



FALKLAND ISLANDS

Administration of Justice (Miscellaneous Provisions) Ordinance 1996

(ORDINANCE No. 22 OF 1996)

ARRANGEMENT OF PROVISIONS

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FALKLAND ISLANDS

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AN ORDINANCE To make further and better provision for the application in the Falkland Islands of certain provisions of the Senior Courts Act 1981 and of the County Courts Act 1984, to enact provisions in relation to the office and functions of bailiff in the Falkland Islands, to apply certain provisions of the Administration of Justice Act 1982, the Administration of Justice Act 1985 and the Insolvency Act 1986, to amend the law in relation to administration orders in respect of debtors and to make provision connected with the foregoing purposes.

[Revision w.e.f. 31/07/2017]

[DATE OF COMMENCEMENT: 29TH NOVEMBER 2002]

1 Short title and commencement

This Ordinance may be cited as the Administration of Justice (Miscellaneous Provisions) Ordinance 1996 and shall come into force on such date as the Governor may appoint by Notice published in the Gazette.

2 Interpretation

In this Ordinance-

"administration order" means an order under section 9 of this Ordinance; and

"the principal Ordinance" means the Administration of Justice Ordinance 1949.

[Revision w.e.f. 31/07/2017]

3 Application of certain provisions of the Senior Courts Act 1981 (1981 c. 54)

[Revision w.e.f. 31/07/2017]

(1) Without prejudice to the operation prior to the commencement of this section of the provisions of section 9 of the principal Ordinance or of any other enactment of the Falkland Islands so as to apply as law of the Falkland Islands any of the provisions to which this section relates, it is hereby declared that the provisions of the Senior Courts Act 1981 mentioned in

Schedule 1 to this Ordinance apply in the Falkland Islands, but subject from such commencement to the exceptions and modifications specified in that Schedule.

[Revision w.e.f. 31/07/2017]

(2) ...

[S. R. & O. 20/2017 w.e.f. 31/07/2017]

4 ...

[Revision w.e.f. 31/07/2017]

5 Application of sections 1, 2 and 5 of the Administration of Justice Act 1982 (1982 c.53)

For the sake of avoidance of doubt, it is hereby declared that sections 1, 2 and 5 of the Administration of Justice Act 1982 apply as law of the Falkland Islands with the substitution of the words "the law of the Falkland Islands" for the words "the law of England and Wales or the law of Northern Ireland" wherever they appear in those provisions.

6 Power of Supreme Court to make judgments binding on persons who are not parties (1985 c.61 s. 47)

The rules of court made pursuant to section 47(2) of the Administration of Justice Act 1985 (that is to say Order 15, rule 13A of the Rules of the Supreme Court of England and Wales) enabling a judgment given in certain actions to be made binding on persons who are not parties to the action in which the judgment is given shall have effect in relation to actions of the same description in the Supreme Court of the Falkland Islands subject to such modifications as the court may in any particular instance direct.

7 Application of sections 48, 49 and 50 of the Administration of Justice Act 1985 (1985 c.61)

(1) Sections 48, 49 and 50 of the Administration of Justice Act 1985 shall have effect in the Falkland Islands subject to the replacement in section 48(1)(b) of all words appearing after the words "an opinion in writing given" with the words "a person approved by the court for the purpose, and whether before or after such opinion was given."

(2) In their application to the Falkland Islands, the provisions applied by subsection (1) of this section shall be construed as if, except in section 48(1) (b), every reference to the High Court were replaced by a reference to the Supreme Court.

8 Application of sections 183, 184 and 346 of the Insolvency Act 1986 (1986 c.45)

Sections 183, 184 and 346 of the Insolvency Act 1986 shall apply in the Falkland Islands subject to the modifications and with the exceptions specified in Schedule 3 to this Ordinance.

9 Administration orders

(1) Where a debtor is unable to pay forthwith the amount of a debt owed by him, the Magistrate's Court may make an order providing for the administration of his estate.

(2) The order may be made-

- (a) on the application of the debtor (whether or not a judgment has been obtained against the debtor in respect of the debt or any of his debts);
- (b) on the application of any creditor under a judgment obtained against the debtor; or
- (c) of the court's own motion during the course of, or on the determination of, any enforcement or other proceedings.

