



FALKLAND ISLANDS

Criminal Justice (International Co-operation) Ordinance 1991

(ORDINANCE No. 20 OF 1991)

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FALKLAND ISLANDS

Criminal Justice (International Co-operation) Ordinance 1991

AN ORDINANCE To enable the Falkland Islands to co-operate with other countries in criminal proceedings and investigations; to enable the Falkland Islands, in the event that the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is ratified by Her Majesty's Government in the United Kingdom in such manner that the provisions of the Convention are applicable to the Falkland Islands, to enable the Falkland Islands to join with other countries in implementing that Convention; to provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash; and to amend the Criminal Justice Ordinance 1989 for purposes connected with the above purposes and for other purposes.

[DATE OF COMMENCEMENT: 16TH MARCH 1992]
(Unless otherwise indicated)

PART I PRELIMINARY

1 Short title

This Ordinance may be cited as the Criminal Justice (International Co-operation) Ordinance.

[Date of commencement: 19th December 1991]

2 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

“**Governor**” means the Governor acting in his discretion, or, where he has received instructions from the Secretary of State, the Governor acting in accordance with such instructions;

“**judge**” includes the Senior Magistrate and any judge of the Supreme Court;

“**the Secretary of State**” means Her Majesty's Secretary of State for Foreign and Commonwealth Affairs.

(2) It shall not be competent for any court or tribunal in any proceedings whatsoever, whether the proceedings arise out of or in connection with any provision of this Ordinance or otherwise, to inquire into or determine any question as to whether-

- (a) the Governor has received any instructions from the Secretary of State as to or in connection with the exercise of any of his functions under this Ordinance; or
- (b) if he has, whether he has acted in accordance with those instructions.

PART II

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual Service of Process

3 Service of overseas process in the Falkland Islands

(1) This section has effect where the Governor receives from the government of, or authority in, a country or territory outside the Falkland Islands-

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the Falkland Islands.

(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the chief police officer to cause it to be personally served on the person to be served.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) shall not impose any obligation under the law of the Falkland Islands to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice-

- (a) stating the effect of subsection (3);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the Falkland Islands.

(5) Where the chief police officer is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform the Governor when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the chief police officer has been unable to cause the process or document to be served he shall forthwith inform the Governor of that fact and of the reason.

4 Service of Falkland Islands process overseas

(1) Process of the following descriptions, that is to say-

- (a) a summons requiring a person charged with an offence to appear before a court in the Falkland Islands; and
- (b) a summons or order requiring a person to attend before a court in the Falkland Islands for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside the Falkland Islands and may be served outside the Falkland Islands in accordance with arrangements made in relation to the Falkland Islands by Her Majesty's Government in the United Kingdom.

(2) Service of any process outside the Falkland Islands by virtue of this section shall not impose any obligation under the law of the Falkland Islands to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the Falkland Islands.

Mutual provision of evidence

5 Overseas evidence for use in the Falkland Islands

(1) Where on an application made in accordance with subsection (2) it appears to a justice of the peace or a judge-

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("a letter of request") requesting assistance in obtaining outside the Falkland Islands such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by or on behalf of the Attorney General, or the chief police officer or, if proceedings have been instituted, by the person charged in those proceedings.

(3) The Attorney General may himself, with the consent of the Governor, issue a letter of request if-

- (a) he is satisfied as to matters mentioned in subsection (1)(a); and
- (b) the offence in question is being investigated or he or the chief police officer has instituted proceedings in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent to the Governor for transmission either-

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) to any authority recognized by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter of request may with the consent of the Governor be sent direct to such a court or tribunal as is mentioned in subsection (4)(a).

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(8) In exercising the discretion conferred by section 340 of the Criminal Procedure and Evidence Ordinance 2014 (principles for admission of statements) in relation to a statement contained in evidence taken pursuant to a letter of request the court shall have regard-

- (a) to whether it was possible to challenge the statement by questioning the person who made it; and
- (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being taken.

[Sch. Pt. C/Ord. 10/2024/w.e.f. 14/08/2024]

6 Falkland Islands evidence for use overseas

(1) This section has effect where the Governor receives-

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Falkland Islands or a prosecuting authority in such a country or territory; or
- (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the Falkland Islands in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Governor is satisfied-

- (a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

- (b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate a court in the Falkland Islands to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless-

- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and which extends to the Falkland Islands; or
- (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or similar nature if it had occurred in the Falkland Islands.

