parties organised for gain*

49.(1) It is unlawful either before the beginning or after the end of general licensing hours to supply to consume intoxicating liquor at any party organised for gain and taking place in premises kept or habitually used for the purpose of parties so organised at which intoxicating liquor is consumed; but this subsection does not prohibit anything done at a party taking place in licensed premises or at any party for which an occasional licence has been granted nor anything done as part of the activities of a canteen or mess at the canteen or mess in question.

*Prohibition of consumption of intoxicating liquor outside general licensing hours at parties organised for gain.*

(2) If any person -

- (a) supplies intoxicating liquor in contravention of subsection (1) of this section;
- (b) being the occupier of any premises permits them to be used for a party, and that subsection is contravened at the party;
- (c) being a person concerned in the organisation of a party, permits any person to supply or consume intoxicating liquor at the party in contravention of that subsection; or
- (d) being a person licensed to sell intoxicating liquor, delivers such liquor before the beginning or after the end of the general licensing hours to any premises habitually used as mentioned in that subsection or permits it to be so delivered,

he commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding three months or a fine not exceeding the maximum of level 4 on the standard scale.

(3) Any person who consumes intoxicating liquor in contravention of subsection (1) of this section commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(4) For the purposes of this section, a party shall be deemed to have been organised for gain if any pecuniary advantage accrued or was intended to accrue to any person concerned in its organisation as a result of the party; and in determining whether any such advantage so accrued or was intended to accrue no account shall be taken of any expenditure incurred in connection with the party; but a party shall not be deemed to have been organised for gain by reason only that any person concerned in its organisation took part or intended to take part in the playing of any game, if the arrangements were such as to give him no greater chance of winning than any other person.

(5) For the purposes of this section, a person shall be deemed to have been concerned in the organisation of a party if he took any part in procuring the assembly of the party or in acting as host or assisting the host at the party.

(6) Nothing in this section shall affect the delivery or supply of intoxicating liquor to, or the consumption of intoxicating liquor by, a person in premises in which he is for the time being residing; and in determining for the purpose of this section whether a party is being held in any premises, or whether any premises are kept or habitually used for the purpose of holding parties, the presence of any persons habitually residing in the premises shall be disregarded.

50.(1) If a justice of the peace is satisfied by evidence given on oath that there is reasonable ground for believing that any premises are kept or habitually used for the holding of parties at which the provisions of section 49(1) are contravened, he may issue a search warrant under his hand to a police officer authorising him at any time or times within one month from the date of the warrant to enter those premises, which shall be named in the warrant, by force if need be, and search them and to seize and remove any intoxicating liquor found there that the police officer has reasonable grounds for supposing to be on the premises for the purpose of being supplied or consumed in contravention of the provisions of that section and also to seize and remove any other thing the police officer has reasonable grounds to suppose may be evidence of an offence under that section having been committed.

*Supplemental provisions in relation to parties organised for gain.*

(2) If any person found on any premises in which intoxicating liquor is seized under subsection (1), on being asked by a police officer for his name and address refuses to give them or gives a false name and address, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 2 on the standard scale.

(3) If any person is convicted of an offence under section 49 in respect of the premises in which any intoxicating liquor is seized under this section, the liquor so seized and the vessels containing it shall be forfeited to the Crown.

51. Nothing in this Ordinance shall be taken to require licensed premises to be open for the sale of intoxicating liquor or for any other purpose during the permitted hours, except in so far as they required by any conditions attached to the licence.

*Opening during permitted hours not obligatory.*

## PART V

### RESTAURANTS AND GUEST HOUSES

52.(1) In this Ordinance, "Part V licence" means a justices' on-licence which -

(a) is granted for such premises and is subject to such conditions as are mentioned in section 53;

(b) is not subject to any other condition except -

(i) conditions required to be attached to it under section 54 or 55; or

(ii) in the case of a licence for club premises, conditions prohibiting or restricting sales of intoxicating liquor to non-members.

*Provisions as to the grant of certain licences for restaurants, guest houses, etc.*

(2) A Part V licence is a restaurant licence, a residential licence or a residential and restaurant licence, according as it falls within subsection (1), (2) or (3) of section 53.

(3) Licensing justices shall not refuse an application duly made for the grant of a new Part V licence or for the renewal or transfer of a Part V licence, except on one or more of the grounds specified in section 56; but this subsection shall not affect the operation of any enactment relating to the disqualification of persons or premises for holding or receiving a justices' licence.

(4) A Part V licence may be granted for wine alone.

(5) Subject to the payment not later than the fifteenth day after the commencement of this Ordinance of such fee as may be prescribed under subsection (6), any restaurant licence or residential licence that was in force immediately before the commencement of this Ordinance and which was granted under section 13A or section 13B (as the case may be) of the repealed Ordinance shall after such commencement (and unless it earlier ceases to have effect under any provision of this Ordinance including subsection (6)) continue in force and effect as if upon such commencement it had been granted as a Part V licence ceasing to have effect on 30th June next following the commencement of this Ordinance.

(6) The fee specified in subsection (5) is that specified in relation to the continuation of such licences in Schedule 1 and if such fee has not then been paid by or on behalf of the holder of the licence, that licence shall cease to continue to have effect on the fifteenth day following the commencement of this Ordinance.

(7) Subject to the foregoing provisions of this section, all provisions of this Ordinance applicable to or in respect of a Part V licence granted under this Ordinance shall apply to or in respect of a licence continued in force under subsection (5) of this section.

53.(1) In this Ordinance, "restaurant licence" means a Part V licence which -

*Conditions attached  
to Part V licences  
for restaurants,  
guest houses etc.*

(a) is granted for premises structurally adapted and bona fide used, or intended to be used, for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises; and

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.

(2) In this Ordinance, "residential licence" means a Part V licence which -

(a) is granted for premises bona fide used or intended to be used for the purpose of habitually providing for reward board and lodging, including breakfast and at least one other of the customary main meals;

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons residing there or their private friends bona fide entertained by them at their own expense, and for consumption by such a person or his private friend so entertained by him either on the premises or with a meal supplied at but to be consumed off the premises.

(3) In this Ordinance, "residential and restaurant licence" means a Part V licence which -

(a) is granted for premises falling within both paragraph (a) of subsection (1) and paragraph (a) of subsection (2); and

(b) is subject to the condition that intoxicating liquor shall not be sold or supplied otherwise than as permitted by the conditions of a restaurant licence or by those of a residential licence.



(4) The conditions as to the sale and supply of intoxicating liquor set out in subsection (1)(b) and (2)(b) of this section -

(a) do not extend to the supply for consumption on the premises of intoxicating liquor (whether inside or outside the permitted hours) in any case where section 41 does not prohibit liquor being so supplied outside the permitted hours;

(b) do not extend to the sale or supply of liquor on the premises under the authority of an occasional licence; but

(c) subject to the foregoing do extend to all sales of intoxicating liquor on the premises, whether or not requiring the authority of a justices' licence.

(5) Paragraphs (a) to (c) of subsection (4) apply also to any conditions which are in the same terms as those set out in subsection (1)(b) or subsection (2)(b) of that section but are attached to a justices' licence which is not a Part V licence.

(6) It shall be an implied condition of every Part V licence that suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served in the licensed premises.

54.(1) Where licensing justices grant a new residential licence or residential and restaurant licence, they shall, unless it appears to them that in the circumstances of the particular case there is good reason not to do so, attach to the licence a condition that there shall be afforded in the premises, for persons provided with board and lodging for reward, adequate sitting accommodation in a room not used or to be used for sleeping accommodation, for the service of substantial refreshment or for the supply or consumption of intoxicating liquor.

*Requirement of sitting accommodation for residential licence or residential and restaurant licence.*

(2) Where such a licence is granted without the condition required by subsection (1) the licensing justices shall, on the renewal and transfer of the licence, attach the condition if by reason of any change of circumstances it appears to them that the requirement ought no longer to be dispensed with.

55. Licensing justices shall not attach to any new justices' on-licence -

*Restrictions concerning justices' licences for restaurants and guest houses etc.*

(a) any conditions calculated to restrict the sale or supply of intoxicating liquor to a sale or supply in connection with the service of meals, other than such condition as is required to be attached to a restaurant licence (modified, if need be, to allow for any sale or supply which it is desired to authorise in addition to the sale or supply in connection with the service of table meals); or

(b) any conditions calculated to restrict the sale or supply to persons residing in the licensed premises, other than such condition as is required to be attached to a residential licence (modified, if need be, to allow for any sale or supply which it is desired to authorise in addition to a sale or supply to persons residing in the premises).

56.(1) Licensing justices may refuse an application for the grant of a Part V licence on any of the following grounds -

*Grounds for refusing applications for Part V licences.*

(a) that the applicant is not of full age, or is not in any other respect a fit and proper person to hold one;

(b) that the premises do not fall within paragraph (a) of subsection (1), (2) or (3), as the case may be, of section 53, or are not suitable and convenient for the use contemplated by that paragraph, having regard to their character and condition, to the nature and extent of the proposed use and (where it applies) to the condition as to sitting accommodation required by section 54 or to the consumption of intoxicating liquor for consumption as an ancillary to a table meal only;

(c) that within the twelve months preceding the application -

(i) a justices' on-licence for the premises has been forfeited; or

(ii) the premises have been ill conducted while a justices' on-licence was in force for them; or

(iii) the condition as to sitting accommodation by section 54 has been habitually broken while a residential licence or a residential and restaurant licence, or other licence with the like condition, was in force for the premises; or

(iv) the condition implied by section 53(6) as to the availability of beverages other than intoxicating liquor has been habitually broken while a Part V licence, or other licence with the like condition, was in force for the premises.

(2) Licensing justices may also refuse an application for the grant of a restaurant licence or residential and restaurant licence on the ground that the trade done in the premises in providing refreshment to persons resorting there (but not provided with board and lodging) does not habitually consist to a substantial extent in providing table meals of a kind to which the consumption of intoxicating liquor might be ancillary.

(3) Licensing justices may also refuse an application for the grant of a Part V licence on the ground that the sale or supply of intoxicating liquor on the premises is undesirable either because it would be by self-service methods, that is to say methods allowing a customer to help himself on payment or before payment, or because -

(a) in the case of a residential or a residential and restaurant licence, a large proportion of the persons provided with board and lodging for reward;

(b) in the case of a restaurant licence or a residential and restaurant licence, a large proportion of the persons resorting to the premises but not provided with board and lodging.

is habitually made up of persons under the age of eighteen who are not accompanied by others (whether parents or persons of full age) who pay for them.

(4) If on an application for the grant of a Part V licence for any premises it is made to appear to the licensing justices that -

(a) the chief police officer or chief fire officer desired to inspect the premises in connection with the application either personally or through a designated police officer or, as the case may be, fire officer; and

(b) that after reasonably steps had been taken to obtain access to the premises for the purpose of such inspection, it was not possible to inspect the premises,

the licensing justices may refuse the application.

57.(1) Where a person is convicted of an offence to which this section applies committed by him in respect of premises for which, at the time of the offence, he held a Part V licence, the court by or before which he is convicted may make a disqualification order under this section.

*Power of court to disqualify for Part V licences on conviction of certain offences.*

(2) A disqualification order may, at the discretion of the court, be either -

(a) an order disqualifying the person convicted for such period as may be specified in the order (but not exceeding five years from the date on which the order comes into force) from holding or obtaining Part V licences;

(b) an order prohibiting such licences being held or granted within such period as aforesaid by or to any person in respect of the premises at which the offence in question was committed; or

(c) an order imposing both such a disqualification and such a prohibition;

and, if such an order is made, any licence within the disqualification or prohibition, if previously obtained, shall be forfeited or, if subsequently obtained, shall be null and void.

(3) This section applies to the following offences, that is to say -

(a) offences under sections 61 and 71;

(b) offences under section 82 and any other offence of permitting the premises to be used as a brothel; and

(c) any offence under section 83(1) and, without prejudice to the foregoing so far as it relates to games of chance, any offence an element of which is permitting any unlawful game of chance to be played on the premises.

58.(1) The court making a disqualification order under section 57 may, on such conditions as it thinks just, suspend the operation of the order with a view to enable a licence to remain in force pending an appeal against the conviction or against the making of the disqualification order, or pending the consideration of the question of bringing such an appeal; but, unless so suspended, a disqualification order under the section shall come into force on the day it is made.

*Supplementary provisions as to disqualification orders.*

(2) A court shall not make a disqualification order containing a prohibition on the holding or grant of licences in respect of premises specified in the order, unless an opportunity has been given to any person interested in the premises and applying to be heard by the court to show cause why the order should not be made.

(3) At any time when such a disqualification order is in force, a court of summary jurisdiction, on complaint made by any person affected by the order, may revoke the order or vary it by reducing any period of disqualification or prohibition specified in the order; and any person who has made a complaint under this section and is aggrieved by the decision of the court on the complaint may appeal to the Supreme Court.

(4) Where on a complaint made under subsection (3) the relief asked for is or includes the revocation or variation of a prohibition imposed by the order on the holding or grant of licences in respect of any premises, any summons granted on the complaint shall be served on the chief police officer.

(5) References in any enactment, including this Ordinance, to a person disqualified for holding a justices' licence, or to premises disqualified for receiving a justices' licence shall for the purpose of Part V licences apply, but for other purposes shall not apply, to persons or premises disqualified only by reason of a disqualification order under section 57 of this Ordinance.

(6) The powers of the court under section 57 may be exercised on a conviction in addition to any other powers which the court is required to exercise or does exercise on the conviction.

## PART VI

### GENERAL PROVISIONS REGULATING SALE, ETC, POSSESSION AND DELIVERY OF INTOXICATING LIQUOR

59.(1) Nothing in this Ordinance -

*Exemption in relation to messes and canteens.*

(a) requiring the authorisation of a justices' licence for the sale or supply of intoxicating liquor; or

(b) restricting the sale or supply of intoxicating liquor to permitted hours or general licensing hours, or

(c) requiring intoxicating liquor to be paid for before or at the time it is delivered,

applies to any mess or canteen authorised by the Commander British Forces or in relation to any intoxicating liquor sold or supplied in any such mess or canteen.

(2) Sections 64, 67, 73 to 78 and 80 apply in relation to any such mess or canteen as they apply in respect of premises licensed under a justices' on-licence and as if the person or persons for the time being managing the same were the licensee under such a licence and every other person selling or supplying intoxicating liquor in any such mess or canteen were a servant or agent of such a licensee.

60.(1) Subject to this Ordinance, if any person -

*Selling liquor without a licence.*

(a) sells or exposes for sale by retail any intoxicating liquor without holding a justices' licence authorising the sale of that liquor; or

(b) holding a justices' licence sells or exposes for sale by retail any intoxicating liquor except at the place for which that licence authorises the sale of that liquor.

he commits an offence under this section.

(2) Where intoxicating liquor is sold in contravention of this section on any premises, every occupier of the premises who is proved to have been privy or consenting to the sale commits an offence under this section.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

(4) The holder of a justices' licence shall, on his second or subsequent conviction of an offence under this section, forfeit the licence.

(5) The court by or before which a person is convicted of an offence under this section committed after a previous conviction of such an offence may order him to be disqualified for holding a justices' licence -

(a) on a second conviction, for a period not exceeding five years;

(b) on a third or subsequent conviction, for any term of years or for life.

(6) The court by or before the holder of a justices' licence is convicted of an offence under this section may declare all intoxicating liquor in his possession, and the vessels containing it, to be forfeited to the Crown.

61.(1) If the holder of a justices' on-licence knowingly sells or supplies intoxicating liquor to any person to whom he is not permitted by the conditions of his licence to sell or supply it commits an offence under this section.

*Selling liquor in breach of conditions of licence.*

(2) If the holder of a Part V licence knowingly permits intoxicating liquor sold in pursuance of the licence to be consumed on the licensed premises by persons for whose consumption there he is not permitted by the conditions of the licence to sell it, he commits an offence under this section.

(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

62. If without reasonable excuse the holder of a justices' licence has in his possession on the premises in respect of which the licence is in force any kind of intoxicating liquor which he is not authorised to sell, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale and shall forfeit the liquor and the vessels containing it.

*Keeping on premises of liquor of a kind not authorised by licence.*

63.(1) Where a person, having purchased intoxicating liquor from the holder of a justices' licence which does not cover the sale of that liquor for consumption on the premises, drinks the liquor -

*Penalty for breach of terms of off-licence.*

(a) in the licensed premises;

(b) in premises which are near to or adjoin the licensed premises and which belong to the holder of the licence or are under his control or used by his permission, or

(c) on a highway adjoining or near those premises,

then if the drinking is with the privity or consent of the holder of the licence, the holder of the licence commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(2) If the holder of a justices' off-licence, with intent to evade the terms of the licence, takes or suffers any person to take, any intoxicating liquor from the licensed premises for the purpose of its being sold on the holder of the licence's account or for his benefit or profit, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(3) For the purposes of subsection (2), if liquor is taken for the purpose of its being drunk in any house, tent, shed or other building belonging to the holder of the licence, or hired used or occupied by him, the burden of proving that he did not intend to evade the terms of the licence shall lie upon him.

(4) If the holder of a justices' off-licence sells any spirits or wine in an open vessel, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

64. If any person in licensed premises, himself or by his servant or agent sells or supplies to another person as the measure of intoxicating liquor for which he asks an amount exceeding that measure, he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

*Supply of over-measure prohibited.*

65.(1) Subject to subsection (2), a person shall not in any licensed premises -

*Restriction on credit sales.*

(a) himself or by his servant or agent sell or supply intoxicating liquor for consumption on the premises; or

(b) consume intoxicating liquor,

unless it is paid for before or at the time it is sold or supplied; and any person who contravenes this subsection commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

(2) Subsection (1) does not apply -

(a) if the liquor is sold or supplied for consumption at a meal supplied at the same time, is consumed with the meal and paid for together with the meal; or

(b) if, in the case of licensed premises, the liquor is sold or supplied for consumption by a person residing in the premises or his guests and is paid for together with his accommodation.

## PART VII

PROTECTION OF PERSONS UNDER EIGHTEEN AND OTHER PROVISIONS AS TO  
CONDUCT OF LICENSED PREMISES

66.(1) Subject to subsections (3) to (5) and to section 67, the holder of justices' licence commits an offence if he allows a person under the age of eighteen to be in the bar of the licensed premises during the permitted hours.

*Children and  
young persons  
prohibited from  
bars.*

(2) Subject to subsections (4) and (5) and to section 69, a person under the age of eighteen shall not enter or attempt to enter the bar of licensed premises during the permitted hours and no person shall cause or procure or attempt to cause or procure any person under the age of eighteen years to be in the bar of licensed premises during the permitted hours and a person who contravenes this subsection commits an offence.

(3) The holder of the justices' licence shall not be convicted of an offence under subsection (1) if he proves either -

(a) he exercised all due diligence to prevent the person under the age of eighteen from being admitted to the bar; or

(b) that the person under the age of eighteen years had apparently attained that age.

(4) No offence under subsection (1) or (2) is committed if the person under the age of eighteen years -

(a) is the licence-holder's child, or

(b) resides in the premises, but is not employed there, or

(c) is in the bar only for the purpose of passing to or from some part of the premises which is not a bar to or from which there is no other convenient means of access or egress.

(5) Subsection (1) does not apply to premises in Camp exempted by order of the licensing justices from its provisions. Nor shall subsection (1) or (2) apply in respect of any premises at any time when they are closed for the supply of intoxicating liquor.

(6) A person convicted of an offence under subsection (1) or (2) is liable on conviction of the offence to a fine not exceeding the maximum of level 2 on the standard scale.

(7) Where in any proceedings for an offence under this section it is alleged that a person was at any time under eighteen, and he appears to the court to have been under that age, he shall be deemed for the purpose of those proceedings to be under that age unless the contrary is shown.

67.(1) In licensed premises the holder of the licence or his servant shall not sell intoxicating liquor to a person under the age of eighteen or knowingly allow a person under the age of eighteen to consume intoxicating liquor in a bar nor shall the holder of the licence knowingly allow any person to sell intoxicating liquor to a person under eighteen.

*Serving or delivering  
intoxicating liquor  
to or for consumption  
by persons under 18.*

(2) A person under eighteen shall not in licensed premises buy or attempt to buy intoxicating liquor, nor consume intoxicating liquor in a bar.

(3) No person shall buy or attempt to buy intoxicating liquor for consumption in a bar in licensed premises by a person under eighteen.

(4) Where a person is charged with an offence under subsection (1) of this section with the offence of selling intoxicating liquor to a person under eighteen and is charged by reason of his own act, it is a defence for him to prove -

(a) that he exercised all due diligence to avoid the commission of such an offence; or

(b) that he had no reason to suspect that the person was under eighteen.

(5) Where the person charged with an offence under subsection (1) is the licence-holder and he is charged by reason of the act or default of some other person, it shall be a defence for him to prove that he exercised all due diligence to avoid the commission of an offence under that subsection.

(6) Subject to subsection (8), the holder of the licence or his servant shall not knowingly deliver, nor shall the holder of the licence knowingly allow any person to deliver, to a person under eighteen intoxicating liquor sold in licensed premises for consumption off the premises, except where the delivery is made at the residence or working-place of the purchaser.

(7) Subject to subsection (8) of this section, a person shall not knowingly send a person under eighteen for the purpose of obtaining intoxicating liquor sold or to be sold in licensed premises for consumption off the premises, whether the liquor is to be obtained from the licensed premises or other premises from which it is delivered in pursuance of the sale.

(8) Subsections (6) and (7) of this section do not apply where the person under eighteen is a member of the licence-holder's family or his servant or apprentice and is employed as a messenger to deliver intoxicating liquor.

(9) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 4 on the standard scale; and on a person's second or subsequent conviction of such an offence the court may, if the offence was committed by him as the holder of a justices' licence, order that he shall forfeit the licence.

68.(1) If any person under eighteen is employed in the bar of any licensed premises at a time when the bar is open for the sale or consumption of intoxicating liquor, the holder of the licence shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

*Persons under  
18 not to be employed  
in bars.*

(2) For the purposes of this section a person shall not be deemed to be employed in a bar by reason only that in the course of his employment in some part of the premises he enters the bar for the purpose of giving or receiving any message or of passing to or from some part of the premises which is not a bar and to or from which there is no convenient means of access or egress.

(3) For the purposes of this section a person shall be deemed to be employed by the person for whom he works notwithstanding that he receives no wages for his work.

(4) Where in any proceedings under this section it is alleged that a person was at any time under eighteen, and he appears to the court to have then been under that age, he shall be deemed for the purposes of the proceedings to have then been under that age unless the contrary is shown.

69. Nothing in sections 66 and 68 applies in respect of any bar licensed only under a Part V licence.

*Exclusion from  
sections 66 and  
68 of Part V  
licensed bars.*



70.(1) In any premises which are licensed for the sale of intoxicating liquor for consumption off the premises only or any off-sales department of on-licensed premises, the holder of the licence shall not allow a person under eighteen to make any sale of such liquor unless the sale has been specifically approved by the holder of the licence or by a person of over the age of eighteen acting on his behalf.

*Prohibition of unsupervised off-sales by persons under 18.*

(2) The reference in subsection (1) to an off-sales department of on-licensed premises is a reference to any part of the premises for which a justices' on-licence has been granted which is set aside for the use only for the sale of intoxicating liquor for consumption off the premises.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding the maximum of level 1 on the standard scale.

### *Preservation of order*

71.(1) The holder of a justices' licence shall not permit drunkenness or any violent, quarrelsome or riotous conduct to take place in the licensed premises.

*Licence holder not to permit drunkenness, etc.*

(2) If the holder of a justices' licence is charged under subsection (1) with permitting drunkenness, and it is proved that any person was drunk in the licensed premises, the burden of proving that the licence holder and all persons employed by him took all reasonable steps for preventing drunkenness on the licensed premises shall lie upon him.

(3) The holder of a justices' licence shall not sell intoxicating liquor to a drunken person.

(4) A person who contravenes subsection (1) or subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 2 on the standard scale.

72.(1) Any person who in licensed premises procures or attempts to procure any intoxicating liquor for consumption by a drunken person commits an offence.

*Procuring drink for drunken person.*

(2) Any person who aids a drunken person in obtaining or consuming intoxicating liquor in licensed premises commits an offence.

(3) A person convicted of an offence under subsection (1) or (2) is liable to imprisonment for a term not exceeding one month or to a fine not exceeding the maximum of level 3 on the standard scale.

73.(1) Without prejudice to any other right to refuse a person admission to premises or to expel a person from premises, the holder of a justices' licence may refuse to admit to, or may expel from, the licensed premises any person who is drunken, violent, quarrelsome or disorderly or is the subject of an exclusion order or prohibition order, or whose presence in the licensed premises would subject the licence holder to a penalty under this Ordinance.

*Power to exclude drunkards, etc, from licensed premises.*

(2) If any person liable to be expelled from licensed premises fails to leave the premises when requested by the holder of the justices' licence, his agent or servant or by a police officer, he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 1 on the standard scale.

(3) Any police officer shall, at the request of the holder of a justices' licence or his agent or servant, help to expel from the licensed premises any person liable to be expelled from them under this section, and may use such force as may be required for the purpose.

### *Exclusion orders*

74.(1) Where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing the offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) make an order (in this Ordinance referred to as an "exclusion order") prohibiting him from entering those premises or any other specified licensed premises, without the express consent of the licensee of the premises or his servant or agent. *Exclusion orders.*

(2) An exclusion order may be made either -

(a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or

(b) notwithstanding any other enactment, in addition to a probation order or an order discharging him absolutely or conditionally and in addition to a prohibition order;

but not otherwise and shall not have effect in relation to premises licensed under a justices' off-licence.

(3) An exclusion order shall, unless it is terminated under section 75(2), have effect for such period, not less than three months, or more than two years, as is specified in the order.

75.(1) A person who enters any premises in breach of an exclusion order commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding one month or to a fine not exceeding the maximum of level 3 on the standard scale. *Penalty for non-compliance with an exclusion order.*

(2) Any court may at any time, either of its own motion or on the application of any person (1), by order -

(a) terminate an exclusion order;

(b) vary it by -

(i) deleting the name of any specified licensed premises;

(ii) shortening the period for which it remains in force,

and any court may, on any occasion on which it sentences a person in respect of an offence under subsection (1) extend the period which the order remains in force (except that the order shall not be so extended so that it may remain in force for more than three years from the date on which it is extended under this subsection).

*Prohibition orders*

76.(1) If a court is satisfied by evidence given on oath given in -

*Prohibition order.*

- (a) family proceedings to which the person concerned is a party;
- (b) criminal proceedings in which the person concerned stands or stood charged with having committed any offence;
- (c) any civil proceedings in which there is an material allegation against the person concerned that he has assaulted or offered violence to any other person;
- (d) proceedings brought specifically in relation to an application for an order under this section;

that a person whether male or female ("the person concerned") is by reason of consumption of intoxicating liquor -

- (i) severely prejudicing his health or neglecting his person;
- (ii) failing to make adequate financial or other provision for any spouse or dependent child for whom is appears the person concerned ought to make provision;
- (iii) frequently violent or abusive to any other person;

the court may make an order under this subsection ("a prohibition order").

(2) A prohibition order may be made on the application of any person (including the person concerned) or by the court of its own motion.

(3) Except where an application for a prohibition order is made by the prosecutor in the course of, or at the conclusion of, criminal proceedings, or the court of its own motion in the course of, or at the conclusion of, criminal proceedings initiates consideration of the making of a prohibition order, all proceedings for a prohibition order shall be dealt with in chambers.

(4) A prohibition order may be made in, or at the conclusion of, criminal proceedings, notwithstanding that the person concerned has not been convicted or found guilty of any offence in those proceedings and any prohibition order made in such proceedings shall be deemed not to have been made by way of sentence of the person concerned.