(3) Before an administration order is made, the court shall send to every person whose name the debtor has notified to the court as being a creditor of his, a notice that that person's name has been so notified.

(4) Subject to section 10 of this Ordinance, so long as an administration order is in force, a creditor whose name is included in the schedule to the order shall not, without the leave of the court, be entitled to present, or join in, a bankruptcy petition against the debtor unless-

- (a) his name was so notified; and
- (b) the debt by virtue of which he presents, or joins in, the petition, exceeds £2,500; and
- (c) the notice given under subsection (3) was received by the creditor within 28 days immediately preceding the day on which the petition is presented.

(5) An administration order may provide for the payment of the debts of the debtor by instalments or otherwise, and either in full or to such extent as appears practicable to the court in the circumstances of the case, and subject to any conditions as to his future earnings or income which the court may think just.

(6) An administration order shall cease to have effect-

- (a) at the end of the period of three year beginning on the date on which it is made; or
- (b) on such earlier date as is specified in the order.

10 Further powers of the court in relation to administration orders

(1) Where the court is satisfied-

- (a) that it has power to make the administration order with respect to the debtor concerned; but
- (b) that an order restricting enforcement would be a more satisfactory way of dealing with the case,

it may make such an order instead of making an administration order.

(2) Where an order restricting enforcement is made, no creditor specified in the order shall without the leave of the court have any remedy against the person or property of the debtor in respect of any debt so specified.

(3) Subsection (4) applies to any creditor-

- (a) who is named in the schedule to an administration order or in an order restricting enforcement; and
- (b) who provides the debtor with electricity or water for the debtor's own domestic purposes.

(4) While the order has effect, the creditor may not stop providing the debtor with electricity or water for the debtor's own domestic purposes; unless the reason for doing so relates to the non-payment of charges incurred by the debtor after the making of the order or is unconnected with non-payment by him of any charges.

(5) An order under subsection (1) shall have effect for such period not exceeding twelve months as is specified in the order, and may be revoked if the court on the application of a creditor sees fit to do so.

11 Administration orders with composition provisions

(1) Where the Magistrate's Court is satisfied-

- (a) that it has power to make an administration order with respect to the debtor concerned; and
- (b) that the addition of a composition provision would be a more satisfactory way of dealing with the case,

it may make an administration order subject to such a provision.

(2) Where, at any time while an administration order is in force-

- (a) the debtor has not discharged the debts to which that order relates; and
- (b) the court considers that he is unlikely to be able to discharge them,

the court may add a composition provision to the order.

(3) A composition provision shall specify an amount to which the debtor's total indebtedness in respect of debts owed to creditors scheduled on the administration order is to be reduced.

(4) The amount of the debt owed to each of the creditors so scheduled shall be reduced in proportion to the reduction in his total indebtedness specified by the composition provision.

(5) Where a composition provision is added to an administration order after the order is made, section 113(a) of the County Courts Act 1984 in its application to the Falkland Islands shall apply as if the addition of the composition provision amounted to the making of a new order.

SCHEDULE 1
APPLICATION BY SECTION 3(1) OF THIS ORDINANCE, SUBJECT TO
MODIFICATIONS AND EXCEPTIONS, OF CERTAIN PROVISIONS THE SENIOR
COURTS ACT 1981

[Revision w.e.f. 31/07/2017]

(section 3)

1 ***Provisions applied as law of the Falkland Islands***

Sections 29, 30, 31, 32, 32A, 33, 34, 35, 35A, 37, 38, 39, 40, 40A, 41, 42, 43A, 49, 50, 51, 67 and 72 of the Senior Courts Act 1981 (in subsequent paragraphs of this Schedule described as "the Act") are applied as law of the Falkland Islands with the exceptions and subject to the modifications specified in this Schedule.

[Revision w.e.f. 31/07/2017]

2 ***General modifications***

Except as may be specifically provided to the contrary in this Schedule, any reference in the provisions of the Senior Courts Act 1981 specified in paragraph 2 of this Schedule-

[Revision w.e.f. 31/07/2017]

- (a) to the High Court, shall be construed as if it were a reference to the Supreme Court of the Falkland Islands;
- (b) to the Crown, shall be construed as if it were a reference to the Crown in right and title of the Falkland Islands;
- (c) to the Court of Appeal, shall be construed as if it were a reference to the Court of Appeal of the Falkland Islands;
- (d) to the sheriff, shall be construed as if it were a reference to the bailiff;
- (e) to the London Gazette, shall be construed as if it were a reference to the Falkland Islands Gazette;
- (f) to a magistrates' court shall be construed as if it were a reference to the Summary Court and any reference to the Crown Court shall be construed as if it were a reference to the Magistrate's Court.

3 ***Section 29***

(1) Section 29(1) of the Act is modified so that in its application to the Falkland Islands it shall be construed as if it read-

"(1) The Supreme Court of the Falkland Islands shall have power to make orders of mandamus, prohibition and certiorari in those classes of cases in which the High Court in England had power to do so immediately before the commencement of this Act."

(2) Section 29(3) of the Act shall not apply in the Falkland Islands.

(3) The reference in section 29(4) of the Act to a county court shall, in the application of the provision to the Falkland Islands, be construed as if it were a reference to the Magistrate's Court of the Falkland Islands.

4 Section 37

Section 37(4) of the Act (which refers to section 1 of the Charging Orders Act 1979) and section 37(5) of the Act (which refers to section 6 of the Land Charges Act 1972) respectively shall not apply in the Falkland Islands until such time as there is in Falkland Islands law provision corresponding to the relevant English provision mentioned, when the reference in question shall be construed in the Falkland Islands as a reference to the corresponding provision of Falkland Islands law and sections 37(4) and (5) of the Act, whichever in the circumstances is relevant, shall then have effect in the Falkland Islands accordingly.

[Corresponding Falkland Islands laws:

Charging Orders Ordinance 1997

Land Charges Ordinance 1996]

5 Section 40

(1) The references in section 40 to a deposit-taking institution shall be construed as a reference to any institution which is a financial institution for the purposes of the Banking Ordinance 1987 and section 40(6) shall not apply in the Falkland Islands.

(2) Section 40(5) shall not be construed as enabling any person holding office in the Falkland Islands to make any order of the kind mentioned in the provision but as applying to the Falkland Islands, so far as in the circumstances it may be applicable, any order made by the Lord Chancellor under that provision.

6 Section 41(2A)

The reference in section 41(2A) of the Act to section 105 of the Children Act 1989 shall, in the application of section 41(2A) to the Falkland Islands, be construed as if it were a reference to section 3 of the Children Ordinance 2014.

[Revision w.e.f. 31/07/2017]

7 Section 51

Section 51(1)(a) of the Act in its application to the Falkland Islands shall be construed as if it read "the Court of Appeal of the Falkland Islands in any civil action, cause or matter".

SCHEDULE 2 . . .

[Revision w.e.f. 31/07/2017]

SCHEDULE 3
MODIFICATIONS OF SECTIONS 183, 184 AND 346 OF THE INSOLVENCY ACT 1986
IN THEIR APPLICATION TO THE FALKLAND ISLANDS

(section 8)

1 *Section 183*

Section 183 of the Insolvency Act 1986 in its application to the Falkland Islands shall be construed-

- (a) as if, until a provision corresponding to section 1 of the Charging Orders Act 1979 is enacted in the Falkland Islands, the reference to that provision did not appear in subsection (3) and, after such enactment, as if the reference to that provision were a reference to the corresponding provision of the law of the Falkland Islands; and
- (b) as if subsection (5) were omitted.

[Corresponding Falkland Islands laws:

Charging Orders Ordinance 1997

Land Charges Ordinance 1996]

2 *Section 184*

Section 184 of the Insolvency Act 1986 in its application to the Falkland Islands shall be construed-

- (a) as if all references in the section to the sheriff were a reference to the bailiff who took the goods in execution; and
- (b) as if subsections (7) and (8) did not appear.

3 *Section 346*

Section 346 of the Insolvency Act 1986 in its application to the Falkland Islands shall be construed-

- (a) as if the reference in subsection (1) to section 285 of that Act were a reference to section 59 of the Bankruptcy Act 1914;
- (b) as if, until a provision corresponding to section 1 of the Charging Orders Act 1979 is enacted in the Falkland Islands, subsection (5)(a) did not appear, and, after such enactment, as if the reference in subsection 5(a) to section 1 of the Charging Orders Act 1979 were a reference to the corresponding provision of the law of the Falkland Islands.