For the purposes of satisfying himself as to the matters mentioned in subsection 2(a) and (b) the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(5) In this section “**evidence**” includes documents and other articles.

(6) Schedule 1 to this Ordinance shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2).

7 Transfer of Falkland Islands prisoner to give evidence or assist investigation overseas

(1) The Governor may, if he thinks fit, issue a warrant providing for a person ("a prisoner") serving a sentence in a prison or other institution to which the Prison Ordinance applies to be transferred to a country or territory outside the Falkland Islands for the purpose-

- (a) of giving evidence in criminal proceedings there; or
- (b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) and that consent may be given either-

- (a) by the prisoner himself; or
- (b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section shall be to authorize-

- (a) the taking of the prisoner to a place in the Falkland Islands and his delivery at a place of departure from the Falkland Islands into the custody of a person representing the

appropriate authority of the country or territory to which the prisoner is to be transferred; and

- (b) the bringing of the prisoner back to the Falkland Islands and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, in the Falkland Islands or on board a British ship, British aircraft or British hovercraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorized by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer and whether the prisoner is within the Falkland Islands for the time being or outside the Falkland Islands for the time being.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) In subsection (4)-

“**British aircraft**” means a British-controlled aircraft with the meaning of section 1 (application of criminal law to aircraft) of the Tokyo Convention Act 1967 (Overseas Territories) Order 1968 (which Order remains in force in relation to the Falkland Islands notwithstanding the repeal of the Tokyo Convention Act 1967 by section 109(3) of and Schedule 16 to the Civil Aviation Act 1982 and which Order under section 17(2)(b) of the Interpretation Act 1978 has effect as if made under, or partly made under section 109 of the Civil Aviation Act 1982);

“**British hovercraft**” means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provisions made under the Hovercraft Act 1968 or one of Her Majesty's hovercraft;

“**British ship**” means a British ship for the purposes of the Merchant Shipping Acts or one of Her Majesty's ships;

and in this subsection references to Her Majesty's aircraft, hovercraft or ships are references to aircraft, hovercraft or, as the case may be, ships belonging to or exclusively employed in the service of Her Majesty in right of the Government of the United Kingdom or of the Government of the Falkland Islands.

(8) In subsection (6) “**police officer**” means any person who is a police officer in the Falkland Islands or any person who, at the place in question has, under any enactment including subsection (5), the powers of such a police officer.

(9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and the reference in subsection (3)(b) to a sentence shall be construed accordingly.

(10) The reference in subsection (7) to the Hovercraft Act 1968 shall be construed as a reference to that Act to the extent that, at the time in question, it applies to the Falkland Islands by virtue of-

- (a) an Order or Orders of Her Majesty in Council under section 1(1) of that Act; or
- (b) legislation made in the Falkland Islands for the time being in force.

8 Transfer of overseas prisoner to give evidence to assist investigation in the Falkland Islands

(1) This section has effect where-

- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in the Falkland Islands in respect of a person ("a prisoner") who is detained in custody in a country or territory outside the Falkland Islands by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in the Falkland Islands of an offence.

(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the Falkland Islands to give evidence pursuant to the witness order or witness summons or, as the case may be, for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the Falkland Islands to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorize-

- (a) the bringing of the prisoner to the Falkland Islands;
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in the Falkland Islands as may be specified in the warrant; and
- (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (8) of section 7 shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration Ordinance in respect of his entry into or presence in the Falkland Islands in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in the Falkland Islands-

- (a) he shall be treated for the purposes of that Ordinance as if he has then illegally entered the Falkland Islands; and
- (b) the provisions of that Ordinance shall have effect accordingly except that a carrier shall not be liable for expenses of custody or passage in relation to directions for his removal given by virtue of this subsection.

(7) This section applies to a person detained in custody in a country or territory outside the Falkland Islands in consequence of having been transferred there-

- (a) from the Falkland Islands under the Repatriation of Prisoners Act 1984 in its application to the Falkland Islands; or
- (b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1) above.

Additional co-operation powers

9 Search, etc., for material relevant to overseas investigation

(1) Parts 2 and 3 of the Criminal Procedure and Evidence Ordinance 2014 (powers of entry, search and seizure) have effect as if references in them to offences included any conduct which is an offence under the law of a country or territory outside the Falkland Islands and would constitute an offence if it had occurred in the Falkland Islands.