(5) A person aggrieved by the making of a prohibition order in respect of him may apply on motion within twenty-one days of the making of the order to the Supreme Court for the discharge or variation of the order, and the Supreme Court on hearing such motion may make such order as it thinks fit, and this subsection applies in respect of prohibition orders to the exclusion of any provisions of any enactments relating to appeals in civil or criminal proceedings which would otherwise apply in relation thereto.

(6) Proceedings in the Supreme Court pursuant to subsection (5) are civil proceedings, regardless of the nature of the proceedings in which the prohibition order was made.

(7) The effect of a prohibition order shall be to render it unlawful -

- (a) for the person concerned -

(i) subject to subsection (8), to consume, attempt to consume, procure or attempt to procure, intoxicating liquor;

(ii) subject to subsection (9), in permitted hours to enter or remain in any bar in any premises in respect of which a justices' on-licence (other than a Part V licence) is in force or any bar in premises in respect of which a club is registered;

(b) for any person who is aware of the order and the identity of the person concerned -

(i) subject to subsection (8), to sell or supply to the person concerned, assist him to consume or to procure for him or attempt to procure for him, intoxicating liquor;

(ii) who is the holder of a justices' licence or secretary of a registered club or the servant or agent of the holder of a justices' licence or secretary of a registered club, subject to subsection (9) in permitted hours, knowingly and willingly to allow or suffer the person concerned to enter or remain in any bar in the premises to which the justices' licence relates or in any bar upon premises in respect of which the club is registered.

(8) Nothing in subsection (7) applies to the supply or consumption of intoxicating liquor in the course of the sacrament of Holy Communion in accordance with the rites of any religious denomination.

(9) Nothing in subsection (7) prohibits the person concerned from entering in and remaining upon or from being permitted to enter or remain upon any bar to which a Part V licence relates.

(10) A prohibition order shall be made so as to have effect for a period of not less than six and not more than twelve months from the date on which it is made, and may be extended for a period of not more than twelve months by any court upon its convicting the person to whom it relates of any offence under subsection (12) of contravening any provision of subsection (7)(a).

(11) A court of summary jurisdiction may on the application of the person to whom a prohibition order relates made at any time not less than six months after the order was made or last extended (whichever is the later) (but so that no application may be made under this subsection within three months of the date on which a previous application in respect of the order under this subsection was last determined by a court) discharge the order or vary it by shortening the period for which it will remain in force.

(12) A person commits an offence who contravenes subsection (7) and -

(a) if such offence consists of contravening subsection (7)(b)(i) is liable on conviction to imprisonment for six months or a fine not exceeding the maximum of level 5 on the standard scale; and

(b) in any other case is liable to a fine not exceeding the maximum of level 3 on the standard scale and, if he is the person to whom the order relates, to imprisonment for a term not exceeding one month.

(13) Nothing in the Criminal Justice Ordinance 1988 restricting the circumstances in which a custodial sentence may be imposed on a person or relating to the minimum period of a custodial sentence shall apply in respect of any offence under this section.

(14) A person to whom a prohibition order relates shall be disqualified for holding or obtaining a justices' licence of any kind so long as the order remains in force.

77.(1) Any court by order under section 76 making extending, varying or discharging a prohibition order shall transmit a copy of that order to the chief police officer who shall in writing inform every holder of a justices' licence of the effect of the order.

*Notification of  
and knowledge of a  
prohibition order.*

(2) Every licensee shall bring every notification from the chief police officer under subsection (1) to the attention of all persons engaged in the sale or supply of intoxicating liquor on or from any premises of which he is the licensee.

(3) In any proceedings for an offence under section 76 in which knowledge of a prohibition order is relevant, the accused shall be deemed to have been aware of the order unless he proves the contrary.

78.(1) Sections 76(7) to (9), (11), (12) and (14) and 77(3) apply in relation to a prohibition order made under section 26 of the repealed Ordinance and which was in effect immediately before the coming into force of this Ordinance as they do in relation to a prohibition order made under section 76(1) of this Ordinance.

*Application of sections  
76 and 77 to prohibition  
order under section  
26 of repealed  
Ordinance.*

(2) A prohibition order which was made under section 26 of the repealed Ordinance and which was in effect immediately before the coming into force of this Ordinance shall, notwithstanding the repeal of the repealed Ordinance, continue to have effect on the coming into force of this Ordinance and as if it had been made under section 76(1) of this Ordinance.

79.(1) A person commits an offence who -

*Drunken behaviour  
in public place.*

(a) in any public place, while drunk, is disorderly in his behaviour; or

(b) is, in any public place, found incapable through drunkenness.

(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding one month and to a fine not exceeding the maximum of level 2 on the standard scale.

(3) A police officer may arrest without warrant any person whom he reasonably suspects to have committed an offence under subsection (1).

(4) In subsection (1), "public place" includes any place to which the public have or are at the material time permitted to have access, whether on payment or otherwise.

#### *Offences in relation to constables*

80. If the holder of a justices' licence -

*Offence in relation  
to constables.*

(a) knowingly suffers to remain on the licensed premises any police officer during any time appointed for the police officer's being on duty, except for the purpose of the execution of the police officer's duty;

(b) supplies any liquor or refreshment, whether by way of gift or sale, to any police officer on duty except by authority of a superior officer of the police officer; or

(c) bribes or attempts to bribe any police officer,

he commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 4 on the standard scale.

### *Offences related to prostitution*

81.(1) The holder of a justices' licence shall not knowingly allow the licensed premises to be the habitual resort or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution; but this section does not prohibit his allowing any such person to remain in the premises for the purpose of obtaining reasonable refreshment for such time as is necessary for that purpose.

*Prostitutes not to be allowed to assemble on licensed premises.*

(2) A holder of a justices' licence who contravenes subsection (1) commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

82.(1) If the holder of a justices' licence permits the licensed premises to be a brothel, he commits an offence and is liable on conviction of that offence to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

*Permitting licensed premises to be a brothel.*

(2) If the holder of a justices' licence is convicted, whether under this section or under any other enactment, of permitting his premises to be a brothel, he shall forfeit his licence.

### *Other prohibited activities*

83.(1) If the holder of a justices' licence permits the licensed premises to be used -

*Other prohibited activities on licensed premises.*

(a) for the purpose of fighting or baiting any animal, bird or other creature;

(b) for betting (other than for moderate stakes upon the result of any game of pure skill played upon the premises) or for gaming; or

(c) any sale by auction,

he commits an offence and is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale.

(2) Nothing in subsection (1) applies to -

(a) any raffle or lottery conducted in accordance with, or under a permit granted under, the Lotteries Ordinance;

(b) the playing for moderate stakes of cribbage or dominoes or other game approved for the purposes of this section by Order made by the Governor;

(c) the operation of any electronic or mechanical gaming or amusement with prizes machine approved by the licensing justices and placed upon the licensed premises with their approval.

(3) For the purpose of this section -

(a) darts, skittles, shove halfpenny, billiards, snooker and pool are declared to be games of pure skill (but nothing in this paragraph shall preclude any other game from being, or being found by a court to be, a game of pure skill);

(b) "moderate stake" means a stake not exceeding £5 on the result of any game.

(4) Any electronic or mechanical gaming or amusement with prizes machine which was upon the licensed premises immediately before the coming into force of this Ordinance shall, until otherwise ordered by the licensing justices under this subsection or 30th June next following the coming into force of this Ordinance (whichever shall first occur) be deemed to have been placed upon the licensed premises, and be there operated, with the approval of the licensing justices.

(5) The licensing justices may approve the placing and operation of an electronic or mechanical gaming or amusement with prizes machine upon licensed premises either subject to conditions or unconditionally and may in the exercise of their powers under this subsection limit the number of such machines which may be placed upon any premises licensed under any justices' licence. No approval under this subsection shall have effect for a period of more than one year at any one time.

(6) No appeal shall lie from a decision of the licensing justices under subsection (5).

## PART VII

### MISCELLANEOUS

84.(1) A court of summary jurisdiction may, if satisfied as to the matters mentioned in subsection (2), grant to any person a licence (in this Ordinance called an "occasional licence") authorising him to sell intoxicating liquor during a period not exceeding five days at some function or event. *Grant of occasional licences.*

(2) The matters as to which the court must be satisfied are -

(a) that the applicant is a fit and proper to sell intoxicating liquor;

(b) that the place where the intoxicating liquor will be sold is suitable and persons under the age of eighteen years can readily and suitably be excluded therefrom;

(c) that the sale of intoxicating liquor will be merely ancillary to the function or event;

(d) that the sale of intoxicating liquor at the function is not likely to result in disturbance or annoyance being caused to residents in the neighbourhood of that place, or any disorderly conduct.

(3) An occasional licence shall specify -

(a) the place where intoxicating liquor may be sold by virtue of the licence;

(b) the kind or kinds of intoxicating liquor that may be sold by virtue of the licence;

(c) the hours between which such liquor may be so sold and the date (or dates) on which those hours fall,

and the court may attach to the licence any condition that it thinks proper.

85.(1) An application for an occasional licence shall be in writing and shall contain the following particulars - *Application for occasional licences.*

- (a) the name and address of the applicant;
- (b) the date and nature of the function and the place where it is to be held;
- (c) the premises or place in which it is proposed intoxicating liquor will be sold; and
- (d) the kind or kinds of intoxicating liquor proposed to be sold at the function and the hours between which it is proposed that such liquor shall be sold;

(2) An application for an occasional licence shall be made by sending two copies of the application to the clerk to the court to whom it is desired to make application for the occasional licence at least seven days before it is intended that the application shall be heard, but the court may, if for specific reason, thinks fit, consider and grant application on shorter notice.

(3) On receiving a notice of application pursuant to subsection (2), the clerk of the court shall forthwith send one copy of it to the chief police officer.

(4) On application for an occasional licence the application shall attend unless his non-attendance has been excused by the court.

86.(1) On the grant of an occasional licence a fee calculated as specified in paragraph 10 of Schedule 3 shall be paid and, until it has been paid, the licence shall be of no effect. *Further provisions in relation to occasional licences.*

(2) No occasional licence shall be granted -

- (a) to any person who for the time being is disqualified from holding or obtaining a justices' licence; or
- (b) for any premises which for the time being is disqualified from receiving a justices' licence.

(3) The provisions of Parts VI and VII of this Ordinance apply to premises licensed under an occasional licence, the holder of an occasional licence and his servants and agents as if the premises were licensed under a justices' on-licence and the holder of the occasional licence were the holder of such a licence.

87.(1) For the purpose of preventing or detecting any offence under this Ordinance, a police officer may during any time when the same are apparently open to the public, or he reasonably believes them to be so open, enter or remain in any premises licensed under a justices' licence or under an occasional licence. *Right of police officer to enter licensed premises.*

(2) Any person who hinders or obstructs a police officer in the exercise of his powers under subsection (1) commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

88.(1) If the holder of a justices' licence - *Adulterating liquor.*

- (a) mixes any unwholesome ingredient with any intoxicating liquor;



(b) has in his possession any unwholesome ingredient with intent to mix the same with any intoxicating liquor;

(c) other than at the request of the person to whom the same is sold or supplied, and in his sight and presence, adds any water to any intoxicating liquor;

(d) permits any servant or agent of his to do anything prohibited by paragraph (a), (b) or (c).

he commits an offence under this subsection.

(2) A person who is the servant or agent of the holder of a justices' licence under this subsection who, while acting as such servant or agent, does anything which, if that holder had done it, would be an offence by that holder under paragraph (a), (b) or (c) of subsection (1).

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale and in the case of an offence under subsection (1) by a person who is the holder of a justices' licence, he shall forfeit that licence.

89. Notwithstanding any foregoing provision of this Ordinance -

(a) intoxicating liquor may, without the authority of a justices' licence, be sold or supplied at any time abroad any ship to any passenger or member of the crew of that ship and the *bona fide* guest of any such passenger or member of the crew;

*Special provision  
as to sale or supply  
of intoxicating  
liquor on ships and  
on Camp farms or sheep  
stations.*

(b) the owner, lessee or manager of any farm or sheep station may, at any place on that farm or station which is further than 10 kilometres from the spire of Christ Church Cathedral Stanley, without a justices' licence sell or supply intoxicating liquor at any time to any person who is *bona fide* employed on that farm or station.

90.(1) The holder of a justices' on-licence shall not be liable in a sum greater than £300 for the loss of, or damage to, any goods or other property of a customer, visitor or guest brought upon the licensed premises unless -

*Limitation of  
liability for property  
of guest.*

(a) the goods or other property were stolen, lost or damaged through the wilful act or through the default or neglect of the licensee or any person in his employment on the licensed premises;

(b) the goods or other property were deposited for safe-keeping with him or some person authorised by him to accept the same on his behalf for safe-keeping.

(2) Where the owner of the business conducted on premises licensed under a justices' on-licence is not the holder of that licence, subsection (1) shall have effect as if he were such holder.

91.(1) It is unlawful for any person to sell any tobacco to any person whom he knows or has reasonable cause to suspect may be under 16.

*Sale of tobacco  
to persons under 16.*

(2) It is unlawful for any person under 16 to consume tobacco, whether by smoking, chewing it or in any other way.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 2 on the standard scale.

(4) A police officer may, with the use only of such force as may be reasonably necessary in the circumstances of the case, seize any tobacco which he finds in the possession in a street or other public place of a person he reasonably suspects to be under 16, and shall deliver any tobacco so seized to, or as may be directed by, the chief police officer.

92. The Governor may make any regulations he thinks necessary or convenient for the carrying out of the purposes of this Ordinance and may by regulations under this subsection vary the amount of any fee prescribed under the provisions of any Schedule to this Ordinance. *Regulations.*

93. The Licensing Ordinance is repealed. *Repeal.*

## SCHEDULE 1

### TRANSITIONAL CONTINUATION FEES

1. The fee payable in respect of the transitional continuation of a publican's retail licence is £75.
2. The fee payable in respect of the transitional continuation of a wholesale licence is £60.
3. The fee payable in respect of the transitional continuation of a club licence is £25.
4. The fee payable for the transitional continuation of a restaurant licence or residential licence is £15.
5. The fees specified in paragraphs 1, 2, 3 and 4 shall be paid to the Financial Secretary.

## SCHEDULE 2

### APPLICATIONS FOR JUSTICES' LICENCES

1. A person proposing to apply for the grant of a new justices' licence or the transfer of a justices' licence, shall first apply in writing to the clerk to the Summary Court to nominate a date not less than four weeks and not more than five weeks from the date of the notification pursuant to paragraph 2 of this Schedule ("the nominated date") on which the application, if the notice is given in accordance with the following paragraphs of this Schedule, will be considered.
2. The clerk to the Summary Court on receiving an application to nominate a date made pursuant to paragraph 1 shall within three days from the receipt of the application notify the applicant in writing of the nominated date.
3. The applicant shall then -
  - (a) not less than 21 days before the nominated date give notice in writing of the application to the clerk to the Summary Court, the chief police officer and to the Government Secretary and, if the application is an application for the grant of a new licence, also to the chief fire officer;
  - (b) if the application is an application for a transfer, give the like notice to the holder of the licence (if any);
  - (c) except where the application is for a transfer -
    - (i) display notice of the application for a period of 7 days in a place where it can conveniently be read by the public on or near the premises to be licensed (or, in the case of an application for a provisional grant, on or near the proposed site of those premises);
    - (ii) not more than 28 days nor less than 14 days before the nominated date, advertise notice of the application in a newspaper circulating in the Falkland Islands.

4. Where the application is an application for a new justices' licence or, except where the application is made pursuant to section 8(5), for the provisional grant of a new justices' licence, with the notices of the application sent under paragraph 2 the applicant shall supply a copy of a plan of the premises to be licensed.

5. A notice under this Schedule -

- (a) shall be signed by the applicant or his authorised agent;
- (b) shall state the name and address of the applicant;
- (c) shall state the situation of the premises to be licensed;
- (d) in the case of a new licence, shall state the kind of licence for which application is to be made;
- (e) shall state the date on which it is intended the application shall be dealt with by the licensing justices in the Summary Court (which date shall be the nominated date);
- (f) shall state that any person intending to oppose the application should give notice of his intended opposition to the applicant and to the clerk to the licensing justices not later than three clear days before the date notified under sub-paragraph (e).

6. Where an applicant for a new justices' licence has, through inadvertence or misadventure, failed to comply with the preceding paragraphs of this Schedule, the licensing justices may, upon such terms as they think fit, postpone consideration of his application; and, if on the postponed consideration they are satisfied that any terms so imposed have been complied with, they may deal with the application as if the applicant had complied with those requirements.

### SCHEDULE 3

#### COURT FEES PAYABLE IN CONNECTION WITH JUSTICES' LICENCES

- 1. On an application for the grant of a new justices' licence, £50.
- 2. On the grant (including a grant on transfer) or renewal of a new justices' on-licence, other than a Part V licence or an occasional licence, £200.
- 3. On the grant (including a grant on transfer) or renewal of a Part V licence, £80.
- 4. On the grant (including a grant on transfer) or renewal of a justices' off-licence, £150.
- 5. On an application for a protection order, £10.
- 6. On the grant of an application for a protection order, £25.
- 7. On inspection of the register of licences pursuant to section 25(1), £5.
- 8. On the grant of a special hours certificate, £50.

9. On the grant of an extension of permitted hours, for every hour or part thereof to which the extension relates, £5.

10. On the grant of an occasional licence, for every day or part thereof to which the occasional licence relates, £10.

#### SCHEDULE 4

#### REQUIREMENTS TO BE COMPLIED WITH BY CLUB'S APPLICATION FOR REGISTRATION CERTIFICATE

1. The application shall specify the name, objects and address of the club, and shall state that there is kept at that address a list of the names and addresses of the members.

2. The application shall state in terms of subsections (1) and (2) of section 30 of this Ordinance that the club is qualified under those subsections to receive a registration certificate for the premises.

3. The application shall set out, or shall incorporate a document annexed which sets out, the names and addresses of the members of any committee having the general management of the affairs of the club, and those of the members of any other committee concerned with the purchase for the club or with the supply by the club of intoxicating liquor, and those of the other officers of the club.

4.(1) The application shall state, or shall incorporate a document annexed which states, the rules of the club or, in the case of an application for renewal, the changes in the rules of the club made since the last application for the issue or renewal of the certificate.

(2) If, in the case of an application for renewal, there has been no such change as aforesaid, the application shall so state.

5. The application shall -

(a) identify the premises for which the issue or renewal of the registration certificate is sought;

(b) state that those premises are or are to be occupied by the habitually used for the purposes of the club;

(c) state the interest held by or in trust for the club in those premises and, if it is a leasehold interest or if the club has no interest, the name and address of any person to whom payment is or is to be made of rent under the lease or otherwise for use of the premises.

6.(1) The application shall give, or shall incorporate a document annexed which gives -

(a) particulars of any property not comprised in paragraph 5 of this Schedule which is or is to be used for the purposes of the club and not held by or in trust for the club absolutely, including the name and address of any person to whom payment is or is to be made for the use of that property;

(b) particulars of any liability of the club in respect of the principal or interest of moneys borrowed by the club or charges on property held by or in trust for the club, including the name and address of the person to whom payment is or is to be made in account of that principal interest;

(c) particulars of any liability of the club or of a trustee for the club in respect of which any person has given any guarantee or provided any security, together with particulars of the guarantee or security given or provided, including the name and address of the person giving or providing it.

(2) An application for renewal, or document annexed to it, may give the particulars required by this paragraph by reference to the changes (if any) since the last application by the club for the issue or renewal of the registration certificate.

(3) If there is no property or liability of which particulars are required by any paragraph of sub-paragraph (1) of this paragraph, the application shall so state.

(4) In this paragraph, "liability" includes a future or contingent liability.

7.(1) The application shall give, or shall incorporate a document annexed which gives, particulars of any premises not comprised in paragraph 5 of this Schedule, which have within the preceding twelve months been occupied and habitually used for the purposes of the club, and shall state the interest then held by or in trust for the club in those premises and, if it was a leasehold interest or if the club had no interest, the name and address of any person to whom payment was made of rent under the lease or otherwise for the use of the premises.

(2) If there are no premises of which particulars are required by this paragraph, the application shall so state.

8. Where the interest held by or in trust for the club of which particulars are required by paragraph 5, 6 or 7 of this Schedule is or was a leasehold interest, and the rent under the lease is not or was not paid by the club or the trustees for the club, the application shall state the name and address of the person by whom it was paid.

## SCHEDULE 5

### PROCEDURE ON APPLICATIONS AND COMPLAINTS RELATING TO REGISTRATION CERTIFICATES

#### PART I

#### ISSUE, RENEWAL AND SURRENDER OF REGISTRATION CERTIFICATES

##### *Applications, etc*

1.(1) An application by the club for the issue, renewal or variation of a registration certificate shall be made by lodging the application, together with the number of additional copies required under paragraph 4 of this Schedule, with the clerk to the Summary Court.

(2) The court may, on such conditions as the court thinks fit, allow such an application to be amended.

(3) An amended application shall be made by lodging with the clerk to the Summary Court the original application or the relevant parts of it altered so as to show the amendments, together with the number of additional copies required under paragraph 4 of this Schedule.

2. A registration certificate shall be surrendered by lodging with the clerk to the Summary Court a notice of surrender, together with the certificate and such number of additional copies required under paragraph 4 of this Schedule.

3.(1) Any such application or amended application and any such notice shall be signed by the chairman or by the secretary of the club.

(2) In the absence of objection the court shall not require proof that an application or amended application is so signed.

4. On receipt of any such application or amended application or of any such notice the clerk to the Summary Court shall forthwith send a copy to the chief police officer and to the Attorney General and the chief fire officer and the number of additional copies required to be lodged with the clerk is the number necessary to provide the copies the clerk requires for the purpose.

5. A club applying for the issue of a registration certificate for any premises, or for the renewal of a registration certificate in respect of different, additional or enlarged premises, shall give public notice of the application (identifying those premises and giving the name and address of the club) either -

(a) by displaying the notice on or near the premises, in a place where it can conveniently be read by the public, for the seven days beginning with the date of the application; or

(b) by advertisement in a newspaper circulating in the Falkland Islands in the two weeks commencing with the date of the application.

#### *Objections, etc*

6. An objection to an application for the issue or renewal of a registration certificate shall be made by lodging with the clerk to the Summary Court two copies in writing of the objection not later than twenty-one days after the making of the application or, if the application is amended, after the making of the amended application.

7. On receipt of an objection to an application for the issue or renewal of a registration certificate the clerk to the Summary Court shall forthwith send a copy to the person signing the application at an address furnished by him for communications relating to the application or, in default of such an address, at the address given in the application as that of the club.

8. Paragraphs 6 and 7 of this Schedule shall apply in relation to any notice of intention, on an application for the issue, renewal or variation of a registration certificate, to make representations as to conditions relating to the sale of intoxicating liquor as they apply to objections to an application for the issue or renewal of a registration certificate (with the substitution of reference to giving the notice for references to making the objection).

9. Where any such objection or any such notice is given, the Summary Court may make such order as it thinks just and reasonable for the payment of costs to the club by the person making the objection or giving the notice or by the club to that person; and for the purposes of enforcement the order shall be treated as an order for the payment of a sum enforceable as a civil debt.

10.(1) Subject to sub-paragraph (2) of this paragraph, an objection to an application for the issue or renewal of a registration certificate shall specify the ground of objection with such particulars as are sufficient to indicate the matters relied on to make it out.

(2) Where objection is made to an application for the issue or renewal of a registration certificate on the ground that the application does not give the information required by this Ordinance, or the information is incomplete or inaccurate, or the application is not otherwise in conformity with this Ordinance, it shall be sufficient for the objection to state the ground as a matter of suspicion, and to indicate the reasons for the suspicion.

11. Where, on an objection to an application for the issue or renewal of a registration certificate, there appears to the court to be good reason to suspect that the application does not give the information required by this Ordinance, or that the information is incomplete or inaccurate, or the application is otherwise not in conformity with this Ordinance, it shall be for the applicant to satisfy the court that the ground of objection cannot be made out, unless the applicant desires and is permitted to amend the application so as to remove the ground of objection.

## PART II

### COMPLAINT FOR CANCELLATION OR VARIATION OR REGISTRATION CERTIFICATE

12.(1) A summons issued on a complaint made against a club for the cancellation or variation of a registration certificate shall be served on the chairman or secretary of the club or the person who signed the last application for the issue or renewal of the certificate, and that service shall be treated as service on the club.

(2) Any such summons shall, in addition to being served on the club, be served on such persons, if any, as the justices issuing the summons may direct.

(3) Only the Summary Court shall have jurisdiction to deal with any such complaint.

13. Where it appears to the Summary Court that the summons cannot be served on the club in accordance with paragraph 12 of this Schedule, or not without undue difficulty or delay, the court may order that service on the club may be effected by serving the summons on a person who appears to the court to have, or to have had, an interest in the club, or to be, or to have been an officer of the club.

14. A complaint may be made against the club for the cancellation of a registration certificate on the ground that the club has not twenty-five members, notwithstanding that the complainants' case is that the club does not exist.



### PART III

#### GENERAL

15.(1) The Summary Court may deal with an application by a club for the issue, variation or renewal of a registration certificate without hearing the club, but before refusing such an application, shall give the club an opportunity to be heard.

(2) In relation to any such application subsection (1) and (3) of section 97 and section 121 of the Magistrate's Courts Act 1980 in their application to the Falkland Islands shall apply as they apply in relation to a complaint.

(3) The Senior Magistrate shall not sit as a member of the Summary Court when it is exercising any function in relation to registration of clubs under this Ordinance.

16. On any application or complaint made to the Summary Court by or against a club under Part III of this Ordinance, and on any appeal by a club under section 17 of this Ordinance, the club, if not represented by a legal practitioner, shall be heard by the chairman or secretary, by any member of the committee having the general management of the affairs of the club or by any officer of the club duly authorised.

#### SCHEDULE 6

##### PROVISIONS AS TO CLUB RULES

###### *Management of club*

1. The affairs of the club, in matters not reserved for the club in general meeting or otherwise for the general body of members, must, under the rules, be managed by one or more elective committees; and one committee must be a general committee, charged with the general management of those affairs in committee not assigned to special committees.

###### *General meetings*

2.(1) There must, under the rules, be a general meeting of the club at least once in every year, and fifteen months must not elapse without a general meeting.

(2) The general committee must be capable of summoning a general meeting at any time on reasonable notice.

(3) Any members entitled to attend and vote at a general meeting must be capable of summoning one or requiring one to be summoned at any time on reasonable notice, if a specified number of them join to do so; and the number must not be more than thirty or one-fifth of the total number of members so entitled.

(4) At a general meeting the voting must be confined to members, and all members entitled to use the club premises must be entitled to vote, and must have equal voting rights, except that -

(a) the rules may exclude from voting, either generally or on particular matters, members below a specified age (not greater than twenty-one), women, if the club is primarily a women's club, and men if the club is primarily a men's club, and

(b) if the club is primarily a club for persons qualified by service or past service, or by any particular service or past service, in Her Majesty's forces, the rules may exclude persons not qualified from voting, either generally or on particular matters, and

(c) if the rules make special provision for family membership or family subscriptions or any similar provision, the rules may exclude from voting, either generally or on particular matters, all or any of the persons taking the benefit of that provision as being members of a person's family, other than that person.

3.(1) Ordinary members must, under the rules, be elected either by the club in general meeting or by an elective committee, or by an elective committee with other members of the club added to it for the purpose; and the name and address of any person proposed for election must, for not less than two days before the election, be prominently displayed in the club premises or principal club premises in a part frequented by the members.

(2) The rules must not make any such provision for the admission of persons to membership otherwise than as ordinary members (or in accordance with the rules required for ordinary members by sub-paragraph (1) of this paragraph) as is likely to result in the number of members so admitted being significant in proportion to the total membership.

*Meaning of "elective committee"*

4.(1) In this Schedule "elective committee" means, subject to the following provisions of this paragraph, a committee consisting of members of the club who are elected to the committee by the club in accordance with sub-paragraph (2) of this paragraph for a period of not less than one year and not more than five years; and paragraph 2(4) of this Schedule shall apply to the voting as it applies to voting at general meetings.

(2) Elections to the committee must be held annually, and if all the elected members do not go out of office in every year, there must be fixed rules for determining those that are to; and all members entitled to vote at the election and of not less than two years' standing, must be equally capable of being elected (subject only to any provision made for nomination by the club and to any provision prohibiting or restricting re-election) and, if nomination is required, must have equal rights to nominate persons for election.

(3) Except in the case of a committee with less than four members, of a committee concerned with the purchase for the club or with the supply by the club of intoxicating liquor, a committee of which not less than two-thirds of the members are members of the club elected to the committee in accordance with sub-paragraphs (1) and (2) of this paragraph shall be treated as an elective committee.

(4) A sub-committee of an elective committee shall also be treated as an elective committee if its members are appointed by the committee and not less than two-thirds of them (or, in the case of a sub-committee having less than four members, or concerned with the purchase for the club or with the supply by the club of intoxicating liquor, all of them) are members of the committee elected to the committee in accordance with sub-paragraphs (1) and (2) of this paragraph who go out of office in the sub-committee on ceasing to be members of the committee.

(5) For the purposes of this paragraph a person who on a casual vacancy is appointed to fill the place of a member of an elective committee for the remainder of his term and no longer shall, however appointed, be treated as elected in accordance with sub-paragraphs (1) and (2) of this paragraph if the person whose place he fills was so elected or is to be treated as having been so elected.

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

The Pool Betting Ordinance 1994

(No: 19 of 1994)

ARRANGEMENT OF PROVISIONS

Section

- 1. Short title.
- 2. Interpretation.
- 3. Registration of pool promoters.
- 4. Pool betting duty.
- 5. Submission of returns.

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Pool Betting Ordinance 1994

(No: 19 of 1994)

An Ordinance  
To legalise certain betting by way of Pool Betting and for connected purposes

*(assented to: 13th December 1994  
(commencement: on publication)  
(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Pool Betting Ordinance 1994.

*Short title.*

2.(1) For the purpose of this Ordinance, a bet shall be deemed to be made by way of pool betting unless it is a bet at fixed odds or a bet upon the result of a race by way of a sum of money staked by way of totalisator bet and, in particular and subject as aforesaid, bets shall be held to be made by way of pool betting wherever a number of persons make bets -

*Interpretation.*

(a) on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets are made by filling up and returning coupons or other printed and written forms, or in any other way; or

(b) on terms that the winnings of such of those persons as are winners shall be, or shall include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners; or

(c) on the basis that the winners or their winnings shall, to any extent, be at the discretion of the promoter or any other person.

(2) A bet is at fixed odds within the meaning of this section only if each of the persons making it knows or can know, at the time he makes it, the amount he will win, except in so far as that amount is to depend on the result of the event or events betted on, or on any such event taking place or producing a result, or on the numbers taking part in any such event, or on the starting prices or totalisator odds for any such event, or on the time when the bet is received by any person with or through whom it is made.

In this subsection -

"starting prices" means, in relation to any event, the odds ruling at the scene of the event immediately before the start, and

"totalisator odds" means the odds paid on bets by means of a totalisator at the scene of the event.

(3) A bet made with or through a person carrying on business or receiving or negotiating bets, being a bet made in the course of that business, shall be deemed not to be a bet at fixed odds within the meaning of this section if the winnings of the person by whom it is so made consist of or may consist wholly or in part of something other than money.

(4) Where a person carries on a business of receiving or negotiating bets and there is or has been issued in connection with that business any advertisement or other publication calculated to encourage in persons making bets of any description a belief that the bets are made on the basis mentioned in subsection (1)(c), then any bets subsequently made with or through him in the course of that business shall be deemed for the purposes of this section to be made on that basis.

3.(1) The Financial Secretary shall be the authority for the registration of pool promoters.

*Registration of  
pool promoters.*

(2) No person shall be registered as a pool promoter -

(a) without the permission of the Governor;

(b) who has been convicted of an offence under this Ordinance or of any offence involving fraud or dishonesty; or

(c) until he has paid the fee of £25.

(3) If after a person has been registered under this section, the Financial Secretary after giving him the opportunity of being heard, is satisfied -

(a) that he does not intend to carry on a pool betting business or activity; or

(b) that he has permanently ceased to carry on a pool betting business or activity,

he shall revoke his registration.

(4) The Financial Secretary shall also revoke the registration of a person under this section if he is satisfied, by virtue of the production of a certificate of conviction or such other information as the Financial Secretary considers sufficient in the circumstances of the case, that the person concerned has been convicted of an offence under this Ordinance or, whether in the Falkland Islands or elsewhere, has been convicted of an offence involving fraud or dishonesty.

(5) No appeal shall lie to any court or authority whatsoever against -

(a) the refusal or failure of the Governor to approve the registration of a person under this section or the Financial Secretary to register a person under;

(b) the decision of the Financial Secretary to revoke a person's registration under this section.

(6) The revocation of a person's registration under this section shall not take effect until the expiry of 28 days after the service or delivery to him of notice in writing of such revocation.

(8) Any person who carries on the business or activity of pool promoter when he is not registered under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale.

4.(1) Subject to this section, there shall be paid by every promoter to the Financial Secretary by way of pool betting duty ten per centum of the aggregate staked in relation to every pool betting competition organised or promoted by the promoter. *Pool betting duty.*

(2) The said pool betting duty shall be paid to the Financial Secretary at the same time as the promoter sends to the Financial Secretary the account in respect of the pool betting competition in question required by section 5(1).

(3) Pool betting duty is not payable in relation to a pool competition -

(a) if the Governor has granted an exemption under subsection (4); and

(b) the profits of the pool competition are paid or to be paid to a charity or applied for a public purpose (and profits paid or to be paid to a club, association or society established and conducted mainly for the support of athletic sports or games is to be treated as money which has been or will be applied for a public purpose);

(4) The Governor may by order exempt any promoter from the payment of pool betting duty on condition that the profits of all pool betting competition conducted by him are applied for such charitable, sporting or public purposes as are mentioned in the order.

(5) For the purposes of pool betting duty, any payment which entitles a person to make a bet by way of pool betting or coupon betting shall, if he makes the bet, be treated as stake money on the bet; and this subsection shall apply to any payment entitling a person to take part in a transaction which is, on his part only, not a bet made by way of pool betting or coupon betting by reason of his not in fact making any stake as if the transaction were such a bet, and the transaction shall accordingly be treated as a bet for the purposes of pool betting duty.

5.(1) Within seven days after the event on which any pool betting of which he is the promoter takes place, or where a bet is made by way of pool betting on the results in combination of more than one event, within seven days of the date on which the last of those events takes place, the promoter shall submit to the Financial Secretary in writing in such form as the Financial Secretary may reasonably require, an account containing the following information - *Submission of returns.*

- (a) the total amount received by way of stake money in respect of the pool betting promoted on the occasion in question;
- (b) the total amount paid by way of prizes in relation to the results of the pool betting;
- (c) any amount carried forward so as to be available as prize money in relation to pool betting on another occasion on which the promoter intends to promote pool betting;
- (d) any amount charged by way of expenses and the expenses in respect of which it has been charged;
- (e) the amount (if any) paid or proposed to be paid for charitable sporting or public purposes and to what person or body;
- (f) the amount payable by way of pool betting duty,

and the return shall be accompanied by a remittance in the amount (if any) mentioned under paragraph (f) of this subsection.

(2) The Financial Secretary may -

- (a) require the promoter to produce to him or any person authorised by him, receipts or evidence of payment of any sums included in any amount to which any return under subsection (1) relates;
- (b) require the promoter to produce for the purposes of audit by a person appointed by the Financial Secretary all books, papers, accounts and documents as may be necessary to verify and substantiate any return made in accordance with subsection (1), or in default of any such return having been made, to indicate the receipts and outgoings of the pools promoter in connection with all pools promotions undertaken by him, and the application by him of moneys received by him in his capacity as such.

(3) A pools promoter who contravenes any provision of this section or obstructs or impedes any person appointed by the Financial Secretary under subsection (2) in the performance of any audit or inspection he is to undertake in accordance with that section commits an offence and is liable on conviction thereof to imprisonment for six months or to a fine not exceeding the maximum of level 5 on the standard scale.

(4) A justice of the peace may, on being satisfied by evidence given on oath that a person has wilfully refused to produce or has failed to produce or has failed to produce the same within a reasonable time of being required so to do any receipt, book, paper, account or document he is required pursuant to subsection (2) to produce, grant to a police officer a warrant authorising him with such assistance as he may think necessary, within one month after the date of such warrant, to enter, if need be by force, any premises named in the warrant, and there to search for and if found seize and carry away any such receipt, book, paper, account or document.



Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

The Supplementary Appropriation (1994-1995) Ordinance 1994

(No: 20 of 1994)

ARRANGEMENT OF PROVISIONS

Section

- 1. Short title.
- 2. Appropriation of £330,580 for the service of the year 1994-1995.

SCHEDULE

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Supplementary Appropriation (1994-1995) Ordinance 1994

(No: 20 of 1994)

### An Ordinance

to appropriate and authorise the withdrawal from the Consolidated Fund of additional sums totalling £330,580 for the service of the financial year ending 30 June 1995.

*(assented to: 12th December 1994)*

*(commencement: on publication)*

*(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows:

1. This Ordinance may be cited as the Supplementary Appropriation (1994-1995) Ordinance 1994. *Short title.*

2. The Financial Secretary may cause to be issued out of the Consolidated Fund and applied to the service of the year commencing on 1 July 1994 and ending on 30 June 1995 ("the financial year"), sums not exceeding in aggregate the sum of THREE HUNDRED AND THIRTY THOUSAND FIVE HUNDRED AND EIGHTY POUNDS, which sum is granted and shall be appropriated for replenishing the Contingencies Fund in respect of advances authorised to be issued therefrom for the purposes of the Heads of Service mentioned in the Schedule hereto and which will come into course of payment during the financial year. *Appropriation of £330,580 for the services of the year 1994-1995.*

## SCHEDULE

Number	Head of Service	£
PART I OPERATING BUDGET		
200	Medical and Dental	24,550
300	Customs and Harbour	200
320	Fisheries	29,060
350	Public Works	60,000
390	Fox Bay Village	600
400	Agriculture	5,000
450	Justice	20,000
500	Falklands Islands Defence Force	1,800
550	Police, Fire and Rescue Service	2,200
600	Secretariat, Treasury etc	19,400
750	The Governor	5,720
800	Legislature	1,220
850	Falklands Islands Government London Office	5,750
Total Operating Supplementary Expenditure		175,500
PART II CAPITAL BUDGET		
950	Expenditure	155,080
Total Supplementary Expenditure		330,580

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Evidence Ordinance 1994

(No: 21 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title and commencement.
2. Rebuttal of common law presumptions as to legitimacy or illegitimacy.
3. Proof of instrument to validity of which attestation is necessary.
4. Presumptions as to documents twenty years old.
5. Application of Acts relating to evidence.

#### Schedule

## ELIZABETH II



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Evidence Ordinance 1994

(No: 21 of 1994)

## An Ordinance

To make further and better provision in relation to the law of evidence in the Falkland Islands.

(assented to: 12th December 1994)

(commencement: 1st January 1995)

(published: 21st December 1994)

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Evidence Ordinance 1994 and shall come into force on such date as may be appointed by the Governor by notice published in the *Gazette*.

*Short title and commencement.*

2. Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence which shows that it is more probable than not that that person is legitimate or illegitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

*Rebuttal of common law presumptions as to legitimacy or illegitimacy.*

3.(1) Subject to subsection (2), in any proceedings, civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive.

*Proof of instrument to validity of which attestation is necessary.*

(2) Subsection (1) does not apply to the proof of wills or other testamentary documents.

4.(1) Subject to subsection (2), in any proceedings, civil or criminal, any written document which -

*Presumptions as to documents twenty years old.*

(a) is proved to be or purports to be not less than twenty years old; and

(b) is produced from proper custody,

shall (unless there is proved to be any reason to suspect to the contrary) be presumed to have been duly signed, sealed, attested, delivered or published in accordance with its purport and recitals, statements, descriptions of facts, matters and parties contained in any such document not so proved shall, unless and except so far as they may be proved to be inaccurate be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

5.(1) The Acts mentioned in the Schedule are adopted as law of the Falkland Islands to the extent and subject to the modifications and adaptations there specified.

*Application of  
Acts relating to  
evidence.*

(2) Subsection (1) has effect without prejudice to the application of any of the provisions of the said Acts under and in accordance with any provision of the Interpretation and General Clauses Ordinance 1977.

## THE SCHEDULE

(section 5(1))

### ADOPTION OF ACTS WITH MODIFICATIONS AND ADAPPTIONS

1. Except where in this Schedule specified to the contrary, the words "United Kingdom", "England" and "England and Wales" wherever appearing in any provision of any Act adopted as law of the Falkland Islands by virtue of this Ordinance are replaced by the words "Falkland Islands".

*General.*

2. The Civil Evidence Act 1968 ("the 1968 Act") is adopted as law of the Falkland Islands subject to the exceptions, modifications and adaptations specified in paragraphs 3 and 4 of this Schedule.

*Adoption of Civil  
Evidence Act 1968.*

3. Sections 11(5), 15, 17, 19 and 20(2), (3) and (4) of the 1968 Act shall be omitted.

4. Paragraph 1 of this Schedule shall not apply in relation to section 11(1), 11(2) or 13(3) of the 1968 Act and in every instance in which they appear in those provisions the words "United Kingdom or by a court-martial there or elsewhere" are replaced by the words "United Kingdom or the Falkland Islands or by a court-martial in the United Kingdom, in the Falkland Islands or elsewhere".

5. The Civil Evidence Act 1972 ("the 1972 Act") is adopted as law of the Falkland Islands subject to the modifications and adaptations specified in paragraphs 6 and 7 of this Schedule.

*Adoption of Civil  
Evidence Act 1972.*

6. Paragraph 1 of this Schedule shall not apply in relation to section 4(1), (2) and (5) of the 1972 Act and -

(a) the words "and the Falkland Islands" are inserted after the words "United Kingdom" where they first appear in each of section 4(1) and (2);

(b) the words "after the passing of this Act" in section 4(2) of the 1972 Act shall, subject to section 5(2) of this Ordinance, have effect as if the Act had been passed on such date as this Ordinance comes into force under the provisions of section 1 of this Ordinance; and

(c) the words "or the Falkland Islands" are inserted after the words "England and Wales" where they first appear in section 4(5) of the 1972 Act and those words where they secondly appear in that provision are replaced by the words "the Falkland Islands".



7. Section 4(4) of the 1972 Act is replaced by the following -

"(4) The proceedings referred to in subsection (2) above are the following, whether civil or criminal, namely -

(a) proceedings at first instance in the Supreme Court or in the Magistrate's Court;

(b) appeals arising out of any such proceedings as are mentioned in paragraph (a) above."

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# The Wireless Telegraphy Ordinance 1994

(No: 22 of 1994)

## ARRANGEMENT OF PROVISIONS

### Section

1. Short title.
2. Interpretation.
3. Saving for Telecommunications Ordinance 1988.
4. Licensing of wireless telegraphy.
5. Fees and charges for telegraphy licences.
6. Regulations as to wireless telegraphy.
7. Misleading messages and interception and disclosure of messages.
8. Territorial extent of preceding provisions.
9. Prevention or reduction of interference.
10. Deliberate interference.
11. Penalties and legal proceedings.

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Wireless Telegraphy Ordinance 1994

(No: 22 of 1994)

An Ordinance  
To make further provision in relation to wireless telegraphy

*(assented to: 7th December 1994)**(commencement: on publication)**(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Wireless Telegraphy Ordinance 1994.

*Short title.*

2.(1) In this Ordinance, except where the context otherwise requires -

*Interpretation.*

"1949 Act" means the Wireless Telegraphy Act 1949;

"electric line" means a wire or wires, or other means used for the purpose of conveying, transmitting or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, electricity or electric currents;

"station for wireless telegraphy" includes the wireless telegraphy apparatus of a ship or aircraft;

"Superintendent" means the Superintendent of Posts and Telecommunications and any public officer for the time being responsible for the functions of the Superintendent of Posts and Telecommunications;

"wireless telegraphy" means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megacycles a second, being energy which either -

(a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not), or for the actuation or control of machinery or apparatus; or

(b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of objects of any class,

and references to stations for wireless telegraphy and apparatus for wireless telegraphy or wireless telegraphy apparatus shall be construed as references to stations and apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy as aforesaid;

"wireless telegraphy licence" means a licence granted under section 4.

(2) Any reference in this Ordinance to the emission of electro-magnetic energy, or to emission (as opposed to reception) shall be construed as including a reference to the deliberate reflection of electro-magnetic energy by means of any apparatus designed or specially adapted for the purpose, whether the reflection is continuous or intermittent.

(3) In this Ordinance, the expression "interference", in relation to wireless telegraphy, means the prejudicing by any emission or reflection of electro-magnetic energy of the fulfilment of the purpose of the telegraphy (either generally or in part, and, without prejudice to the generality of the preceding words, as respects all, or as respects any, of the recipients or intended recipients of any message, sound or visual image intended to be conveyed by the telegraphy), and the expression "interfere" shall be construed accordingly.

(4) In considering for any of the purposes of this Ordinance whether in any particular case any interference with wireless telegraphy caused or likely to be caused by the use of any apparatus is, or is not, undue interference, regard shall be had to all the known circumstances of the case and the interference shall not be regarded as undue interference if so to regard it would unreasonably cause hardship to the person using or desiring to use the apparatus.

(5) Any reference in this Ordinance to the sending or conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly.

(6) In this Ordinance, the expression "ship" and "vessel" have the meanings respectively assigned to them by section 742 of the Merchant Shipping Act 1894.

(7) References in this Ordinance to apparatus on board a ship or vessel include references to apparatus on a kite or balloon flown from a ship or vessel.

### 3. Nothing in this Ordinance shall -

(a) render unlawful anything which is done under the authority of a licence granted under the Telecommunications Ordinance 1988;

(b) require the holding of a licence for the doing of anything for which a licence under that Ordinance has been granted; or

(c) render lawful anything which is unlawful unless done under the authority of a licence granted under that Ordinance.

*Saving for  
Telecommunications  
Ordinance 1988.*

4.(1) No person shall establish or use any station for wireless telegraphy or install or use any apparatus for wireless telegraphy except under the authority of a licence in that behalf granted by the Governor, but this subsection, unless otherwise provided by regulations made under this Ordinance, does not apply to any apparatus designed and used only for the reception of wireless telegraphy or to any station for wireless telegraphy or wireless telegraphy apparatus used by Her Majesty's armed forces under the authority of United Kingdom legislation applicable to such armed forces.

*Licensing of  
wireless telegraphy.*

(2) The Governor may by regulations exempt from the provisions of this subsection the establishment, installation or use of stations for wireless telegraphy or wireless telegraphy apparatus of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be so specified.

(3) A licence granted under this section may be issued subject to such terms, provisions and limitations as the Governor may think fit, including in particular in the case of a licence to establish a station, limitations as to the position and nature of the station, the purpose for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be installed or used therein, and in the case of any other licence, limitations as to the apparatus which may be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.

(4) A wireless telegraphy licence shall, unless previously revoked by the Governor, continue in force for such period as may be specified in the licence.

(5) A wireless telegraphy licence may be revoked, or the terms, provisions or limitations thereof varied, by a notice in writing of the governor served on the holder of the licence or by a general notice applicable to licences of the class to which the licence in question belongs published in the *Gazette* or in such other manner as may be specified in the licence.

(6) Where a wireless telegraphy licence has expired or has been revoked, it shall be the duty of the person to whom the licence was issued, and of every person in whose possession or under whose control the licence may be, to cause the licence to be surrendered to the Governor if required by the Governor so to do and any person who without reasonable excuse fails or refuses to comply with the provisions of this subsection commits an offence under this Ordinance.

(7) The Governor may by instrument in writing signed by him authorise the Superintendent to exercise in his name and on his behalf any of the Governor's powers under this section, except any power to make regulations, and any such authorisation may be subject to such exceptions, limitations and conditions as the Governor may think fit and shall not preclude the Governor himself from exercising any of the powers to which the authorisation relates.

5.(1) On the issue or renewal of a wireless telegraphy licence, and where the regulations under this section so provide, at such times thereafter as may be prescribed by the regulations, there shall be paid to the Governor by the person to whom the licence is issued such sums as may be prescribed by regulations made by the Governor, and different provision may be made in relation to different licences, according to the nature, terms, provisions, limitations and duration thereof; and such regulations may provide for authorising, in such cases as are not otherwise dealt with by the regulations, the charge by the Governor (or, where under section 4(7) the Governor has authorised the Superintendent to exercise the power of the issue or renewal of the licence in question, the charge by the Superintendent) of such sums, whether on the issue or renewal of the licence or subsequently, as may in the particular case appear to the Governor (or, as the case may be, the Superintendent) to be proper.

*Fees and charges for  
wireless telegraphy  
licences.*

(2) Where sums will or may become payable under subsection (1) of this section subsequently to the issue or renewal of a licence, the Governor (or, as the case may be, the Superintendent) may on the issue or renewal of the licence require such security as he thinks fits to be given, by way of deposit or otherwise, for the payment of sums which will or may become payable.

6.(1) The Governor may make regulations -

*Regulations as to wireless telegraphy.*

(a) prescribing the things which are to be done or are not to be done in connection with the use of any station for wireless telegraphy or wireless telegraphy apparatus, and, in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf of any such persons as may be prescribed by or under the regulations;

(b) imposing on the person to whom a wireless telegraphy licence is issued with respect to any station for wireless telegraphy or wireless telegraphy apparatus, or who is in possession or control of any station for wireless telegraphy or wireless telegraphy apparatus, obligations as to permitting and facilitating the inspection of the station and apparatus, as to the condition in which the station and apparatus are to be kept and, in the case of a station or apparatus for the establishment, installation or use of which a wireless telegraphy licence is necessary, as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;

(c) where sums are or may become due from the person to whom a wireless telegraphy licence is issued after the issue or renewal thereof, requiring that person to keep and produce such accounts and records as may be specified in the regulations; and

(d) requiring the person to whom a wireless telegraphy licence authorising the establishment or use of a station has been issued to exhibit at the station such notices as may be specified in the regulations,

and different provision may be made by any such regulations for different classes of case.

(2) A person commits an offence under this Ordinance who contravenes any regulations made under this section.

7. A person commits an offence under this Ordinance who -

*Misleading messages and interception and disclosure of messages.*

(a) by means of wireless telegraphy, sends or attempts to send, any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or in need of assistance; or

(b) otherwise than under the authority of the Governor or in the course of his duty as a servant of the Crown, either -

(i) uses any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Governor to receive; or

(ii) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or another person.

8.(1) Subject to the provisions of this section, sections 3 to 7 apply -

*Territorial extent  
of preceding  
provisions.*

(a) to all stations and apparatus in or over, or for the time being in or over, the Falkland Islands and the territorial sea adjacent thereto;

(b) subject to any limitations which the Governor may by regulations determine, to all stations and apparatus on board any ship or aircraft which is registered in the Falkland Islands but is not for the time being in or over the Falkland Islands or the said territorial sea; and

(c) subject to any limitations which the Governor may by regulations determine, to all apparatus which is not or over the Falkland Islands or the said territorial sea but was released from within the Falkland Islands or the said territorial sea, or from any ship or aircraft which is registered in the Falkland Islands,

and, without prejudice to the liability of any other person, in the event of any contravention of section 3 to 7 or of any regulations made thereunder occurring in relation to any station or apparatus on board or released from any vessel or aircraft, the captain or person for the time being in charge of the vessel or aircraft commits an offence under this Ordinance.

(2) The Governor may make regulations for regulating the use on board any ship or aircraft not registered in the Falkland Islands of any wireless telegraphy apparatus on board the ship or aircraft while it is within the limits of the Falkland Islands and the territorial sea adjacent thereto, and such regulations may provide for the punishment of persons contravening the regulations by a fine for each offence of an amount not exceeding the maximum of level 5 on the standard scale.

9. The Governor may by Order under this section apply to and in respect of the Falkland Islands and apparatus within the Falkland Islands -

*Prevention or  
reduction of  
interference.*

(a) all or any of the provisions of any regulations made under section 10(1) of the 1949 Act (regulations as to radiation of electro-magnetic energy) and section 15(2) to (4) of the 1949 Act so far as relevant to such regulations; and

(b) sections 11 and 12 of the 1949 Act (enforcement of regulations as to use of apparatus and enforcement of regulations as to sales, etc, by manufacturers and others), subject to such modifications and adaptations as are specified in such Order,

and may render contraventions of those provisions offences under this Ordinance.

10.(1) A person commits an offence under this Ordinance who uses any apparatus for the purpose of interfering with any wireless telegraphy.

*Deliberate  
interference.*

(2) Subsection (1) applies whether or not the apparatus is question in wireless telegraphy apparatus or apparatus to which the preceding provisions of this Ordinance apply, and whether or not (in the event that sections 11 and 12 of the 1949 Act have been applied) any notice under either of those sections has been given with respect to the apparatus or, if given, has been varied or revoked.

11.(1) A person who commits an offence under section 7 of this Ordinance is liable on conviction to imprisonment for a term not exceeding two years and a fine not exceeding the maximum of level 10 on the standard scale.

(2) A person who commits any other offence under this Ordinance is liable on conviction of that offence to a fine not exceeding the maximum of level 5 on the standard scale.

(3) Where any offence under this Ordinance has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and in all the circumstances.

(4) Where a person is convicted of an offence under this Ordinance consisting in any contravention of sections 3 to 7 of this Ordinance in relation to any station for wireless telegraphy or any wireless telegraphy apparatus or in the use of any apparatus for the purpose of interfering with any wireless telegraphy apparatus the court may, in addition to any other penalty, order all or any of the apparatus of the station, or (as the case may be) of the apparatus in connection with which the offence was committed, to be forfeited to the Crown.

(5) An order under subsection (4) may be made notwithstanding that the apparatus is not the property of the person by whom the offence giving rise to the forfeiture was committed and any apparatus forfeited under that subsection may be disposed of as the Governor thinks fit.

(6) Subsection (4) and (5) have effect notwithstanding anything in section 140 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands.

(7) The court by which any apparatus is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that apparatus except by delivering it up to the Governor within forty-eight hours of being so required by him.

(8) If a person against whom an order under subsection (7) of this section is made contravenes that order or fails to deliver up the apparatus to the Governor as required he commits a further offence in respect of which he is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(9) Without prejudice to the right to bring separate proceedings for contraventions of this Ordinance taking place on separate occasions, a person who is convicted of an offence under this Ordinance consisting of the use of any station or apparatus, or in a failure or refusal to cause any licence or authority to be surrendered, shall, where the use, or failure or refusal continues after the conviction, be deemed to commit a separate offence in respect of every day on which the use, failure or refusal so continues.

(10) Nothing in the preceding provisions of this section shall limit any right of any person to bring civil proceedings in respect of the doing apprehended doing of anything rendered unlawful by any provision of this Ordinance, and, without prejudice to the or generality of the preceding words, compliance with the provisions of this Ordinance which are declared to be offences under this Ordinance shall be enforceable by civil proceedings by the Crown for an injunction or for any other appropriate relief.