[Sch. Pt. C/Ord. 10/2024/w.e.f. 14/08/2024]

(2) If, on an application made by a police officer, a justice of the peace or the Senior Magistrate is satisfied-

- (a) that criminal proceedings have been instituted against a person in a country or territory outside the Falkland Islands or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the Criminal Procedure and Evidence Ordinance 2014 if it had occurred in the Falkland Islands; and
- (c) that there are reasonable grounds for suspecting that there is on premises in the Falkland Islands occupied or controlled by that person evidence relating to the offence other than items subject to legal privilege within the meaning of that Ordinance,

he may issue a warrant authorizing a police officer to enter and search those premises and to seize any such evidence found there.

[Sch. Pt. C/Ord. 10/2024/w.e.f. 14/08/2024]

(3) The power to search conferred by subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

(4) No application for a warrant or order shall be made by virtue of subsections (1) or (2) except in pursuance of a direction given by the Governor in response to a request received-

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section,

and any evidence seized by a police officer by virtue of this section shall be furnished by him to the Governor for transmission to that court, tribunal or authority.

(5) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Governor.

(6) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

10 Enforcement of overseas forfeiture orders

(1) The Governor may by order made with the advice of the Executive Council provide for the enforcement in the Falkland Islands of any order which-

- (a) is made by a court in a country or territory outside the Falkland Islands designated for the purposes of this section by the order; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.

(1A) Without prejudice to the generality of subsection (1) the provision which may be made by virtue of this subsection includes provision which, for the purpose of facilitating the enforcement of any order that may be made, has effect at times before there is an order to be enforced.

[S. 10/Ord. 11/97/w.e.f. 1/1/98]

(2) Without prejudice to the generality of subsection (1) an order under this section may provide for the registration by a court in the Falkland Islands of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An order under this section may include such supplementary and incidental provisions as appear to the Governor to be necessary or expedient and may apply for the purposes of the order (with such modifications as appear to the Governor to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) An order under this section may make different provision for different cases.

(5) This section applies to any offence which corresponds to, or is similar to —

- (a) an offence under the Misuse of Drugs Ordinance 1987; or
- (b) a drug trafficking offence as defined in section 3(3) of the Drug Trafficking Offences Ordinance 1997.

[Revision w.e.f. 31/07/2017; Sch. Pt. C/Ord. 10/2024/w.e.f. 14/08/2024]

Supplementary

11 Rules of court

- (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Ordinance.
- (2) Rules made for the purposes of Schedule 1 to this Ordinance may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.
- (3) An order under section 10 may authorize the making of rules of court for any purpose in the order.
- (4) This section is without prejudice to the generality of any existing power to make rules.

PART III THE VIENNA CONVENTION

Interpretation of this Part

12 Interpretation of Part III

- (1) In this Part of this Ordinance-

“British ship” means a ship registered in the United Kingdom, the Isle of Man, the Channel Islands, the Falkland Islands or any other Overseas Territory of the United Kingdom;

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

“Convention state” means a state other than the United Kingdom which is a party to the Vienna Convention and any country or territory of such a state to which it has applied that Convention;

“scheduled substance” has the meaning given in section 13(4);

“ship” includes any vessel used in navigation;

“the territorial sea of the Falkland Islands” means the territorial sea of the Falkland Islands existing under the Falkland Islands (Territorial Sea) Order 1989;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

- (2) Any expression used in this Part of this Ordinance which is also used in the Drug Trafficking Offences Ordinance has the same meaning as in that Ordinance.
- (3) If in any proceedings under this Ordinance any question arises-
 - (a) as to whether any country or territory is a state;

(b) whether any state, country or territory is a Convention state,
a certificate issued by or under the authority of the Government shall be conclusive upon that question.

Substances useful for manufacture of controlled drugs

13 Manufacture and supply of scheduled substances

- (1) It is an offence for a person-
- (a) to manufacture a scheduled substance; or
 - (b) to supply such a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding fourteen years or to a fine (with no limit on the amount of the fine which may be imposed) or to both such imprisonment and fine.

(3) In this section “**a controlled drug**” has the same meaning as in the Misuse of Drugs Ordinance and “**unlawful production of a controlled drug**” means the production of such a drug which is unlawful by virtue of a section of that Ordinance.