12.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Ordinance or any provision of law applied by this Ordinance has been or is being committed, and evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, he may grant a search warrant authorising any person authorised in that behalf by the Attorney General and named in the warrant, with or without any police officers, to enter, at any time within one month from the date of that warrant, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and any premises on which it may be, and to search the premises or, as the case may be, the vehicle or aircraft, and to examine and test any apparatus found on the premises, vessel, vehicle or aircraft.

(2) Where under this section a person has a right to examine any apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give him any such assistance as he may reasonably require in the examination or testing of the apparatus.

(3) A person commits an offence under this Ordinance who -

(a) intentionally obstructs any person in the exercise of the powers conferred on him under this section;

(b) without reasonable excuse fails or refuses to give to any such person any assistance which he is under this section under a duty to give to him; or

(c) discloses, otherwise than for the purposes of this Ordinance or of any report of proceedings thereunder, any information obtained by means of the exercise of powers under this Ordinance, which is information with regard to any manufacturing process or trade secret.

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Media Trust (Amendment) Ordinance 1994

(No: 23 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Principal Ordinance.
3. Amendment to Schedule 1 to the Principal Ordinance.

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

The Media Trust (Amendment) Ordinance 1994

(No: 23 of 1994)

An Ordinance  
To amend the Media Trust Ordinance 1989.

*(assented to: 7th December 1994)*

*(commencement: on publication)*

*(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Media Trust (Amendment) Bill 1994.

*Short title.*

2. In this Ordinance "the principal Ordinance" means the Media Trust Ordinance 1989.

*Principal Ordinance.*

3. Paragraph 6 of the Schedule 1 to the principal Ordinance is amended -

*Amendment of Schedule 1  
to the principal Ordinance.*

(a) by replacing "£500" in paragraph 6(1)(b) with "£1,000";

(b) by deleting the full stop at the end of paragraph 6(1)(b) and the insertion immediately thereafter of:

";or

(c) in the case of a cheque or other bill of exchange in an amount of £200 or less, by one trustee or the editor of the newspaper."; and

(c) by deleting the phrase "subparagraph (1)(b)" in paragraph 6(2) and replacing it with the phrase "subparagraphs (1)(b) and (1)(c)".

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Employment Protection (Amendment) Ordinance 1994

(No: 24 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Correction of Employment Protection Ordinance 1989.

## ELIZABETH II



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Employment (Amendment) Ordinance 1994

(No: 24 of 1994)

## An Ordinance

To correct errors and omissions in the Employment Protection Ordinance 1989

*(assented to: 7th December 1994)**(commencement: on publication)**(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Employment Protection (Amendment) Ordinance 1994.
2. The Employment Protection Ordinance 1989 is corrected by being amended as specified in the Schedule to this Ordinance and shall be deemed to have been enacted as so corrected.

*Short title.**Correction of  
Employment Protection  
Ordinance 1989.*

## SCHEDULE

*General*

1. In this Schedule, a reference to a section is to the section of that number of the Employment Protection Ordinance 1989 ("the 1989 Ordinance").
2. The word "tribunal", wherever it appears in the 1989 Ordinance, is replaced by the word "court".

*Section 52(2)*

3. In section 52(2), the words "by section 3 or by or under any provision of this Part" are replaced by the words "by any provision of this Ordinance".

*Section 60*

4. In section 60(2)(a) the words "section 56(1)(b)" are replaced by the words "section 22".

*Section 71(2)*

5. In section 71(2), the following words are added at the end of the subsection, and so as to complete it -

"(a) by virtue of section 80(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment;

(b) by virtue of the operation of section 82(1) is not treated as dismissed for the purposes of Part VIII".

*Sections 100(6) to (8), 101(1) to (3) and 102(1) and (2)*

6. The following provisions (which were included in the provisions of the Bill published in the *Gazette* on 19th October 1988 and were passed by the Legislative Council but were inadvertently omitted from the assent copies of the Bill) are inserted in the Ordinance (with a correction of an incorrect cross-reference in section 100(6) so published and passed to "subsection (11)" to subsection (7) (of that section)) -

(a) the following subsections in section 100 -

"(6) Subject to subsection (7), the Governor shall not in such a case authorise any payment under this section in respect of any debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on request by the Governor, provide him as soon as reasonably practicable with such a statement.

(7) Where -

(a) the application for a payment under this section has been received by the Governor, but no such payment has been made;

(b) the Governor is satisfied that a payment under this section should be made; and

(c) it appears to the Governor that there is likely to be unreasonable delay before he receives a statement about the debt in question,

then the Governor may, if the applicant so requests or, if the Governor thinks fit, without such a request, make a payment under this subsection notwithstanding that no such statement has been received.

(8) The total amount payable to an employee in respect of any debt mentioned in subsection (3), where that debt is referable to a period of time, shall not exceed £152 in respect of any one week or, in respect of any shorter period, an amount bearing the same proportion to £152 as that shorter period bears to a week,";

(b) the following section 101 -

"101.(1) Where in pursuance of section 100, the Financial Secretary makes any payment to an employee in respect of any debt to which that section applies -

*Transfer of rights  
and remedies to  
the Crown.*

(a) any rights and remedies of the employee in respect of that debt (or, if the Financial Secretary has paid only part of it, in respect of that part) shall, on the making of the payment become rights and remedies of the Crown;

(b) any decision of the Summary Court requiring an employer to pay that debt shall have the effect that that debt or, as the case may be, that part of it which the Financial Secretary has paid, is to be paid to the Financial Secretary.

(2) There shall be included in the rights and remedies which become rights and remedies of the Crown in accordance with subsection (1)(a) any right to be paid in priority to other creditors of the employer in accordance with -

(a) section 33 of the Bankruptcy Act 1914,

(b) section 319 of the Companies Act 1948,

and the Crown shall be entitled to be so paid in priority to any other unsatisfied claim of the employee; and in computing for the purposes of those provisions any limit of the amount of sums to be so paid any sums payable to the Crown shall be treated as if they had been paid to the employee.

(3) Any sum recovered by the Crown in exercising any right or pursuing any remedy which is its by virtue of this section shall be paid into the Consolidated Fund."

(c) the following section 102(1) and (2) -

*Power of Crown  
to obtain information  
in connection with  
applications.*

"102.(1) Where an application is made to the Governor under section 100 in respect of a debt owed by a employer, the Financial Secretary may require -

(a) the employer to provide him with such information as the Governor may reasonably require for the purpose of determining whether the application is well-founded;

(b) any person having the custody or control of any relevant records or documents to produce for examination on behalf of the Governor any such document in that person's custody or control which is of such a description as the Financial Secretary may require.

(2) Any such requirement shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given."

#### *Section 104*

7. Section 104 is amended -



(a) by constituting the existing section as subsection (1) of that section; and

(b) by adding the following subsection -

"(2) Subsection (1) shall not apply -

(a) to any provision of a collective agreement excluding rights under section 15 if an order under section 21 is for the time being in force in respect of it;

(b) to any provision of an agreement relating to dismissal from employment as is mentioned in section 106(1) or (2)."

*Section 107*

8. Section 107(1) is amended by the omission of the words "section 373 of the Merchant Shipping Act 1894".

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

## The Old Age Pensions (Credit of Contributions) Ordinance 1994

(No: 25 of 1994)

### ARRANGEMENT OF PROVISIONS

#### Section

1. Short title.
2. Amendment of Old Age Pensions (Amendment) (No.2) Ordinance 1986.

ELIZABETH II



Colony of the Falkland Islands

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 DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

## The Old Age Pensions (Credit of Contributions) Ordinance 1994

(No: 25 of 1994)

## An Ordinance

To amend the Old Age Pensions (Amendment) (No.2) Ordinance 1986 by providing that 1st January 1982 shall be substituted for 1st January 1986 as the date from which it is to have effect.

*(assented to: 12th December 1994)**(commencement: on publication)**(published: 21st December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Old Age Pensions (Credit of Contributions) Ordinance 1994. *Short title.*

2. Section 1 of the Old Age Pensions (Amendment) (No.2) Ordinance 1986 is amended by replacing the words "1st day of January 1986" with the words "1st day of January 1982" (and so that the amendments made by section 2 of that Ordinance to the Old Age Pensions Ordinance 1952 shall have effect on and from the 1st day of January 1982). *Amendment of Old Age Pensions (Amendment) (No.2) Ordinance 1986.*

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

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## SUBSIDIARY LEGISLATION

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### INCOME TAX

#### Income Tax (Annual Values) Rules 1994

(S. R. & O. No.17 of 1994)

*Made: 7th December 1994*

*Coming into operation: 1st January 1995*

*Published: 21st December 1994*

IN EXERCISE of my powers under section 160 of the Taxes Ordinance 1994 (a) and of all other powers me enabling in that behalf, I make the following Rules -

1. These Rules may be cited as the Income Tax (Annual Values) Rules 1994. *Citation.*
2. Subject to section 7(3) of the Taxes Ordinance, these Rules shall come into force on 1st January 1995 and shall apply in relation to the charge for Income Tax for years of assessment beginning on or after 1st January 1995. *Commencement and application.*
3. The following annual values are prescribed for the purposes of section 7(1)(c) and (d) of the Ordinance - *Board and accommodation fuel, light and power.*
  - (a) Board and accommodation provided aboard ship as an incident of his employment to a member of the crew of a ship who is resident in the Falkland Islands and whose usual place of abode during the relevant period is aboard ship: £966;
  - (b) Board and accommodation provided as an incident of his employment to a domestic servant employed other than in an institution: £651;
  - (c) Employees residing as an incident of his employment in an institution:
    - (i) in respect of accommodation in the institution (including the provision to him of fuel, light and power or any of them): £651;
    - (ii) in respect of food or meals provided by employer: £735;
  - (d) Employee, other than an employee in agriculture or horticulture, provided with -

(i) free heating: £315;

(ii) free light: £126;

(e) Employee other than an employee of a kind mentioned in subparagraph (a), (b) or (c) above, provided by his employer with free board and lodging -

(i) where the employee only is so provided: £1,418;

(ii) Where the employee and his spouse are so provided: £1,785 and in addition for each child so provided £189;

(f) A person other than a person engaged or employed in agriculture who as a result thereof is provided with a dwelling is liable to income tax on the difference between the amount he actually pays in respect of the use and occupation of the house and whichever of the following sums is relevant -

#### Category A

A dwelling not having permanent disadvantages of a kind such as those mentioned under Categories B and C -

(a) Where the house is provided substantially furnished: £17.85 per room per month subject to a maximum of: £124.95;

(b) Where the house is not provided substantially furnished: £14.18 per room per month.

#### Category B

A dwelling which, in the opinion of the Commissioner, suffers permanent disadvantages such as over-thin dividing walls -

(a) Where the house is provided substantially furnished: £16.28 per room per month;

(b) Where the house is not provided substantially furnished: £12.60 per room per month.

#### Category C

A dwelling which, in the opinion of the Commissioner, is particularly disadvantaged by reason of lack of privacy, liability of the tenant for repair or decoration or other sufficient reason -

(a) Where the house is provided substantially furnished: £12.60 per room per month;

(b) Where the house is not provided substantially furnished: £10.50 per room per month.

And, for the purposes of any liability to tax under any of the foregoing categories -

(i) The maximum number of rooms in respect of which a liability to tax may arise is seven; and

(ii) Garages, outbuildings, porches, bathrooms, lavatories, larders, halls and passages are not rooms.

4. Where a person has the benefit of anything to which paragraph 3 relates for part only of a calendar year, the sums provided for by that paragraph shall be reduced in the proportion that part bears to a full year. *Apportionment.*

5. The Income Tax (Annual Values) Rules 1991 are revoked but without prejudice to their application to any year of assessment ended before 1st January 1995. *Revocation.*

Made this 7th day of December 1994.

D. E. TATHAM,  
*Governor.*

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## SUBSIDIARY LEGISLATION

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### THE TAXES ORDINANCE 1994

#### The Taxes (Excess Benefits) Rules 1994

(S. R. & O. No: 18 of 1994)

*Made: 7th December 1994*

*Published: 21st December 1994*

*Coming into force: when confirmed by Legislative Council (see s.94(2) Taxes Ordinance 1994)*

IN EXERCISE of my powers under section 94(3) of the Taxes Ordinance 1994 I make the following Rules -

1.(1) These Rules may be cited as the Taxes (Excess Benefits) Rules 1994 and shall have effect as respects relevant accounting periods beginning on or after the date on which they are made.

*Citation, commencement, purpose and interpretation.*

(2) These Rules shall have effect for the purposes of section 94(1) of the Taxes Ordinance 1994, and any reference in these Rules to a particular section is a reference to that section of that Ordinance.

2.(1) Subject to Rule 3 below, any benefit falling within paragraphs (a) to (f) below is hereby prescribed for the purposes of section 94(1)(a), that is to say -

*Prescribed benefits and values and the prescribed percentage of remuneration.*

(a) any sum paid by an employer in respect of expenses incurred by or on behalf of an employee or a member of the family of an employee, whether paid to the employee, a member of his family or to another person;

(b) a motor vehicle (as defined by Rule 6(2)) which is provided for the use of an employee or a member of the family of an employee;

(c) a loan made by the employer to an employee or a member of the family of an employee which is written off in whole or in part during the relevant accounting period in question;

(d) any other loan made by the employer to an employee or a member of the family of an employee;

(e) any benefit being a sum of money (other than a loan) or any asset (including a motor vehicle) title to which is transferred to an employee or a member of the family of an employee, if the cost of providing that benefit is wholly or partly borne (directly or indirectly) by the employer;

(f) any other benefit provided to an employee or to a member of the family of an employee, including the use of an aeroplane, accommodation, entertainment, domestic or other services and any other facility.

(2) For the purposes of section 94(1)(b) -

(a) the cash equivalent of any benefit (as defined in Rules 4 and 5) is hereby prescribed as the value of that benefit; and

(b) 50 per cent. of a person's remuneration is hereby prescribed as the percentage of remuneration.

3.(1) Paragraph (1)(a) of Rule 2 does not include the provision of any sum -

*Exclusions from  
Rule 2.*

(a) which in the hands of the employee is (or would if he had defrayed the expenses himself) deductible in computing his chargeable income, or

(b) if or to the extent that the expenses are incurred by or in respect of the employee solely for or in connection with the performance of the duties of his employment.

(2) Paragraph (1) of Rule 2 does not include any vehicle if the employee uses it during the relevant accounting period in question only for travel which he is necessarily obliged to do in the performance of the duties of his employment.

(3) Paragraph (1)(d) of Rule 2 does not include any loan -

(a) which is made by an employer who carries on a business which includes the making of loans if the loan was made in the ordinary course of that business and is of an amount and on terms comparable to loans available generally to customers of that business; or

(b) if at no time during the relevant accounting period in question does the amount of the loan or, if the employee has more than one loan which (disregarding this paragraph) falls within paragraph (1)(c) of Rule 2, the amount of the aggregate of those loans exceed £5,000;

(c) if it is made by an individual and shown to have been made in the normal course of his domestic, family or personal relationships; or

(d) if and to the extent that the interest payable on the loan is deductible from the employee's income by virtue of section 14(3)(b).

(4) Paragraph (1)(e) of Rule 2 does not include an invalid carriage (as defined by Rule 6(2)(b)).

(5) Paragraph (1)(f) of Rule 2 does not include -

(a) a car-parking space at or near the employee's place of work;

(b) the provision of anything used by the employee in performing the duties of his employment in so far as it is so used;

(c) any benefit the value of which is chargeable to tax as income of the employee;



(d) any expenditure by the employer in the provision for or in respect of the employee of any benefit to be given on the employee's retirement or death;

(e) an invalid carriage (as defined by Rule 6(2)(b)).

4.(1) In the case of a motor vehicle which is placed at the disposal of any person for his use (without being transferred to him) the cash equivalent is -

*The cash equivalent  
for motor vehicles.*

(a) where, after the person providing the motor vehicle had acquired or produced it but before it was provided for the use of the employee or any member of his family, it has been used or has depreciated, an amount equal to 15 per cent. of the market value of the asset at the time it is so first provided;

(b) if sub-paragraph (a) above does not apply and the vehicle is owned by the employer, an amount equal to 15 per cent. of the actual expense of providing the vehicle;

(c) if sub-paragraph (a) above does not apply and the vehicle is not owned by the employer, 15 per cent. of the market value of the vehicle when it is or was first placed at the disposal of the employee or any member of his family for his or their use.

(2) In the case of a motor vehicle which is transferred to a person, the cash equivalent is -

(a) where motor vehicle has been used or has depreciated before the transfer, the cash equivalent is an amount equal to the market value of the asset at the time it is so first provided;

(b) if paragraph (a) does not apply, an amount equal to the cost incurred by the employer in acquiring the vehicle or, if the employer did not acquire the vehicle, the cost borne by the employer in connection with the transfer;

less so much if any as is made good by the employee to the employer.

5.(1) This Rule applies for the determination of the cash equivalent of any benefit within Rule 2(1) other than a motor vehicle.

*The cash equivalent  
for benefits other  
than motor vehicles.*

(2) The cash equivalent of any benefit within paragraph (1)(a) of Rule 2 is an amount equal to the sum paid in the relevant accounting period in question.

(3) In relation to any loan within paragraph (1)(c) of Rule 2 the cash equivalent is equal to the amount written off in the relevant accounting period in question.

(4) In relation to any loan within paragraph (1)(d) of Rule 2 the cash equivalent is an amount equal to the amount of interest which would have been paid in respect of the loan during the relevant accounting period in question if it had borne interest, calculated on a daily basis, throughout that period at the rate equal to base lending rate plus 3 per cent., less the amount of any interest actually paid in respect of the loan during that period.

(5) In relation to any benefit within paragraph (1)(e) of Rule 2 other than a motor vehicle the cash equivalent is an amount equal to -

(a) if the benefit is a sum of money, that sum;

(b) if the benefit is the transfer of an asset by the employer, the cost to the employer of acquiring the asset, including the costs of any improvements to the asset but less an fair amount for depreciation if appropriate; or

(c) in any other case, the cost borne by the employer in connection with the transfer;

less so much if any as is made good by the employee to the employer.

(6) In relation to any benefit within paragraph (1)(f) of Rule 2 -

(a) where the benefit is the use of an asset which, after the person providing it had acquired or produced it but before it was provided to the employee or any member of his family, has been used or has depreciated, the cash equivalent of the benefit is an amount equal to 30 per cent. of the market value of the asset at the time it is so first provided;

(b) if sub-paragraph (a) does not apply and the benefit is the use of an asset which is owned by the employer, the cash equivalent of the benefit is an amount equal to 30 per cent. of the actual expense incurred in providing the asset;

(c) if sub-paragraph (a) does not apply and the benefit is the use of an asset which is not owned by the employer, the cash equivalent of the benefit is an amount equal to -

(i) the annual rent or hire charge which might reasonably be expected to be obtained on a letting or hiring of the asset from year to year with the lessor or hirer bearing the cost of repairs and insurance, or

(ii) 30 per cent. of the asset's market value at the time when it was first provided for the use of the employee concerned or a member of his family,

whichever can be ascertained or, if both can be ascertained, whichever is the greater.

6.(1) For the purposes of these Rules, the actual expense of providing a benefit other than cash -

*Supplementary provisions.*

(a) includes the expenses incurred in its acquisition by the employer together with a proper proportion of any expense relating partly to the benefit and partly to other matters and any costs incurred in its maintenance, repair and insurance, but;

(b) excludes so much if any as is made good by the employee to the employer or to the person providing the benefit (if the not employer).

(2) In these Rules "motor vehicle" means any mechanically propelled road vehicle other than -

(a) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description the design weight of which exceeds 3,500 kilograms;

(b) an invalid carriage, that is to say, a vehicle which is specially designed and constructed (not merely adapted) for the use of a person with a disability and has an unladen weight not exceeding 254 kilograms;

(c) a motor cycle, that is to say, a vehicle, not being an invalid carriage, with fewer than 4 wheels and an unladen weight which does not exceed 410 kilograms;

(d) a moped or a motor scooter.

(3) For the purposes of these Rules -

(a) any reference to a loan includes a reference to any form of credit, and to any arrangement, guarantee or other facility connected with the provision of a loan; and

(b) any reference to a member of the family of an employee includes the spouse, parent, child, grandparent, grandchild, brother or sister of the employee and any person living with the employee as his partner and any child of such a person living with the employee.

Made this 7th day of December 1994

D. E. TATHAM,  
*Governor.*



# THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

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The following are published in this Supplement —

**The Family Allowances (Amendment) Ordinance 1994, (No. 26 of 1994);**

**The Immigration (Amendment) Ordinance 1994, (No. 27 of 1994);**

**The Children Ordinance 1994, (No. 28 of 1994);**

**The Various Wreck Sites (Designation) Order 1994, (S.R. & O. No. 20 of 1994);**

**The Harbour Regulations (Amendment) Order 1994, (S.R. & O. No. 21 of 1994);**

**The Elected Councillors' Allowances Ordinance 1990 (Replacement of Schedule)  
Order 1994, (S.R. & O. No. 22 of 1994).**

# **The Family Allowances (Amendment) Ordinance 1994**

(No: 26 of 1994)

## **ARRANGEMENT OF PROVISIONS**

### **Section**

- 1. Short title and commencement.**
- 2. Amendment of principal Ordinance.**

ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
*Governor.*

The Family Allowances (Amendment) Ordinance 1994

(No: 26 of 1994)

An Ordinance  
To amend the Family Allowances Ordinance.

*(assented to: 12th December 1994)*  
*(commencement: 1st January 1995)*  
*(published: 22nd December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows:

1. This Ordinance may be cited as the Family Allowances (Amendment) Ordinance 1994 and comes into operation on 1st January 1995. *Short title and commencement.*
- 2.(1) Section 3(2) and (3) of the principal Ordinance are replaced by the following subsection - *Amendment of principal Ordinance.*

"(2) The Superintendent shall pay for each child of a family an allowance at the rate of £43.50.

(3) Subject to subsection (4) of this section the Superintendent shall pay each month to any person to whom he pays an allowance under subsection (2) of this section in respect of a family to which paragraph (b) or (c) of section 5(1) applies ("a single parent") a further allowance of £36.00 ("a single parent's allowance") and this sum shall be paid regardless of the number of children that person maintains."

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# **The Immigration (Amendment) Ordinance 1994**

(No: 27 of 1994)

## **ARRANGEMENT OF PROVISIONS**

### **Section**

1. Short title.
2. Interpretation.
3. Insertion of new sections 11A, 11B and 11C in the principal Ordinance.
4. Amendment of section 12 of the principal Ordinance.
5. Insertion of section 12A in the principal Ordinance.
6. Minor and consequential amendments of the principal Ordinance.

### **Schedule**



ELIZABETH II



Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Immigration (Amendment) Ordinance 1994

(No: 27 of 1994)

An Ordinance  
To amend the Immigration Ordinance 1987

(assented to: 12th December 1994)  
(commencement: on publication)  
(published: 22nd December 1994)

ENACTED by the Legislature of the Falkland Islands as follows -

1. This Ordinance may be cited as the Immigration (Amendment) Ordinance 1994. *Short title.*
2. In this Ordinance, the "principal Ordinance" means the Immigration Ordinance 1987. *Interpretation.*
3. The principal Ordinance is amended by the insertion, immediately after section 11, of the following sections 11A, 11B and 11C - *Insertion of new sections 11A, 11B and 11C in the principal Ordinance.*
  - "11A.(1) Subject to this Ordinance, the Governor may on the application of any person grant to him a permanent residence permit. *Issue of permanent residence permits.*
  - (2) An application for a permanent residence permit may be made by delivering an application in the prescribed form to the Principal Immigration Officer.
  - (3) Subject to subsection (4), the Principal Immigration Officer shall forward every application for a permanent residence permit to the Governor together with any comments or observations he wishes to make in connection with that application and the application, and the Principal Immigration Officer's comments or observations in relation to it, if any, shall be considered by the Executive Council.
  - (4) The Principal Immigration Officer shall not be obliged by subsection (3) to forward an application for a permanent residence permit to the Governor, nor shall it be necessary for the application to be considered by the Executive Council -
    - (a) if the Principal Immigration Officer or, as the case may be, the Governor, is of opinion that the requirements of subsection (5) are not met in relation to the applicant;

(b) if the Governor is of the view that further inquiries ought to be made in relation to the applicant or further information ought to be obtained from the applicant and has directed that those inquiries be made or that information sought, until those inquiries have been made or that information has been obtained.

(c) if the Governor directs that notice of the application should be published in the Gazette, until the expiry of fourteen days after such publication.

(5) Subject to subsection (6), an application for a permanent residence permit shall not be granted -

(a) if it appears that the applicant is not of good character; or

(b) if it appears that the applicant is not readily financially capable of supporting himself and any person who he may in his application have mentioned as a dependant of his whom he wishes, in the event of a permanent residence permit being granted to him to live with him as part of his family; or

(c) to a prohibited immigrant.

(6) An application for a permanent residence permit shall not be refused to an applicant who is of good character and proves that he is lawfully married to a person who is a person who, in terms of section 17(5) of the Constitution, belongs to the Falkland Islands.

(7) Subject to subsections (5) and (6), the Governor may grant or refuse an application for a permanent residence permit and, if he refuses such an application shall not be obliged to state any reason for so doing.

(8) The Governor may make regulations -

(a) prescribing the form of application for a permanent residence permit; and

(b) requiring every applicant for a permanent residence permit and every dependant of the applicant of a kind mentioned in subsection (5)(c) to undergo medical examination by a Government Medical Officer or other medical practitioner approved by the Governor for the purpose and for a certificate of the result of that examination or those examinations to be attached to the form of application;

(c) requiring every applicant for a permanent residence permit to disclose such information or give such authority to another to enable him to disclose such information, in either case as the Governor may consider necessary in connection with the proper consideration of the application; and

(d) otherwise as the Governor may think necessary or convenient in connection with applications for permanent residence permits.

(9) Where an applicant for a permanent residence permit has indicated in his application that he does not wish to be permitted to take gainful employment or engage in any business in the Falkland Islands, the Governor may, if he grants the application, grant it on condition that so long as the condition remains in force the applicant shall not take gainful employment or engage in any business in the Falkland Islands.

(10) The effect of a permanent residence permit shall be so long as the same shall remain unrevoked -

(a) to permit the person to whom it is granted to remain in the Falkland Islands without limitation on the period of time for which he may remain therein, and to permit him to leave the Falkland Islands and re-enter the same at any time while the permit remains in force;

(b) subject to section 11C(3), to permit any person named in the permit as a dependant of the holder to remain in the Falkland Islands, to leave and re-enter the Falkland Islands so long as he may be a dependent of the person to whom the permit is granted and no removal order has been made in respect of him and the permit remains in force, and on condition that he does not take gainful employment or engage in any business in the Falkland Islands.

(11) For the purposes of this section a person is the dependant of the holder of a permanent residence permit if -

(a) he ordinarily lives with the holder of the permit as part of the holder's household;

(b) being a person of eighteen years of age or more, he is the spouse of the holder;

(c) except in relation to such a spouse, he is under the age of eighteen years; and

(d) in the case of an application for a permanent residence permit, he is named in the application and, in any other case, he is named in the permit.

(12) In subsection (11) "spouse" includes a person of the opposite gender who lives with the holder of a permit as if he or she were married to the holder.

(13) The Governor may at any time, on the application of the holder, amend a permit so as to delete any condition subject to which it was granted or to add to the persons named therein as dependents of the holder.

(14) A person commits an offence who, in or in connection with an application for the grant or amendment of a permanent residence permit, knowingly or recklessly makes any statement which is false or misleading in any material particular. A person convicted of an offence under this section is liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding the maximum of level 6 on the standard scale.

11B.(1) The Governor may revoke a permanent residence permit -

(a) if he is satisfied that the permit was granted following some material false or misleading statement made by the holder or on his behalf in or in connection with his application for the permit;

*Revocation of  
permanent residence  
permits.*

(b) if the applicant is convicted of an offence which is punishable by six months imprisonment or more and conviction of which imputes that the person convicted is of bad character (and whether the holder was in fact sentenced to imprisonment in respect of the offence or not) or the applicant is sentenced in respect of any offence to six months imprisonment or more (and whether or not conviction of the offence in question imputes that the person convicted is of bad character);

(c) if the holder is adjudicated bankrupt; or

(d) if the holder in the opinion of the Governor has become, or is likely to become, a burden upon public funds; or

(e) if it appears to the Governor that the holder is unable adequately to maintain himself or his dependants; or

(f) if the Governor proposes to make a removal order in respect of the holder of the permit.

(2) The effect of the revocation of a permanent residence permit shall be to terminate the rights of the holder and of his dependants under the permit twenty-one days after service upon the holder of notice in writing of the revocation of the permit (and without prejudice to section 17, it is hereby specifically declared that if the holder and such dependants are not by virtue of some provision of the Constitution or some other provision of this Ordinance or a permit issued thereunder entitled to remain in the Falkland Islands after such termination, his and their continued presence in the Falkland Islands shall then be unlawful).

(3) Notice of the revocation of a permanent residence permit shall be given to the holder in writing and such notice shall state upon which of the grounds (a) to (f) in subsection (1) the Governor revokes the permit.

11C.(1) No appeal shall lie to any court or authority from and against any decision of the Governor to refuse, grant or revoke a permanent residence permit.

*Supplementary to  
sections 11A and 11B.*

(2) For the sake of avoidance of doubt, it is hereby declared that a dependant of the holder of a permanent residence permit may at any time apply for a residence permit on his own behalf and that so long as such a permit remains in force in respect of such a person, nothing in section 11A or section 11B relating to the dependent of the holder of a permanent residence permit shall apply to him.

(3) Nothing in section 11A(10)(b) prevents a removal order being made and taking effect in respect of a dependent of the holder of a permanent residence permit."

4. Section 12 of the principal Ordinance is amended -

*Amendment of section  
12 of the Principal  
Ordinance.*

(a) by the insertion at the beginning of subsection (2) of the words "Subject to subsection (4),"; and

(b) by the insertion of the following subsection -

"(4) The Principal Immigration Officer may, if he considers that in the circumstances of the particular case there is special reason to do so -

(a) grant a visitor's permit so that it is valid for a period of more than four months in any period of twelve months; or

(b) extend the validity of a visitor's permit previously granted,

(but the Principal Immigration Officer shall not without the consent of the Governor exercise his powers under this subsection in such a way that the holder can lawfully remain in the Falkland Islands for a period exceeding twelve months from the date on which the permit was or is granted).

(5) Unless a particular visitor's permit stipulates to the contrary it shall be deemed to be a condition of the permit that the holder thereof shall not take employment in the Falkland Islands without the permission in writing of the Principal Immigration Officer."

5. The principal Ordinance is amended by the insertion of the following section 12A -

*Insertion of  
section 12A in the  
principal Ordinance.*

12A.(1) The Principal Immigration Officer may on the application of any person under this subsection, and if he is satisfied having regard to subsection (2) that such a permit can properly be issued to the applicant grant to him a business visitor's permit.

*Business visitor's  
permits.*

(2) A business visitor's permit may be issued to a person if -

(a) as a director of a company incorporated in the Falkland Islands or as a director or other employee of a company incorporated elsewhere and which has established a place of business in the Falkland Islands;

(b) in the course of a business established outside the Falkland Islands of which he is an owner or employee,

he is likely to wish to visit the Falkland Islands on a number of occasions regularly or irregularly occurring.

(3) Subject to subsection (4), a business visitor's permit shall be valid for a period of five years and shall permit the holder to remain in the Falkland Islands for a period not exceeding six weeks (or such greater period as the Principal Immigration Officer may on a particular occasion or generally for special reason permit) on the occasion of any visit to the Falkland Islands.

(4) A business visitor's permit may be revoked by the Principal Immigration Officer if it appears to him that any of the circumstances mentioned in paragraphs (b), (d), (e) or (f) or section 12(3) apply in relation to the holder of the permit or the circumstances mentioned in subsection (2) of this section no longer apply in respect of the holder."

6. The Schedule to this Ordinance shall have effect so as to incorporate in the principal Ordinance the amendments specified in such Schedule (which are minor amendments and amendments consequential to amendments of the principal Ordinance effected by the foregoing provision of this Ordinance).

*Minor and consequential  
amendments of the  
principal Ordinance.*

### **The Schedule**

#### **Minor and consequential amendments of the principal Ordinance**

1. In this Schedule, a reference to a section is the section of the principal Ordinance bearing the same number.
2. Section 2 is amended by the insertion in the section, in their correct alphabetical positions among the definitions appearing in that section, of the following definitions -
  - "business visitor's permit" means a permit granted under section 12A;
  - "permanent residence permit" means a permit of that description granted under section 11A;
  - "removal order" means an order under section 19;
  - "residence permit" means a permit of that description granted under section 11; and
  - "visitor's permit" means a permit granted under section 12;
3. Section 7(a) is amended by the replacement of the words "section 10" with the words "section 11 or section 11A".
4. Section 10(2) is amended by the addition at the end of the subsection of the words "but nothing in this section applies in respect of any application for a permanent residence permit".

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

# Children Ordinance 1994

(No: 28 of 1994)

## ARRANGEMENT OF PROVISIONS

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2. Interpretation.

#### *General principles of wide application*

3. Principle on which questions relating to upbringing etc. of children are to be decided.

#### *Provisions in relation to parental responsibility*

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5. Acquisition of parental responsibility by father.
6. Appointment of guardians.
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#### *General*

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10. Power of court to make Section 9 orders.
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15. Orders for financial relief with respect to children.

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#### *Criminal care and supervision orders*

- 34. Care and supervision orders in criminal proceedings.

#### *Effect and duration of orders etc.*

- 35. Effect and duration of orders etc.

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- 36. Jurisdiction of courts.
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- 39. Attendance of child at hearing under Part III or IV.
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- 41. Privacy for children involved in certain proceedings.
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- 43. Restrictions on use of wardship jurisdiction.

#### *General*

- 44. Offences by bodies corporate.
- 45. Consent by persons over 16 to surgical, medical and dental treatment.
- 46. Time at which a person attains a particular age.
- 47. Persons under full age may be described as children instead of as infants or minors.
- 48. Repeals etc.
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## ELIZABETH II



## Colony of the Falkland Islands

DAVID EVERARD TATHAM, C.M.G.,  
Governor.

## The Children Ordinance 1994

(No: 28 of 1994)

An Ordinance  
To reform the law relating to children.

*(assented to: 12th December 1994)**(commencement: 1st January 1995)**(published: 22nd December 1994)*

ENACTED by the Legislature of the Falkland Islands as follows -

## Part I

## INTRODUCTORY

1. This Ordinance may be cited as the Children Ordinance 1994 and shall come into force on such date as the Governor may appoint by notice published in the Gazette.

*Short title and  
commencement.*

2.(1) In this Ordinance -

*Interpretation.*

"care order" means an order under section 17(1)(a) of this Ordinance and any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Ordinance and (except where express provision to the contrary is made) includes an interim care order made under section 23; and any reference to a child who is in the care of the Crown is a reference to a child who is in its care by virtue of a care order;

"child" means, subject to paragraph 15(1) of Schedule 1 to this Ordinance, a person under the age of eighteen;

"child assessment order" has the meaning given by section 27(3);

"child of the family", in relation to the parties of a marriage, means -

(a) a child of both of those parties;

(b) any other child, not being a child who is placed with those parties as foster parents by the Crown, who has been treated by both of those parties as a child of their family;

"a contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

"court", in so far as is consistent with the context, means the Supreme Court, the Magistrate's Court and, subject to section 36 and any order having effect thereunder, the Summary Court;

"court of summary jurisdiction" means the Magistrate's Court and the Summary Court;

"a family assistance order" means an order under section 16 of this Ordinance;

"family proceedings" means any proceedings -

(a) in the inherent jurisdiction of the Supreme Court in relation to children;

(b) under any of the following enactments -

(i) Parts II and III of this Ordinance;

(ii) the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967;

(iii) the Matrimonial Causes Ordinance 1973;

(iv) the Adoption Act 1976 in its application to the Falkland Islands;

(v) the Matrimonial Proceedings (Domestic Violence) Ordinance 1994;

(vi) any other enactment specified by Ordinance for the purposes of this definition;

"parental responsibility" has the meaning given by subsection (4) of this section;

"a prohibited steps order" means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

"a section 9 Order" has the meaning given by section 9;

"a specific issue order" means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child;

"supervised child" and "supervisor", in relation to a supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order;

"supervision order" means an order under section 17(1)(b) of this Ordinance and (except in relation to a provision of this Ordinance as to which express provision to the contrary is made) includes an interim supervision order under section 23;

"upbringing", in relation to any child, includes the care of the child but not his maintenance;

(2) References in this Ordinance to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 2 of the Family Law Reform Ordinance 1994 (which extends the meaning of such references).

## (3) References in this Ordinance to -

- (a) a person with whom a child lives, or is to live, as the result of a residence order; or
- (b) a person in whose favour a residence order is in force,

shall be construed as references to the person named in the order as the person with whom the child is to live.

(4) In this Ordinance "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property and also includes the rights, powers and duties which a guardian of the child's estate (appointed, before the commencement of this Ordinance, to act generally) would have had in relation to the child and his property.

(5) The rights referred to in subsection (4) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(6) Any notice or other document required under this Ordinance to be served on any person may be served on him by being delivered personally to him, or by being sent by post to him in a registered letter at his proper address.

(7) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.

(8) For the purposes of subsection (6) of this section, the proper address of a person -

- (a) in the case of a secretary or clerk of a body corporate, shall be that of the registered or principal office of that body;
- (b) in the case of a partner of a firm, shall be that of the principal office of the firm; and
- (c) in any other case, shall be the last known address of the person to be served.

***General principles of wide application***

3.(1) Where in any proceedings before any court (whether or not a court as defined in section 2) -

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

*Principles on which questions relating to upbringing etc. of children are to be decided.*

is in question, the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in subsection (4) of this section, a court shall have regard in particular to -

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Ordinance in the proceedings in question.

(4) The circumstances are that -

(a) the court is considering whether to make, vary or discharge a section 9 order, and the making variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge an order under Part III of this Ordinance.

(5) Where a court is considering whether or not to make one or more orders under this Ordinance with respect to a child, it shall not make the order or any other orders unless it considers that doing so would be better for the child than making no order at all.

#### *Provisions in relation to parental responsibility*

4.(1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child. *Parental responsibility for children.*

(2) Where a child's father and mother were not married to each other at the time of his birth -

(a) the mother shall have parental responsibility for the child;

(b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with this Ordinance.

(3) For the sake of avoidance of doubt, it is hereby declared that section 2 of the Family Law Ordinance 1994 applies for the purposes of subsection (2) of this section and as required by section 2(2) of this Ordinance.

(4) The rule that a father is the natural guardian of his legitimate child is abolished.

(5) More than one person may have parental responsibility for the same child at the same time.

(6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to effect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Ordinance.

(9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(11) The making of any such arrangement shall not affect the liability of the person making it which may arise from any failure to meet any part of his responsibility for the child concerned.

(12) The fact that a person has, or does not have, parental responsibility for a child shall not affect -

(a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(13) A person who -

(a) does not have parental responsibility for a particular child; but

(b) has care of the child,

may (subject to the provisions of this Ordinance and of any other enactment) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

5.(1) Where a child's father and mother were not married to each other at the time of his birth -

*Acquisition of  
parental responsibility  
by father.*

(a) the court may on the application of the father, order that he shall have parental responsibility for the child; or

(b) the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child.

(2) A parental responsibility agreement shall be of no effect until it has been approved by an order of a court made under this subsection on the application of either the father or the mother.

(3) The approval by a court of a parental responsibility agreement may be subject to such amendments to the agreement as are specified in the order of the court and the parental responsibility agreement shall have effect subject to any amendments so specified.

(4) An order under subsection (1)(a) or a parental responsibility agreement may only be brought to an end by an order of the court made on the application -

(a) of any person who has parental responsibility for the child; or

(b) with the leave of the court, of the child himself.

(5) The court may only grant leave under subsection (4)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

6.(1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if - *Appointment of guardians.*

(a) the child has no parent with parental responsibility for him; or

(b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that such an order should be made even though no application has been made for it.

(3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death.

(4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.

(5) An appointment under subsection (3) or (4) of this section shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or -

(a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837 in its application to the Falkland Islands;

(b) in any other case, is signed at the direction of the person making the appointment, in his presence and join the presence of two persons who each attest the signature.

(6) A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.

(7) Where -

(a) on the death of any person making an appointment under subsection (3) or (4) of this section, the child concerned has no parent with parental responsibility for him; or

(b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child,

the appointment shall take effect on the death of that person.



(8) Where, on the death of any person making an appointment under subsection (3) or (4) of this section -

(a) the child concerned has a parent with parental responsibility for him; and

(b) subsection (7)(b) of this section does not apply,

the appointment shall take effect when the child no longer has a parent with parental responsibility for him.

(9) Subsections (1) and (7) of this section do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.

(10) Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) of this section being made by two or more persons acting jointly.

(11) Subject to any provision made by rules of court, no court shall exercise the Supreme Court's inherent jurisdiction to appoint a guardian of the estate of any child.

(12) Where rules of court are made under section 37 they may prescribe the circumstances in which, and subject to which, an appointment of such a guardian may be made, and until any rules of court are made under that subsection, rules of court made under section 5(11) of the Children Act 1989 shall have effect for the purposes of that subsection subject only to such modifications as may be required for them to apply in respect of the Supreme Court.

(13) A guardian of a child may only be appointed in accordance with the provisions of this section.

7.(1) An appointment under section 6(3) or (4) of this Ordinance revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

*Guardians: revocation and disclaimer.*

(2) An appointment under section 6(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed -

(a) by him; or

(b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.

(3) An appointment under section 6(3) or (4) of this Ordinance (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it -

(a) destroys the instrument by which it was made; or

(b) has some other person destroy that instrument in his presence.

(4) For the avoidance of doubt, an appointment under section 6(3) or (4) of this Ordinance is revoked if the will or codicil is revoked.

(5) A person who is appointed as a guardian under section 6(3) or (4) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect, but no such disclaimer shall have effect unless it is delivered to the Registrar of the Supreme Court for registration in the records of that court.

(6) An appointment of a guardian under section 6 may be brought to an end at any time by order of the court -

- (a) on the application of the person who has parental responsibility for the child;
- (b) on the application of the child concerned, with leave of the court; or
- (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

8.(1) A court considering any question with respect to a child under this Ordinance may -

*Welfare reports.*

- (a) ask a probation officer;
- (b) ask the Crown to arrange for -
  - (i) a public officer; or
  - (ii) such other person (other than a probation officer) as the Crown considers appropriate,

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The Chief Justice may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section.

(3) The report may be made in writing or orally, as the court requires.

(4) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

- (a) any statement contained in the report; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question it is considering.

(5) It shall be the duty of the Crown or probation officer to comply with any request for a report under this section.

## Part II

### ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS

#### *General*

9.(1) In this Ordinance, "a section 9 order" means a contact order, a prohibited steps order, a residence order, a specific issue order and any order varying or discharging such an order.

*Residence, contact and other orders with respect to children.*

(2) No court shall make any section 9 order, other than a residence order, with respect to any child who is in the care of the Crown.

(3) No court shall exercise its powers to make a specific issue order or prohibited steps order -

(a) with a view to achieving a result which could be achieved by making a residence or contact order;

(b) in any way which is by subsection (6) of this section denied to the Supreme Court in the exercise of its inherent jurisdiction in relation to children.

(4) No court shall make any section 9 Order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

(5) No court shall make any section 9 Order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

(6) No court shall exercise the Supreme Court's inherent jurisdiction with respect to children -

(a) so as to require a child to be placed in the care, or put under the supervision of the Crown;

(b) so as to require a child to be accommodated by or on behalf of the Crown;

(c) so as to make a child who is the subject of a care order a ward of court; or

(d) for the purpose of conferring upon the Crown power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

10.(1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 9 order with respect to the child if -

*Power of court to make Section 9 orders.*

(a) an application for an order has been made by a person who -

(i) is entitled to apply for a section 9 order with respect to the child; or

(ii) has obtained the leave of the court to make the application; or

(b) the court considers that the order should be made even though no such application has been made.

(2) The court may also make a section 9 order with respect to any child on the application of a person who -

(a) is entitled to apply for a section 9 order with respect to the child; or

(b) has obtained the leave of the court to make the application.

(3) This section is subject to the restrictions imposed by section 9.

(4) The following persons are entitled to apply to the court for any section 9 order with respect to a child -

(a) any parent or guardian of the child;

(b) any person in favour a residence order is in force with respect to the child.

(5) The following persons are entitled to apply for a residence or contact order with respect to a child -

(a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;

(b) any person with whom the child has lived for a period of at least three years;

(c) any person who -

(i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;

(ii) in any case where the child is in the care of the Crown, has the consent of the Crown; or

(iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.

(6) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for variation or discharge of a section 9 order shall be entitled to do so if -

(a) the order was made on his application; or

(b) in the case of a contact order, he is named in the order.

(7) Any person who falls within a category of persons prescribed by rules of court is entitled to apply for any such section 9 order as may be prescribed in relation to that category of person.

(8) Where a person applying for leave to make an application for a section 9 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for a section 9 order.

(9) Where the person applying for leave to make an application for a section 9 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to -

- (a) the nature of the proposed application for the section 9 order;
- (b) the applicant's connection with the child;
- (c) any risk there might be of the proposed application disrupting the child's life to the extent that he would be harmed by it; and
- (d) where the child is being looked after by the Crown -
  - (i) the Crown's plans for the child's future; and
  - (ii) the wishes and feelings of the child's parents.

(10) The period of three years mentioned in subsection (5)(b) of this section need not be continuous but must have begun not more than five years before, or ended more than three months before, the making of the application.

11.(1) In the proceedings in which any question of making a section 9 order, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of subsection (2)) - *General principles and supplementary provisions.*

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

(2) Rules of court may -

- (a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.

(3) Where a court has power to make a section 9 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(5) Where -

- (a) a residence order has been made with respect to a child; and
- (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him,

the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.

(6) A contact order which requires the parent with whom the child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.

(7) A section 9 order may -

(a) contain directions about how it is to be carried into effect;

(b) contain conditions which must be complied with by any person -

(i) in whose favour the order is made;

(ii) who is a parent of the child concerned;

(iii) who is not a parent of his but who has parental responsibility for him; or

(iv) with whom the child is living,

and to whom the conditions are expressed to apply;

(c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;

(d) make such incidental, supplemental or consequential provision as the court thinks fit.

12.(1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 5 giving him that responsibility. *Residence orders and parental responsibility.*

(2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child as a result of subsection (2) of this section he shall not have the right -

(a) to consent, or refuse to consent, to the making of an application with respect to the child under section 18 of the Adoption Act 1976 in its application to the Falkland Islands;

(b) to agree, or refuse to agree, to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 in its application to the Falkland Islands, with respect to the child; or

(c) to appoint a guardian for the child.

(4) Where subsection (1) of this section requires the court to make an order under section 5 of this Ordinance in respect of the father of the child, the court shall not bring that order to an end while the residence order remains in force.

13.(1) Where a residence order is in force with respect to a child no person may -

*Change of child's name  
or removal from jurisdiction.*

- (a) cause the child to be known by a new surname; or
- (b) remove him from the Falkland Islands;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than two months, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified purposes.

14.(1) Where -

*Enforcement of  
residence orders.*

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by that order,

the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) of this section is complied with, enforce the order under section 63(3) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands as if it were an order requiring the other person to produce the child to him.

(2) The requirement is that a copy of the residence order has been served on the other person.

(3) Subsection (1) of this section is without prejudice to any other remedy open to the person in whose favour the residence orders is in force.

### *Financial relief*

15.(1) Schedule 1 makes provision in relation to financial relief for children.

*Orders for financial relief  
with respect to children.*

(2) The powers of the Summary Court under section 60 of the Magistrates' Courts Act 1980 in its application to the Falkland Islands to revoke, revive or vary an order for the periodical payment of money and the power of the clerk of the Summary Court to vary such an order shall not apply in relation to an order made under Schedule 1.

### *Family assistance orders*

16.(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order - *Family assistance orders.*

- (a) requiring a probation officer; or
- (b) requesting the Crown to make a public officer available,

to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this section ("a family assistance order") are -

- (a) any parent or guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force in relation to the child;
- (c) the child himself.

(3) No court may make a family assistance order unless -

- (a) it is satisfied that the circumstances of the case are exceptional; and
- (b) it has obtained the consent of every person to be named in the order other than the child.

(4) A family assistance order may direct -

- (a) the person named in the order; or
- (b) such of the persons named in the order as may be specified in the order,

to take such steps as may be so specified with a view to enabling the officer named in the order to visit any such person.

(5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.

(6) Where -

- (a) a family assistance is in force with respect to a child; and
- (b) a section 9 order is also in force with respect to the child,

the officer concerned may refer to the court the question whether the section 9 order should be varied or discharged.

### **Part III**

## **CARE AND SUPERVISION**

### ***General***

17.(1) On the application of the Crown, the court may make an order -

*Care and supervision orders.*

- (a) placing the child with respect to whom the application is made in the care of the Crown;



(b) putting him under the supervision of a designated public officer or of a probation officer.

(2) A court may only make a care order or supervision order if it is satisfied -

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to -

(i) the care given to the child, or the care likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

(3) No care or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).

(4) An application under this section may be made on its own or in any other family proceedings.

(5) The court may -

(a) on an application for a care order, make a supervision order;

(b) on an application for a supervision order, make a care order.

(6) An application may only be made under this section by or with the consent of the Attorney General.

(7) In this section -

"harm" means ill-treatment or the impairment of health or development;

"development" means physical, intellectual, emotional, social or behavioural development;

"health" means physical or mental health;

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

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

18.(1) A court hearing an application under this Part shall (in light of any rules made by virtue of subsection (2)) -

(a) draw up a timetable with a view to disposing of the application without delay;

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

*Period within which application for an order under this Part must be disposed of.*

(2) Rules of court may -

(a) specify periods within which specified steps must be taken in relation to such proceedings; and

(b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

### *Care orders*

19.(1) Where a care order is made with respect to a child it shall be the duty of the Crown to receive the child into its care and to keep him in its care while the order remains in force. *Effect of care order.*

(2) While a care order is in force with respect to a child, the Crown shall -

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.

(3) The Crown shall not exercise the power in subsection (2)(b) unless it is satisfied that it is necessary to do so to safeguard or promote the child's welfare.

(4) Nothing in subsection (2)(b) shall prevent a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(5) While a care order is in force with respect to a child, the Crown shall not -

(a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or

(b) have the right -

(i) to agree or refuse to agree to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 in its application to the Falkland Islands, with respect to the child; or

(ii) to appoint a guardian for the child.

(6) While a care order is in force with respect to a child, no person may -

(a) cause the child to be known by a new surname; or

(b) remove him from the Falkland Islands,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(7) Subsection (6)(b) does not prevent the removal by the Crown of such a child, for a period less than three months.

(8) The power in subsection (2)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other enactment.

20.(1) Where a child is in the care of the Crown, the Crown shall (subject to the provisions of this section) allow the child reasonable contact with -

*Parental contact etc  
with children in care.*

- (a) his parents;
- (b) any guardian of his;
- (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and
- (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by -

- (a) any person mentioned in paragraphs (a) to (d) of subsection (1); or
- (b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(3) On an application made by the Crown or the child, the court may make an order authorising the Crown to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) of this section and named in the order.

(4) When making an order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Crown, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that such an order should be made.

(5) The Crown may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if -

(a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) the refusal -

- (i) is decided upon as a matter of urgency; and
- (ii) does not last for more than seven days.

(6) An order under this section may impose such conditions as the court considers appropriate.

(7) The court may vary or discharge any order made under this section on the application of the Crown, the child concerned or the person named in the order.

(8) An order under this section may be made either at the same time as the care order itself or later.

(9) Before making a care order with respect to any child the court shall -

- (a) consider the arrangements which the Crown has made, or proposes to make, for affording any person contact with a child to whom this section applies; and
- (b) invite the parties to the proceedings to comment on those arrangements.

### *Supervision orders*

21.(1) While a supervision order is in force it shall be the duty of the supervisor -

*Supervision orders.*

- (a) to advise, assist and befriend the supervised child;
- (b) to take such steps as are reasonably necessary to give effect to the order;
- (c) where -
  - (i) the order is not wholly complied with; or
  - (ii) the supervisor considers that the order may no longer be necessary,

to consider whether or not to apply to the court for its variation or discharge.

(2) Parts I and II of Schedule 2 make further provision with respect to supervision orders.

### *Powers of court*

22.(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may request the Crown to undertake an investigation of the child's circumstances.

*Powers of court in certain family proceedings.*

(2) When the court makes a request under this section, the Crown shall, when undertaking the investigation, consider whether it should -

- (a) apply for a care order or for a supervision order with respect to the child;
- (b) provide services or assistance for the child or his family; or
- (c) take any other action with respect to the child.

(3) Where the Crown undertakes an investigation under this section, and decides not to apply for a care order or supervision order with respect to the child concerned, it shall inform the court of -

- (a) its reasons for so deciding;
- (b) the service or assistance the Crown has provided, or intends to provide, for the child and his family;
- (c) any other action which the Crown has taken, or proposes to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the request, unless the court otherwise directs.

(5) If, on the conclusion of any investigation or review under this section, the Crown decides not to apply for a care order or supervision order with respect to the child -

(a) it shall consider whether it would be appropriate to review the case at a later date; and

(b) if it decides that it would be, it shall determine the date on which that review is to begin.

23.(1) Where -

*Interim orders.*

(a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or

(b) the court makes a request under section 22(1),

the court may make an interim order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 17(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless it is satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following first occurs -

(a) the expiry of the period of eight weeks beginning with the date on which the order is made;

(b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;

(c) in a case which falls within subsection (1)(a) of this section, the disposal of the application;

(d) in a case which falls within subsection (1)(b) of this section, on the disposal of an application for a care order or supervision order made by the Crown with respect to the child;

(e) in a case which falls within subsection (1)(b) of this section and in which -

(i) the court has given a direction under section 22(4), but

(ii) no application for a care order or supervision order has been made with respect to the child.

the expiry of the period fixed by that direction.

(5) In subsection (4)(b) of this section "the relevant period" means -

(a) the period of four weeks beginning with the date on which the order in question is made; or

(b) the period of eight weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in paragraph (a) of this subsection.

(6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

(7) A direction under subsection (6) may be to the effect that there is to be -

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court otherwise directs.

(8) A direction under subsection (6) may be -

(a) given when the interim order is made or at any time while it is in force; and

(b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

(9) Paragraphs 4 and 5 of Schedule 2 shall not apply in relation to an interim supervision order.

(10) Where a court makes an order under or by virtue of this section it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

24.(1) A care order may be discharged by the court on the application of -

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the Crown.

*Discharge and variation  
etc of care orders and  
supervision orders.*

(2) A supervision order may be varied or discharged by the court on the application of -

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(5) When a court is considering whether to substitute one order for another under subsection (4) of this section any provision of this Ordinance which would otherwise require section 17(2) of this Ordinance to be satisfied when the proposed order is substituted or made shall be disregarded.

25.(1) Where -

- (a) a court dismisses an application for a care order;
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

*Orders pending appeals in cases about care orders or supervision orders.*

the court may make a care order with respect to the child to have effect subject to such direction (if any) as the court may see fit to include in the order.

(2) Where -

- (a) a court dismisses an application for a care order, or an application for a supervision order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(3) Where the court grants an application to discharge a care order or supervision order, it may order that -

- (a) its decision is not to have effect; or
- (b) the care order, or supervision order, is to continue to have effect but subject to such direction as the court sees fit to include in the order.

(4) An order made under this section shall only have effect for such period, not exceeding the appeal period, as may be specified in the order.

(5) Where -

- (a) an appeal is made against any decision of the court under this section; or
- (b) any application is made to the appellate court in connection with a proposed appeal against that decision,

the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

(6) In this section "the appeal period " means -

- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal;
- (b) otherwise the period during which an appeal may be made against the decision.

#### *Guardians ad litem*

26.(1) For the purpose of any specified proceedings, the court shall appoint a guardian ad litem for the child concerned unless it is satisfied that it is not necessary to do so to safeguard his interests.

*Representation of child  
and of his interests in  
certain proceedings.*

(2) The guardian ad litem shall -

- (a) be appointed in accordance with rules of court; and
- (b) be under a duty to safeguard the interests of the child in the manner prescribed by the rules.

(3) Where -

- (a) the child concerned is not represented by a legal practitioner; and
- (b) any of the conditions specified in subsection (4) is satisfied,

the court may appoint a legal practitioner to represent him.

(4) The conditions are that -

- (a) no guardian ad litem has been appointed for the child;
- (b) the child has sufficient understanding to instruct a legal practitioner and wishes to do so;
- (c) it appears to the court that it would be in the child's best interests to be represented by a legal practitioner.

(5) Any legal practitioner appointed under or by virtue of this section shall be appointed, and shall represent the child in accordance with rules of court.



(6) In this section "specified proceedings" means any proceedings -

- (a) on an application for a care order or supervision order;
- (b) in which the court has given a direction under section 22(1) and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) on an application under section 24(4);
- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;
- (g) under Part IV;
- (h) on an appeal against -
  - (i) the making of, or refusal to make, a care order, supervision order or any order under section 19;
  - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order;
  - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);
  - (iv) the refusal of an application under section 24(4);
  - (v) the making of, or refusal to make an order under Part IV; or
  - (vi) which are specified for the time being, for the purposes of this section, by rules of court.

(7) Rules of court may make provision as to -

- (a) the assistance which any guardian ad litem may be required by the court to give it;
- (b) the consideration to be given by any guardian ad litem, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;
- (c) the participation of guardians ad litem in reviews, of a kind specified in the rules, which are conducted by the court.

(8) Notwithstanding any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

(a) any statement contained in a report made by a guardian ad litem who is appointed under this section for the purpose of the proceedings in question; and

(b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

#### Part IV

#### PROTECTION OF CHILDREN

27.(1) An application under this section may only be made by or with the consent of the Attorney General. *Child assessment orders.*

(2) On an application under this section for an order with respect to a child, the court may make the order if, but only if, it is satisfied that -

(a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;

(b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer significant harm; and

(c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

(3) In this Ordinance "a child assessment order" means an order under this section.

(4) A court may treat an application under this section as an application for an emergency protection order.

(5) No court shall make a child assessment order if it is satisfied -

(a) that there are grounds for making an emergency protection order with respect to the child; and

(b) that it ought to make such an order rather than a child assessment order.

(6) A child assessment order shall -

(a) specify the date by which the assessment is to begin; and

(b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.

(7) Where a child assessment order is in force with respect to a child it shall be the duty of any person who is in a position to produce the child -

(a) to produce him to such person as is named in the order; and

(b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.

(8) A child assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.

(9) Notwithstanding subsection (8) of this section, if the child is of sufficient understanding to make an informed decision he may refuse to submit to a medical or psychiatric examination or other assessment.

(10) The child may only be kept away from home -

(a) in accordance with directions specified in the order;

(b) if it is necessary for the purposes of the assessment; and

(c) for such period or periods as may be specified in the order.

(11) Where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from home.

(12) Any person making an application for a child assessment order shall take such steps as are reasonably practicable to ensure that notice of the application is given to -

(a) the child's parents;

(b) any person who is not a parent of his but who has parental responsibility for him;

(c) any other person caring for the child;

(d) any person in whose favour a contact order is in force in relation to the child;

(e) any person who is allowed to have contact with the child by virtue of an order under section 19; and

(f) the child,

before the hearing of the application.

(13) Rules of court may make provision as to the circumstances in which -

(a) any of the persons mentioned in subsection (12) of this section; or

(b) such other persons as may be specified in the rules,

may apply to the court for a child assessment order to be varied or discharged.

28.(1) Where any person ("the applicant") applies to the court for an order to be made under this section with respect to a child, the court may make the order, but only if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if - *Orders for emergency protection of children.*

(a) he is not removed to accommodation provided by or on behalf of the Crown; or

(b) he does not remain in the place in which he is then being accommodated.

(2) An application under this section may only be made by a public officer authorised in that behalf by the Attorney General to make it.

(3) While an order under this section ("an emergency protection order") is in force it -

(a) operates as a direction to any person who is in a position to do so to produce the child to the applicant;

(b) authorises -

(i) the removal of the child at any time to accommodation provided by or on behalf of the Crown and the child being kept at such accommodation;

(ii) the prevention of the child's removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and

(iii) gives the Crown parental responsibility for the child, which may be exercised on behalf of the Crown by the applicant or any other public officer authorised for the purpose by the Governor.

(4) Where an emergency protection order is in force with respect to a child, the applicant and any other public officer so authorised -

(a) shall only exercise the power given by subsection (3)(b) of this section in order to safeguard the welfare of the child;

(b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and

(c) shall comply with any directions given him by the Governor for the purposes of this subsection as well as, and in so far as they are not inconsistent with, any directions given by the court under subsection (5) of this section.

(5) Where the court makes an emergency protection order, it may give such directions as it considers appropriate with respect to -

(a) the contact which is, or is not, to be allowed between the child and any named person;

(b) the medical or psychiatric examination or other assessment of the child.

(6) Where any direction is given under subsection (5)(b) of this section, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.

(7) A direction under subsection (5)(a) of this section may impose conditions and one under subsection (5)(b) may be to the effect that there is to be -

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court otherwise directs.

(8) A direction under subsection (5) of this section may be -

(a) given when the emergency protection order is made or at any time while it is in force;

(b) varied at any time on the application of the applicant, the Attorney General or any public officer authorised by him or on the application of any person mentioned in subsection (12) of this section.

(9) Where an emergency protection order is in force in relation to a child and -

(a) the applicant has exercised the power given by subsection (3)(b)(i) but it appears to him that it is safe for the child to be returned; or

(b) the applicant has exercised the power given by subsection (3)(b)(ii) but it appears to him that it is safe for the child to be allowed to be removed from the place in question,

he shall return the child or (as the case may be) allow him to be removed.

(10) Where he is required by subsection (9) to return the child the applicant shall -

(a) return him to the care of the person from whom he was removed; or

(b) if that is not reasonably practicable, return him to the care of -

(i) a parent of his;

(ii) any person who is not a parent of his but who has parental responsibility for him;

(iii) such other person as the applicant (with the agreement of the court) considers appropriate.

(11) Where the applicant has been required by subsection (9) of this section to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.

(12) Where an emergency protection order has been made with respect to a child, the applicant shall, subject to any direction given by the court under subsection (5) of this section, allow the child reasonable contact with -

- (a) his parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any person with whom he was living immediately before the making of the order;
- (d) any person in whose favour or contact order is in force with respect to him;
- (e) any person who is allowed to have contact with him by virtue of an order under section 20; and
- (f) any person acting on behalf of those persons.

(13) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him it shall describe him as clearly as possible.

(14) A person who intentionally obstructs a person exercising the power under subsection (3)(b) of this section to remove, or prevent the removal of, a child commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 3 on the standard scale.

29.(1) An emergency protection order shall have effect for such period, not exceeding eight days as may be specified in the order.

*Duration of emergency protection orders and other supplemental provisions.*

(2) Where -

(a) the court making the emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order does not have effect; but

(b) the last of those eight days is a Sunday or public holiday,

the court may specify a period which ends at noon on the first later day which is not a Sunday or public holiday.

(3) Where an emergency protection order is made on an application under section 30(7), the period of eight days mentioned in subsection (1) of this section shall begin with the first day on which the child was taken into police protection under section 30.

(4) Any person who -

(a) has parental responsibility for a child as the result of an emergency protection order; and

(b) is entitled to apply for a care order with respect to the child,

may apply to the court for the period during which the emergency protection order is to have effect to be extended.

(5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding seven days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.

(6) An emergency protection order may only be extended once.

(7) Notwithstanding any enactment or rule of law which would otherwise prevent it from so doing, a court hearing an application for, or with respect to, an emergency protection order may take account of -

(a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or

(b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(8) Any of the following may apply to the court for an emergency protection order to be discharged -

(a) the child;

(b) a parent of his;

(c) any person who is not a parent of his but who has parental responsibility for him; or

(d) any person with whom he was living immediately before the making of the order.

(9) No application for the discharge of an emergency protection order shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.

(10) No appeal may be made against -

(a) the making of, or refusal to make, an emergency protection order;

(b) the extension of, or refusal to extend, the period during which such an order is to have effect;

(c) the discharge of, or refusal to discharge, such an order; or

(d) the giving of, or refusal to give, any direction in connection with such an order.

(11) Subsection (8) of this section does not apply -

(a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged -

(i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and

(ii) was present at the hearing; or

(b) to any emergency protection order the effective period of which has been extended under subsection (5).

(12) A court making an emergency protection order may direct that the applicant may, in exercising any powers which he has by virtue of the order, be accompanied by a medical practitioner, nurse or health visitor, if he so chooses.

30.(1) Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may -

*Removal and accommodation  
of children by police  
in cases of emergency.*

- (a) remove the child to suitable accommodation and take him there;
- (b) take such steps as are reasonable to ensure the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.

(2) For the purposes of this Ordinance, a person with respect to whom a police officer has exercised his powers under this section is referred to as having been taken into police protection.

(3) As soon as reasonably practicable after taking a child into police protection, the police officer concerned shall -

- (a) inform the Attorney General of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;

- (b) inform the Attorney General of the place at which the child is being accommodated;

- (c) inform the child (if he appears to be capable of understanding) -

- (i) of the steps that have been taken with respect to him under this section and of the reasons for taking them; and

- (ii) of the further steps that may be taken with respect to him under this section;

- (d) take such steps as are reasonably practicable to discover the wishes and feelings of the child; and

- (e) secure that the case is inquired into by the Chief Police Officer or by some other police officer not below the rank of inspector.

(4) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned shall take such steps as are reasonably practicable to inform -

- (a) the child's parents;

- (b) every person who is not a parent of his but who has parental responsibility for him; and

- (c) any other person with whom the child was living immediately before being taken into police protection,

of the steps that he has taken under this section with respect to the child, the reasons for them and the further steps that may be taken with respect to him under this section.

(5) On completing any enquiry under subsection (3)(e) of this section, the officer conducting it shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would be likely to suffer harm if released.

(6) No child may be kept in police protection for more than 72 hours.



(7) While a child is being kept in police protection, the Attorney General or any other public officer with the consent of the Attorney General may apply for an emergency protection order to be made under section 29 in respect of the child.

(8) While a child is being kept in police protection, no police officer shall have parental responsibility for him; but the Chief Police Officer shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the length of the period during which the child will be so protected).

(9) Where a child has been taken into police protection, the Chief Police Officer shall allow -

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for him;
- (c) any person with whom the child was living immediately before he was taken into police protection;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 20; and
- (f) any person acting on behalf of those persons,

to have such contact (if any) with the child as (in the opinion of the Chief Police Officer) is reasonable and in the child's best interests.

31.(1) A person who, knowingly and without lawful authority or reasonable excuse -

*Abduction of children  
in care etc.*

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person,

commits an offence.

(2) This section applies in relation to a child who is -

- (a) in care;
- (b) the subject of an emergency protection order; or
- (c) in police protection,

and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 30, as the case may be.

(3) A person convicted of an offence under this section is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 5 on the standard scale or both.

32.(1) Where it appears to the court that there is reason to believe that a child to whom this section applies -

*Recovery of abducted children etc.*

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section ("a recovery order").

(2) This section applies in relation to the same children to whom section 31 applies and in this section "the responsible person" has the same meaning as in section 31.

(3) A recovery order -

- (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
- (b) authorises the removal of the child by any authorised person;
- (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a police officer or to an officer of the court;
- (d) authorises a police officer to enter any premises specified in the order and search for the child, using reasonable force if necessary.

(4) The court may make a recovery order only on the application of -

- (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
- (b) where the child is in police protection, the Chief Police Officer.

(5) A recovery order shall name the child and -

- (a) any person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or
- (b) where the child is in police protection, the Chief Police Officer.

(6) Premises may only be specified under subsection (3)(d) of this section if the court is satisfied that there are reasonable grounds for believing the child to be on them.

(7) In this section "an authorised person" means -

- (a) any person specified by the court;
- (b) any police officer;
- (c) any person who is authorised -
  - (i) after the recovery order is made; and
  - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order,

to exercise any power under a recovery order.

(8) Where a person is authorised as mentioned in subsection (7)(c) of this section -

- (a) the authorisation shall identify the recovery order; and
- (b) any person claiming to be authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

(9) A person commits an offence who intentionally obstructs an authorised person exercising the power under subsection (3)(c) of this section to remove a child and on conviction of that offence is liable to a fine not exceeding the maximum of level 3 on the standard scale.

(10) No person shall be excused from complying with any request made under subsection (3)(c) of this section on the ground that complying with it might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be evidence against either of them in proceedings for an offence other than perjury.

33.(1) Without prejudice to section 37 or any other power to make such rules, rules of court may be made with respect to the procedure to be followed in connection with proceedings under this Part of this Ordinance. *Rules and regulations.*

(2) The rules may, in particular, make provision -

- (a) as to the form in which any application is to be made or direction is to be given;
- (b) prescribing the persons who are to be notified of -
  - (i) the making or extension of an emergency protection order;
  - (ii) the making of an application under section 29(4) or (8) or 30(7); and
- (c) as to the content of any such notification and the manner in which, and the person by whom, it is to be given.

(3) Until such time as rules of court to which subsection (1) of this section relates are first made, the rules of court for the time being in force to which section 52(1) of the Children Act 1989 relates ("the corresponding rules of court") shall have effect as if they had been made under subsection (1) of this section, but subject to such modifications as may be necessary to substitute references to courts and authorities in the Falkland Islands for references to courts and authorities in England and Wales.

(4) The power to make rules of court for the purposes mentioned in subsection (1) of this section includes power by such rules to adopt, subject to such modifications and adaptations as may be specified in those rules, the corresponding rules of court.

## Part V

### MISCELLANEOUS AND GENERAL

#### *Criminal care and supervision orders*

34.(1) The power of a court to make an order in the application to the Falkland Islands of subsection (2) of section 1 of the Children and Young Persons Act 1969 (care proceedings in juvenile courts) where it is of opinion that the condition mentioned in paragraph (f) of that subsection ("the offence condition") is satisfied is hereby abolished. *Care and supervision orders in criminal proceedings.*

(2) The powers of the court to make care orders -

(a) in the application of section 7(7)(a) of the Children and Young Persons Act 1969 (alteration in treatment of young offenders); and

(b) in the application of section 15(1) of that Act, on discharging a supervision order made under section 7(7)(b) of that Act,

are hereby abolished.

(3) The powers given by that Act in its application to the Falkland Islands to include requirements in supervision orders shall have effect subject to amendments made by Schedule 5.

#### *Effect and duration of orders etc.*

35.(1) The making of a residence order with respect to a child who is subject to a care order discharges the care order. *Effect and duration of orders etc.*

(2) The making of a care order with respect to a child who is the subject of any section 9 order discharges that other order.

(3) The making of a care order with respect to a child who is the subject of a supervision order discharges that other order.

(4) The making of a care order with respect to a child who is a ward of court brings that wardship to an end.

(5) Where an emergency protection order is made with respect to a child who is in care, the care order shall have effect subject to the emergency protection order.

(6) Any order made under section 5(1) or 6(1) shall continue in force until the child reaches the age of eighteen unless it is brought to an end earlier.

(7) Any -

(a) agreement under section 5; or

(b) appointment under section 6(3) or (4),

shall continue in force until the child reaches the age of eighteen unless it is brought to an end earlier.

(8) An order under Schedule 1 has effect as specified in that Schedule.

(9) A section 9 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of sixteen, unless it is to have effect beyond that age by virtue of section 9(4).

(10) Where a section 9 order has effect with respect to a child who has reached the age of sixteen, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

(11) Any care order, other than an interim care order, shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.

(12) Any order made under any other provision of this Ordinance in relation to a child shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

(13) On disposing of any application for an order under this Ordinance, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Ordinance of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(14) Where an application ("the previous application") has been made for -

(a) the discharge of a care order;

(b) the discharge of a supervision order;

(c) the substitution of a supervision order for a care order; or

(d) a child assessment order,

no further application of a kind mentioned in paragraphs (a) to (d) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds six months.

(15) Subsection (14) of this section does not apply to applications made in relation to interim orders.

(16) Where -

(a) a person has made an application for an order under section 20;

(b) the application has been refused; and

(c) a period of less than six months has elapsed since the refusal,

that person may not make a further application for such an order with respect to the same child, unless he has obtained the leave of the court.

*Jurisdiction and procedure etc.*

36.(1) The name "domestic proceedings", given to certain proceedings in courts of summary jurisdiction, is hereby changed to "family proceedings" and the name "domestic court" is hereby changed to "family proceedings court". *Jurisdiction of courts.*

(2) Proceedings under this Ordinance shall in relation to the Summary Court be treated as family proceedings.

(3) Subsection (2) is subject to the provisions of sections 65(1) and (2) (proceedings which may be treated as not being family proceedings) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands as amended by this Ordinance.

(4) The Summary Court shall not be competent to entertain any application, or make any order, involving the administration or application of -

(a) any property belonging to or held in trust for a child; or

(b) the income of any such property.

(5) The powers of the Summary Court under section 63(2) of the Magistrates' Court Act 1980 in its application to the Falkland Islands to suspend or rescind orders shall not apply to any order made under this Ordinance.

(6) The Chief Justice shall have and may exercise the like powers as are possessed by the Lord Chancellor of England under Part I of Schedule 11 to the Children Act 1989 (powers by order to specify in what court various types of proceedings under this Ordinance or the Adoption Act 1976 in its application to the Falkland Islands may be commenced, by such order to make provision as to transfer of such proceedings or any specified part of such proceedings from one court to another, by such order to make provision as to the exercise by a single justice of the peace of the powers of the Summary Court to make an emergency protection order etc).

37.(1) The Chief Justice may by rules of court made by him make such provision for giving effect to - *Rules of court.*

(a) this Ordinance;

(b) the provisions of any Order made under this Ordinance (including any Order made by him under section 36(6); or

(c) any amendment made by this Ordinance to any other enactment (including an enactment of the United Kingdom Parliament in its application to the Falkland Islands by or under the provisions of any Ordinance of the Falkland Islands),

as appears to him to be necessary or expedient.

(2) The rules may, in particular, make provision -

(a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);

(b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;

(c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;

(d) applying (with or without modifications) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint to a court of summary jurisdiction to relevant proceedings in such a court brought otherwise than on such a complaint;

(e) with respect to preliminary hearings;

(f) for the service outside the Falkland Islands, in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a court of summary jurisdiction;

(g) for the exercise by courts of summary jurisdiction, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question may be outside the Falkland Islands);

(h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;

(i) authorising a single justice of the peace to discharge the functions of the Summary Court with respect to such relevant proceedings as may be prescribed;

(j) authorising the Summary Court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.

(3) In subsection (2) -

"notice of proceedings" means a summons or such other notice of proceedings as is required; and "given" in relation to a summons, means "served";

"prescribed" means prescribed by rules; and

"relevant proceedings" means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) of this section and any part of such proceedings.

(4) This section and any other power in this Ordinance to make rules of court are not to be taken as in any way limiting any other power of the Chief Justice to make rules of court.

(5) Until such time as the Chief Justice first makes rules of court under the powers conferred by the foregoing provisions of this section, and to the extent that he does not make inconsistent provision by any such rules of court, the rules of court made under section 93 of the Children Act 1989 and for the time being in force shall have effect as if they had been made by the Chief Justice under the foregoing provisions of this section and so that the provisions of those rules which apply to or have effect in relation to proceedings -

(a) at first instance in the High Court or the Family Division of that Court, shall apply to and in relation to corresponding proceedings in the Supreme Court under this Ordinance;

(b) in a county court, shall apply to or in relation to corresponding proceedings in the Magistrate's Court;

(c) in a magistrates' court, shall apply to or in relation to corresponding proceedings in the Summary Court (save that proceedings for a care order or a supervision order or the discharge or variation of such an order shall be commenced only in the Magistrate's Court),

and in each case, with such amendments and modifications only as are necessary in the circumstances.

38.(1) An appeal shall lie to the Supreme Court against -

*Appeals.*

(a) the making by the Magistrate's Court or by the Summary Court of any order under this Ordinance;

(b) any refusal by the Magistrate's Court or by the Summary Court to make such an order.

(2) Where, in relation to any proceedings under this Ordinance, the Summary Court declines jurisdiction because it considers that the case can be more conveniently dealt with by the Magistrate's Court or by the Supreme Court, no appeal shall lie against that decision of the Summary Court.

(3) Subsection (1) of this section does not apply in relation to an interim order for periodical payments made under Schedule 1 to this Ordinance.

(4) On an appeal under this section, the Supreme Court may make such order as may be necessary to give effect to its determination of the appeal.

(5) Where an order is made under subsection (4) of this section, the Supreme Court may also make such incidental or consequential order as appear to it to be just.

(6) Where an appeal under this section relates to an order for periodical payments, the Supreme Court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.

(7) The date so specified must not be earlier than the earliest date on which the court from which the appeal is brought could have ordered the periodical payments to commence.

(8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the Supreme Court reduces the amount of those payments or discharges the order -



(a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the Supreme Court thinks fit;

(b) if any arrears are due under the order for periodical payments, it may remit the whole, or part, or those arrears.

(9) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by the court from which the appeal was brought) shall, for the purposes -

(a) of the enforcement of the order; and

(b) of any power to vary, revive or discharge order,

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.

39.(1) In any proceedings in which a court is hearing an application for an order under Part III or IV of this Ordinance, or is considering whether to make any such order, the court may order the child concerned to attend at any such stage or stages of the proceedings as may be specified in the order.

*Attendance of child at hearing under Part III or IV.*

(2) The power conferred by subsection (1) shall be exercised in accordance with rules of court.

(3) Subsections (4) to (6) apply where -

(a) an order under subsection (1) has not been complied with; or

(b) the court has reasonable cause to believe that it will not be complied with.

(4) The court may make an order authorising a police officer, or such person as may be specified in the order -

(a) to take charge of the child and bring him to court;

(b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.

(5) The court may order any person who is in a position to do so to bring the child to the court.

(6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose it to the court.

40.(1) Subsection (2) applies where a child who is called as a witness in any civil proceeding does not, in the opinion of the court, understand the nature of an oath.

*Evidence given by, or with respect to children.*

(2) The child's evidence may be heard by the court if, in its opinion -

(a) he understands that it is duty to speak the truth; and

(b) he has sufficient understanding to justify his evidence being heard.

(3) The Governor, after consultation with the Chief Justice, may by Order make provision for the admission of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.

(4) An Order under subsection (3) may only be made with respect to -

(a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and

(b) evidence in connection with the upbringing, maintenance or welfare of a child.

(5) An order under subsection (3) -

(a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;

(b) may make different provision for different purposes and in relation to different descriptions of court; and

(c) may make such amendments and repeals in any enactment relating to evidence (other than this Ordinance) as the Governor, after consulting the Chief Justice, considers necessary or expedient in consequence of the provision made by the Order.

(6) In this section -

"civil proceedings" and "court" have the same meanings as they have in the Civil Evidence Act 1968 by virtue of section 18 of that Act, and in the application of that Act (and of that section) to the Falkland Islands; and

"prescribed" means prescribed by an order under subsection (3) of this section.

41.(1) It is hereby declared that any rules made under section 144 of the Magistrates' Courts Act 1980 and which provide for a magistrates' court to sit in private in proceedings in which any powers under the Children Act 1989 may be exercised by the court with respect to any child shall apply so as to have the effect that they provide for the Magistrate's Court and the Summary Court to sit in private in corresponding proceedings in which any powers under this Ordinance may be exercised by the court with respect to any child.

*Privacy for children involved in certain proceedings.*

(2) No person shall publish any material which is intended, or likely, to identify -

(a) any child as being involved in any proceedings before a court of summary jurisdiction in which any power under this Ordinance may be exercised by the court with respect to that or any other child; or

(b) an address as being that of a child involved in any such proceedings.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(4) The court or the Governor may, if satisfied that the welfare of the child in a particular case requires it, by order dispense with the requirement of subsection (2) of this section to such extent as may be specified in the order.

(5) For the purposes of this section -

"publish" includes -

(a) broadcast by radio, television or cable television;

(b) cause to be published; and

"material" includes any picture or representation.

(6) A person who contravenes this section commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 4 on the standard scale.

42.(1) In any proceedings in which a court is hearing an application for an order under Part III or IV of this Ordinance, no person shall be excused from giving evidence in any matter or from answering any question put to him on the ground that doing so might incriminate him or his spouse of an offence.

*Self-incrimination.*

(2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

43.(1) There shall cease to be exercisable any power of the Supreme Court (otherwise than in the exercise of any power conferred on it by this Ordinance), whether by virtue of any provision of any enactment, at common law or in equity -

*Restrictions on use of wardship jurisdiction.*

(a) to place a ward of court in the care of the Crown (as distinct from the court) or under the supervision of the Crown (as distinct from the court) or of a public officer in his capacity as such;

(b) to require a child to be accommodated by or on behalf of the Crown;

(c) so as to make a child who is the subject of a care order a ward of court;

(d) for the purpose of conferring upon the Crown power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) No application for the exercise of the Supreme Court's inherent jurisdiction with respect to children may be made by the Crown unless the Crown has obtained the leave of the Supreme Court.

(3) The court may only grant leave if it is satisfied that -

(a) the result which the Crown wishes to achieve could not be achieved through the making of any order of a kind to which subsection (4) applies;

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(4) This subsection applies to any order -

- (a) made otherwise than in the exercise of the Supreme Court's inherent jurisdiction;
- (b) which the Crown is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

### *General*

44.(1) This section applies where any offence under this Ordinance is committed by a body corporate.

*Offences by bodies corporate.*

(2) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) has committed the offence and is liable to be proceeded against and punished accordingly.

45.(1) The consent of a child who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian or any other person who has parental responsibility for him.

*Consent by persons over 16 to surgical, medical and dental treatment.*

(2) In this section "surgical, medical or dental treatment" includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

(3) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted, and, without prejudice to the foregoing, this section shall be deemed to state the law of the Falkland Islands as it has been at all times since 1st January 1970.

46.(1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.

*Time at which a person attains a particular age.*

(2) This section applies only when the relevant anniversary falls on a date after that on which this section comes into force and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein.

(3) This section abrogates the common law rule (sometimes known as the Rule in *Re Shurey*) that a person attains a particular age at the beginning of the day immediately preceding the relevant anniversary of his birth.

47. A person who is not of full age, and who might before the commencement of this Ordinance have been described as "an infant" or as a "minor" may after the commencement of this Ordinance be described in any instrument or enactment as a child instead of being described as an infant or as a minor, and in every instrument made in every enactment passed after the commencement of this Ordinance the expression "child" shall, unless in the context the expression describes a relationship between two persons or the contrary intention otherwise appears, be construed as referring to a person who is not of full age (that is to say a person who has not attained the age of eighteen years).

*Persons under full age may be described as children instead of as infants or minors.*

48.(1) The Ordinance mentioned in Part I of Schedule 3 to this Ordinance are repealed to the extent there specified. *Repeals etc.*

(2) The Ordinances mentioned in Part II of Schedule 3 to this Ordinance are amended to the extent there specified.

(3) The Acts mentioned in Part III of Schedule 3 to this Ordinance shall cease to apply in the Falkland Islands to the extent there specified.

49. Schedule 4 to this Ordinance (transitional provisions) shall have effect.

*Transitional.*

## SCHEDULES

### SCHEDULE 1

#### Section 15(1)

#### FINANCIAL PROVISION FOR CHILDREN

##### *Orders for financial relief against parents*

1.(1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may -

(a) in the case of an application to the Supreme Court or to the Magistrate's Court, make one or more of the orders mentioned in sub-paragraph (2);

(b) in the case of an application to the Summary Court, make one or both of the orders mentioned in paragraphs (a) and (b) of that sub-paragraph.

(2) The orders referred to in sub-paragraph (1) are -

(a) an order requiring either or both parents of a child -

(i) to make to the applicant for the benefit of the child; or

(ii) to make to the child himself,

such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both parents of a child -

(i) to secure to the applicant for the benefit of the child; or

(ii) to secure to the child himself,

such periodical payments, for such term, as may be so specified;

(c) an order requiring either or both parents of a child -

(i) to pay to the applicant for the benefit of the child; or

(ii) to pay to the child himself,

such lump sum as may be so specified;

(d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property -

(i) to which either parent is entitled (either in possession or reversion); and

(ii) which is specified in the order;

(e) an order requiring either or both parents of a child -

(i) to transfer to the applicant for the benefit of the child; or

(ii) to transfer to the child himself,

such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.

(3) The powers conferred by this paragraph may be exercised at any time.

(4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(5) Where a court makes an order under this paragraph -

(i) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child if he has not attained the age of eighteen;

(ii) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.

(6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.

(7) Where a child is a ward of court, the court may exercise any of its powers under this Schedule even though no application has been made to it.

#### *Orders for financial relief for persons over eighteen*

2.(1) If, on an application by a person who has reached the age of eighteen, it appears to the court -

(a) that the applicant is, will be (or if an order were made under this paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order under this paragraph,

the court may make one or more of the orders mentioned in sub-paragraph (2).

(2) The orders are -

(a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An application may not be made under this paragraph by any person if, immediately before he reached the age of sixteen, a periodical payments order was in force with respect to him.

(4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

(5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(6) In sub-paragraph (3) "periodical payments order" means an order under -

(a) this Schedule;

(b) section 26 or 30 of the Matrimonial Causes Ordinance 1979;

(c) section 4(1)(g) of the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967,

for the making or securing of periodical payments.

(7) The powers conferred by this paragraph shall be exercisable at any time.

(8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

#### *Duration of orders for financial relief*

3.(1) The term to be specified in an order for periodical payments made under paragraph 1(2)(a) or (b) in favour of a child may begin with the date of the making of an application in question or any later date but -

(a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and

(b) shall not in any event extend beyond the child's eighteenth birthday.

(2) Paragraph (b) of sub-paragraph (1) shall not apply in the case of a child if it appears to the court that -

(a) the child is, or will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for periodical payments made under paragraph 1(2)(a) or (b) requiring periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.



(4) Where an order is made under paragraph 1 (2) (a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if -

- (a) any parent making or securing the payment; and
- (b) any parent to whom the payments are made or secured,

live together for a period of more than six months.

*Matters to which the court is to have regard in making orders for financial relief*

4.(1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court shall have regard to all the circumstances, including -

- (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;
- (f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to -

- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he assumed that responsibility and the period during which he met that responsibility;
- (b) whether he did so knowing that the child was not his child;
- (c) the liability of any other person to maintain the child.

(3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.

(4) The persons mentioned in sub-paragraph (1) are -

- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
- (b) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;

(c) the applicant for the order;

(d) any other person in whose favour the court proposes to make the order.

*Provisions relating to lump sums*

5.(1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liability or expenses -

(a) incurred in connection with the birth of the child or in maintaining the child; and

(b) reasonably incurred before the making of the order,

to be met.

(2) The amount of any sum required to be paid by an order made by the Summary Court under paragraph 1 or 2 shall not exceed £1,000 or such larger amount as the Governor may from time to time fix for the purposes of this sub-paragraph.

(3) The power of the court under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.

(4) The amount of a lump sum which a parent may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by the Summary Court, exceed the maximum amount that may at the time of the order be required to be paid under sub-paragraph (2), but the Summary Court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Ordinance.

(5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) Where the order provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying -

(a) the number of instalments payable;

(b) the amount of any instalment;

(c) the date on which any instalment becomes payable.

*Variation etc of orders for periodical payments*

6.(1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under paragraph 1 or 2 for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where on an application under paragraph 1 or 2 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under the order, the court may provide that the payments so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child himself.

(5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child attains the age of sixteen, or at any time after that date but before the date on which he reaches the age of eighteen, the child may apply to the court which made the order for an order for its revival.

(6) If on such an application it appears to the court that -

(a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order under this sub-paragraph,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) An order which is revived by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.

(8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

*Variations of orders for periodical payments etc made by the Summary Court*

7.(1) Subject to sub-paragraphs (7) and (8), the power of the Summary Court -

(a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or

(b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

(2) In any case where -

(a) the Summary Court has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments;

(b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 in its application to the Falkland Islands (standing order, etc),

any person entitled to make application under this Schedule for the variation of the order (in this paragraph referred to as "the applicant") may apply to the clerk to the Summary Court for the order to be varied as mentioned in sub-paragraph (3).

(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after giving written notice (by post or otherwise) or the application to any interested party and allowing that party, within the period of 21 days beginning with the date of the giving of the notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it in appropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

(6) Subsection (4) of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands (power of court or order that account be opened) shall apply for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that section.

(7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 in its application to the Falkland Islands, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands, the court shall, unless on representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) None of the powers of the court, or of the clerk to the Summary Court, conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Court Act 1980 in its application to the Falkland Islands).

(10) In sub-paragraphs (3) and (4) "interested party", in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

*Variation of orders for secured periodical payments after death of parent*

8.(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation of a discharge of the order shall include the personal representatives of the deceased parent.

(2) No application for the variation of an order shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.

(4) Sub-paragraph (3) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.

(5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) shall include the changed circumstances resulting from death of the parent.

(6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(7) In this paragraph "secured periodical payments order" means an order for secured periodical payments under paragraph 1(2)(b).

*Financial relief under other enactments*

9.(1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order ("the financial relief order") made under any enactment other than this Ordinance and requiring a person to contribute to the child's maintenance.

(2) Where this paragraph applies, the court may, on the application of -

(a) any person required by the financial relief order to contribute to the child's maintenance; or

(b) any person in whose favour a residence order with respect to the child is in force,

make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is payable under that order.

### *Interim orders*

10.(1) Where an application is made under paragraph 1 or 2 the court may, at any time before it disposes of the application, make an interim order -

(a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit;

(b) giving any direction that the court thinks fit.

(2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1 or 2.

(3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified or the purposes of this paragraph in the interim order.

(4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

### *Alteration of maintenance agreements*

11.(1) In this paragraph and in paragraph 12 "maintenance agreement" means any agreement in writing made with respect to a child, whether before or after the commencement of this Ordinance, which -

(a) is or was made between the father and mother of the child;

(b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,

and any such provisions are in this paragraph, and paragraph 12, referred to as "financial arrangements".

(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in the Falkland Islands, then, either party may apply to the court for an order under this paragraph.

(3) If the court to which the application is made is satisfied either -

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to the child,

then the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.

(4) If the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.

(5) Where a court decides to make an order under this paragraph altering the maintenance agreement -

(a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or

(b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or (as the case may be) the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of the sub-paragraphs (1) and (2) of paragraph (3) as if the order were an order under paragraph 1(2)(a) or (b).

(6) The Summary Court shall not entertain an application under sub-paragraph (2) unless both parties are resident in the Falkland Islands, and shall not have power to make any order on such an application except -

(a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;

(b) in a case where the agreement contains provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

12.(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in the Falkland Islands, the surviving party or the personal representatives of the deceased party may apply to the Supreme Court or to the Magistrate's Court for an order under paragraph 11.

(2) If a maintenance agreement is altered by a court on an application under this paragraph the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

(3) An application under this paragraph shall not, except with the leave of the Supreme Court or the Magistrate's Court be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.

(4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(5) The Magistrate's Court has the same jurisdiction as the Supreme Court to entertain an application under this paragraph or an application for leave to make an application under this paragraph.

(6) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by a surviving party after that period.

(7) Sub-paragraph (6) shall not prejudice any power to recover any part of the estate so distributed by virtue of the making of an order in pursuance of this paragraph.

#### *Enforcement of orders for maintenance*

13. An order for the payment of money made by the Magistrate's Court or the Summary Court under this Ordinance shall be enforceable as (or as if it were) a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Court Act 1980 in its application to the Falkland Islands.

#### *Financial provision for child resident in country outside the Falkland Islands*

14.(1) Where one parent of a child lives in the Falkland Islands and the child lives outside the Falkland Islands with -

- (a) another parent of his;
- (b) a guardian of his; or
- (c) a person in whose favour a residence order is in force with respect to the child,

the court shall have power, on an application by any of the persons mentioned in paragraphs (a) to (c) to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in the Falkland Islands.

(2) Any reference in this Ordinance to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or as the case may be to an order made by virtue of sub-paragraph (1).

#### *Interpretation*

15.(1) In this Schedule "child" includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has attained the age of eighteen, that person.

(2) In this Schedule, except in paragraph 2, "parent" includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family; and for this purpose any reference to either parent or to both parents shall be construed as references to any parent of his and to all of his parents.



**SCHEDULE 2****Section 20****SUPERVISION ORDERS****Part I****GENERAL*****Meaning of "responsible person"***

1. In this Schedule, "the responsible person", in relation to a supervised child, means -

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

***Power of supervisor to give directions to supervised child***

2.(1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things -

- (a) to live at a place or places specified in the directions for a period or periods so specified;
- (b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;
- (c) to participate in activities specified in the directions on a day or days so specified.

(2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.

(3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

***Imposition of obligations on responsible persons***

3.(1) With the consent of any responsible person, a supervision order may include a requirement -

- (a) that he shall take all reasonable steps to ensure that the supervised child complies with any directions given by the supervisor under paragraph 2;
- (b) that he takes all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;
- (c) that he complies with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is to attend with him.

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

*Psychiatric and medical examinations*

4.(1) A supervision order may require the supervised child -

- (a) to submit to a medical or psychiatric examination; or
- (b) to submit to any such examination from time to time as directed by the supervisor.

(2) Any such examination shall be required to be conducted -

- (a) by, or under the direction of such medical practitioner as may be specified in the order;
- (b) at a place specified in the order (and whether in the Falkland Islands or in the United Kingdom) and at which the supervised child is to attend as a non-resident patient; or
- (c) at -
  - (i) such hospital in the Falkland Islands or in the United Kingdom; or
  - (ii) in the case of a psychiatric examination, a hospital in the Falkland Islands or in the United Kingdom or mental nursing home in the United Kingdom,

at which the supervised child is, or is to attend as, a resident patient.

(3) A requirement of the kind mentioned in sub-paragraph (2)(c) shall not be included unless the court is satisfied, on the evidence of a medical practitioner, that -

- (a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment;
- (b) a period as a resident patient is necessary if the examination is to be carried out properly; and
- (c) (if the requirement is to attend as a non-resident patient at a place in the United Kingdom or as a resident patient at a hospital or mental nursing home in the United Kingdom) that the requisite examination is not ordinarily and sufficiently available at a place or at any hospital in the Falkland Islands.

*Psychiatric and medical treatment*

5.(1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a Government medical officer or some other medical practitioner approved by the Governor for the purpose (provided that a person who is approved for the purposes of section 12 of the Mental Health Act 1983 in the United Kingdom shall be deemed to have been approved by the Governor for the purpose), that the mental condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for the period specified in the order, submit to such treatment as is specified in the order.

(2) The treatment specified in accordance with sub-paragraph (1) must be -

(a) by, or under the direction of, such medical practitioner as may be specified in the order;

(b) as a non-resident patient at such place as may be so specified; or

(c) as a resident patient in a hospital or any place designated as an approved place for the purposes of the Mental Health Ordinance 1987.

(3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for the period specified in the order, submit to such treatment as is specified in the order.

(4) The treatment specified in accordance with sub-paragraph (3) must be -

(a) by, or under the direction of, such medical practitioner as may be specified in the order;

(b) as a non-resident patient at such place as may be specified in the order; or

(c) as a resident patient at a hospital in the Falkland Islands or in the United Kingdom.

(5) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied -

(a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion;

(b) that satisfactory arrangements have been, or can be, made for the treatment; and

(c) where it is proposed that the treatment shall be given in the United Kingdom, that that treatment is not ordinarily or sufficiently available in the Falkland Islands.

(6) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement contained in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that -

- (a) the treatment should be continued beyond the period specified in the order;
- (b) the supervised child needs different treatment;
- (c) that he is not susceptible to treatment; or
- (d) that he does not require further treatment,

the practitioner shall make a report in writing to the supervisor.

(7) On receiving a report under this paragraph the supervisor shall refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

## Part II

### MISCELLANEOUS

#### *Life of supervision order*

6.(1) Subject to sub-paragraph (2) and section 35, a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

(2) Where a supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as the court may specify.

(3) A supervision order may not be extended so as to run beyond the end of the period of three years beginning with the date on which the order was made.

#### *Information to be given to supervisor etc*

7.(1) A supervision order may require the supervised child -

- (a) to keep the supervisor informed of any change in his address; and
- (b) to allow the supervisor to visit him at the place where he is living.

(2) The responsible person in relation to any child with respect to whom a supervision order is made shall -

- (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
- (b) if he is living with the child, allow the supervisor reasonable contact with the child.

#### *Effect of supervision order on earlier orders*

8. The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which -

- (a) was made with respect to the child; and
- (b) would otherwise continue in force.

### SCHEDULE 3

#### REPEALS, AMENDMENTS AND MODIFICATIONS OF EXISTING ENACTMENTS

##### Part I

##### ORDINANCES REPEALED

The Ordinances mentioned in this Part of this Schedule are repealed to the extent specified in relation to them.

##### **The Guardianship of Minors Ordinance 1979**

##### *Extent to which repealed*

The whole Ordinance.

##### **The Matrimonial Causes Ordinance 1979**

##### *Extent to which repealed*

Section 45(3).

##### Part II

##### ORDINANCES AMENDED

The Ordinances mentioned in this Part of this Schedule are amended in the manner specified in relation to them.

##### **The Matrimonial Causes Ordinance 1979**

For section 44 of the Ordinance (restrictions on decrees for dissolution, annulment or separation affecting children) there shall be substituted -

"44.(1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider -

*Restrictions on decrees for dissolution, annulment or separation affecting children.*

(a) whether there are any children of the family to whom this section applies; and

(b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Ordinance 1994 with respect to any of them.

(2) Where, in any case to which this section applies, it appears to the court that -

(a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the 1994 Ordinance with respect to any such child;

(b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and

(c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to -

(a) any child of the family who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and

(b) any child of the family who has reached that age on that date and in relation to whom the court directs that this section shall apply."

#### The Crimes Ordinance 1989

(a) The text under the heading "Extent of Application" in relation to the Sexual Offences Act 1956 in Part I of Schedule 1 is replaced by the following -

"Sections 1 to 7 (inclusive), 9 to 12(1) (inclusive), 16(1), 17, 19 to 37 (inclusive) (except section 37(2) and 37(4) in so far as it refers to section 37(2) and except section 37(7)(a) and (b)), 39, 41 to 47 (inclusive) 52, 53, 55, First Schedule (except paragraph 5) and Second Schedule (except column 2)"

(b) thereafter in the said Schedule and in relation to the Sexual Offences Act 1956 the text under the heading "Modifications" is replaced by the following -

"1. In sections 19(3), 20(2), 21(3) and 43(5) the words "the lawful charge of " are replaced by the words "parental responsibility for or care of".

2. In section 28 the following subsections replace subsections (3) and (4) -

"(3) The persons who are to be treated for the purposes of this section as responsible for a girl are (subject to subsection (4) of this section) -

(a) her parents;

(b) any person who is not a parent of hers but who has parental responsibility for her; and

(c) any person who has care of her.

(4) An individual falling within subsection (3)(a) or (b) of this section is not to be treated as responsible for a girl if -

(a) a residence order under the Children Ordinance 1994 is in force with respect to him and he is not named in the order as the person with whom she is to live; or

(b) a care order under that Ordinance is in force with respect to her."

3. Nothing in section 37 shall exclude the operation of any enactment of the Falkland Islands (whether made before or after the passing of this Ordinance) which is inconsistent with section 37 and section 37 shall take effect subject to such enactment.

4. In section 43(6) the words "section forty of the Children and Young Persons Act 1933" are replaced by the words "Part IV of the Children Ordinance 1994."

5. The following new section is inserted after section 46 -

"46A. In this Act "parental responsibility" has the same meaning as in the Children Ordinance 1994."

(c) the text under the heading "Modifications" in relation to the Child Abduction Act 1984 in Part 1 of Schedule 1 to the Crimes Ordinance 1989 is replaced by the following -

"1. Section 1(2) to (4) are replaced by -

*Meaning of  
parental responsibility.*

"(2) A person is connected with a child for the purposes of this section if -

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

(b) in the case of a child whose parents were not married to each other at the time of his birth, there are reasonable grounds for believing that he is the father of the child; or

(c) he is a guardian of the child;

(d) he is a person with respect to whom a residence order is in force with respect to the child; or

(e) he 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 he has parental responsibility for him;

(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; or

(b) the leave of the court granted under or by virtue of any provision of Part IV of the Children Ordinance 1994; or

(c) if any person has custody of the child, the leave of the court which granted custody to him.

(4) A person 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) he is a person in whose favour there is a residence order with respect to the child; and
- (b) he takes or sends him out of the Falkland Islands for a period of less than two months.

(4A) 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 Part II of the Children Ordinance 1994".

2. In section 1(5) the words from "but" to the end are replaced by -

"(5A) Subsection (5)(c) does not apply if -

- (a) the person who has 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."

3. Section 1(7) is replaced by the following -

"(7) For the purposes of this section -

- (a) "guardian of a child", "residence order" and "parental responsibility" have the same meaning as in the Children Ordinance 1994; and
- (b) a person shall be treated as having custody of a child if there is in force an order of a court in the Falkland Islands awarding him (whether solely or jointly with another person) custody, legal custody or care and control of the child.

4. In section 2(1) the words from "Subject" to "above" are replaced by the words "Subject to subsection (3), a person, other than one mentioned in subsection (2)".

5. Section 2(2) is replaced by -

"(2) The persons are -

- (a) where the father and mother of the child in question were married to each other at the time of his birth, the child's father and mother;
- (b) where the father and mother of the child in question were married to each other at the time of his birth, the child's mother; and
- (c) any other person mentioned in section 1(2)(c) to (e) above.



(3) In proceedings against any person for an offence under this section, it shall be a defence for that person to prove -

(a) where the father and mother of the child in question were not married to each other at the time of his birth -

(i) that he is the child's father; or

(ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child's father; or

(b) that, at the time of the alleged offence, he believed that the child had attained the age of sixteen."

6. At the end of section 3 there shall be added the words -

"and

(d) references to a child's parents and to a child whose parents were (or were not) married to each other at the time of his birth shall be construed in accordance with section 2 of the Family Law Reform Ordinance 1994 (which extends their meaning)."

### Part III

#### PROVISIONS OF ENGLISH ACTS CEASING TO HAVE EFFECT

In so far as the following English Acts applied or may have applied as part of the law of the Falkland Islands immediately prior to the coming into force of this Ordinance, they shall on the commencement of this Ordinance cease to apply in the Falkland Islands to the extent stated individually in respect of them in this Schedule -

#### **The Guardianship of Infants Act 1886**

*Extent to which to cease to have effect*

All provisions

#### **The Custody of Children Act 1891**

*Extent to which to cease to have effect*

All provisions

#### **The Children and Young Persons Act 1933**

*Extent to which to cease to have effect*

In section 14(2), the words from (and including) "may also" to (and including) "together, and".  
Section 40.

**Children and Young Persons Act 1963**

*Extent to which to cease to have effect*

Sections 1 to 15, 19 to 25, the words "under section 1 of the Children and Young Persons Act 1969 or" in section 29(1), sections 30, 32, 35(1) and (2)

**Family Law Reform Act 1969**

*Extent to which to cease to have effect*

Section 7

**Children and Young Persons Act 1969**

*Extent to which to cease to have effect*

The whole Act except sections 4 to 10

**The Adoption Act 1976**

*Extent to which to cease to have effect*

Section 11(5), 14(3), in section 15(1) the words from "subject" to "cases", section 15(4), section 26.

**The Child Care Act 1980**

*Extent to which to cease to have effect*

The whole Act.

**The Magistrates' Courts Act 1980**

*Extent to which to cease to have effect*

Section 65(1)(e) and (g) and in section 81(8) the words "by deed or will" in the definition of "guardian" and the words from "as applied" to the end in the definition of "sums adjudged to be paid by a conviction".

**Part IV**

**MODIFICATIONS WHICH ARE TO HAVE EFFECT IN RELATION TO ENGLISH ACTS  
IN THEIR APPLICATION TO THE FALKLAND ISLANDS**

With effect from the coming into force of this Ordinance, the English Acts mentioned in this Part of this Schedule are modified in their application to the Falkland Islands in the manner specified in this Part of this Schedule.

### **The Wills Act 1937**

#### *Modifications*

In section 1 (interpretation), in the definition of "will", for the words "and also to a disposition by will and testament or devise of the custody and tuition of any child" there shall be substituted "and also to an appointment by will" and also to an appointment by will of a guardian of a child".

### **The Children and Young Persons Act 1933**

#### *Modifications*

In section 1(2)(a) (cruelty to persons under sixteen), after the words "young person" there shall be inserted ", or the legal guardian of a child or young person,".

### **The Children and Young Persons Act 1969**

#### *Modifications*

In section 5 (restrictions on criminal proceedings for offences by young persons) in subsection (2), for the words "section 1 of this Act" there shall be substituted "Part IV of the Children Ordinance 1994".

### **The Magistrates' Courts Act 1980**

#### *Modifications*

In section 59(2) (in its application to the Falkland Islands, periodical payments through the clerk to the Summary court) for the words "the Guardianship of Minors Acts 1971 and 1973" (which in the Falkland Islands are to be taken as a reference to the Guardianship of Minors Ordinance 1979) there shall be substituted "(or having effect as if made under) Schedule 1 to the Children Ordinance 1994".

## **SCHEDULE 4**

### **TRANSITIONAL AND SAVINGS**

#### *Pending proceedings etc*

1.(1) Subject to sub-paragraphs (2) and (5), nothing in any provision of this Ordinance (other than the repeals mentioned in sub-paragraph (3)) shall affect any proceedings which are pending immediately before the coming into force of this Ordinance.

(2) Any proceedings for the committal of wards of court to the care of the Crown or in the exercise of the Supreme Court's inherent jurisdiction with respect to children which are pending in relation to a child who has been placed or allowed to remain in the care of the Crown shall not be treated for the purposes of this Schedule as pending proceedings after the expiry of six weeks from the coming into force of this Ordinance if no final order has been made in those proceedings by that time.

(3) The repeals are -

(a) section 45(3) of the Matrimonial Causes Ordinance 1979 (declaration by court that party to the marriage unfit to have custody of children of the family); and

(b) section 38 of the Sexual Offences Act 1956 in its application to the Falkland Islands (power of court to divest person of authority over girl or boy in cases of incest).

(4) For the purposes of the following provisions of this Schedule, any reference to an order in force immediately before the coming into force of this Ordinance shall be construed as including a reference to an order made after the coming into force of this Ordinance in proceedings pending before it came into force.

(5) Sub-paragraph (4) is not to be read as making the order in question have effect from a date earlier than that on which it was made.

(6) An Order under section 40(3) may make such provision with respect to the application of the Order in relation to proceedings which are pending when the Order comes into force as the Governor, acting in accordance with the advice of the Chief Justice, considers appropriate.

### CUSTODY ORDERS, ETC

#### *Cessation of declarations of unfitness etc*

2. Where immediately before the day on which this Ordinance comes into force there was in force -

(a) a declaration under section 45(3) of the Matrimonial Causes Ordinance 1979 (declaration by court that party to marriage unfit to have custody of children of family); or

(b) an order under section 38(1) of the Sexual Offences Act 1956 divesting a person of authority over a girl or boy in a case of incest);

the declaration or, as the case may be, the order, shall cease to have effect on that day.

#### *Orders to which paragraphs 4 to 9 apply*

3. In paragraphs 4 to 9 "an existing order" means any order which -

(a) is in force immediately before this Ordinance comes into force;

(b) was made under any enactment mentioned in sub-paragraph (2);

(c) determines all or any of the following -

(i) who is to have custody of a child;

(ii) who is to have care and control of a child;

(iii) who is to have access to a child;

(iv) any matter with respect to a child's education or upbringing; and

(2) The enactments are -

(a) the Matrimonial Proceedings (Courts of Summary Jurisdiction) Ordinance 1967;

(b) the Matrimonial Causes Ordinance 1979;

(c) the Guardianship of Minors Ordinance 1979.

(3) For the purposes of this paragraph and paragraphs 4 to 9 "custody" includes legal custody and joint as well as sole custody but does not include access.

*Parental responsibility of parents*

4.(1) Where -

(a) a child's father and mother were married to each other at the time of his birth; and

(b) there is an existing order in force in relation to the child,

each parent shall have parental responsibility for the child in accordance with section 4 of this Ordinance as modified by sub-paragraph (3) of this paragraph.

(2) Where -

(a) a child's father and mother were not married to each other at the time of his birth; and

(b) there is an existing order with respect to the child,

section 4 of this Ordinance shall apply as modified by sub-paragraphs (3) and (4) of this paragraph.

(3) The modification is that for section 4(8) there shall be substituted -

"(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or order made under this Ordinance with respect to the child."

(4) The modifications are that -

(a) for the purposes of section 4(2) of this Ordinance, where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of this Ordinance) an order under section 5(1) of this Ordinance giving him parental responsibility for the child;

(b) where by virtue of paragraph (a) a court is deemed to have made an order under section 5(1) in favour of a father who has care and control by virtue of an existing order, the court shall not bring the order under section 4(1) to an end at any time while he has care and custody of the child by virtue of the order.

***Persons who are not parents but who have custody or care and control***

5.(1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) of this paragraph applies Parts I and II of Schedule 1 to this Ordinance shall have effect as modified by this paragraph.

(3) The modifications are that -

(a) for section 4(8) of this Ordinance there shall be substituted -

"(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Ordinance with respect to the child."

(b) at the end of section 10(4) of this Ordinance there shall be inserted -

"(c) any person who has custody and care and control of a child by virtue of any existing order"; and

(c) at the end of section 20(1)(c) there shall be inserted -

"(cc) where immediately before the care order was made there was an existing order by virtue of which a person had custody or care and control of the child, that person."

***Persons who have care and control***

6.(1) Sub-paragraphs (2) to (4) of this paragraph apply when a person has care and control by virtue of an existing order, but they cease to apply when that order ceases to have effect.

(2) Section 6 shall have effect as if -

(a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child; and

(b) for subsection (9) there were substituted -

"(9) Subsection (1) and (7) do not apply if the existing order referred to in paragraph (b) of those subsections was one by virtue of which a surviving parent of the child also had care and control of him."

(3) Section 10 shall have effect as if for subsection (5)(c)(i) of that section there were substituted -

"(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons."

(4) In Schedule 1 to this Ordinance, paragraph 1(1) shall have effect as if for the words "in whose favour a residence order is in force with respect to the child" there were substituted "who has been given care and control of the child by an existing order."

*Persons who have access*

7.(1) Sub-paragraphs (2) to (4) of this paragraph apply where a person has access by virtue of an existing order.

(2) Section 10 shall have effect as if after subsection (5) there were inserted -

"(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order."

(3) Section 16(2) shall have effect as if after paragraph (b) there were inserted -

"(bb) any person who has access to the child by virtue of an existing order."

(4) Sections 27(12), 28(12) and 30(12) shall have effect as if in each case after paragraph (d) there were inserted -

"(dd) any person who has been given access to him by virtue of an existing order."

*Enforcement of certain existing orders*

8. Sub-paragraph (2) of this paragraph applies in relation to any existing order which but for the repeal by this Ordinance of -

(a) the Guardianship of Minors Ordinance 1979;

(b) section 15 of the Matrimonial Proceedings (Court of Summary Jurisdiction) Ordinance 1967,

might have been enforced as if it were an order requiring a person to give up a child to another person.

(2) Where this sub-paragraph applies, the existing order may be enforced under section 14 of this Ordinance as if -

(a) any reference to a residence order were a reference to the existing order;

(b) any reference to the person in whose favour the residence order is in force were a reference to a person in whom actual custody of the child is given by an existing order which is in force.

(3) In sub-paragraph (2) of this paragraph "actual custody", in relation to a child, means the actual possession of his person.

*Discharge of existing orders*

9.(1) The making of a residence order or a care order with respect to a child who is the subject of an existing order discharges the existing order.

(2) Where the court makes any section 9 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the section 9 order.

(3) The court may discharge an existing order which is in force with respect to a child -

(a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or

(b) on the application of -

(i) any parent or guardian of the child;

(ii) the child himself; or

(iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) of this paragraph to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed any party to the proceedings, have regard to the matters mentioned in section 3(3) of this Ordinance.

**GUARDIANS**

*Existing guardians to be guardians under this Ordinance*

10.(1) Any appointment of a guardian of a child which -

(a) was made -

(i) under sections 5 to 7 of the Guardianship of Minors Ordinance 1979;

(ii) under section 38(3) of the Sexual Offences Act 1956 in its application to the Falkland Islands; or

(iii) under the Supreme Court's inherent jurisdiction in relation to children; and

(b) has taken effect before the commencement of this Ordinance,

shall (subject to sub-paragraph (2)) be deemed, on and after the commencement of this Ordinance, to be an appointment made and having effect under section 6 of this Ordinance.



(2) Where an appointment of a person as guardian of a child has taken effect by virtue of subparagraph (1)(a)(ii) the appointment shall not have effect for a period which is longer than any period specified in the order.

*Appointment of guardian not yet in effect*

11. Any appointment of a person to be the guardian of a child -

(a) which was made as mentioned in paragraph 10(1)(a)(i); but

(b) which, immediately before the commencement of this Ordinance, had not taken effect,

shall take effect in accordance with section 6 of this Ordinance (modified, where it applies by paragraph 6(2) of this Schedule).

*Persons deemed to be appointed as guardians under existing wills*

13.(1) For the purposes of the Wills Act 1937 in its application to the Falkland Islands and of this Ordinance any disposition by will and testament or devise of the custody and tuition of a child, made before the commencement of this Ordinance shall be deemed to be an appointment by will of a guardian of a child.

**SUPERVISION ORDERS**

*Orders under section 1(3)(b) or 21(2) of the 1969 Act*

12.(1) This paragraph applies to any supervision order -

(a) made under section 1(3)(b) of the Children and Young Persons Act 1969 in its application to the Falkland Islands; and

(b) in force immediately before the coming into force of this Ordinance.

(2) On and after the coming into force of this Ordinance, the order shall be deemed to be a supervision order made under section 17 of this Ordinance and -

(a) any requirement of the order that the child reside with a named individual shall continue to have effect while the order remains in force unless the court otherwise directs;

(b) any other requirement imposed by the court or directions given by the supervisor shall be deemed to have been given under the appropriate provisions of Schedule 2 of this Ordinance.

(3) Where immediately before the coming into force of this Ordinance, the order had been in force for more than six months it shall cease to have effect at the end of a period of six months commencing with the date on which this Ordinance comes into force unless -

(a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years);

(b) it ceases to have effect earlier in accordance with section 35 of this Ordinance; or

(c) it would have ceased to have effect earlier if this Ordinance had not been enacted.

(4) Where sub-paragraph (3) of this paragraph applies paragraph 6 of Schedule 2 to this Ordinance shall not apply.

(5) Where immediately before the coming into force of this Ordinance, the order had been in force for less than six months it shall cease to have effect in accordance with section 35 and paragraph 6 of Schedule 2 to this Ordinance unless -

(a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or

(b) it would have ceased to have had effect earlier had this Ordinance not been enacted.

Passed by the Legislature of the Falkland Islands this 25th day of November 1994.

C. de CEBALLOS,  
*Clerk of Councils.*

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

C. de CEBALLOS,  
*Clerk of Councils.*

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## SUBSIDIARY LEGISLATION

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### PROTECTION OF WRECKS

#### The Various Wreck Sites (Designation) Order 1994

(S. R. & O. No. 20 of 1994)

*Made: 15th December 1994*

*Published: 22nd December 1994*

*Coming into force: on publication*

IN EXERCISE of my powers under section 3 of the Protection of Wrecks Ordinance 1977 (a) and of all other powers enabling me in that behalf, I make the following Order -

- |  |   |
|--|---|
| <p>1. This Order may be cited as the Various Wreck Sites (Designation) Order 1994 and shall come into force on its being published in the <i>Gazette</i>.</p> <p>2. The areas specified in the Schedule to this Order are designated as restricted areas, save that this Order shall not have effect so as to designate any area above high water mark or ordinary spring tides.</p> | <p><i>Citation and commencement.</i></p> <p><i>Designation of restricted areas.</i></p> |
|--|---|

#### THE SCHEDULE

##### Areas designated as restricted areas

##### *The Billy Rock Area*

The area (known to be the site of the wrecks of *City of Philadelphia*, *Oravia*, *Sydney Dacres* and *Levenside*, but possibly the site in addition of other wrecks) lying within a circle 1000 metres in circumference, the centre of which circle is latitude 51° 40.480' South longitude 57° 42.440' West.

##### *North East Islands, East Falkland, Area*

The area (known to be the site of the wreck of *Robert Foulton* and possibly the site of earlier wrecks) bounded by latitude 51° 59.500' South, longitude 58° 20.000' West, latitude 52° 01.000' South and longitude 58° 22.000' West.

##### *The Blanco Bay and Doctor's Point, Port William, Area*

The area (known to be the site of the wreck of *G F Handel*) bounded by latitude 51° 39.680' South, longitude 57° 48.700' West, latitude 51° 40.000' South and longitude 57° 50.300' West.

*The Ruggles Island, Falkland South, Area*

The area (known to be the site of the wreck of *Luigi Y*) bounded by latitude 52° 05.000' South, longitude 59° 43.000' West, latitude 52° 43.000' West, latitude 52° 06.000' South and longitude 59° 45.000' West.

Made this 15th day of December 1994

D. E. TATHAM,  
Governor.

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**EXPLANATORY NOTE**

*(This Note is not part of the above Order)*

The effect of this Order is to make it an offence for any person, without the authority of a licence granted by the Governor within any of the four restricted areas designated by the Order -

(a) to tamper with damage or remove any part of a vessel lying wrecked on or in the sea-bed, or any object formerly contained in such a vessel;

(b) to carry out diving or salvage operations directed to the exploration of any wreck or to removing objects from it or from the sea-bed, or to use equipment constructed or adapted for any purpose of diving or salvage operations;

(c) to deposit, so as to fall and lie abandoned on the sea-bed anything, which if it were to fall on the site of a wreck (whether it so falls or not) would wholly or partly obliterate the site, or obstruct access to it, or damage any part of the wreck,

or permit any of those things to be done by any one else,

unless (in every case) it is done -

(i) in the course of any action done for the sole purpose of dealing with an emergency of any description;

(ii) in exercising or seeing to the exercise of functions conferred by or under an enactment; or

(iii) out of necessity due to stress of weather or navigational hazards.

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## SUBSIDIARY LEGISLATION

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### PORTS AND HARBOURS

#### The Harbour Ordinance

#### The Harbour Regulations (Amendment) Order 1994

(S.R. & O. No. 21 of 1994)

Made: 16th December 1994

Published: 22nd December 1994

Coming into operation: 1st January 1995

IN EXERCISE of my powers under section 3 of the Harbour Ordinance (a) and of all other powers enabling me in that behalf, I make the following Order -

1. This Order may be cited as the Harbour Regulations (Amendment) Order 1994 and shall come into force on 1st January 1995.

*Citation and  
commencement.*

2. The Harbour Regulations (b) are amended by revoking paragraph 1(1) of Schedule III to those Regulations and by replacing the said paragraph 1(1) with the following -

*Amendment of the  
Harbour Regulations.*

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(a) Cap. 30 Laws of the Falkland Islands 1950 Edition p.251.

(b) Vol II Laws of the Falkland Islands 1950 Edition p.183 and, so far as is relevant to this Order, as at the date of making of this Order as amended by S.R. & O. No.8 of 1993 which is in effect replaced by this Order.

"(1) The following harbour dues shall be payable on all vessels arriving in a harbour in the Colony -

	£
Yachts	44
Vessels under 15 tons	48
Vessels of 15 tons and up to 30 tons	83
Vessels of over 30 tons and up to 50 tons	165
Vessels of over 50 tons and up to 800 tons	231
Vessels of over 800 tons and up to 1000 tons	290
Vessels of over 1000 tons and up to 1500 tons	339
Vessels of over 1500 tons and up to 2000 tons	411
Vessels of over 2000 tons and up to 5000 tons	497
Vessels of over 5000 tons and up to 7000 tons	618
Vessels of over 7000 tons and up to 10000 tons	920
Vessels of over 10000 tons and up to 15000 tons	1126
Vessels of over 15000 tons and up to 20000 tons	1320
Vessels of over 20000 tons	1525,

but notwithstanding the foregoing, locally registered vessels normally employed in trading shall be exempt from payment of the foregoing dues".

Made 16th December 1994.

D.E. TATHAM,  
*Governor.*

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

This Order increases harbour dues, with effect from 1st January 1995, by approximately ten per cent above the levels in force since 1 January 1994.

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## SUBSIDIARY LEGISLATION

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### THE ELECTED COUNCILLORS ALLOWANCES

Elected Councillors' Allowances Ordinance 1990  
(Replacement of Schedule) Order 1994

(S. R. & O. No. 22 of 1994)

*Made: 20th December 1994*

*Published: 23rd December 1994*

*Coming into force: 1st January 1995*

IN EXERCISE of my powers under section 5 of the Elected Councillors' Allowances Ordinance 1990(a) and after consultation with the elected members of the Legislative Council I make the following Order -

1. This Order may be cited as the Elected Councillors' Allowances Ordinance 1990 (Replacement of Schedule) Order 1994 and shall come into force on 1st January 1995.

*Citation and  
commencement.*

2. The Schedule to the Elected Councillors' Allowances Ordinance 1990 is replaced by the following -

*Replacement of Schedule  
to the Elected Councillors'  
Allowances Ordinance 1990.*

#### SCHEDULE

#### ALLOWANCES PAYABLE TO ELECTED MEMBERS OF THE LEGISLATIVE COUNCIL

##### *Annual non-taxable allowance*

1. Every elected member of the Legislative Council shall be entitled to be paid an allowance at an annual rate of £2,500 (periods of less than a year qualifying for payment of this allowance on a proportionate basis).

##### *Taxable allowances*

2.(1) In this paragraph any reference to "meeting" means any meeting of -

(a) the Legislative Council;

(b) the Executive Council;

(c) any Committee of the Legislative Council (including without prejudice to the generality of the foregoing, the Standing Finance Committee); or



(d) any Committee, whether established by or under any Ordinance or pursuant to any resolution of the Executive Council, being a Committee of which the elected member of the Legislative Council in question is appointed to be a member.

(2) An elected member of the Legislative Council shall be entitled to be paid or re-imbursed the reasonable and actual costs of travel for the purpose of attendance at, or return from, a meeting.

(3) Where an elected member of the Legislative Council is absent from the Falkland Islands in the circumstances to which subparagraph (7) relates, he shall be entitled to be re-imbursed the reasonable and actual costs of travel, accommodation and subsistence on the same scale as is for the time being applicable to Chief Officers in the Public Service.

(4) Subject to subparagraph (5), every elected member of the Legislative Council shall be entitled to be paid an allowance of £75 in respect of every meeting he attends.

(5) The allowance under subparagraph (4) shall be payable only in respect of any one day, and so that where an elected member of the Legislative Council attends more than one meeting on any one day he shall be paid an allowance under that subparagraph in respect of one only of those meetings.

(6) Every elected member of the Legislative Council representing the Camp Constituency shall be entitled to be paid an allowance of £75 in respect of each day or part thereof spent in travelling to and from every meeting he attends except in respect of the day upon which the meeting occurs.

(7) An elected member of the Legislative Council shall be entitled to be paid an allowance of £75 for each day he is absent from the Falkland Islands in his capacity as an elected member of the Legislative Council where he represents elected members of the Legislative Council by authority of that Council or by authority of the Governor advised by the Executive Council.

*Telephone and facsimile rental*

3. All Legislative Councillors shall be entitled to be re-imbursed with -

- (a) the annual cost of rental of a telephone and facsimile machine at their home address;
- (b) one third of the total charges incurred for local calls within the Falkland Islands made from such telephone and such facsimile machine; and
- (c) the whole of the total charges incurred for overseas calls made from such telephone and such facsimile machine provided that any such overseas calls are made wholly in connection with Executive Council or Legislative Council business.

Made 20th December 1994.

D. E. TATHAM,  
*Governor.*

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**EXPLANATORY NOTE**

*(This Note is not part of the Order)*

This Order has the effect of replacing the Schedule to the Elected Councillors' Allowances Ordinance 1990 so as to set new rates of allowances for elected Members of the Legislative Council with effect from 1st January 1995.





**THE  
FALKLAND ISLANDS GAZETTE  
Supplement**

**PUBLISHED BY AUTHORITY**

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*Vol. 5*

*23rd DECEMBER 1994*

*No. 32*

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The following is published in this Supplement —

**The Deductions (Employees) (Amendment) Regulations 1994, (S.R. & O. No. 19 of 1994).**

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## SUBSIDIARY LEGISLATION

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### INCOME TAX

#### The Deductions (Employees) (Amendment) Regulations 1994

(S. R. & O. No. 19 of 1994)

*Made: 13th December 1994*

*Published: 23rd December 1994*

*Coming into force: 1st January 1995*

IN EXERCISE of my powers under section 32E of the Income Tax Ordinance (a).

1. These Rules may be cited as the Deductions (Employees) (Amendment) Regulations 1994 and shall apply in respect of all remuneration paid to an employee after 31st December 1994. Citation and application.
2. The attached Tables are substituted for the Tables set out in the Schedule (as amended) to the Deductions (Employees) Regulations 1987 (b). New Tables.

Made this 13th day of December 1994.

D. E. TATHAM,  
*Governor.*

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(a) Cap. 32 Laws of the Falkland Islands 1950.

(b) S. R. & O. No. 23 of 1987 as amended by S. R. & O. Nos. 6 of 1990, 10 of 1991, 2 of 1992 and 10 of 1992.

SINGLE PERSON  
MONTHLY PAID

MONTHLY WAGE (£)	TAX per MONTH (£)
=====	=====
500	1
525	5
550	10
575	14
600	18
625	22
650	27
675	31
700	35
725	39
750	44
775	48
800	52
825	56
850	61
875	65
900	69
925	73
950	78
975	82
1,000	86
1,025	90
1,050	95
1,075	99
1,100	103
1,125	107
1,150	112
1,175	116
1,200	120
1,225	124
1,250	129
1,275	133
1,300	137
1,325	141
1,350	146
1,375	150
1,400	154
1,425	158
1,450	163
1,475	167
1,500	171
1,525	175
1,550	180
1,575	184
1,600	188
1,625	192
1,650	197
1,675	201
1,700	205
1,725	209
1,750	214
1,775	218
1,800	222
1,825	226
1,850	231
1,875	235

SINGLE PERSON  
MONTHLY PAID

MONTHLY WAGE  
(£)

TAX per MONTH  
(£)

1,900	239
1,925	243
1,950	248
1,975	252
2,000	256
2,025	260
2,050	265
2,075	269
2,100	273
2,125	277
2,150	282
2,175	286
2,200	290
2,225	294
2,250	299
2,275	303
2,300	307
2,325	311
2,350	316
2,375	320
2,400	324
2,425	328
2,450	333
2,475	338
2,500	343
2,525	349
2,550	354
2,575	359
2,600	365
2,625	370
2,650	375
2,675	380
2,700	386
2,725	391
2,750	396
2,775	402
2,800	407
2,825	412
2,850	418
2,875	423
2,900	428
2,925	434
2,950	439
2,975	444
3,000	450
3,025	455
3,050	460
3,075	465
3,100	471
3,125	476
3,150	481
3,175	487
3,200	492
3,225	497
3,250	503
3,275	508

MONTHLY WAGE (£)	SINGLE PERSON MONTHLY PAID	TAX per MONTH (£)
3,300		
3,325		513
3,350		519
3,375		524
3,400		529
3,425		535
3,450		540
3,475		545
3,500		550
3,525		556
3,550		561
3,575		566
3,600		572
3,625		577
3,650		582
3,675		588
3,700		593
3,725		598
3,750		604
3,775		609
3,800		614
3,825		620
3,850		625
3,875		630
3,900		635
3,925		641
3,950		646
3,975		651
4,000		657
4,025		662
4,050		667
4,075		673
4,100		678
4,125		683
4,150		689
4,175		694
4,200		699
4,225		705
4,250		710
4,275		715
4,300		720
4,325		726
4,350		731
4,375		736
4,400		742
4,425		747
4,450		752
4,475		758
4,500		763
4,525		768
4,550		774
4,575		779
4,600		784
4,625		790
4,650		795
4,675		800
		805



SINGLE PERSON  
MONTHLY PAID

MONTHLY WAGE  
(£)

TAX per MONTH  
(£)

4,700	-----	811
4,725	-----	816
4,750	-----	821
4,775	-----	827
4,800	-----	832
4,825	-----	837
4,850	-----	843
4,875	-----	848
4,900	-----	853
4,925	-----	859
4,950	-----	864
4,975	-----	869
5,000	-----	875
5,025	-----	880
5,050	-----	885
5,075	-----	890
5,100	-----	896
5,125	-----	901
5,150	-----	906
5,175	-----	912
5,200	-----	917

MARRIED PERSON  
MONTHLY PAID

MONTHLY WAGE (£)	TAX per MONTH (£)
725	2
750	6
775	10
800	15
825	19
850	23
875	27
900	32
925	36
950	40
975	44
1,000	49
1,025	53
1,050	57
1,075	61
1,100	66
1,125	70
1,150	74
1,175	78
1,200	83
1,225	87
1,250	91
1,275	95
1,300	100
1,325	104
1,350	108
1,375	112
1,400	117
1,425	121
1,450	125
1,475	129
1,500	134
1,525	138
1,550	142
1,575	146
1,600	151
1,625	155
1,650	159
1,675	163
1,700	168
1,725	172
1,750	176
1,775	180
1,800	185
1,825	189
1,850	193
1,875	197
1,900	202
1,925	206
1,950	210
1,975	214
2,000	219
2,025	223
2,050	227
2,075	231
2,100	236

MARRIED PERSON  
MONTHLY PAID

MONTHLY WAGE  
(£)

TAX per MONTH  
(£)

2,125	240
2,150	244
2,175	248
2,200	253
2,225	257
2,250	261
2,275	265
2,300	270
2,325	274
2,350	278
2,375	282
2,400	287
2,425	291
2,450	295
2,475	299
2,500	304
2,525	308
2,550	312
2,575	316
2,600	321
2,625	325
2,650	329
2,675	334
2,700	339
2,725	344
2,750	350
2,775	355
2,800	360
2,825	365
2,850	371
2,875	376
2,900	381
2,925	387
2,950	392
2,975	397
3,000	403
3,025	408
3,050	413
3,075	419
3,100	424
3,125	429
3,150	435
3,175	440
3,200	445
3,225	450
3,250	456
3,275	461
3,300	466
3,325	472
3,350	477
3,375	482
3,400	488
3,425	493
3,450	498
3,475	504
3,500	509

MARRIED PERSON  
MONTHLY PAID

MONTHLY WAGE  
(£)

TAX per MONTH  
(£)

3,525	514
3,550	520
3,575	525
3,600	530
3,625	535
3,650	541
3,675	546
3,700	551
3,725	557
3,750	562
3,775	567
3,800	573
3,825	578
3,850	583
3,875	589
3,900	594
3,925	599
3,950	605
3,975	610
4,000	615
4,025	620
4,050	626
4,075	631
4,100	636
4,125	642
4,150	647
4,175	652
4,200	658
4,225	663
4,250	668
4,275	674
4,300	679
4,325	684
4,350	690
4,375	695
4,400	700
4,425	705
4,450	711
4,475	716
4,500	721
4,525	727
4,550	732
4,575	737
4,600	743
4,625	748
4,650	753
4,675	759
4,700	764
4,725	769
4,750	775
4,775	780
4,800	785
4,825	790
4,850	796
4,875	801
4,900	806

MARRIED PERSON  
MONTHLY PAID

MONTHLY WAGE  
(£)

TAX per MONTH  
(£)

4,925	-----	812
4,950	-----	817
4,975	-----	822
5,000	-----	828
5,025	-----	833
5,050	-----	838
5,075	-----	844
5,100	-----	849
5,125	-----	854
5,150	-----	860
5,175	-----	865
5,200	-----	870

SINGLE PERSON  
WEEKLY PAID

WEEKLY WAGE  
(£)

TAX per WEEK  
(£)

120	1
125	2
130	2
135	3
140	4
145	5
150	6
155	7
160	7
165	8
170	9
175	10
180	11
185	12
190	13
195	13
200	14
205	15
210	16
215	17
220	18
225	19
230	19
235	20
240	21
245	22
250	23
255	24
260	24
265	25
270	26
275	27
280	28
285	29
290	30
295	30
300	31
305	32
310	33
315	34
320	35
325	36
330	36
335	37
340	38
345	39
350	40
355	41
360	41
365	42
370	43
375	44
380	45
385	46
390	47
395	47

SINGLE PERSON  
WEEKLY PAID

WEEKLY WAGE (£)	TAX per WEEK (£)
400	48
405	49
410	50
415	51
420	52
425	53
430	53
435	54
440	55
445	56
450	57
455	58
460	58
465	59
470	60
475	61
480	62
485	63
490	64
495	64
500	65
505	66
510	67
515	68
520	69
525	70
530	70
535	71
540	72
545	73
550	74
555	75
560	75
565	76
570	77
575	78
580	79
585	81
590	82
595	83
600	84
605	85
610	86
615	87
620	88
625	89
630	90
635	91
640	92
645	93
650	94
655	95
660	96
665	98
670	99
675	100

SINGLE PERSON  
WEEKLY PAID

WEEKLY WAGE  
(£)

TAX per WEEK  
(£)

680	101
685	102
690	103
695	104
700	105
705	106
710	107
715	108
720	109
725	110
730	111
735	112
740	113
745	115
750	116
755	117
760	118
765	119
770	120
775	121
780	122
785	123
790	124
795	125
800	126
805	127
810	128
815	129
820	130
825	132
830	133
835	134
840	135
845	136
850	137
855	138
860	139
865	140
870	141
875	142
880	143
885	144
890	145
895	146
900	147
905	149
910	150
915	151
920	152
925	153
930	154
935	155
940	156
945	157
950	158
955	159



SINGLE PERSON  
WEEKLY PAID

WEEKLY WAGE (£)	TAX per WEEK (£)
960	160
965	161
970	162
975	163
980	164
985	166
990	167
995	168
1,000	169
1,005	170
1,010	171
1,015	172
1,020	173
1,025	174
1,030	175
1,035	176
1,040	177
1,045	178
1,050	179
1,055	180
1,060	181
1,065	183
1,070	184
1,075	185
1,080	186
1,085	187
1,090	188
1,095	189
1,100	190
1,105	191
1,110	192
1,115	193
1,120	194
1,125	195
1,130	196
1,135	197
1,140	198
1,145	200
1,150	201
1,155	202
1,160	203
1,165	204
1,170	205
1,175	206
1,180	207
1,185	208
1,190	209
1,195	210
1,200	211

MARRIED PERSON  
WEEKLY PAID

WEEKLY WAGE  
(£)

TAX per WEEK  
(£)

170	1
175	1
180	2
185	3
190	4
195	5
200	6
205	6
210	7
215	8
220	9
225	10
230	11
235	12
240	12
245	13
250	14
255	15
260	16
265	17
270	18
275	18
280	19
285	20
290	21
295	22
300	23
305	23
310	24
315	25
320	26
325	27
330	28
335	29
340	29
345	30
350	31
355	32
360	33
365	34
370	35
375	35
380	36
385	37
390	38
395	39
400	40
405	40
410	41
415	42
420	43
425	44
430	45
435	46
440	46
445	47

MARRIED PERSON  
WEEKLY PAID

WEEKLY WAGE (£)	TAX per WEEK (£)
450	48
455	49
460	50
465	51
470	52
475	52
480	53
485	54
490	55
495	56
500	57
505	57
510	58
515	59
520	60
525	61
530	62
535	63
540	63
545	64
550	65
555	66
560	67
565	68
570	69
575	69
580	70
585	71
590	72
595	73
600	74
605	74
610	75
615	76
620	77
625	78
630	79
635	80
640	81
645	82
650	84
655	85
660	86
665	87
670	88
675	89
680	90
685	91
690	92
695	93
700	94
705	95
710	96
715	97
720	98
725	99

MARRIED PERSON  
WEEKLY PAID

WEEKLY WAGE (£)	TAX per WEEK (£)
730	101
735	102
740	103
745	104
750	105
755	106
760	107
765	108
770	109
775	110
780	111
785	112
790	113
795	114
800	115
805	116
810	118
815	119
820	120
825	121
830	122
835	123
840	124
845	125
850	126
855	127
860	128
865	129
870	130
875	131
880	132
885	133
890	135
895	136
900	137
905	138
910	139
915	140
920	141
925	142
930	143
935	144
940	145
945	146
950	147
955	148
960	149
965	150
970	152
975	153
980	154
985	155
990	156
995	157
1,000	158
1,005	159

MARRIED PERSON  
WEEKLY PAID

WEEKLY WAGE (£)	TAX per WEEK (£)
1,010	160
1,015	161
1,020	162
1,025	163
1,030	164
1,035	165
1,040	166
1,045	167
1,050	169
1,055	170
1,060	171
1,065	172
1,070	173
1,075	174
1,080	175
1,085	176
1,090	177
1,095	178
1,100	179
1,105	180
1,110	181
1,115	182
1,120	183
1,125	184
1,130	186
1,135	187
1,140	188
1,145	189
1,150	190
1,155	191
1,160	192
1,165	193
1,170	194
1,175	195
1,180	196
1,185	197
1,190	198
1,195	199
1,200	200