(4) In this section and elsewhere in this Part of this Ordinance “**a scheduled substance**” means a substance for the time being specified in Schedule 2 to this Ordinance.

(5) The Governor may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but-

- (a) no such order shall add any substance to the Schedule unless-
 - (i) it appears to the Governor to be frequently used in or for the unlawful production of a controlled drug; or
 - (ii) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention.

14 Regulations about scheduled substances

- (1) The Governor with the advice of the Executive Council may by regulations make provision-
- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
 - (b) requiring the keeping of records and the furnishing of information with respect to such substances;
 - (c) for the inspection of records kept pursuant to the regulations;
 - (d) for the labelling of consignments of scheduled substances.

- (2) Regulations made by virtue of subsection (1)(b) may, in particular, require-
- (a) the notification of the proposed exportation of substances specified in Table 1 in Schedule 2 to this Ordinance to such countries as may be specified in the regulations; and
 - (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of section 143 of the Customs Ordinance 2003 (offences relating to exportation of prohibited or restricted goods) any such substance shall be deemed to be exported contrary to a prohibition for the time being in force with respect to it under this Ordinance if it is exported without the requisite notification having been given.

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

(3) Regulations under this section may make different provision in relation to substances specified in Table I and Table II in Schedule 2 to this Ordinance respectively and in relation to different cases or circumstances.

(4) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 7 on the standard scale.

(5) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Ordinance.

Proceeds of drug trafficking

15 . . .

[S. 60/Ord. 25/97/w.e.f. 1/3/98.]

16 Interest on sums unpaid under confiscation orders

(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified . . .) that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgment debt under the Judgments Act 1838, s. 17 in its application to the Falkland Islands.

17 . . .

[S. 60/Ord. 25/97/w.e.f. 1/3/98.]

Offences at sea

18 Offences on British ships

(1) Anything which would constitute a drug trafficking offence if done on land in the Falkland Islands shall constitute that offence if done on a British ship, but if done on a British ship which is a British ship registered at a port of registry outside the Falkland Islands only if that thing would also constitute a drug trafficking offence in the United Kingdom.

(2) For the purposes of subsection (1), an offence is a drug trafficking offence in the United Kingdom if it is a drug trafficking offence for the purposes of Part II of the Criminal Justice (International Co-operation) Act 1990 (which Part of that Act makes provision corresponding to the provisions of this Part of this Ordinance).

(3) Subsections (1) and (2) have effect without prejudice to the application to British ships in accordance with the terms of section 18 of the Criminal Justice (International Co-operation) Act 1990.

19 Ships used for illicit traffic

(1) This section applies to a British ship, a ship registered in a Convention state and a ship not registered in any country or territory.

(2) A person commits an offence if on a ship to which this section applies, wherever it may be, he-

- (a) has a controlled drug in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 3(1) of the Misuse of Drugs Ordinance or the law of any country or territory other than the Falkland Islands.

(3) A certificate purporting to be issued by or on behalf of the government of any country or territory other than the Falkland Islands to the effect that the importation or export of a controlled drug is prohibited by the law of that country or territory shall be evidence of the matters stated.

(4) A person who commits an offence under this section is liable on conviction-

- (a) in a case where the controlled drug is a Class A drug, to imprisonment for life or to a fine (without limit on the amount of fine which may be imposed) or to both such imprisonment and fine;
- (b) in a case where the controlled drug is a Class B drug, to imprisonment for a term not exceeding fourteen years or to a fine (without limit on the amount of the fine which may be imposed) or to both such imprisonment and fine;
- (c) in a case where the controlled drug is a Class C drug, to imprisonment for a term not exceeding five years or to a fine or to both such imprisonment and fine.

In this section “**a controlled drug**” and the references to controlled drugs of a specified class have the same meaning as they have under the Misuse of Drugs Ordinance; and an offence under this section shall be included in the offences to which section 25 of that Ordinance (defence) applies.

20 Enforcement powers

(1) The powers conferred on an enforcement officer by Schedule 3 to this Ordinance shall be exercisable in relation to any ship to which section 18 or 19 applies for the purpose of detecting and the taking of the appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of the Falkland Islands in relation to a ship registered in a Convention state except with the authority of the Governor and he shall not give his authority in relation to a ship registered in a Convention state unless that state has in relation to that ship-

(a) requested the assistance of the United Kingdom or the Falkland Islands for the purpose mentioned in subsection (1); or

(b) authorized the United Kingdom or the Falkland Islands to act for that purpose.

(3) In giving his authority pursuant to a request or authorization from a Convention state the Governor shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(4) The powers conferred by Schedule 3 shall not be exercised in the territorial sea of any other country or territory.

(5) The Governor shall not authorize under subsection (3) the exercise of powers conferred by Schedule 3 in relation to a ship registered in a Convention state other than the United Kingdom except-

(a) upon the instructions of the Secretary of State; or

(b) after consulting the Secretary of State and in accordance with such instructions, if any, as he may then receive.

21 Jurisdiction and prosecutions

(1) Proceedings under this Part of this Ordinance or Schedule 3 in respect of an offence on a ship may be taken as if they were offences to which section 23 of the Misuse of Drugs Ordinance related and the offence may for all incidental purposes be treated as having been committed in the Falkland Islands.

(2) No such proceedings shall be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2), no proceedings for an offence under section 19 alleged to have been committed outside the landward limits of the territorial sea of the Falkland Islands on a ship registered in a Convention state shall be instituted except with the consent of the Governor and (so far as is applicable) in accordance with the requirement for his consent under section 3 of the Territorial Waters Jurisdiction Act 1878.

PART IV
DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

22 Interpretation of Part IV

In this Part of this Ordinance-

“**cash**” includes coins and notes in any currency;

“**customs officer**” means an officer appointed by the Governor to be a customs officer;

“**drug trafficking**” has the same meaning as in the Drug Trafficking Offences Ordinance;

“**exported**”, in relation to any cash, includes its being brought to any place in the Falkland Islands for the purpose of being exported;

“**the proceeds of drug trafficking**” has the same meaning as in the Drug Trafficking Offences Ordinance and includes proceeds received by any person before as well as after the coming into force of this Part of this Ordinance.

23 to 26 . . .

[S. 60/Ord. 25/97/w.e.f. 1/3/98.]

PART V
GENERAL

27 Expenses

(1) Any expenses incurred by the Governor or any public officer under this Ordinance shall be defrayed out of money appropriated by Ordinance.

(2) . . .

SCHEDULE 1
EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF NOMINATED COURT

Securing attendance of witnesses

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

Power to administer oaths

2. The court may in the proceedings take evidence on oath.

Privilege of witnesses

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give-

- (a) in criminal proceedings in the Falkland Islands; or
- (b) subject to subparagraph (2), in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Subparagraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the United Kingdom or of the Falkland Islands; and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the reference in subparagraph (3) to the transmission of evidence given by a person shall be construed accordingly.

Transmission of evidence

4. (1) The evidence received by the court shall be furnished to the Governor for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by a certificate, an affidavit or other verifying document, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Supplementary

5. For the avoidance of doubt it is hereby declared that the Bankers' Books Evidence Act 1879 in its application to the Falkland Islands applies to the proceedings as it applies to other proceedings before the court.

6. No order for costs shall be made in the proceedings.

SCHEDULE 2 SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE I

Ephedrine
Ergometrine
Ergotamine
Lysergic Acid
1-Phenyl-2-propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

TABLE II

Acetic Anhydride
Acetone
Anthranilic Acid
Ethyl ether
Phenylacetic Acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

SCHEDULE 3 ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1. (1) In this Schedule “**an enforcement officer**” means-

- (a) a police officer;
- (b) a customs officer;
- (c) any other officer or other person appointed by the Governor for the purposes of this Schedule.

(2) In this Schedule "the ship" means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and retain

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Falkland Islands and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 20(2) of this Ordinance the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.

(3) For any of those purposes he may require the master or any member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to search and obtain information

3. (1) An enforcement officer may search the ship, anyone on it, and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may-

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;
- (d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 18 or 19 of this Ordinance has been committed on a ship to which one of those sections applies he may-

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of an offence; and
- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

Assistants

5. (1) An enforcement officer may take with him, to assist him in exercising his powers-

- (a) any other persons; and
- (b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

Evidence of authority

7. An enforcement officer shall, if required, produce evidence of his authority.

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court was satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person commits an offence if he-

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;

- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
 - (c) in purporting to give information required by an officer for the performance of those functions-
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose any material particular.
- (2) A person who commits an offence under this paragraph is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale.