FALKLAND ISLANDS

Crimes Ordinance 2014

(No: 13 of 2014)

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FALKLAND ISLANDS

Crimes Ordinance 2014

(assented to: 9 November 2016)
(commencement on: in accordance with section 1)
(published: 23 November 2016)

AN ORDINANCE To consolidate and partially codify the law relating to criminal offences; and for connected purposes.

CHAPTER 1 - PRELIMINARY

PART 1 – PRELIMINARY AND INTERPRETATION

1. Title and commencement

(1) This Ordinance may be cited as the Crimes Ordinance 2014.

(2) This Ordinance comes into operation on a day or days appointed by the Governor by notice in the *Gazette*.

(3) Different dates may be appointed under subsection (2) for different provisions and for different purposes.

2. Interpretation

(1) In this Ordinance, unless otherwise stated or the context otherwise requires —

"**armed forces**" means any of the naval, military or air forces of the Crown raised under the law of the United Kingdom;

"**Chief Justice**", in relation to a function under this Ordinance, means —

(a) the person appointed as Chief Justice under section 88 of the Constitution; or

(b) if an acting judge has been appointed under section 89 of the Constitution - the person appointed to perform the relevant function for the time being;

"**child**" means a person under the age of 14 years;

"**civil partner**" …;

[S. 17 Ord. 8/2022/w.e.f. 16/05/2022]

"**Court of Appeal**" means the Court of Appeal for the Falkland Islands established by section 87(1) of the Constitution;

"**Criminal Justice Council**" means the body of that name established by section 775 of the Criminal Procedure and Evidence Ordinance 2014;

"**criminal procedure rules**" means rules made by the Chief Justice under section 785 of the Criminal Procedure and Evidence Ordinance 2014 or, in the absence of such rules, the Criminal Procedure Rules 2015 of England and Wales as amended or updated from time to time and as they apply to the topic;

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

"**defendant**", in relation to criminal proceedings, means a person charged with an offence in those proceedings, whether or not the person has been convicted;

"**document**" means anything in or on which information of any description is recorded, and includes —

(a) any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means; and

(b) data recorded by electronic means;

"**DVPN**" ...;

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

"**DVPO**" ...;

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

"**dwelling**" means any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose "**structure**" includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

"**dwelling house**" does not include a building although within the same curtilage with any dwelling house and occupied with it unless there is a communication between the building and dwelling house either immediately or by means of a covered and enclosed passage leading from one to another;

"**electronic means**" includes telephone, e-mail or visual or oral link by computer or any other electronic device;

"**Falkland Islands status**" has the meaning given that term by section 22(5) of the Constitution;

"**family proceedings**" means any proceedings —

(a) under the Children Ordinance 2014; or

(b) under any enactment relating to divorce, separation or dissolution of a civil partnership, family homes, domestic abuse or adoption;

[S. 17 Ord. 8/2022/w.e.f. 16/05/2022]

"**firearm**" has the same meaning as in section 2 of the Firearms and Ammunition Ordinance 1987;

"**Group A offence**" and "**Group B offence**" have the meanings assigned to them by section 7;

"**highway**" has the meaning given to that term in section 2 of the Road Traffic Ordinance 1948;

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

"**imprisonable offence**" means an offence for which a custodial sentence can be imposed on conviction, but —

(a) does not include an offence for which a custodial sentence can be imposed only for non-payment of a fine;

(b) is to be construed without regard to any prohibition or restriction imposed by or under this Ordinance or any other enactment on the imprisonment or detention of young offenders;

"**indictment-only offence**" means an offence listed in section 181 of the Criminal Procedure and Evidence Ordinance 2014;

"**installation**" includes an installation in transit;

"**judge**" means the Chief Justice or any person presiding over a trial if not the Chief Justice;

"**judicial proceedings**" includes proceedings before any court, tribunal, or person having by law power to hear, receive and examine evidence on oath;

"**money**" includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

"**national security**" means the security of the Falkland Islands, or of any other British Overseas Territory, or of the United Kingdom or of the Crown Dependencies;

"**offence**" means —

(a) any statutory offence for which a person may be tried by the Supreme Court, the Magistrate's Court or the Summary Court and punished if convicted; and

(b) in relation to any place outside the Falkland Islands, includes an act or omission punishable under the law of that place, however it is described;

"**parental responsibility**" has the meaning given to that term by section 6 of the Children Ordinance 2014;

"**partner**" in a domestic context means one of a married couple, one of an unmarried couple, or one of a civil partnership;

"**person**" and "**owner**" and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used includes the Crown;

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

"**picture**" includes a likeness however produced;

"**place**" includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

"**place of lawful custody**" means any police station, and any other place designated in writing by a police officer of the rank of inspector or above in relation to a particular investigation;

"**play**"...

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

"**police force**" means the Royal Falkland Islands Police established under the Police Ordinance 2000;"

"**police officer**" means a member of the police force, including a police cadet and a reserve police officer performing police duties under any enactment;

"**police station**" means Stanley Police Station or the Guard Room of the Military Police situated at the Mount Pleasant Complex and any other place designated as a police station by the Governor by order;

"**postal operator**" means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets;

"**premises**" includes —

(a) land and buildings;

(b) any vehicle, vessel, aircraft or hovercraft;

(c) any airport;

(d) any offshore installation;

(e) any renewable energy installation;

(f) any stall, tent or moveable structure; and

(g) any other place whatever, whether or not occupied as land;

"**prison**" means any place or building or portion of a building set aside for the purpose of a prison under any Ordinance relating to prisons and includes, in the case of a person under 21, a place of detention directed by the Governor under section 730 of the Criminal Procedure and Evidence Ordinance 2014;

"**programme**", in relation to a programme service, includes any item included in that service;

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

"**programme service**" means any service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both either —

(a) for reception at 2 or more places in the Falkland Islands (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(b) for reception at a place in the Falkland Islands for the purpose of being presented there to members of the public or to any group of persons,

and includes a television, sound or digital broadcasting service;

"**public place**" means —

(a) any highway (as defined in the Road Traffic Ordinance); and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"**publish**" in relation to an item means to include it in a publication;

"**recording**", in relation to information, whether used as a verb or a noun, means putting it in a durable or retrievable form, such as writing or tape or disc and includes digital data which is retrievable;

"**road**" has the meaning given to that term in section 2 of the Road Traffic Ordinance 1948;

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

"**sentence**", in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offence; and "**sentencing**" is to be construed accordingly;

"**serious offence**" means an offence for which the maximum penalty is imprisonment for 5 years or more;

"**spouse**" includes a civil partner;

"**standard scale**" means the scale of fines set out in Schedule 8 to the Criminal Procedure and Evidence Ordinance 2014;

"**statutory maximum fine**" means a fine at the highest level on the standard scale;

"**summary offence**" ...;

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

"**triable summarily**" ...;

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

"**under a disability**", in relation to a defendant, means suffering from mental disorder and consequently incapable of making a defence;

"**vehicle**" includes any motor vehicle, vessel, aircraft or hovercraft;

"**witness**", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings;

"**written material**" includes any sign or other visible representation, and includes visual representation of electronic data;

"**young offender**" means an adult under the age of 21 who is convicted of an offence;

"**young person**" means a person who has attained the age of 14 years and is under the age of 18 years;

"**youth**" means a person aged below 18 years, whether a child or a young person;

"**Youth Court**" means the Magistrate's Court or the Summary Court when sitting as the Youth Court under the provisions of Part 33 (Young Offenders and Youth Protection) of the Criminal Procedure and Evidence Ordinance 2014.

(2) Terms used in this Ordinance that are not defined in this Ordinance but are defined in the Criminal Procedure and Evidence Ordinance 2014 have the same meaning in this Ordinance as in that Ordinance unless otherwise stated.

(3) A reference in this Ordinance to the Magistrate's Court or the Summary Court includes either of those courts when sitting as a Youth Court, but subject to any limitation on the jurisdiction and powers of a Youth Court.

(4) Subject to section 756 of the Criminal Procedure and Evidence Ordinance 2014 as regards the ascertainment of the age of a person who appears to the court to be a youth, the age of a person is to be taken as that which it appears to the court to be after considering any available evidence.

(5) For the purposes of this Ordinance, a reference to a person being convicted of an offence under the law of a place outside the Falkland Islands includes —

(a) a finding by a court exercising jurisdiction under the law of that place in respect of such an offence equivalent to a finding that the person is not guilty by reason of mental disorder; and

(b) a finding by such a court in respect of such an offence equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.

[UK Theatres Act 1968 s.18; PACE Act 1984 s.23; Criminal Justice & Police Act 2001 s.66(1); Broadcasting Act 1990 s.201; Gibraltar Criminal Offences Act s.2]

PART 2 – GENERAL PRINCIPLES

Criminal liability

3. Age of criminal responsibility

(1) There is a conclusive presumption that no child under the age of 10 years can be guilty of any offence.

(2) The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is abolished.

[Crimes Ord. s.37; UK Children &Young Persons Act 1933 s.50 am. by Children & Young Persons Act 1963 s.16; UK Crime and Disorder Act 1998 s.34]

4. Inferences as to intent

A court or jury, in determining whether a person has committed an offence —

(a) is not bound in law to infer that the person intended or foresaw a result of the person's actions by reason only of its being a natural and probable consequence of those actions; but

(b) must decide whether the person did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

[UK CJ Act 1967 s.8]

5. Automatism

(1) This section applies in the case of a person who is not mentally disordered within the meaning of section 2 of the Mental Health Ordinance 2010.

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

(2) A person must not be found guilty of an offence if —

(a) the person acts in a state of automatism;

(b) the act —

(i) is a reflex, spasm or convulsion; or

(ii) occurs while the person is in a condition (whether of sleep, unconsciousness, impaired consciousness or otherwise) depriving the person of effective control of the act; and

(c) the act or condition is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

(3) A person must not be found guilty of an offence by virtue of an omission to act if —

(a) the person is physically incapable of acting in the way required; and

(b) his or her being so incapable is not the result of anything done or omitted with the mental element required for the offence nor the result of voluntary intoxication.

[Crimes Ord. s.26; UK case law]

Offences committed outside the Falkland Islands

6. Offences committed partly outside the Falkland Islands

(1) An offence begun outside the Falkland Islands and completed in the Falkland Islands may be treated as having been committed in the Falkland Islands.

(2) If —

(a) a person dies in the Falkland Islands in consequence of any act or omission outside the Falkland Islands; and

(b) the person committing that act or making that omission would, if the act or omission had been in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

(3) If a person —

(a) dies outside the Falkland Islands in consequence of any act or omission in the Falkland Islands; and

(b) the person committing the act or making the omission would, if the death had occurred in the Falkland Islands, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in the Falkland Islands.

[Common law]

7. Offences to which sections 8 to 13 apply

(1) Sections 8 to 13 apply to Group A offences and Group B offences.

(2) The Group A offences are —

(a) an offence under any of the following provisions of Part 12 —
347 - Offence of theft
359 - Handling stolen goods
367 - Blackmail
368 - Offence of fraud
369 - Fraud by false representation
370 - Fraud by failing to disclose information
371 - Fraud by abuse of position
374 - Participating in fraudulent business carried on by sole trader, etc.
375 - Obtaining services dishonestly
378 - False accounting
379 - False statements by company directors, etc.
380 - Suppression, etc. of documents
381 - Dishonestly retaining a wrongful credit
382 - Cheating the public revenue

(b) an offence under any of the following provisions of Part 13 —
390 - Forgery
391 - Copying a false instrument
392 - Using a false instrument
393 - Using a copy of a false instrument
394 - Offences relating to money orders, share certificates, passports, etc.
401 - Reproducing currency notes
402 - Making, etc. imitation protected coins

(3) The Group B offences are —

(a) conspiracy to commit an offence listed in subsection (2)(a) or (b);

(b) attempting to commit an offence listed in subsection (2)(a) or (b);

(c) encouraging, or aiding and abetting, the commission of an offence listed in subsection (2)(a) or (b).

(4) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2) or (3) by adding or removing any offence.

[UK CJ Act 1993 ss.1 to 6]

8. Jurisdiction in respect of Group A offences

(1) A person may be convicted of a Group A offence if any of the events which are relevant events in relation to the offence occurred in the Falkland Islands.

(2) For the purposes of subsection (1), "**relevant event**" means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(3) In relation to an offence under section 368, "**relevant event**" includes —

(a) if the fraud involved an intention to make a gain and the gain occurred - that occurrence;

(b) if the fraud involved an intention to cause a loss or expose another to a risk of loss and the loss occurred - that occurrence.

(4) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

[UK CJ Act 1993 ss.1 to 6]

9. Questions immaterial to jurisdiction in the case of certain offences

(1) A person may be convicted of a Group A or Group B offence whether or not the person had Falkland Islands status at any material time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Falkland Islands, a person may be convicted of the offence whether or not —

(a) the person became a party to the conspiracy in the Falkland Islands;

(b) any act or omission or other event in relation to the conspiracy occurred in the Falkland Islands.

(3) On a charge of attempting to commit a Group A offence, a person may be convicted of the offence whether or not —

(a) the attempt was made in the Falkland Islands;

(b) it had an effect in the Falkland Islands.

(4) Subsection (1) does not apply in relation to an offence if a different rule about national status of the defendant is included in the provision which creates the offence.

(5) Subsection (2) does not apply in relation to a charge of conspiracy brought by virtue of section 24.

(6) Subsection (3) does not apply in relation to a charge of attempt brought by virtue of section 36.

[UK CJ Act 1993 ss.1 to 6]

10. Rules relating to the location of events

In relation to a Group A or Group B offence —

(a) there is an obtaining of property in the Falkland Islands if the property is either despatched from or received at the Falkland Islands;

(b) there is a communication in the Falkland Islands of any information, instruction, request, demand or other matter if it is sent by any means —

(i) from the Falkland Islands to a place elsewhere; or

(ii) from a place elsewhere to the Falkland Islands.

[UK CJ Act 1993 ss.1 to 6]

11. Conspiracy and encouraging

(1) A person may be convicted of conspiracy to defraud if —

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation;

(b) a party to it became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of it,

and the conspiracy would be triable in the Falkland Islands but for the fraud which the parties to it had in view not being intended to take place in the Falkland Islands.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) A person may be convicted of encouraging the commission of a Group A offence if the encouragement —

(a) takes place in the Falkland Islands; and

(b) would be triable in the Falkland Islands but for what the defendant had in view not being an offence triable in the Falkland Islands.

(3) Subsections (1) and (2) are subject to section 12.

[UK CJ Act 1993 ss.1 to 6]

12. Extended jurisdiction in relation to certain attempts

(1) If this section applies to an act, what the person doing the act had in view is to be treated as an offence to which section 19 (Attempts generally) applies.

(2) This section applies to an act if —

(a) it is done in the Falkland Islands; and

(b) it would fall within section 19(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in the Falkland Islands.

(3) Subsection (1) is subject to section 13.

(4) If a person does any act to which this section applies, the offence which the person commits is to be treated for all purposes as the offence of attempting to commit the relevant Group A offence.

[UK CJ Act 1993 ss.1 to 6]

13. Relevance of external law

(1) A person commits an offence triable by virtue of section 11(1) only if pursuing the agreed course of conduct would at some stage involve —

(a) an act or omission by one or more of the parties; or

(b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person commits an offence triable by virtue of section 11(2) only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) "**the relevant conduct**" means —

(a) if the condition in subsection (1) is in question - the agreed course of conduct; and

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court may, if it thinks fit, permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.

[UK CJ Act 1993 ss.1 to 6]

13A. Offences against the person committed outside the Falkland Islands

(1) If —

(a) a person does an act in a country outside the Falkland Islands,

(b) the act constitutes an offence under the law in force in that country, and

(c) the act, if done in the Falkland Islands, would constitute an offence to which this subsection applies,

the person is guilty of that offence in the Falkland Islands.

(2) The offences to which subsection (1) applies are —

(a) murder;

(b) manslaughter;

(c) an offence under section 64, 65, 65A or 71 (offences relating to bodily harm or injury);

(d) an offence under section 68 (administering poison); or

(e) an offence under section 57 (child destruction).

(3) Subsection (1) does not apply where a person would, in the absence of that subsection, be guilty of an offence of murder or manslaughter under section 6.

(4) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsection (1)(a) however it is described in that law.

(5) The condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to prove that it is met.

(6) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(8) In this section —

"**act**" includes a failure to act;

"**country**" includes a British Overseas Territory as defined in section 50 of the British Nationality Act 1981.

[UK Domestic Abuse Act 2021, s.72]

[S.4. Ord. 8/2022/w.e.f. 16/05/2022]

Alternative verdicts

14. Conviction of offence other than that charged

(1) A person who is charged with an offence may plead not guilty of the offence charged but guilty of another offence of which the person might be found guilty on that charge.

(2) If, pursuant to subsection (1), a defendant pleads not guilty of an offence charged but guilty of some other offence of which the person might be found guilty on that charge, and the person is convicted on that plea of guilty without trial for the offence of which the person has pleaded not guilty, then (whether or not the 2 offences are separately charged in distinct counts) the person's conviction of the one offence is an acquittal of the other.

(3) If, on a person's trial for any offence except treason or murder, the court, or the jury if there is one, finds the person not guilty of the offence specifically charged, but the allegations amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court, the court or jury, as the case may be, may find the person guilty of that other offence or of an offence of which the person could be found guilty on a charge for that other offence.

(4) For the purposes of subsection (3) —

(a) an allegation of an offence is to be taken as including an allegation of attempting to commit that offence;

(b) if a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the court to permit the bringing of a charge or the preferment of an indictment for the completed offence) the person may be convicted of the offence charged notwithstanding that the person is shown to be guilty of the completed offence.

(5) Subsections (1) and (3) apply to a charge containing more than one offence as if each offence were a separate charge.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) On an indictment for murder a person found not guilty of murder may be found guilty —

(a) of manslaughter, or of causing grievous bodily harm with intent to do so;

(b) of any offence of which the person may be found guilty under an enactment specifically so providing, or under section 15; or

(c) of an attempt to commit murder, or of an attempt to commit any other offence of which the person might be found guilty,

but may not be found guilty of any offence not included in this subsection.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(7) Nothing in this section excludes the application of any law which —

(a) restricts the power of a court to imprison;

(b) authorises an offender to be dealt with in a way not authorised by the enactment specially relating to the offence; or

(c) authorises a person to be found guilty of an offence other than that with which the person is charged.

[Crimes Ord. s.8; UK Criminal Law Act 1967 s.6]

15. Person tried for offence may be convicted of ancillary offence

If on a trial for an imprisonable offence the court, or the jury if there is one —

(a) is satisfied that the offence charged (or some other offence of which the defendant might on that charge be convicted) was committed; but

(b) finds the defendant not guilty of that offence,

the court or jury, as the case may be, may convict the defendant of an offence under any of sections 31 (Offence of encouragement), 42 (Aiding and abetting) or 43(Assisting offenders) if it is satisfied that the defendant committed such an offence in relation to the offence charged (or that other offence).

[Criminal Law Act 1967 s.4(2)]

Miscellaneous

16. Proceedings by and against spouses

(1) This Ordinance applies in relation to the parties to a marriage, and to property belonging to either of them, whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) A person has the same right to bring proceedings against that person's spouse for any offence (whether under this Ordinance or otherwise) as if they were not married, and a person

bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (5), proceedings may not be commenced against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or encouraging, or aiding and abetting, the commission of such an offence, except by, or with the consent of, the Attorney General.

(4) In subsection (3), the term "**proceedings**" includes —

(a) an arrest without warrant made by the spouse; and

(b) a warrant of arrest issued on an information laid by the spouse.

(5) Subsection (3) —

(a) does not apply to proceedings against another person charged with committing the offence jointly with the person;

(b) does not apply if by virtue of any judicial decree or order (wherever made) the person and the spouse are at the time of the offence under no obligation to cohabit;

(c) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, if the arrest (if without a warrant) is made, or the warrant of arrest is issued on an information laid, by someone other than the spouse of the person.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) In this section, a reference to a spouse includes a reference to a civil partner and a reference to a marriage includes a reference to a civil partnership.

[UK Theft Act 1968 s.30 adapted; Common law]

[S. 17 Ord. 8/2022/w.e.f. 16/05/2022]

17. Application of Ordinance to corporations

(1) This Ordinance applies in relation to a corporation as if —

(a) the corporation were an individual aged 18 or over;

(b) the words "he or she" or grammatical variations of those words were "it" or the corresponding grammatical variation of "it"; and

(c) the words "in custody or on bail" were omitted wherever they appear.

(2) If an offence under this or any other Ordinance is committed by a corporate body and it is proved —

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (2) "**officer**", in relation to a corporate body, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a corporate body are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body.

(5) A reference in this Ordinance to a defendant or other person by a gender-specific term does not preclude the application of that provision to a corporation.

[Crimes Ord. s.51; UK Public Order Act 1986 s.28; UK Knives Act 1997 s.10 etc.]

18. No requirement for corroboration

(1) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a person merely because that person is —

(a) an alleged accomplice of the defendant; or

(b) if the offence charged is a sexual offence – the person in respect of whom it is alleged to have been committed.

(2) There is no requirement at a trial for the court to give itself, or the jury if there is one, a warning about convicting the defendant on the uncorroborated evidence of a child.

(3) Unsworn evidence admitted by virtue of section 352 or 353 of the Criminal Procedure and Evidence Ordinance 2014 may corroborate evidence (sworn or unsworn) given by any other person.

(4) This section does not affect —

(a) any requirement for a warning to the tribunal of fact about convicting a defendant on uncorroborated evidence imposed by this Ordinance or any other written law;

(b) any rule of law that requires the tribunal of fact to be warned to exercise caution or to look for supporting material before acting on the unsupported evidence of a certain type of witness;

(c) any rule of law relating to —

(i) confessions by mentally disabled persons;

(ii) identification evidence;

(iii) evidence relating to sudden unexplained infant deaths; or

(iv) unconvincing hearsay evidence.

[Crimes Ord. s.49; UK CJ Act 1988 s.34; Criminal Justice & Public Order Act 1994 s.32]

PART 3 – ANCILLARY OFFENCES

Attempts

19. Attempts generally

(1) A provision in any written law of the Falkland Islands which creates or results in the creation of an offence (other than an offence created by this Part), whether indictment-only or summary, is deemed to include a provision that an attempt to commit such an offence itself constitutes an offence which may, subject to section 21(1) in respect of the penalty for attempted murder, be dealt with and punished in the same way as if the offence had been committed.

(2) A person charged with an offence may be convicted of having attempted to commit that offence although the person was not charged with the attempt.

(3) In this Part, an attempt means any act done with intent to commit an offence which is more than merely preparatory to the commission of the offence.

(4) A person may be convicted of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(5) In any case where —

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as the person believed them to be, the person's intention would be so regarded,

then, for the purposes of subsection (1), the person is to be regarded as having had an intention to commit that offence.

[Crimes Ord. s.10; UK Criminal Attempts Act 1981 s.1 (part)]

20. Application of procedural and other provisions to offences of attempt

(1) A provision to which this section applies has effect with respect to an offence under section 19 as it has effect with respect to the offence attempted.

(2) This section applies to provisions of any enactment, whenever coming into operation —

(a) whereby proceedings may not be commenced or carried on otherwise than by, or on behalf or with the consent of, any person;

(b) conferring power to commence proceedings;

(c) as to the venue of proceedings;

(d) whereby proceedings may not be commenced after the expiration of a time limit;

(e) conferring a power of arrest or search;

(f) conferring a power of seizure and detention of property;

(g) whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than 2 credible witnesses);

(h) conferring a power of forfeiture or deprivation, including any power to deal with anything liable to be forfeited;

(i) whereby, if an offence committed by a corporate body is proved to have been committed with the consent or connivance of another person, that person also commits the offence.

[UK Criminal Attempts Act 1981 s.2 adapted]

21. Procedural rules

(1) The maximum penalty on conviction for an offence of attempted murder is life imprisonment.

(2) In any case in which a court may proceed to trial of an indictment or charge charging a person with an offence and an indictment or charge charging the person with an offence under section 19 of attempting to commit that offence, the court may, without the person's consent, try the indictments or charges together.

(3) If, in proceedings against a person for an offence under section 19, there is evidence sufficient in law to support a finding that the person did an act falling within subsection (1) of that section, the question whether or not the act fell within that subsection is a question of fact.

[UK Criminal Attempts Act 1981 s.4]

22. Effect of sections 19 to 21 on common law

(1) The offence of attempt at common law and any offence at common law of procuring materials for crime are abolished for all purposes not relating to acts done before the commencement of this Part.

(2) Except as regards offences committed before the commencement of this Part, references in any enactment coming into operation before the commencement of this Part which fall to be construed as references to the offence of attempt at common law are to be construed as references to the offence under section 19.

[UK Criminal Attempts Act 1981 s.6]

23. Conspiracy

(1) Subject to the following provisions of this Part, a person who agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions, either —

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

commits the offence of conspiracy to commit the offence or offences in question.
Penalty: As provided in section 26.

(2) Even if liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person does not commit conspiracy to commit that offence by virtue of subsection (1) unless that person and at least one other party to the agreement intend or know that that fact or circumstance will exist at the time when the conduct constituting the offence is to take place.

(3) In this Part "**offence**" —

(a) means an offence triable in the Falkland Islands; and

(b) includes murder even if the murder in question would not be triable in the Falkland Islands, if it was committed in accordance with the intentions of the parties to the agreement.

[UK Criminal Law Act 1977 s.1 am. by Criminal Attempts Act 1981]

24. Conspiracy to commit offences outside the Falkland Islands

(1) If each of the following conditions is satisfied in the case of an agreement, this Part has effect in relation to the agreement as it has effect in relation to an agreement falling within section 23(1).

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve —

(a) an act by one or more of the parties; or

(b) the happening of some other event,

intended to take place outside the Falkland Islands.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that place.

(4) The third condition is that the agreement would fall within section 23(1) as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in the Falkland Islands if committed in accordance with the parties' intentions.

(5) The fourth condition is that —

(a) a party to the agreement, or a party's agent, did anything in the Falkland Islands in relation to the agreement before its formation;

(b) a party to the agreement became a party in the Falkland Islands (by joining it either in person or through an agent); or

(c) a party to the agreement, or a party's agent, did or omitted anything in the Falkland Islands in pursuance of the agreement.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) In the application of this Part to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in the Falkland Islands.

(7) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(8) Subject to subsection (9), the second condition is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8).

(10) In the Supreme Court, the question whether the second condition is satisfied is to be decided by the judge alone, and treated as a question of law.

(11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in the Falkland Islands if the message is sent or received in the Falkland Islands.

(12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial whether or not the defendant had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(13) References in any enactment, instrument or document (except those in this Part) to an offence of conspiracy to commit an offence include an offence triable in the Falkland Islands as such a conspiracy by virtue of this section (without affecting subsection (6)).

[UK Criminal Law Act 1977 s.1A ins. by Criminal Justice (Terrorism & Conspiracy) Act 1998]

25. Exemptions from liability

(1) A person does not by virtue of section 23 commit conspiracy to commit any offence if the person is an intended victim of that offence.

(2) A person does not by virtue of section 23 commit conspiracy to commit any offence or offences if the only other person or persons with whom the person agrees are (both initially and at all times during the currency of the agreement) —

(a) the person's spouse or civil partner;

(b) a person under the age of criminal responsibility; or

(c) an intended victim of that offence or of each of those offences.

[UK Criminal Law Act 1977 ss.2 to 5]

26. Penalties

(1) The maximum penalty on conviction for conspiracy by virtue of section 23 is —

(a) in a case falling within subsection (3) or (4) of this section - imprisonment for a term related in accordance with the respective subsection to the gravity of the offence or offences in question (referred to in this section as the relevant offence or offences);

(b) in any other case - a fine.

(2) Subsection (1)(a) does not affect the application of section 565 of the Criminal Procedure and Evidence Ordinance 2014 (Suspended sentences of imprisonment) in a case falling within subsection (3) or (4).

(3) If the relevant offence or any of the relevant offences is —

(a) an offence of murder, or any other offence the sentence for which is fixed by law;

(b) an offence for which a sentence extending to imprisonment for life is provided; or

(c) an indictment-only offence punishable with imprisonment for which no maximum term of imprisonment is provided,

the maximum penalty on conviction for conspiracy is imprisonment for life.

(4) If, in a case other than one to which subsection (3) applies, the relevant offence or any of the relevant offences is punishable with imprisonment, the maximum penalty on conviction for conspiracy is imprisonment for a term not exceeding the maximum term provided for that

offence or (if more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

[UK Criminal Law Act 1977 ss.2 to 5]

27. Restrictions on the commencement of proceedings

(1) Proceedings under section 23 for conspiracy to commit any offence or offences may not be commenced against any person except by, or with the consent of, the Attorney General.

(2) If —

(a) an offence has been committed in pursuance of any agreement; and

(b) proceedings may not be commenced for that offence because any time limit applicable to the commencement of any such proceedings has expired,

proceedings under section 23 for conspiracy to commit that offence may not be commenced against any person on the basis of that agreement.

[UK Criminal Law Act 1977 ss.2 to 5]

28. Conspiracy under other enactments

Sections 23 and 25 apply for determining whether a person commits an offence of conspiracy under any enactment other than section 23 but conduct which is an offence under any such other enactment is not also an offence under section 23.

[UK Criminal Law Act 1977 ss.2 to 5]

29. Effect of acquittal of other defendant

(1) The fact that the person or persons who, so far as appears from the indictment or charge on which any person has been convicted of conspiracy, were the only other parties to the agreement on which the conviction was based have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) is not a ground for quashing the conviction unless under all the circumstances of the case the conviction is inconsistent with the acquittal of the other person or persons in question.

(2) Any rule of law or practice inconsistent with subsection (1) is abolished.

[UK Criminal Law Act 1977 ss.2 to 5]

30. Abolitions, savings, transitional provisions

(1) Subject to the following provisions, the offence of conspiracy at common law is abolished.

(2) Subsection (1) does not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which —

(a) tends to corrupt public morals or outrages public decency; but

(b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.

(3) Subsection (1) does not affect —

(a) any proceedings commenced before the time when this Part comes into force;

(b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time; or

(c) subject to subsection (4), any proceedings commenced after that time in respect of a trespass committed before that time.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(4) A person convicted of conspiracy to trespass in any proceedings brought by virtue of subsection (3)(c) is not in respect of that conviction liable to imprisonment for a term exceeding 6 months.

(5) Incitement to commit the offence of conspiracy (whether the conspiracy incited would be an offence at common law or under this Part or any other enactment) is abolished.

[UK Criminal Law Act 1977 ss.2 to 5 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

Encouragement of offences

31. Offence of encouragement

(1) A person who —

(a) does an act capable of encouraging the commission of an offence; and

(b) intends to encourage its commission,

commits an offence.
Penalty: As provided in section 40.

(2) A person is not to be taken to have intended to encourage the commission of an offence under subsection (1) merely because such encouragement was a foreseeable consequence of the person's act.

(3) A person who —

(a) does an act capable of encouraging the commission of an offence; and

(b) believes that —

(i) the offence will be committed; and

(ii) the act will encourage its commission,

commits an offence.
Penalty: As provided in section 40.

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

(4) A person who —

(a) does an act capable of encouraging the commission of one or more of a number of offences; and

(b) believes that —

(i) one or more of those offences will be committed; and

(ii) the act will encourage the commission of one or more of them,

commits an offence.
Penalty: As provided in section 40.

(5) It is immaterial for the purposes of subsection (4)(b) whether the person has any belief as to which offence will be encouraged.

(6) If a person is charged with an offence under subsection (4) the charge —

(a) must specify the offences alleged to be the "number of offences" mentioned in subsection (4)(a); but

(b) need not specify all the offences potentially comprised in that number.

(7) In relation to an offence under subsection (4), any reference in this Part to the offences specified in the charge is to the offences specified by virtue of subsection (6)(a).

[UK Serious Crime Act 2007 ss.44, 45 and 46 adapted]

32. Proving an offence under section 31

(1) Section 31 is to be read in accordance with this section.

(2) If it is alleged under section 31(1) that a person ('**A**') intended to encourage the commission of an offence, it is sufficient to prove that A intended to encourage the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 31(3) that A believed that an offence would be committed and that A's act would encourage its commission, it is sufficient to prove that A believed that —

(a) an act would be done which would amount to the commission of that offence; and

(b) A's act would encourage the doing of that act.

(4) If it is alleged under section 31(4) that A believed that one or more of a number of offences would be committed and that A's act would encourage the commission of one or more of them, it is sufficient to prove that A believed that —

(a) one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and

(b) A's act would encourage the doing of one or more of those acts.

(5) In proving for the purposes of this section whether an act done by A is one which, if done, would amount to the commission of an offence —

(a) if the offence is one requiring proof of fault, it must be proved that —

(i) A believed that, if the act were done, it would be done with that fault;

(ii) A was reckless as to whether or not it would be done with that fault; or

(iii) A's state of mind was such that, if A were to do it, it would be done with that fault;

(b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that A —

(i) believed that, if the act were done, it would be done in those circumstances or with those consequences; or

(ii) was reckless as to whether or not it would be done in those circumstances or with those consequences.

(6) For the purposes of subsection (5)(a)(iii), A is to be assumed to be able to do the act in question.

(7) In the case of an offence under section 31(1) —

(a) subsection (5)(b)(i) is to be read as if the reference to "A believed" were a reference to "A intended or believed"; but

(b) A is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of A's act of encouragement or assistance.

(8) A reference in this section to the doing of an act includes a reference to —

(a) a failure to act;

(b) the continuation of an act that has already begun;

(c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).

(9) In this Part (unless otherwise provided) a reference to the anticipated offence is —

(a) in relation to an offence under section 31(1) - a reference to the offence mentioned in subsection (2);

(b) in relation to an offence under section 31(3) - a reference to the offence mentioned in subsection (3); and

(c) in relation to an offence under section 31(4) – a reference to any of the offences mentioned in subsection (4).

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(10) In relation to an offence under section 31(4) —

(a) it is sufficient to prove the matters mentioned in subsection (5) by reference to one offence only; but

(b) the offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment or charge.

(11) Subsection (10) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 39 (Alternative verdicts and guilty pleas).

[UK Serious Crime Act 2007 ss.47 and 48 adapted]

33. Supplemental provisions

(1) A person may be convicted of an offence under section 31 whether or not any offence capable of being encouraged by the person's act is committed.

(2) If a person's act is capable of encouraging the commission of a number of offences —

(a) section 31(1) applies separately in relation to each offence that the person intends to encourage to be committed; and

(b) section 31(3) applies separately in relation to each offence that the person believes will be encouraged to be committed.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) A person may, in relation to the same act, commit an offence under more than one provision of section 31.

(4) In reckoning whether —

(a) for the purposes of section 31(4), an act is capable of encouraging the commission of an offence; or

(b) for the purposes of section 31(4), an act is capable of encouraging the commission of one or more of a number of offences,

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 4/Ord. 3/2019/w.e.f. 10/04/19]

an offence under section 31 and any other offence of encouraging, assisting, inciting, soliciting, inducing or conspiring with another person to commit an offence (whether any of those words is used in the description of that other offence or not) is to be disregarded.

(5) For the purposes of section 31(3)(b)(i) and 31(4)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

[UK Serious Crime Act 2007 s.49 and Schedule 3 adapted]

34. Defences

(1) A person ('**A**') is not guilty of an offence under section 31 if A proves that —

(a) A knew certain circumstances existed; and

(b) it was reasonable for A to act as A did in those circumstances.

(2) A person ('**A**') is not guilty of an offence under section 31 if A proves that —

(a) A believed certain circumstances to exist;

(b) A's belief was reasonable; and

(c) it was reasonable for A to act as A did in the circumstances as A believed them to be.

(3) Factors to be considered in determining whether it was reasonable for the purposes of subsections (1) and (2) for a person to act as the person did include —

(a) the seriousness of the anticipated offence (or, in the case of an offence under section 31(4) the offences specified in the charge);

(b) any purpose for which the person claims to have been acting;

(c) any authority by which the person claims to have been acting.

(4) A person is not guilty of an offence under section 31 by reference to a protective offence if the person —

(a) falls within the protected category; and

(b) is the person in respect of whom the protective offence was committed or would have been if it had been committed.

(5) In subsection (4) "**protective offence**" means an offence that exists (wholly or in part) for the protection of a particular category of persons ("the protected category").

[UK Serious Crime Act 2007 ss.50 and 51 adapted]

35. Jurisdiction

(1) If a person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person can be convicted of an offence under section 31 no matter where the person was at any relevant time.

(2) If it is not proved that the person knew or believed that what he or she anticipated might take place wholly or partly in the Falkland Islands, the person cannot be convicted of an offence under section 31 unless subsection (1), (3) or (8) of section 36 applies.

(3) A reference in this section (and in any of those paragraphs) to what a person anticipated —

(a) in relation to an offence under section 31(1) or (3) - is to the act which would amount to the commission of the anticipated offence;

(b) in relation to an offence under section 31(4) - is to an act which would amount to the commission of any of the offences specified in the indictment or charge.

(4) Nothing in this section or section 36 restricts the operation of any enactment by virtue of which an act constituting an offence under section 31 is triable under the law of the Falkland Islands.

[UK Serious Crime Act 2007 s.52 adapted and S.R. & O. 6/2017/w.e.f. 13/4/2017]

36. Extended jurisdiction in certain cases

(1) This subsection applies if —

(a) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;

(b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) either —

(i) the anticipated offence is one that would be triable under the law of the Falkland Islands if it were committed there; or

(ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions.

(2) In this subsection (1) "**relevant condition**" means a condition that —

(a) determines (wholly or in part) whether an offence committed outside the Falkland Islands is nonetheless triable under the law of the Falkland Islands; and

(b) relates to the citizenship, nationality or residence of the person who commits it.

(3) This subsection applies if —

(a) subsection (1) does not apply;

(b) any relevant behaviour of a person takes place wholly or partly in the Falkland Islands;

(c) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(d) what the person anticipates would amount to an offence under the law in force in force in that place.

(4) The condition in subsection (3)(d) is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice —

(a) stating that on the facts as alleged the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under subsection (4).

(6) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone and treated as a question of law.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(7) An act punishable under the law in force in any place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.

(8) This subsection applies if —

(a) any relevant behaviour of a person takes place wholly outside the Falkland Islands;

(b) the person knows or believes that what he or she anticipates might take place wholly or partly in a place outside the Falkland Islands; and

(c) the person could be tried under the law of the Falkland Islands if he or she committed the anticipated offence in that place.

(9) For the purposes of subsection (8)(c), the person is to be assumed to be able to commit the anticipated offence.

(10) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to any of the offences specified in the indictment or charge.

[UK Serious Crime Act 2007 Schedule 4]

37. Commencement of proceedings, etc. for an offence

(1) Any provision to which this section applies has the same effect with respect to an offence under section 31 as it has with respect to the anticipated offence.

(2) This section applies to any provision in or under an enactment (whenever coming into operation) that —

(a) provides that proceedings may not be commenced or carried on except by, or with the consent of, the Attorney General;

(b) confers power to commence proceedings;

(c) confers power to seize and detain property;

(d) confers a power of forfeiture or deprivation, including a power to deal with anything liable to be forfeited.

(3) In relation to an offence under section 31(4) —

(a) the reference in subsection (1) to the anticipated offence is a reference to any offence specified in the indictment or charge; and

(b) each of the offences specified in the indictment or charge must be an offence in respect of which the prosecutor has power to commence proceedings.

(4) Any consent to proceedings required as a result of this section is in addition to any consent required by subsection (5).

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(5) Proceedings for an offence triable by reason only of a provision of section 36 may not be commenced except by, or with the consent of, the Attorney General.

[UK Serious Crime Act 2007 ss.53, 54 (part) and 55, with s.34 definitions]

38. Persons who may be convicted

(1) In proceedings for an offence under section 31, a person can be convicted if —

(a) it is proved that the person must have committed that offence or the anticipated offence; but

(b) it is not proved which of those offences the person committed.

(2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because the person aided, abetted, counselled or procured its commission.

(3) In relation to an offence under section 31(4), a reference in this section to the anticipated offence is a reference to an offence specified in the indictment or charge.

[UK Serious Crime Act 2007 ss. 56 to 59]

39. Alternative verdicts and guilty pleas

(1) If in proceedings for an offence under section 31(1) or (3) a person is not found guilty of that offence by reference to the specified offence, the person may be found guilty of that offence by reference to an alternative offence.

(2) If in proceedings for an offence under section 31(4) a person is found not guilty of that offence by reference to any specified offence, the person may be found guilty of that offence by reference to one or more alternative offences.

(3) If in proceedings for an offence under section 31(4) a person is found guilty of the offence by reference to one or more specified offences, the person may also be found guilty of it by reference to one or more other alternative offences.

(4) For the purposes of this section, an offence is an alternative offence if —

(a) it is an offence of which, on a trial for the specified offence, a defendant may be found guilty; and

(b) condition in subsection (5) is satisfied.

(5) The condition referred to in subsection (4)(b) is that the indictment or charge under section 31 includes allegations which amount to or include (expressly or by implication) an allegation of that offence by reference to it.

(6) Subsection (4) does not apply if the specified offence, or any of the specified offences, is murder or treason.

(7) In the application of subsection (5) to proceedings for an offence under section 31(1), the allegations in the indictment or charge are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.

(8) Section 33(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.

(9) In this section —

(a) in relation to a person charged with an offence under section 31(1) or (3), "**the specified offence**" means the offence specified in the indictment or charge as the one alleged to be the anticipated offence;

(b) in relation to a person charged with an offence under section 31(4), "**specified offence**" means an offence specified in the indictment or charge (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.

(10) A person being tried for an offence under section 31 may plead guilty to an offence of which the person could be found guilty under this section on the same indictment or charge.

(11) This section applies to an indictment or charge containing more than one offence as if each offence were the subject of a separate count or allegation.

(12) This section does not affect section 14 (Conviction of offence other than that charged).

[UK Serious Crime Act 2007 ss. 56 to 59]

40. Penalties

(1) Subsections (2) and (3) apply if a person is convicted —

(a) of an offence under section 31(1) or (3); or

(b) of an offence under section 31(4) by reference to only one offence ("the reference offence").

(2) The maximum penalty on conviction of a person for encouragement is —

(a) if the anticipated or reference offence is murder - imprisonment for life;

(b) in any other case - any penalty for which the person would be liable on conviction of the anticipated or reference offence.

(3) Subsections (4) to (7) apply if a person is convicted of an offence under section 31(4) by reference to more than one offence ("the reference offences").

(4) If one of the reference offences is murder, the convicted person is liable to imprisonment for life.

(5) The maximum penalty on conviction of a person for encouragement, if none of the reference offences is murder, but one or more of them is punishable with imprisonment, is imprisonment for the maximum term prescribed for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph if the terms prescribed differ).

(6) The maximum penalty on conviction of a person for encouragement in any other case is a fine.

(7) Subsections (2)(b), (5) and (6) are subject to any contrary provision made by or under any other enactment.

[UK Serious Crime Act 2007 ss. 56 to 59]

41. Abolition of common law offence of incitement

(1) The common law offence of inciting the commission of another offence is abolished.

(2) A reference in any enactment to the offence of incitement is to be read as a reference to the offence of encouragement under section 31(1), (3) or (4), according to the circumstances of the case, and the offender may be prosecuted and punished in accordance with sections 31 to 40.

[UK Serious Crime Act 2007 ss. 56 to 59]

Accessories

42. Aiding and abetting

(1) A person who aids, abets, counsels, procures, suborns or commands the commission of an offence is guilty of the offence of aiding and abetting the principal offence and is liable to be dealt with, tried and punished as a principal offender.

(2) A person may be charged with and tried for an offence of aiding and abetting another person even if that other person is not charged as a principal.

[UK Accessories & Abettors Act 1861 am. by Criminal Law Act 1977; Magistrates' Courts Act 1980 s.44]

43. Assisting offenders

(1) If a person ('A') has committed an imprisonable offence, any other person who, knowing or believing A to be guilty of the offence or of some other imprisonable offence, does without lawful authority or reasonable excuse any act with intent to impede A's arrest or prosecution, commits an offence.

Penalty: (i) if the offence is one for which the person must or may be sentenced to imprisonment for life – imprisonment for 12 years;
(ii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 18 years – imprisonment for 9 years;
(iii) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 14 years – imprisonment for 7 years;
(iv) if the offence is not one included above but for which a person (not previously convicted) may be sentenced to imprisonment for 10 years – imprisonment for 5 years;
(iv) in any other case – imprisonment for 3 years.

(2) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

(3) Subsection (2) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.

[UK Criminal Law Act 1967 s.4(1) and (3) adapted]

44. Concealing offences and false information

(1) If a person ('**A**') has committed an imprisonable offence, any other person ('**B**') who, knowing or believing that —

(a) the offence or some other imprisonable offence has been committed; and

(b) B has information which might be of material assistance in securing the prosecution or conviction of an offender for it,

accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who causes any wasteful employment of the police by knowingly making to any person a false report tending to —

(a) show that an offence has been committed;

(b) give rise to fear for the safety of any persons or property; or

(c) show that the person has information material to any police inquiry,

commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(4) The compounding of an offence other than treason is not an offence otherwise than under this section.

[UK Criminal Law Act 1967 s.5]

Miscellaneous

45. Consequences of conviction for ancillary offence

(1) If —

(a) any written law of the Falkland Islands confers a power or imposes a duty which must or may be exercised or performed consequent upon a conviction of an offence or in relation to a person who is detained in custody for an offence; or

(b) a reference is otherwise made in any written law of the Falkland Islands to an offence,

(c) that power or duty or that reference is deemed to be also exercisable or performable consequent upon a conviction of, or include a reference to, as the case may be —

(i) an attempt to commit that offence;

(ii) a conspiracy to commit that offence;

(iii) encouraging that offence;

(iv) aiding and abetting that offence.

(2) The powers and duties to which subsection (1) applies include, but are not limited to powers—

(a) to authorise search and seizure and detention of property;

(b) to order forfeiture or deprivation of property;

(c) to award costs;

(d) to cancel, suspend or refuse to issue any licence, permit or other authorisation.

[Crimes Ord. s.11 modified]

CHAPTER 2 – CRIMES AGAINST THE INDIVIDUAL

PART 4 – OFFENCES AGAINST THE PERSON

Causing and threatening death

46. Murder

(1) A person who with intent to kill or to cause grievous bodily harm to any person causes the death of another person by an unlawful act or omission commits the offence of murder.
Penalty: As provided in subsection (2).

(2) A person convicted of murder must be sentenced to life imprisonment, but —

(a) sections 577 and 582 of the Criminal Procedure and Evidence Ordinance 2014 apply in relation to the recommendation of a minimum term; and

(b) section 729 of the Criminal Procedure and Evidence Ordinance 2014 applies if the person convicted is a youth.

(3) In relation to murder and other fatal offences there is no requirement that the death should occur within a year and a day after the infliction of injury, but no prosecution for murder or any other fatal offence may be commenced except by, or with the consent of, the Attorney General if—

(a) the injury alleged to have caused the death was sustained more than 3 years before the death occurred; or

(b) the accused person has previously been convicted of an offence alleged to be connected with the death.

(4) In subsection (3) "**fatal offence**" means —

(a) murder, manslaughter, infanticide or any other offence of which one of the elements is causing a person's death; or

(b) the offence of encouraging, or aiding and abetting, a person's suicide.

(5) The offence of murder is triable on indictment only.

[Common law; Crimes Ord. ss.22 and 23B; UK Murder (Abolition of Death Penalty) Act 1965 s.1 adapted]

47. Abolition of constructive malice

(1) If a person kills another in the course or furtherance of some other offence, the killing does not amount to murder unless done with the same intention as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of subsection (1), a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, is to be treated as a killing in the course or furtherance of an offence.

[Crimes Ord. s.23 modified; UK Homicide Act 1957 s.1]

48. Diminished responsibility

(1) A person ('**A**') who kills or is a party to the killing of another is not to be convicted of murder if A was suffering from an abnormality of mental functioning which —

(a) arose from a recognised medical condition;

(b) substantially impaired A's ability to do one or more of the things mentioned in subsection (2); and

(c) provides an explanation for A's acts and omissions in doing or being a party to the killing.

(2) The things referred to in subsection (1)(b) are to —

(a) understand the nature of A's conduct;

(b) form a rational judgment;

(c) exercise self-control.

(3) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for A's conduct if it causes, or is a significant contributory factor in causing, A to carry out that conduct.

(4) On a charge of murder, it is for the defence to prove that the defendant is by virtue of this section not liable to be convicted of murder.

(5) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder is liable instead to be convicted of manslaughter.

(6) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

[Crimes Ord. s.24 modified; UK Homicide Act 1957 s.2 am. by Coroners & Justice Act 2009 s.52]

49. Loss of self-control

(1) If a person ('**A**') kills or is a party to the killing of another ('**B**'), A is not to be convicted of murder if —

(a) A's acts and omissions in doing or being a party to the killing resulted from A's loss of self-control;

(b) the loss of self-control had a qualifying trigger; and

(c) a person of A's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of A, might have reacted in the same or in a similar way to A.

(2) For the purposes of subsection (1)(a), it is irrelevant whether or not the loss of self-control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of A" is a reference to all of A's circumstances other than those whose only relevance to A's conduct is that they bear on A's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, A acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the court, or jury if there is one, must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

(9) A loss of self-control had a qualifying trigger if —

(a) A's loss of self-control was attributable to A's fear of serious violence from B against A or another identified person;

(b) A's loss of self-control was attributable to a thing or things done or said (or both) which —

(i) constituted circumstances of an extremely grave character; and

(ii) caused A to have a justifiable sense of being seriously wronged; or

(c) A's loss of self-control was attributable to a combination of the matters mentioned in paragraphs (a) and (b).

(10) In determining whether a loss of self-control had a qualifying trigger —

(a) A's fear of serious violence is to be disregarded to the extent that it was caused by a thing which A incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if A incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(11) The common law defence of provocation is abolished.

[Crimes Ord. s.25 modified; Coroners and Justice Act 2009 ss.54 & 55]

50. Manslaughter

(1) A person who kills another by an unlawful act likely to cause bodily harm commits the offence of manslaughter.

(2) A person who kills another by gross negligence commits the offence of manslaughter.

(3) The maximum penalty on conviction for manslaughter, whether the conviction is under subsection (1) or (2) of this section, or under section 48(5), 49(7), 54(1) or 56, is imprisonment for life.

(4) If manslaughter is committed in the course of driving a motor vehicle, the driver must upon conviction be disqualified from driving for a minimum period of 2 years.

(5) The offence of manslaughter is triable on indictment only.

[Common law; UK OAP Act 1861 s.5 adapted; Road Traffic Offences Act 1988]

51. Murder or manslaughter outside the Falkland Islands

(1) An offence of murder or manslaughter committed on land anywhere outside the Falkland Islands by a person who has Falkland Islands status may be dealt with, inquired of, tried, determined, and punished in the Falkland Islands.

(2) This section does not prevent any person from being tried in any place outside the Falkland Islands for any murder or manslaughter committed outside the Falkland Islands.

[UK OAP Act 1861 s.9]

52. Soliciting murder

(1) A person who solicits, encourages, persuades or endeavours to persuade or proposes to any person, to murder any other person in the Falkland Islands or elsewhere, commits an offence. Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting murder, but not for both offences arising out of the same facts.

[UK OAP Act 1861 s.4 am by Criminal Law Act 1977]

53. Threats to kill

A person ('**A**') who without lawful excuse makes to another person ('**B**') a threat, intending that B would fear it would be carried out, to kill B or a third person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK OAP Act 1861 s.16 subst. by Criminal Law Act 1977]

54. Suicide pacts

(1) A person ('**A**') who, in pursuance of a suicide pact between A and another person ('**B**') —

(a) kills B; or

(b) is party to the killing of B by a third person,

commits the offence of manslaughter.

(2) If it is shown that a person ('A') charged with the murder of another person ('B') killed B or was a party to B's being killed, it is for the defence to prove that A was acting in pursuance of a suicide pact between A and B.

(3) For the purposes of this section —

(a) "**suicide pact**" means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life; but

(b) nothing done by a person who enters into a suicide pact is to be treated as done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.

[UK Homicide Act 1957 s.4 am. by Suicide Act 1961]

55. Complicity in suicide

(1) A person ('**A**') commits an offence if —

(a) A does an act capable of encouraging, or assisting, the suicide or attempted suicide of another person; and

(b) A's act was intended to encourage, or aid and abet, suicide or an attempt at suicide.
Penalty: Imprisonment for 14 years or a fine, or both.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, A.

(3) A may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(4) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the defendant committed an offence under subsection (1) in relation to that suicide, the court, or jury if there is one, may find the defendant guilty of the offence under subsection (1).

(5) If A arranges for a person ('**B**') to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and B does that act, A is to be treated for the purposes of this Part as having done it.

(6) If the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this section it is to be treated as so capable if the act would have been so capable had the facts been as A believed them to be at the time of the act; or had subsequent events happened in the manner A believed they would happen, or both.

(7) A reference in this section to a person doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to the person's doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

(8) A reference in this section to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.

(9) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

[UK Suicide Act 1961 s.2 am. by Coroners and Justice Act 2009 s.59]

56. Infanticide

(1) If a woman by any wilful act or omission causes the death of her child, being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of —

(a) her not having fully recovered from the effect of giving birth to a child; or

(b) the effect of lactation consequent upon the birth of the child,

then, if the circumstances were such that but for this section the offence would have amounted to murder or manslaughter, she commits the offence of infanticide

(2) If on the trial of a woman for the murder of her child, being a child under the age of 12 months, the court, or jury if there is one, are of the opinion that she by any wilful act or omission caused the death of the child, but that at the time of the act or omission the balance of her mind was disturbed as described in paragraph (a) or (b) of subsection (1), the court or jury as the case may be may, if the circumstances were such that but for the provisions of this section they might have returned a verdict of murder or manslaughter, return instead a verdict of infanticide.

(3) A woman convicted of infanticide may be dealt with and punished as if she had committed the offence of manslaughter of the child.

(4) This section does not affect the power of the court or jury, as the case may be, upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of not guilty by reason of mental disorder.

(5) An offence under subsection (1) is triable on indictment only.

[UK Infanticide Act 1938 s.1 am. by Coroners and Justice Act 2009 s.57]

57. Child destruction

(1) Subject to this section, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, commits the offence of child destruction.
Penalty: Imprisonment for life.

(2) A person is not to be found guilty of an offence against this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more is *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

(4) No offence under this section is committed by a registered medical practitioner who terminates a pregnancy in accordance with section 60.

(5) For the purposes of the law relating to abortion —

(a) anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 60; and

(b) in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if —

(i) the ground for termination of the pregnancy specified in subsection 60(1)(d) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or

(ii) any of the other grounds for termination of the pregnancy specified in section 60 applies.

(6) If on the trial of a person for the murder or manslaughter of a child, or for infanticide, or for an offence under section 58 (Administering drugs or using instruments to procure abortion), the court, or jury if there is one, are of opinion that the defendant is not guilty of murder, manslaughter or infanticide, or of an offence under section 58 as the case may be, but that the defendant is guilty of child destruction —

(a) the court or jury, as the case may be, may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under this section.

(7) If on the trial of a person for child destruction the court, or jury if there is one, are of opinion that the defendant is not guilty of that offence, but that the person is guilty of an offence under section 58 —

(a) the court or jury, as the case may be, may find the person guilty of that offence; and

(b) the person is liable to be punished as if he or she had been convicted of an offence under that section.

(8) An offence under subsection (1) is triable on indictment only.

[UK Infant Life Preservation Act 1929 ss.1 and 2; Abortion Act 1967 s.5]

Termination of pregnancy

58. Administering drugs or using instruments to procure abortion

(1) A pregnant woman who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[S. 4/Ord. 5/2017/w.e.f. 21/04/2017]

(2) A person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.58 am. by CJ Act 1948 s.1]

59. Supplying drugs, etc. to procure abortion

A person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of a woman, whether she is or is not with child, commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[UK OAP Act 1861 s.59 am by CJ Act 1948 s.1]

60. Medical termination of pregnancy

(1) Subject to this section, a person does not commit an offence under section 58 or 59 when a pregnancy is terminated by a registered medical practitioner if 2 medical practitioners are of the opinion, formed in good faith that —

(a) the pregnancy has not exceeded its 24th week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family;

(b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;

(c) the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4), any treatment for the termination of pregnancy must be carried out in the King Edward VII Hospital or in a place approved for the purposes of this section by the Governor.

(4) Subsection (3), and so much of subsection (1) as relates to the opinion of 2 registered medical practitioners, do not apply to the termination of a pregnancy by a registered medical practitioner in a case where he or she is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

(5) An opinion as referred to in subsection (1) must be certified by the practitioners concerned in the form and at the time prescribed.

(6) Certificates made for the purposes of this section must be preserved and disposed of in the prescribed manner.

(7) A registered medical practitioner who terminates a pregnancy must give notice of the termination and other prescribed information relating to the termination to the Attorney General within 14 days of the termination.

(8) The disclosure, except to prescribed persons or for prescribed purposes, of notices given or information furnished pursuant to this section, is prohibited.

(9) In this section "**prescribed**" means prescribed by regulations made by the Secretary of State under the Abortion Act 1967 or any replacement of that Act.

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

(10) A person who wilfully contravenes or wilfully fails to comply with the requirements of this section or of regulations made under it commits an offence.
Penalty: A fine at level 5 on the standard scale.

[UK Abortion Act 1967 ss.1 and 2 as amended and adapted]

61. Conscientious objection to participation in treatment

(1) Subject to subsections (2) and (3), no person is under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 60 to which the person has a conscientious objection.

(2) In any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

(3) Subsection (1) does not affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

[UK Abortion Act 1967 s.4 am. by the Human Fertilisation & Embryology Act 1990]

Concealing the birth of a child

62. Concealing the birth of a child

If a woman gives birth to a child, any person who, by any secret disposition of the dead body of the child, whether the child died before, at, or after its birth, endeavours to conceal the birth of it, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK OAP Act 1861 s.60]

Endangering life

63. Impeding rescue from shipwreck

A person ('**A**') who unlawfully and maliciously prevents or impedes any person ('**B**') who is on board of or has abandoned any ship or vessel that is in distress, wrecked, stranded or cast on shore, and who is endeavouring —

(a) to save B's own life; or

(b) to save the life of any other person in such peril,

commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.17 adapted]

64. Wounding, etc. with intent to do grievous bodily harm

A person who unlawfully and maliciously by any means wounds or causes any grievous bodily harm to any person, with intent —

(a) to do some grievous bodily harm to any person; or

(b) to resist or prevent the lawful apprehension or detainer of any person,

commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.18 am. by Criminal Law Act 1967]

65. Malicious wounding

A person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

[UK OAP Act 1861 s.20]

65A. Causing grievous bodily harm by gross negligence

(1) A person commits an offence if the person causes grievous bodily harm to another person by gross negligence.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) An offence against subsection (1) is triable on indictment only.

[S. 5/Ord. 3/2019/w.e.f. 10/04/19]

66. Attempting to choke, etc. with intent to facilitate a serious offence

A person ('**A**') who, by any means —

(a) attempts to choke, suffocate or strangle another person ('**B**'); or

(b) by any means calculated to choke, suffocate or strangle, attempts to render B insensible, unconscious or incapable of resistance,

with intent to enable A or any other person to commit, or to assist any other person in committing, a serious offence, commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.21 am. by CJ Act 1948 and Criminal Law Act 1967]

67. Using drugs to facilitate a serious offence

A person ('**A**') who —

(a) unlawfully applies or administers to another person ('**B**');

(b) causes to be taken by, applied or administered to another person ('**B**'); or

(c) attempts to do any of the things in subsections (a) and (b),

any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent to enable A or any other person to commit, or to assist in committing, a serious offence, commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK OAP Act 1861 s.22 am. by CJ Act 1948]

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

68. Administering poison

(1) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing so as to endanger the life of the other person or cause that person any grievous bodily harm commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy that other person commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(3) If, on the trial of a person for an offence under subsection (1) the court (or the jury, if there is one) is not satisfied that the person is guilty of that offence, but is satisfied that the person is guilty of the offence under subsection (2), the court or jury, as the case may be, may acquit the person of the offence under subsection (1) and convict him or her of an offence under subsection (2).

[UK OAP Act 1861 ss.23 to 25 am. by CJ Act 1948 and Criminal Law Act 1967]

69. Setting spring guns, etc.

(1) A person who sets or places, or causes to be set or placed, any spring gun, man trap or other device calculated to destroy human life or inflict grievous bodily harm, with the intent that it should or whereby it might destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person ('**A**') who knowingly and wilfully permits any such spring gun, man trap or other device which has been set or placed by another person in a place that subsequently comes into A's possession or occupation to continue so set or placed, is deemed to have set and placed it with the intention mentioned in subsection (1).

(3) Nothing in this section makes it illegal to set or place any gin or trap such as is usually set or placed to destroy vermin.

[UK OAP Act 1861 s.31 am. by CJ Act 1948]

70. Common assault

(1) A person who unlawfully assaults or beats any other person commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) In addition to or instead of imposing any penalty the court may order the offender to enter into a recognisance, with or without sureties, to keep the peace and to be of good behaviour for a period not exceeding 12 months.

(3) In this Part —

(a) an assault occurs when a person intentionally or recklessly causes another person to apprehend immediate unlawful violence, whether or not physical contact is made;

(b) a battery occurs when a person intentionally or recklessly applies unlawful force to another person.

[Common law; UK OAP Act 1861 s.42 replaced by CJ Act 1988 s.39]

70A. Reasonable punishment

(1) In relation to any offence specified in subsection (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment.

(2) The offences referred to in subsection (1) are —

(a) an offence under section 64 or 65 of this Ordinance (wounding and causing grievous bodily harm);

(b) an offence under section 71 of this Ordinance (assault occasioning actual bodily harm);

(c) an offence under section 82 of this Ordinance (cruelty to persons under 16).

(3) Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.

(4) For the purposes of subsection (3) "actual bodily harm" has the same meaning as it has for the purposes of section 71 of this Ordinance.

(5) Battery of a child can only be justified on the ground that it constituted reasonable punishment if the battery is administered by a person who holds parental responsibility for the child.

[UK Children Act 2004 s.48, adapted and S. 5/Ord. 5/2017/w.e.f. 21/04/2017]

70B. Time limit for prosecution of common assault or battery in domestic abuse cases

(1) This section applies to proceedings for an offence of common assault or battery under section 70 if —

(a) the alleged behaviour of the accused amounts to domestic abuse; and

(b) the condition in subsection (2) or (3) is met.

(2) The condition in this subsection is that —

(a) the complainant has made a witness statement with a view to its possible admission as evidence in the proceedings; and

(b) the complainant has provided the statement to —

(i) a police officer; or

(ii) a person authorised by a police officer to receive the statement.

(3) The condition in this subsection is that —

(a) the complainant has been interviewed by —

(i) a police officer; or

(ii) a person authorised by a police officer to interview the complainant; and

(b) a video recording of the interview has been made with a view to its possible admission as the complainant's evidence in chief in the proceedings.

(4) Proceedings to which this section applies may be commenced at any time which is both —

(a) within 2 years from the date of the offence to which the proceedings relate; and

(b) within 6 months from the first date on which either of the conditions in subsection (2) or (3) was met.

(5) This section has effect despite section 182(4) of the Criminal Procedure and Evidence Ordinance 2014 (time for commencement of criminal proceedings).

(6) In this section —

"**domestic abuse**" has the meaning given by section 102 (definition of "domestic abuse");

"**video recording**" has the meaning given by section 2(1) of the Criminal Procedure and Evidence Ordinance 2014;

"**witness statement**" means a written statement that satisfies the conditions in section 408(2)(a) and (b) of the Criminal Procedure and Evidence Ordinance 2014.

(7) This section does not apply to an offence committed before this section comes into force.

[UK Police, Crime, Sentencing and Courts Act 2022 s. 49]

[S.4/Ord.10/2024/w.e.f. 14.08.2024]

71. Assault occasioning actual bodily harm

A person who commits an assault occasioning actual bodily harm commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[UK OAP Act 1861 s.47]

71A. Strangulation or suffocation

(1) A person ("**A**") commits an offence if —

(a) A intentionally strangles another person ("**B**"), or

(b) A does any other act to B that —

(i) affects B's ability to breathe, and

(ii) constitutes battery of B.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.

(3) Subsection (2) does not apply if —

(a) B suffers serious harm as a result of the strangulation or other act, and

(b) A either —

(i) intended to cause B serious harm; or

(ii) was reckless as to whether B would suffer serious harm.

(4) ...

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

(5) In this section "**serious harm**" means —

(a) grievous bodily harm, within the meaning of section 64;

(b) wounding, within the meaning of section 64; or

(c) actual bodily harm, within the meaning of section 71.

[UK Domestic Abuse Act 2021 s.70]

[S.5. Ord. 8/2022/w.e.f. 16/05/2022]

71B. Consent to serious harm for sexual gratification not a defence

(1) This section applies for the purposes of determining whether a person ("**D**") who inflicts serious harm on another person ("**V**") is guilty of a relevant offence.

(2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.

(3) In this section —

"**relevant offence**" means an offence under section 64, 65, 65A or 71;

"**serious harm**" means —

(a) grievous bodily harm, within the meaning of section 64;

(b) wounding, within the meaning of section 64; or

(c) actual bodily harm, within the meaning of section 71.

(4) Subsection (2) does not apply in the case of an offence under section 65 or 71 where —

(a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity; and

(b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

(6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

[UK Domestic Abuse Act 2021 s.71]

[S.5. Ord. 8/2022/w.e.f. 16/05/2022]

72. Assaulting or obstructing emergency worker

(1) A person commits an offence if they assault —

(a) an emergency worker who is acting in the exercise of their functions as such a worker; or

(b) a person who is assisting such an emergency worker.

Penalty: Imprisonment for 2 years or a fine, or both.

[S. 6(1)/Ord 3/2019/w.e.f. 10/04/19; S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 5/Ord. 10/2024/w.e.f. 14.08.2024]

(2) A person commits an offence if they wilfully obstruct —

(a) an emergency worker who is acting in the exercise of their functions as such a worker; or

(b) a person who is assisting such an emergency worker.

Penalty: Imprisonment for 12 months or a fine, or both.

[S. 6(2)/Ord 3/2019/w.e.f. 10/0419; S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 5/Ord. 10/2024/w.e.f. 14.08.2024]

(3) In this section —

"**emergency worker**" means —

(a) a police officer;

(b) a member of the police reserve enlisted under section 9 of the Police Ordinance 2000 or any other person employed or engaged to provide services for police purposes;

(c) an Officer in Charge, a prison officer, or another member of prison staff appointed under section 6 of the Prisons Ordinance 2017;

(d) a person employed or engaged to provide fire, search or rescue services; or

(e) a person employed or engaged to provide medical care, including in a para medical capacity;

"**employed or engaged**" means employed or engaged in any capacity (whether full-time, part-time, casual, or otherwise, and whether paid or not).

[S. 5/Ord. 10/2024/w.e.f. 14.08.2024]

(4) In this section, an emergency worker who is not at work or on duty is still "**acting in the exercise of their functions as such a worker**" if they are performing functions which would, if they were at work or on duty, be in the exercise of their functions as an emergency worker.

[UK Police, Crime, Sentencing and Courts Act 2022 s. 2 and Assaults on Emergency Workers (Offences) Act 2018]

[S. 5/Ord. 10/2024/w.e.f. 14.08.2024]

72A. ...

[UK Assaults on Emergency Workers (Offences) Act ss. 1 and 3]

[S. 7/Ord. 3/2019/w.e.f. 10/04/19; S. 5/Ord. 10/2024/w.e.f. 14.08.2024]

73. Assault to prevent arrest

A person ('**A**') who assaults another person ('**B**') with intent to resist or prevent the lawful arrest or detention of A or of any other person for any offence, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK OAP Act 1861 s.38 am. by Criminal Law Act 1967]

74. Assaulting persons when preserving wrecks

A person who assaults and strikes or wounds any justice of the peace, police officer or other authorised person who is exercising a duty concerning the preservation of —

(a) a vessel in distress; or

(b) any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

[UK OAP Act 1861 s.37 am. by CJ Act 1948]

75. Obstructing or assaulting clergyman

(1) A person who by threats or force —

(a) obstructs or prevents; or

(b) endeavours to obstruct or prevent,

any clergyman or other Minister of religion in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house or other place of divine worship, or in or from the performance of that person's duty in the lawful burial of the dead in any burial place, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

(a) strikes or offers any violence to; or

(b) upon any civil process, or under the pretence of executing any civil process, arrests,

any clergyman or other Minister of religion who is engaged in any rites or duties, or who to the knowledge of the offender is about to engage in, is going to perform or is returning from the performance of, any rites or duties, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK OAP Act 1861 s.36]

76. ...

[UK OAP Act 1861 ss.44 and 45 am. by CJ Act 1988 and Courts Act 2003]

[S. 6/Ord. 10/2024/w.e.f. 14.08.2024]

Death of, or harm to a child or vulnerable adult

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

77. Causing or allowing the death of or harm to a child or vulnerable adult

(1) A person ('**A**') commits an offence if —

(a) a child or vulnerable adult ('**B**') dies or suffers serious physical harm as a result of the unlawful act of a person who —

(i) was a member of the same household as B; and

(ii) had frequent contact with B;

(b) A was such a person at the time of the act;

(c) at that time there was a significant risk of serious physical harm being caused to B by the unlawful act of such a person; and

(d) either A was the person who caused the death or serious physical harm, or —

(i) A was, or ought to have been, aware of the risk mentioned in paragraph (c); or

(ii) A failed to take such steps as A could reasonably have been expected to take to protect B from the risk; and

(iii) the act occurred in circumstances of the kind that A foresaw or ought to have foreseen.

Penalty: As provided in subsection (7).

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) The prosecution does not have to prove whether it is paragraph (i) in subsection (1)(d) that applies, or paragraphs (ii) and (iii) that apply.

(3) If A was not the mother or father of B —

(a) A cannot be charged with an offence if A was under the age of 16 at the time of the act that caused the death or serious physical harm;

(b) for the purposes of subsection (1)(d)(ii), A could not have been expected to take any such step as is there referred to before attaining that age.

(4) For the purposes of this section —

(a) A is to be regarded as a member of a particular household, even if A does not live in it, if A visits it so often and for such periods of time that it is reasonable to regard A as a member of it;

(b) if B lived in different households at different times, "**the same household as B**" in subsection (1)(a)(i) means the household in which B was living at the time of the act that caused the death or serious physical harm.

(5) For the purposes of this section, an unlawful act is one that —

(a) constitutes an offence; or

(b) would constitute an offence but for being the act of a person other than A who is —

(i) under the age of 10; or

(ii) entitled to rely on a defence of insanity.

(6) In this section —

"**act**" includes a course of conduct and an omission;

"**child**" means a person under the age of 16;

"**serious physical harm**" means harm that amounts to grievous bodily harm for the purpose of section 64;

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

"**vulnerable adult**" means a person aged 16 or over whose ability to protect themselves from physical or psychological harm is significantly impaired through physical or mental disability, illness, old age, or otherwise.

[S. 7/Ord. 10/2024/w.e.f. 14.08.2024]

(7) The maximum penalty on conviction for an offence under this section is —

(a) for causing or allowing a person's death - imprisonment for life;

(b) for causing or allowing a person to suffer serious physical harm - imprisonment for 14 years.

[S. 7/Ord. 10/2024/w.e.f. 14.08.2024]

(8) An offence under subsection (1) is triable on indictment only.

[S. 8/Ord. 3/2019/w.e.f. 10/04/19]

[UK Domestic Violence, Crime & Victims Act 2004 s.5 am. by DVCV (Am) Act 2012]

78. Inferences in murder and manslaughter cases

(1) Subsections (2) to (4) apply if a person ("**the defendant**") is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 77 in respect of the same death ("the section 77 offence").

(2) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty —

(a) of murder or manslaughter; or

(b) of any other offence of which the defendant could lawfully be convicted on the charge of murder or manslaughter,

even if there would otherwise be no case for the defendant to answer in relation to that offence.

(3) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or a jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(4) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

(5) An offence under section 77 is, for the purposes of section 724 of the Criminal Procedure and Evidence Ordinance 2014 an offence of homicide.

[UK Domestic Violence, Crime and Victims Act 2004 s.6 am. by DVCV (Am) Act 2012, adapted and S.R. & O. 6/2017/w.e.f. 13/4/2017]

79. Inferences in cases of serious physical harm

(1) Subsections (3) to (5) apply if a person ("**the defendant**") is charged in the same proceedings with a relevant offence and with an offence under section 77 in respect of the same harm ("**the section 77 offence**").

(2) In this section "**relevant offence**" means —

(a) an offence under section 64 or 65 (grievous bodily harm etc);

(b) an offence under section 19 of attempting to commit murder.

(3) If by virtue of a provision in Part 19 of the Criminal Procedure and Evidence Ordinance 2014 a court, or a jury if there is one, is permitted, in relation to the section 77 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury, as the case may be, may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.

(4) The charge of murder or manslaughter is not to be dismissed on the ground that the evidence against the defendant would not be sufficient for a court or jury, if there is one, properly to convict the defendant, unless the section 77 offence is also dismissed on that ground.

(5) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 77 offence, before that earlier time).

[UK Domestic Violence, Crime and Victims Act 2004 s.6A ins. by DVCV (Am) Act 2012 and adapted]

80. Abandoning young child

A person who unlawfully abandons or exposes any child under the age of 5 years, with the result that —

(a) the life of the child is endangered; or

(b) the health of the child is or is likely to be permanently injured,

commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[UK OAP Act 1861 s.27 am by CJ Act 1948]

81. Being drunk while in charge of a child

A person who is drunk in any highway or other public place, whether a building or not, or on any licensed premises, while having the charge of a child under the age of 7 years, commits an offence.
Penalty: Imprisonment for 1 month or a fine at level 2 on the standard scale, or both.

[UK Licensing Act 1902 s.2]

82. Cruelty to persons under 16

(1) If any person who has attained the age of 16 years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes child or young person, or causes or procures them to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause them unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature), that person commits an offence.

Penalty: imprisonment for a term not exceeding 14 years or a fine, or both.

(2) For the purposes of this section —

(a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected them in a manner likely to cause injury to their health if the person has failed to provide adequate food, clothing, medical aid or lodging for the child or young person, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, the person has failed to take steps to procure it to be provided under the enactments applicable in that behalf;

(b) where it is proved that the death of an infant under 3 years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 16 years, that other person shall, if the person was, when they went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected the infant in a manner likely to cause injury to their health.

(3) For the purposes of this section, the following shall be presumed to have responsibility for a child or young person —

(a) any person who —

(i) has parental responsibility for them (within the meaning of the Children Ordinance 2014); or

(ii) is otherwise legally liable to maintain them; and

(b) any person who has care of them.

(4) A person who is presumed to be responsible for a child or young person by virtue of subsection (3)(a) shall not be taken to have ceased to be responsible for them by reason only that the person does not have care of them.

(5) The reference in subsection (2)(b) to the infant being "**in bed**" with another (the "**adult**") includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult "**went to bed**" is to be read accordingly).

(6) A drug is a prohibited drug for the purposes of subsection (2)(b) in relation to a person if the person's possession of the drug immediately before taking it constituted an offence under section 5(1) of the Misuse of Drugs Ordinance 1987.

(7) A person may be convicted of an offence under this section —

(a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;

(b) notwithstanding the death of the child or young person in question.

[UK Children and Young Persons Act 1933 s. 1]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

Offences involving ill-treatment or wilful neglect

82A. Ill-treatment or wilful neglect: care worker offence

(1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.

Penalty: imprisonment for a term not exceeding 5 years or a fine, or both.

(2) "**Care worker**" means an individual who, as paid work, provides —

(a) health care for an adult or a youth; or

(b) social care for an adult, including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.

(3) An individual does something as "**paid work**" if he or she receives or is entitled to payment for doing it other than payment —

(a) in respect of the individual's reasonable expenses;

(b) they are entitled to as a foster parent (within the meaning of the Children Ordinance 2014);

(c) of a benefit payable under the Financial Assistance Ordinance 2023; or

(d) under any other Ordinance to assist people to select, train for, obtain or retain employment.

(4) "**Health care**" includes —

(a) all forms of health care provided for individuals, including health care relating to physical health or mental health and health care provided for or in connection with the protection or improvement of public health; and

(b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

(5) "**Social care**" includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or any other similar circumstances.

(6) References in this section to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person.

[UK Criminal Justice and Courts Act 2015 s. 20]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

82B. Ill-treatment or wilful neglect: care provider offence

(1) A care provider commits an offence if —

(a) an individual who has the care of another individual by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that individual;

(b) the care provider's activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected; and

(c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

Penalty: a fine.

(2) "**Care provider**" means —

(a) a body corporate or unincorporated association which provides or arranges for the provision of —

(i) health care for an adult or youth; or

(ii) social care for an adult; or

(b) an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist him or her in providing such care.

(3) An individual is "**part of a care provider's arrangements**" where the individual —

(a) is not the care provider, but

(b) provides health care or social care as part of health care or social care provided or arranged for by the care provider,

including where the individual is not the care provider but supervises or manages individuals providing health care or social care as described in paragraph (b) or is a director or similar officer of an organisation which provides health care or social care as described there.

(4) A "**relevant duty of care**" means —

(a) a duty owed under the law of negligence; or

(b) a duty that would be owed under the law of negligence but for a provision contained in an Ordinance, or an instrument made under an Ordinance, under which liability is imposed in place of liability under that law,

but only to the extent that the duty is owed in connection with providing, or arranging for the provision of, health care or social care.

(5) For the purposes of this section, there is to be disregarded any rule of the common law that has the effect of —

(a) preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct; or

(b) preventing a duty of care being owed to a person by reason of that person's acceptance of a risk of harm.

(6) A breach of a duty of care by a care provider is a "**gross**" breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.

(7) In this section —

(a) references to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person; and

(b) references to a person arranging for the provision of such care do not include a person who makes arrangements under which the provision of such care is merely incidental to the carrying out of other activities.

(8) References in this section to providing or arranging for the provision of health care or social care do not include making payments under an Ordinance in relation to the provision of care.

(9) In this section, "**health care**" and "**social care**" have the same meaning as in section 82A.

[UK Criminal Justice and Courts Act 2015 s. 21]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

82C. Care provider offence: other orders

(1) A court before which a person is convicted of an offence under section 82B may make either or both of the following orders —

(a) a remedial order;

(b) a publicity order; (whether instead of or as well as imposing a fine).

(2) A "**remedial order**" is an order requiring the person to take specified steps to remedy one or more of the following —

(a) the breach mentioned in section 82B(1)(b) (the "**relevant breach**");

(b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect;

(c) any deficiency in the person's policies, systems or practices of which the relevant breach appears to the court to be an indication.

(3) A "**publicity order**" is an order requiring the person to publicise in a specified manner —

(a) the fact that the person has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(4) A remedial order —

(a) may be made only on an application by the prosecution which specifies the terms of the proposed order;

(b) must be made on such terms as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to its terms by the prosecution or by or on behalf of the person convicted; and

(c) must specify a period within which the steps specified in the order must be taken.

(5) A publicity order must specify a period within which the requirements specified in the order must be complied with.

(6) A person who fails to comply with a remedial order or a publicity order commits an offence.

Penalty: a fine.

[UK Criminal Justice and Courts Act 2015 s. 23]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

82D. Care provider offence: application to public bodies

(1) An organisation that is a servant or agent of the Crown is not, by virtue of its status, immune from prosecution under sections 82A to 82F.

(2) For the purposes of sections 82A to 82F —

(a) every department of the Government; and

(b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government or servant or agent of the Crown.

(3) For the purposes of sections 82A to 82F, a person who is —

(a) employed by or under the Crown for the purposes of a department of the Government; or

(b) employed by a person whose staff constitute such a department,

is to be treated as employed by that department.

(4) For the purposes of sections 82A to 82F, any premises occupied for the purposes of —

(a) a department of the Government; or

(b) a person whose staff constitute such a department,

are to be treated as occupied by that department.

(5) For the purposes of sections 82A to 82F, anything purporting to be done by a department or body of the Government, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

[UK Criminal Justice and Courts Act 2015 s. 22]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

82E. Care provider offence: application to unincorporated associations

(1) For the purposes of sections 82A to 82F, an unincorporated association is to be treated as owing whatever duties of care it would owe if it were a body corporate.

(2) Proceedings for an offence under those sections alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) In relation to such proceedings, rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.

(4) In proceedings under section 82B to 82F brought against an unincorporated association, all laws, rules of court, and other practices and procedures relevant to the conduct of the proceedings apply as if the association were a corporate body.

(5) A fine imposed on an unincorporated association on its conviction of an offence under section 82B to 82F is to be paid out of the funds of the association.

[UK Criminal Justice and Courts Act 2015 s. 24]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

82F. Care provider offence: liability for ancillary and other offences

(1) An individual cannot be guilty of an offence under section 31 (encouragement), 42 (aiding and abetting) or 43 (assisting offenders) by reference to an offence under section 82B.

(2) Where, in the same proceedings, there is —

(a) a charge under section 82B arising out of a particular set of circumstances; and

(b) a charge against the same defendant of a relevant offence arising out of some or all of those circumstances,

the defendant may, if the interests of justice so require, be convicted of both offences.

(3) A person convicted of an offence under section 82B arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a relevant offence arising out of some or all of those circumstances.

(4) "**Relevant offence**" means an offence under an Ordinance, or an instrument made under an Ordinance, dealing with —

(a) health and safety matters; or

(b) the provision of health care or social care.

(5) In this section, "**health care**" and "**social care**" have the same meaning as in section 82A.

[UK Criminal Justice and Courts Act 2015 s. 25]

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

Tattooing

[S. 8/Ord. 10/2024/w.e.f. 14.08.2024]

83. Illegal tattooing of youths

(1) Subject to subsection (2), it is an offence for a person to tattoo a youth except when the tattoo is performed for medical reasons by a medical practitioner or by a person working under such a practitioner's direction.
Penalty: A fine at level 3 on the standard scale.

(2) It is a defence for a person charged with an offence under subsection (1) to show that at the time the tattoo was performed the defendant had reasonable cause to believe that the person tattooed was of or over the age of 18 and did in fact so believe.

(3) In this section, "**tattoo**" means the insertion into the skin of any colouring material designed to leave a permanent mark.

[UK Tattooing of Minors Act 1969]

Child abduction, etc.

84. Abduction of child by parent, etc.

(1) Subject to subsections (5) and (8), a person ('**A**') connected with a child under the age of 18 commits an offence if A takes or sends the child out of the Falkland Islands without the appropriate consent.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) A is connected with a child for the purposes of this section if —

(a) A is a parent of the child;

(b) in the case of a child whose parents were not married to each other at the time of the child's birth - there are reasonable grounds for believing that A is the father of the child;

(c) A is a guardian of the child;

(d) A is a person in whose favour a residence order is in force with respect to the child; or

(e) A has custody of the child.

(3) In this section, "**the appropriate consent**" in relation to a child means —

(a) the consent of each of the following —

(i) the child's mother;

(ii) the child's father, if the father has parental responsibility for the child;

(iii) any guardian of the child;

(iv) any person in whose favour a residence order is in force with respect to the child;

(v) any person who has custody of the child;

(b) the leave of the court granted under or by virtue of any provision of the Children Ordinance 2014; or

(c) if any person has custody of the child - the leave of the court which awarded custody to that person.

(4) A person ('**A**') does not commit an offence under this section by taking or sending a child out of the Falkland Islands without obtaining the appropriate consent if —

(a) A is a person in whose favour there is a residence order in force with respect to the child; and

(b) A takes or sends the child out of the Falkland Islands for a period of less than one month.

(5) Subsection (4) does not apply if the person taking or sending the child out of the Falkland Islands does so in breach of an order under the Children Ordinance 2014.

(6) A person ('**A**') does not commit an offence under this section by doing anything without the consent of another person ('**B**') whose consent is required under the foregoing provisions if A —

(a) does it in the belief that B —

(i) has consented; or

(ii) would consent if B was aware of all the relevant circumstances; or

(b) has taken all reasonable steps to communicate with B but has been unable to communicate with B; or

(c) B has unreasonably refused to consent.

(7) Subsection (6)(c) does not apply if —

(a) the person who refused to consent is a person —

(i) in whose favour there is a residence order in force with respect to the child; or

(ii) who has custody of the child; or

(b) the person taking or sending the child out of the Falkland Islands is, by so acting, in breach of an order made by a court in the Falkland Islands.

(8) If, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (6), it is for the prosecution to prove that that subsection does not apply.

[UK Child Abduction Act 1984 s.1 am. by Children Act 1989]

85. Abduction of child by other persons

(1) Subject to subsection (3), a person, other than one mentioned in subsection (2), commits an offence if, without lawful authority or reasonable excuse, the person takes or detains a child under the age of 16 so as to —

(a) remove the child from the lawful control of any person having lawful control of the child; or

(b) keep the child out of the lawful control of any person entitled to lawful control of the child.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) The persons referred to in subsection (1)(b) are —

(a) if the father and mother of the child in question were married to each other at the time of the child's birth - the child's father and mother;

(b) if the father and mother of the child in question were not married to each other at the time of the child's birth - the child's mother; and

(c) any other person mentioned in section 84(2)(c) to (e).

(3) In proceedings against A person ('A') for an offence under this section, it is a defence for A to prove —

(a) if the father and mother of the child in question were not married to each other at the time of the child's birth —

(i) that A is the child's father; or

(ii) that, at the time of the alleged offence, A believed, on reasonable grounds, that A was the child's father; or

(b) that, at the time of the alleged offence, A believed that the child had attained the age of 16.

[UK Child Abduction Act 1984 s.2 am. by Children Act 1989]

85A. Definition of CAWN and CAWO

In sections 85B to 85G (inclusive) —

"**CAWN**" means a child abduction warning notice;

"**CAWO**" means a child abduction warning order.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85B. Power to issue CAWN

(1) A member of the police force not below the rank of inspector ("**the authorising officer**") may issue a CAWN under this section.

(2) A CAWN may be issued to a person ("**A**") aged 18 years or over if the authorising officer —

(a) has reasonable grounds for believing that A has without lawful authority or reasonable excuse been found in the company of a child under the age of 18 years ("**C**"); and

(b) (i) has reasonable grounds for believing that C has, on at least two occasions (including the occasion referred to in paragraph (a)), been reported missing and subsequently found to be in the company of A; or

(ii) has reason to suspect that C's behaviour is, by reason of association with A, a significant cause for concern.

(3) Before issuing a CAWN, the authorising officer must, in particular, take reasonable steps to gather and consider —

(a) representations made by the person with lawful authority for C; and

(b) representations made by A as to the issuing of the CAWN.

(4) A CAWN must prohibit A from being in the company of C.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85C. Contents and service of CAWN

(1) A CAWN must state —

(a) the grounds on which it has been issued;

(b) that a constable may arrest A without warrant if the constable has reasonable grounds for believing that A is in breach of the CAWN;

(c) that an application for a CAWO under section 85E will be heard within 48 hours of the time of service of the CAWN and a notice of the hearing will be given to A;

(d) that the CAWN continues in effect until that application has been determined; and

(e) the provisions that a court may include in a CAWO under sections 85E and 85F.

(2) A CAWN must be in writing and must be served on A personally by a police officer.

(3) On serving A with a CAWN, the police officer must ask A for an address for the purposes of being given the notice of the hearing of the application for the CAWO.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85D. Breach of CAWN

(1) A constable may arrest a person without a warrant if the constable has reasonable grounds for believing that the person is in breach of a CAWN.

(2) A person arrested by virtue of section 85C(1)(b) for a breach of a CAWN must be held in custody and brought before the court which will hear the application for a CAWO under sections 85E and 85F —

(a) before the end of the period of 24 hours beginning with the time of the arrest; or

(b) if earlier, at the hearing of that application.

(3) If the person is brought before the court by virtue of subsection (2)(a), the court may remand the person.

(4) If the court adjourns the hearing of the application by virtue of section 85E(8), the court may remand the person.

(5) In calculating when the period of 24 hours mentioned in subsection (2)(a) ends, Christmas Day, any Sunday and any day which is a public holiday in the Falkland Islands are to be disregarded.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85E. Application for a CAWO

(1) If a CAWN has been issued, the Attorney General must apply for a CAWO.

(2) The application must be made by complaint to the Magistrate's Court and any hearing relating to the application will be heard by the Senior Magistrate or, if the Senior Magistrate is not available, three Justices of the Peace.

(3) The application must be heard by the Court no later than 48 hours after the CAWN was served pursuant to section 85C(2).

(4) In calculating when the period of 48 hours mentioned in subsection (3) of this section ends, Christmas Day, any Sunday and any day which is a public holiday in the Falkland Islands are to be disregarded.

(5) A notice of the hearing of the application must be given to A.

(6) The notice is deemed given to A if it is left at the address given by A under section 85C(3).

(7) But if the notice has not been given because no address was given by A under section 85C(3), the court may hear the application for the CAWO if the court is satisfied that reasonable efforts have been made to give A the notice.

(8) The court may adjourn the hearing of the application.

(9) If the court adjourns the hearing, the CAWN continues in effect until the application has been determined.

(10) On the hearing of the application for a CAWO, sections 278 and 279 of the Criminal Procedure and Evidence Ordinance 2014 do not apply in relation to a person for whose protection the CAWO would be made, except where the person has given oral or written evidence at the hearing.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85F. Conditions for, effect and contents of CAWO

(1) The court may make a CAWO if two conditions are met.

(2) The first condition is that the court is satisfied on the balance of probabilities that the criteria in section 85B(2)(a) and (b) are satisfied.

(3) The second condition is that the court thinks that making the CAWO is necessary to protect C from harm as a result of association with A.

(4) A CAWO prohibits A from doing anything described in the order.

(5) The only prohibitions that may be included in a CAWO are those necessary to protect C from harm as a result of association with A.

(6) A CAWO must state that it is a criminal offence to breach the CAWO.

(7) A CAWO may be in force for —

(a) no fewer than 14 days beginning with the day on which it is made; and

(b) until the date of the 18th birthday of C.

(8) A CAWO must state the period for which it is to be in force.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85G. Breach of a CAWO

A person in respect of whom a CAWO has been made and who contravenes the order in any respect commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

85H. Guidance

(1) The Attorney General may issue guidance relating to the exercise by a police officer of functions under sections 85B to 85G (inclusive).

(2) The guidance must set out the behaviours associated with "giving significant cause for concern", including, in particular, behaviours associated with giving cause for concern of sexual exploitation or grooming.

(3) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

[S. 9/Ord. 3/2019/w.e.f. 10/04/19]

86. Child abduction: Supplementary

(1) In section 84 —

"**guardian of a child**" means a person appointed as a guardian under the Children Ordinance 2014;

"**residence order**" means an order settling the arrangements to be made as to the person with whom a child is to live.

(2) For the purposes of section 84, a person is to be treated as having custody of a child if there is in force —

(a) an order of a Falkland Islands court; or

(b) an order of a court outside the Falkland Islands recognised by the Falkland Islands courts as having effect in the Falkland Islands,

and awarding the person (whether solely or jointly with another person) custody, legal custody or care and control of the child.

(3) In the case of a child who is in the care of the Crown pursuant to the Children Ordinance 2014, section 84 has effect as if —

(a) the reference in subsection (1) to the appropriate consent were a reference to the consent of the Crown; and

(b) subsection (3) were omitted.

(4) In the case of a child who is —

(a) detained in a place of safety under the Criminal Procedure and Evidence Ordinance 2014; or

(b) remanded to secure accommodation under the provision of any Ordinance,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference to the leave of the court that makes the order; and

(ii) subsection (3) were omitted.

(5) In the case of a child who is the subject of —

(a) a pending application for an adoption order; or

(b) an order under the Adoption Act 1976 as applied to the Falkland Islands relating to adoption abroad, or of a pending application for such an order,

section 84 has effect as if —

(i) the reference in subsection (1) to the appropriate consent were a reference —

(A) in a case within paragraph (5)(a) above - to the leave of the court to which the application was made; and

(B) in a case within paragraph (5)(b) above - to the leave of the court which made the order or, as the case may be, to which the application was made; and

(ii) subsection (3) were omitted.

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

(6) For the purposes of sections 84 and 85, a person ('**A**') —

(a) takes a child if A causes or induces the child to accompany A or any other person, or causes the child to be so taken;

(b) sends a child if A causes the child to be sent;

(c) detains a child if A causes the child to be detained or induces the child to remain with A or any other person.

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

(7) References in those sections to a child's parents and to a child whose parents were (or were not) married to each other at the time of the child's birth are to be construed in accordance with any law of the Falkland Islands that extends their meaning.

(8) No prosecution for an offence against either section 84 or 85 may be commenced except by, or with the consent of, the Attorney General.

[UK Child Abduction Act 1984 ss.3, 4 and 105 and Schedule am. by Children Act 1989]

87. Trafficking people for labour exploitation

(1) A person ('**A**') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('**B**');

(b) the travel of B within the Falkland Islands or another country, or

(c) the departure of B from the Falkland Islands or another country,

with a view to the exploitation of B.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purposes of subsection (1)(a) and (c) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world; or

(b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(3) For the purposes of subsection (1)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if) —

(a) A intends to exploit B, during or after the journey and in any part of the world; or

(b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.

(4) For the purposes of this section B is exploited if (and only if) B —

(a) is the victim of behaviour that contravenes Article 4 of the European Convention on Human Rights (Prohibition of slavery and forced labour);

(b) is encouraged, required or expected to do anything as a result of which B or another person would commit an offence;

(c) is subjected to force, threats or deception designed to induce B —

(i) to provide services of any kind;

(ii) to provide another person with benefits of any kind;

(iii) to enable another person to acquire benefits of any kind; or

(d) is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that —

(i) B is mentally or physically ill or disabled, or is young or has a family relationship with a person; and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

(5) A person who has Falkland Islands status commits an offence under this section regardless of —

(a) where the arranging or facilitating takes place; or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(6) A person who does not have Falkland Islands status commits an offence under this section if —

(a) any part of the arranging or facilitating takes place in the Falkland Islands; or

(b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(7) In this section, "**country**" includes any territory or other part of the world.

[UK Immigration & Asylum (Treatment of Claimants) Act 2004 am. by Protection of Freedoms Act 2012 s.110]

Female genital mutilation

87A. Interpretation for sections 88 to 89F

In sections 88 to 89F —

"**Falkland Islands resident**" means an individual who is habitually resident in the Falkland Islands;

"**girl**" means a female person of any age.

[UK Female Genital Mutilation Act 2003]

[S. 9/Ord. 10/2024/w.e.f. 14.08.2024]

88. Offence of female genital mutilation

(1) Subject to subsections (2) and (4), a person who excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

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

(2) No offence is committed by an approved person who performs —

(a) a surgical operation on a girl which is necessary for her physical or mental health; or

(b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons —

(a) in relation to an operation falling within subsection (2)(a) - a registered medical practitioner;

(b) in relation to an operation falling within subsection (2)(b) - a registered medical practitioner, a person registered as a midwife under the Medical Practitioners, Midwives and Dentists Ordinance, or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) No offence is committed by a person who —

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the Falkland Islands; and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

(6) ...

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

[UK Female Genital Mutilation Act 2003 ss.1 and 5 replacing Prohibition of Female Circumcision Act 1985]

89. Female genital mutilation: Ancillary offences

(1) A person who encourages, or aids and abets, a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person who encourages, or aids and abets, another person (**person B**) to do a relevant act of female genital mutilation outside the Falkland Islands commits an offence.
Penalty: Imprisonment for 14 years.

[S. 10/Ord. 10/2024/w.e.f. 14.08.2024]

(3) An act is a relevant act of female genital mutilation for the purpose of subsection (2) if —

(a) it is done in relation to a person who has Falkland Islands status or is a Falkland Islands resident; and

(b) it would, if done by person B, constitute an offence under section 88.

[S. 10/Ord. 10/2024/w.e.f. 14.08.2024]

(4) ...

[S. 10/Ord. 10/2024/w.e.f. 14.08.2024]

[UK Female Genital Mutilation Act 2003 ss.2, 3 and 4]

89A. Offence of failing to protect girl from genital mutilation

(1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purposes of this section, a person is "**responsible**" for a girl in the following two cases.

(3) The first case is if the person —

(a) has parental responsibility for the girl (within the meaning of the Children Ordinance 2014); and

(b) has frequent contact with her.

(4) The second case is if the person —

(a) is aged 18 or over; and

(b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.

(5) It is a defence for a person charged with an offence under this section to show that —

(a) at the relevant time, the person did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk; or

(b) the person took such steps as they could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.

(6) For the purposes of subsection (3)(b), if a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.

(7) In this section —

"**genital mutilation offence**" means an offence under section 88 or 89 (and for the purposes of subsection (1), the prosecution does not have to prove which section it is);

"**relevant time**" means the time when the mutilation takes place.

[UK Female Genital Mutilation Act 2003 s. 3A]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

89B. Extension of sections 88 to 89A to extra-territorial acts or omissions

(1) Sections 88 and 89 extend to any act done outside the Falkland Islands by a person who has Falkland Islands status or is a Falkland Islands resident.

(2) An offence under section 89A can be committed wholly or partly outside the Falkland Islands by a person who has Falkland Islands status or is a Falkland Islands resident.

(3) If an offence under section 88 to 89A is committed outside the Falkland Islands —

(a) proceedings may be taken in the Falkland Islands; and

(b) for incidental purposes the offence may be treated as having been committed in the Falkland Islands.

[UK Female Genital Mutilation Act 2003 s. 4]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

FGM protection orders

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

89C. FGM protection order

(1) The Attorney General may apply to the Magistrate's Court for a female genital mutilation protection order (an "**FGM protection order**").

(2) The Magistrate's Court may make an FGM protection order for the purposes of —

(a) protecting a girl against the commission of a genital mutilation offence; or

(b) protecting a girl against whom any such offence has been committed.

(3) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl.

(4) An FGM protection order may contain —

(a) such prohibitions, restrictions or requirements; and

(b) such other terms,

as the court considers appropriate for the purposes of the order.

(5) The terms of an FGM protection order may, in particular, relate to —

(a) conduct outside the Falkland Islands as well as (or instead of) conduct within the Falkland Islands;

(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;

(c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

(6) For the purposes of subsection (5), examples of involvement in other respects are —

(a) encouraging, aiding, abetting or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;

(b) conspiring to commit, or to attempt to commit, such an offence.

(7) An FGM protection order may be made for a specified period or until varied or discharged.

(8) In this section and section 89D, "**genital mutilation offence**" means an offence under section 88, 89 or 89A.

[UK Female Genital Mutilation Act 2003 s. 5A]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

89D. FGM protection orders without notice

(1) The court may, if it is just and convenient to do so, make an FGM protection order even though the respondent has not been given notice of the proceedings.

(2) In deciding whether to do so the court must have regard to all the circumstances including —

(a) the risk of the girl, or to another person, becoming a victim of a genital mutilation offence if the order is not made immediately;

(b) whether it is likely that a person will be deterred or prevented from supporting an application if an order is not made immediately; and

(c) whether there is reason to believe that —

(i) the respondent is aware of the proceedings but is deliberately evading service; and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the girl.

(3) If the court makes an order without notice having been given to the respondent, it must give them an opportunity to make representations about the order —

(a) as soon as just and convenient; and

(b) at a hearing of which notice has been given in accordance with rules of court.

[UK Female Genital Mutilation Act 2003 s. 5A]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

89E. Offence of breaching a FGM protection order

(1) A person commits and offence if they do not comply with an FGM protection order, unless they have a reasonable excuse for doing so.

Penalty: Imprisonment for 5 years or a fine or both.

(2) A person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the FGM protection order.

[UK Female Genital Mutilation Act 2003 s. 5A]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

89F. Variation and discharge of FGM protection orders

(1) The court may vary or discharge an FGM protection order on an application by —

(a) the Attorney General;

(b) the respondent;

(c) the girl being protected by the order; or

(d) any person affected by the order.

(2) Before deciding whether to vary or discharge an order under this section, the court must hear from —

(a) the Attorney General if they wish to be heard; and

(b) in a case where the girl protected by the order is seeking to discharge the order, or to amend it to be less onerous on the person bound by it, the girl.

(3) Sections 89C and 89D apply (with any necessary modifications) to the variation of an FGM protection order as they apply to the making of such an order.

[UK Female Genital Mutilation Act 2003 s. 5A]

[S. 11/Ord. 10/2024/w.e.f. 14.08.2024]

Forced marriages: Offence

90. Offence of forced marriage

(1) It is an offence for a person ('A') to use violence, threats or any other form of coercion for the purpose of causing another person ('B') to enter into a marriage, if A believes, or ought reasonably to believe, that the conduct may cause B to enter into the marriage without free and full consent.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) In relation to a victim B who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing B to enter into a marriage (whether or not the conduct amounts to violence, threats or

any other form coercion).

(3) It is an offence for a person ('**A**') to practise any form of deception with the intention of causing another person ('**B**') to leave the Falkland Islands, if A intends B to be subjected to conduct outside the Falkland Islands that is an offence under subsection (1) or would be an offence under that subsection if B were in the Falkland Islands.
Penalty: Imprisonment for 7 years.

(4) In this section —

"**marriage**" means any religious or civil ceremony of marriage, whether legally binding or not;

"**lacks capacity**" means lacks capacity within the meaning of section 91.

(5) For purposes of this section it is irrelevant whether the conduct mentioned in subsection (1) is directed at B or another person.

(6) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception —

(a) either A or B or both are in the Falkland Islands;

(b) neither A nor B is in the Falkland islands but at least one of them is habitually resident in the Falkland Islands; or

(c) neither A nor B is in the Falkland Islands but at least one of them has Falkland Islands status.

[UK Anti-social Behaviour, Crime & Policing Act 2014 s.121]

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

91. Lack of capacity

(1) For the purposes of section 90, a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain, whether permanent or temporary.

(2) A lack of capacity is to be established on the balance of probabilities and cannot be established merely by reference to —

(a) a person's age or appearance; or

(b) a condition or an aspect of behaviour that might lead others to make unjustified assumptions about the person's capacity.

(3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given in a way that is appropriate to the circumstances (using simple language, visual aids or any other means).

(4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent the person from being regarded as able to make the decision.

[UK Mental Capacity Act 2005 ss.1 and 2 adapted]

Forced marriages: Protection orders

92. Forced marriage protection orders

(1) The court may make an order for the purposes of protecting —

(a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or

(b) a person who has been forced into a marriage.

(2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

(3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.

(4) For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part —

"**force**", as a verb, includes to coerce by threats or other psychological means (and related expressions are to be read accordingly);

"**forced marriage protection order**" means an order under this section.

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

(7) In this section and sections 93 to 101, "**the court**" means the Magistrate's Court, unless the Supreme Court or the Summary Court is able, by virtue of section 94(6), to make an order without an application being made, in which case it means the Supreme Court or the Summary Court, as the case may be.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

93. Contents of orders

(1) A forced marriage protection order may contain —

(a) such prohibitions, restrictions or requirements; and

(b) such other terms,

as the court considers appropriate for the purposes of the order.

(2) The terms of such orders may, in particular, relate to —

(a) conduct outside the Falkland Islands as well as (or instead of) conduct within the Falkland Islands;

(b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;

(c) other persons who are, or may become, involved as accessories in any respect as well as respondents of any kind.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

94. Applications and other occasions for making orders

(1) The court may make a forced marriage protection order —

(a) on an application being made to it; or

(b) without an application being made to it but in the circumstances mentioned in subsection (6).

(2) An application may be made by —

(a) the person who is to be protected by the order; or

(b) the Attorney General.

(3) An application may be made by any other person with the leave of the court.

(4) In deciding whether to grant leave, the court must have regard to all the circumstances including —

(a) the applicant's connection with the person to be protected;

(b) the applicant's knowledge of the circumstances of the person to be protected; and

(c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person's age and understanding, to have regard to them.

(5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.

(6) The circumstances in which the court may make an order without an application being made are where —

(a) any other family proceedings are before the court ("the current proceedings");

(b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and

(c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

95. Orders without notice

(1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by criminal procedure rules.

(2) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances including —

(a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;

(b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and

(c) whether there is reason to believe that —

(i) the respondent is aware of the proceedings but is deliberately evading service; and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.

(3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1).

(4) The opportunity must be —

(a) as soon as just and convenient; and

(b) at a hearing of which notice has been given to all the parties in accordance with criminal procedure rules.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

96. Undertakings instead of orders

(1) The court may, subject to subsection (3), accept an undertaking from the respondent to proceedings for a forced marriage protection order if it has power to make such an order.

(2) No power of arrest may be attached to an undertaking given under subsection (1).

(3) The court may not accept an undertaking under subsection (1) instead of making an order if a power of arrest would otherwise have been attached to the order.

(4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking.

(5) This section does not affect the powers of the court apart from this section.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

97. Duration and variation or discharge of orders

(1) A forced marriage protection order may be made for a specified period or until varied or discharged.

(2) The court may vary or discharge a forced marriage protection order on an application by —

(a) any party to the proceedings for the order;

(b) the person being protected by the order (if not a party to the proceedings for the order); or

(c) any person affected by the order.

(3) The court may also vary or discharge a forced marriage protection order made by virtue of section 92(1)(b) even though no application under subsection (1) above has been made to the court.

(4) Section 93 applies to a variation of a forced marriage protection order as it applies to the making of such an order.

(5) Section 94 applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.

(6) Accordingly, references in sections 93 and 94 to making a forced marriage protection order are to be read for the purposes of subsections (2) and (3) above as references to varying such an order.

(7) Subsection (8) applies if a power of arrest has been attached to provisions of a forced marriage protection order by virtue of section 98.

(8) The court may vary or discharge the order under this section so far as it confers a power of arrest (whether or not there is a variation or discharge of any other provision of the order).

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

98. Attachment of power of arrest to orders

(1) Subsection (2) applies if the court —

(a) intends to make a forced marriage protection order otherwise than by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(2) The court must attach a power of arrest to one or more provisions of the order unless it considers that, in all the circumstances of the case, there will be adequate protection without such a power.

(3) Subsection (4) applies if the court —

(a) intends to make a forced marriage protection order by virtue of section 95; and

(b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.

(4) The court may attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately.

(5) The court may provide for a power of arrest attached to any provisions of an order under subsection (4) to have effect for a shorter period than the other provisions of the order.

(6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.

(7) In this section "**respondent**" includes any person who is not a respondent but to whom an order is directed.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

99. Exercise of power of arrest

(1) Subsection (2) applies if a power of arrest is attached to provisions of a forced marriage protection order under section 98.

(2) A police officer may arrest without warrant a person whom the officer has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.

(3) A person arrested under subsection (2) must be brought before the relevant court within 24 hours after the person's arrest (ignoring Christmas Day, Good Friday and any Sunday.)

(4) Subsection (5) applies if the court has made a forced marriage protection order but —

(a) no power of arrest is attached to any provision of the order under section 98;

(b) such a power is attached only to certain provisions of the order; or

(c) such a power was attached for a shorter period than other provisions of the order and that period has expired.

(5) An interested party may apply to the relevant court for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) The relevant court must not issue a warrant on an application under subsection (5) unless —

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(7) In this section "**interested party**", in relation to a forced marriage protection order, means —

(a) the person being protected by the order;

(b) (if a different person) the person who applied for the order; or

(c) any other person,

but no application may be made under subsection (5) by a person falling within paragraph (c) without the leave of the relevant court.

(8) In this section, "**relevant court**" means the court which made the forced marriage protection order.

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

100. Remand

(1) The court before which an arrested person is brought to court under or by virtue of section 99 may, if the matter is not then disposed of immediately, remand the person concerned in custody or on bail as provided by subsections (4) and (5).

(2) The decision whether to remand in custody or on bail must be taken in accordance with Part 9 (Bail in Criminal Proceedings) of the Criminal Procedure and Evidence Ordinance 2014.

(3) If a person remanded under this section is granted bail, the person may be required by the court to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

(4) The power to remand a person under subsection (1) may only be exercised for the purpose of enabling a medical examination and report to be made and only if the court has reason to consider that a medical report will be required.

(5) A remand under subsection (1) must not be for more than 4 weeks at a time unless the court remands the accused in custody, in which case the adjournment must not be for more than 3 weeks at a time.

(6) If there is reason to suspect that a person who has been arrested under or pursuant to section 99 is suffering from mental disorder, the court has the same power to make an order under section 48 of the Mental Health Ordinance (Remand to hospital for report) as the court has under that section in the case of an accused person (within the meaning of that section.).

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

101. Forced marriage protection orders: Supplementary

(1) A forced marriage protection order may be the subject of an appeal —

(a) to the Supreme Court if made by the Magistrate's Court or the Summary Court; or

(b) to the Court of Appeal if made by the Supreme Court.

(2) The Chief Justice may by criminal procedure rules provide for —

(a) the application of the Court of Appeal Ordinance, or of Part 31 of the Criminal Procedure Ordinance 2014 as the case may be, to appeals under this section;

(b) any other matter necessary or appropriate to regulate the making and enforcement of forced marriage protection orders.

(3) The powers in relation to contempt of court arising out of a person's failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the court which made the order.

(4) The Governor, after consulting the Criminal Justice Council, may issue guidance to such persons or classes of persons as the Governor considers appropriate about —

(a) the making and effect of a forced marriage protection order; or

(b) other matters relating to forced marriages,

but this section does not permit the Governor to give guidance to any court or tribunal.

(5) If the Governor issues guidance under subsection (4), a person exercising public functions to whom guidance is given must have regard to it in the exercise of those functions.

(6) The provisions of this Part relating to forced marriage protection orders do not affect any other protection or assistance available to a person who —

(a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or

(b) has been forced into a marriage.

(7) In particular, but without limiting subsection(6), the provisions do not affect —

(a) the inherent jurisdiction of the Supreme Court;

(b) any criminal liability;

(c) any civil remedies relating to protection from harassment;

(d) any protection or assistance under the Children Ordinance 2014;

(e) any claim in tort; or

(f) the law of marriage.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

[UK Family Law Act 1996 ss.63A to 63R, ins. by Forced Marriage (Civil Protection) Act 2007]

Domestic abuse protection

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

102. Definition of "domestic abuse"

(1) This section defines "**domestic abuse**" for the purposes of this Ordinance.

(2) Behaviour of a person ("**A**") towards another person ("**B**") is "**domestic abuse**" if —

(a) A and B are each aged 16 or over and are personally connected to each other; and

(b) the behaviour is abusive.

(3) Behaviour is "**abusive**" if it consists of any of the following —

(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;

(d) economic abuse (see subsection (4)); or

(e) psychological, emotional or other abuse,

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

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

(4) "**Economic abuse**" means any behaviour that has a substantial adverse effect on B's ability to —

(a) acquire, use or maintain money or other property; or

(b) obtain goods or services.

(5) A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).

(6) For the meaning of "**personally connected**", see section 103.

[UK Domestic Abuse Act 2021 s.1]

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S.6 Ord. 8/2022/w.e.f. 16/05/2022]

103. Definition of "personally connected"

(1) For purposes of this Ordinance, two people are "**personally connected**" to each other if any of the following applies —

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they have agreed to marry one another (whether or not the agreement has been terminated);

(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(e) they are, or have been, in an intimate personal relationship with each other;

(f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (2)); or

(g) they are relatives.

(2) For the purposes of subsection (1)(f) a person has a parental relationship in relation to a child if —

(a) the person is a parent of the child; or

(b) the person has parental responsibility for the child.

(3) In this section —

"**child**" means a person under the age of 18 years;

"**parental responsibility**" has the same meaning as in the Children Ordinance 2014 (see section 6 of that Ordinance);

"**relative**" means —

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner, or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

[UK Domestic Abuse Act 2021 s.2, with definition from UK Family Law Act 1996 s. 63]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

104. ...

[UK Domestic Abuse Act 2021 s.3]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022; S.34 Ord. 7/2024/w.e.f. 03/02/2025]

Domestic abuse protection notices

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

105. Power to give a domestic abuse protection notice

(1) A police officer of at least the rank of inspector ("**senior police officer**") may give a domestic abuse protection notice to a person ("P") if conditions A and B are met.

(2) A "**domestic abuse protection notice**" is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected.

(3) Condition A is that the senior police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(4) Condition B is that the senior police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(5) It does not matter whether the abusive behaviour referred to in subsection (3) took place in the Falkland Islands or elsewhere.

(6) A domestic abuse protection notice may not be given to a person who is under the age of 18.

[UK Domestic Abuse Act 2021 s.22]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

106. Provision that may be made by notices

(1) A domestic abuse protection notice may provide that the person to whom the notice is given ("P") —

(a) may not contact the person for whose protection the notice is given;

(b) may not come within a specified distance of any premises in which that person lives.

"**Specified**" means specified in the notice.

(2) If P lives in premises in which the person for whose protection the notice is given also lives, the notice may also contain provision —

(a) prohibiting P from evicting or excluding that person from the premises;

(b) prohibiting P from entering the premises; or

(c) requiring P to leave the premises.

[UK Domestic Abuse Act 2021 s.23]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

107. Matters to be considered before giving a notice

(1) Before giving a domestic abuse protection notice to a person ("P"), a senior police officer must, among other things, consider the following —

(a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person and P are personally connected);

(b) the opinion of the person for whose protection the notice would be given as to the giving of the notice;

(c) any representations made by P about the giving of the notice; and

(d) in a case where the notice includes provision relating to premises lived in by the person for whose protection the notice would be given, the opinion of any relevant occupant as to the giving of the notice.

(2) In subsection (1)(d) "**relevant occupant**" means a person other than P or the person for whose protection the notice would be given —

(a) who lives in the premises; and

(b) who is personally connected to —

(i) the person for whose protection the notice would be given; or

(ii) if P also lives in the premises, P.

(3) The officer must take reasonable steps to discover the opinions mentioned in subsection (1).

(4) It is not necessary for the person for whose protection a domestic abuse protection notice is given to consent to the giving of the notice.

[UK Domestic Abuse Act 2021 s.24]

[S. 6(a) and (b)/Ord. 5/2017/w.e.f. 21/04/2017; S.6 Ord. 8/2022/w.e.f. 16/05/2022]

107A. …

[S. 10/Ord 3/2019/w.e.f. 10/04/19; S.6 Ord. 8/2022/w.e.f. 16/05/2022]

107B. …

[S. 11/Ord 3/2019/w.e.f. 10/04/19; S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108. Further requirements in relation to notices

(1) A domestic abuse protection notice must be in writing.

(2) A domestic abuse protection notice given to a person ("**P**") must state —

(a) the grounds on which it has been given;

(b) that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the notice;

(c) that an application for a domestic abuse protection order under section 108C will be heard by a court within 48 hours of the time of giving the notice (disregarding any days mentioned in section 108D(3)) and a notice of the hearing will be given to P;

(d) that the notice continues in effect until that application has been determined or withdrawn; and

(e) the provision that a court may include in a domestic abuse protection order.

(3) The notice must be served on P personally by a police officer.

(4) On serving the notice on P, the police officer must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.

(5) Subsection (6) applies where —

(a) a senior police officer gives a domestic abuse protection notice to a person ("**P**") who the officer believes is a person subject to service law in accordance with sections 367 to 369 of the Armed Forces Act 2006, in its application to the Falkland Islands;

(b) the notice includes provision by virtue of section 106(2) prohibiting P from entering premises, or requiring P to leave premises; and

(c) the officer believes that the premises are relevant service accommodation.

(6) The officer must make reasonable efforts to inform P's commanding officer of the giving of the notice.

(7) In this section —

"**commanding officer**" has the meaning given by section 360 of the Armed Forces Act 2006 in its application to the Falkland Islands;

"**relevant service accommodation**" means premises which fall within paragraph (a) of the definition of "service living accommodation" in section 96(1) of that Act.

[UK Domestic Abuse Act 2021 s.25]

[S. 12/Ord 3/2019/w.e.f. 10/04/19; S.6 Ord. 8/2022/w.e.f. 16/05/2022; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

108A. Breach of notice

(1) If a police officer has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the officer may arrest the person without warrant.

(2) A police officer may enter and search any premises for the purpose of arresting a person under subsection (1).

(3) A person arrested by virtue of subsection (1) must be held in custody and brought before the appropriate court —

(a) before the end of the period of 24 hours beginning with the time of the arrest; or

(b) if earlier, at the hearing of the application for a domestic abuse protection order against the person.

(4) In subsection (3) "**the appropriate court**" means the court which is to hear the application mentioned in subsection (3)(b).

(5) In calculating when the period of 24 hours mentioned in subsection (3)(a) ends, the following days are to be disregarded —

(a) any Sunday;

(b) Christmas Day; and

(c) any day which is a public holiday.

(6) If the person is brought before the court as mentioned in subsection (3)(a), the court may remand the person in custody or on bail.

(7) If the person is remanded in custody, the adjournment may not be for more than 3 weeks at a time.

(8) If the person is remanded on bail, the adjournment may not be for more than 4 weeks at a time.

(9) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

[UK Domestic Abuse Act 2021 s.26; S.6 Ord. 8/2022/w.e.f. 16/05/2022]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108B. Meaning of "domestic abuse protection order"

(1) A "**domestic abuse protection order**" is an order which, for the purpose of preventing a person ("P") from being abusive towards a person aged 16 or over to whom P is personally connected —

(a) prohibits P from doing things described in the order; or

(b) requires P to do things described in the order.

(2) A domestic abuse protection order may be made —

(a) on application; or

(b) in the course of proceedings referred to in section 108F.

(3) Section 108G sets out the conditions for making a domestic abuse protection order.

[UK Domestic Abuse Act 2021 s.27]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108C. Domestic abuse protection orders on application

(1) A court may make a domestic abuse protection order under this section against a person ("**P**") on an application made to it in accordance with this section.

(2) Where P is given a domestic abuse protection notice by a senior police officer under section 105, the Attorney General must apply for a domestic abuse protection order against P.

(3) An application made by the Attorney General for an order under this section must be made to the Summary Court, or, if that court is not sitting, to the Magistrate's Court.

(4) Where an application is made to a court in accordance with this section —

(a) the court may adjourn the hearing of the application;

(b) on the hearing of the application, section 279 of the Criminal Procedure and Evidence Ordinance 2014 (Power of justice of the peace to summon witnesses) does not apply in relation to a person for whose protection the order is sought, unless that person has given oral or written evidence at the hearing.

[UK Domestic Abuse Act 2021 s.28]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108D. Applications where domestic abuse protection notice has been given

(1) This section applies where, as a result of a person ("**P**") being given a domestic abuse protection notice under section 105, the Attorney General is required by section 108C(2) to apply for a domestic abuse protection order against P.

(2) The application must be heard by the court not later than 48 hours after the notice was given to P.

(3) In calculating when the period of 48 hours mentioned in subsection (2) ends, the following days are to be disregarded —

(a) any Sunday;

(b) Christmas Day; and

(c) any day which is a public holiday.

(4) P must be given a notice of the hearing of the application.

(5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 108(4).

(6) If the notice has not been given because P did not give an address under section 108(4), the court may hear the application if satisfied that reasonable efforts have been made to give P the notice.

(7) If the court adjourns the hearing of the application, the domestic abuse protection notice continues in effect until the application has been determined or withdrawn.

(8) If —

(a) P is brought before the court at the hearing of the application as a result of P's arrest by virtue of section 108A(1); and

(b) the court adjourns the hearing;

the court may remand P in custody or on bail.

[UK Domestic Abuse Act 2021 s.29]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108E. Remand under section 108D(8) of person arrested for breach of notice

(1) This section applies where —

(a) as a result of a person being given a domestic abuse protection notice under section 105, the Attorney General has applied for a domestic abuse protection order against the person; and

(b) the court remands the person under section 108D(8).

(2) If the person is remanded in custody, the adjournment may not be for more than 3 weeks at a time.

(3) If the person is remanded on bail, the adjournment may not be for more than 4 weeks at a time.

(4) If the court has reason to suspect that a medical report will be required, the power to remand the person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(5) If the court has reason to suspect that the person is suffering from mental disorder within the meaning of the Mental Health Ordinance 2010, the court has the same power to make an order under section 48 of that Ordinance (remand to hospital for report on accused's mental condition) as it has under that section in the case of an accused person (within the meaning of that section).

(6) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

[UK Domestic Abuse Act 2021 s.30]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108F. Domestic abuse protection orders otherwise than on application

(1) A court may make a domestic abuse protection order under this section in any of the cases set out in subsections (2), (4) and (5).

(2) Where a person ("**P**") has been convicted of an offence, the court dealing with P for that offence may (as well as sentencing P or dealing with P in any other way) make a domestic abuse protection order against P.

(3) Subsection (2) does not apply where the Court of Appeal is dealing with a person for an offence.

(4) A court by or before which a person is acquitted of an offence may make a domestic abuse protection order against the person.

(5) Where the Supreme Court allows a person's appeal against a conviction for an offence, the court may make a domestic abuse protection order against the person.

[UK Domestic Abuse Act 2021 s.31]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108G. Conditions for making an order

(1) The court may make a domestic abuse protection order under section 108C or 108F against a person ("**P**") if conditions A and B are met.

(2) Condition A is that the court is satisfied on the balance of probabilities that —

(a) P has been abusive towards another person ("**V**") aged 16 or over and to whom P is personally connected; or

(b) there is a risk that P will be so abusive if the order is not made.

[S.35 Ord. 7/2024/w.e.f. 03/02/2025]

(3) Condition B is that the order is necessary and proportionate to protect V from domestic abuse, or the risk of domestic abuse, carried out by P.

[S.35 Ord. 7/2024/w.e.f. 03/02/2025]

(4) It does not matter —

(a) whether the abusive behaviour referred to in subsection (2) took place in the Falkland Islands or elsewhere; or

(b) whether it took place before or after the coming into force of this section.

(5) ...

[UK Domestic Abuse Act 2021 s.32]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022; S.35 Ord. 7/2024/w.e.f. 03/02/2025]

108H. Matters to be considered before making an order

(1) Before making a domestic abuse protection order against a person ("**P**"), the court must, among other things, consider the following —

(a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the order (whether or not that person and P are personally connected);

(b) any opinion of the person for whose protection the order would be made —

(i) which relates to the making of the order, and

(ii) of which the court is made aware;

(c) in a case where the order includes provision relating to premises lived in by the person for whose protection the order would be made, any opinion of a relevant occupant —

(i) which relates to the making of the order; and

(ii) of which the court is made aware.

(2) In subsection (1)(c) "**relevant occupant**" has the same meaning as given in section 107(2).

(3) It is not necessary for the person for whose protection a domestic abuse protection order is made to consent to the making of the order.

[UK Domestic Abuse Act 2021 s.33]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108I. Provision that may be made by orders

(1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse.

"**Requirement**" includes any prohibition or restriction.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect the person for whose protection the order is made from different kinds of abusive behaviour.

(3) Subsections (4) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be made.

(4) A domestic abuse protection order may provide that the person against whom the order is made ("**P**") —

(a) may not contact the person for whose protection it is made;

(b) may not come within a specified distance of any premises in which that person lives;

(c) may not come within a specified distance of any other specified premises, or any other premises of a specified description.

"**Specified**" means specified in the order.

(5) If P lives in premises in which the person for whose protection the order is made also lives, the order may contain provision —

(a) prohibiting P from evicting or excluding that person from the premises;

(b) prohibiting P from entering the premises; or

(c) requiring P to leave the premises.

(6) A domestic abuse protection order may require P to submit to electronic monitoring ("**electronic monitoring requirement"**) of P's compliance with other requirements imposed by the order.

(7) Sections 108J and 108K contain further provision about the requirements that may be imposed by a domestic abuse protection order.

[UK Domestic Abuse Act 2021 s.35]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108J. Further provision about requirements that may be imposed by orders

(1) Requirements imposed on a person by a domestic abuse protection order must, so far as practicable, be such as to avoid —

(a) conflict with the person's religious beliefs;

(b) interference with the person's work or with the person's attendance at an educational establishment; and

(c) conflict with the requirements of any other court order or injunction to which the person may be subject.

(2) A domestic abuse protection order that imposes a requirement to do something on a person ("**P**") must specify the person who is to be responsible for supervising compliance with that requirement.

(3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person to be specified under subsection (2).

(4) Subsections (2) and (3) do not apply in relation to electronic monitoring requirements (see instead section 108K(3) to (5)).

(5) It is the duty of a person specified under subsection (2) —

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the "**relevant requirements**");

(b) to promote P's compliance with the relevant requirements;

(c) if the person considers that P has failed to comply with a relevant requirement, to inform a police officer; and

(d) if the person considers that P has complied with all relevant requirements, to inform the Attorney General.

(6) A person ("**P**") who is subject to a requirement imposed by a domestic abuse protection order —

(a) must keep in touch with the person specified under subsection (2) in relation to that requirement, in accordance with any instructions given by that person;

(b) if P changes home address, must notify the person specified under subsection (2) of the new home address;

(c) if P ceases to have any home address, must notify the person specified under subsection (2) of that fact.

(7) The obligations under subsection (6) have effect as requirements of the order.

[UK Domestic Abuse Act 2021 s.36]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108K. Further provision about electronic monitoring requirements

(1) Subsections (2) to (4) apply for the purpose of determining whether a court may impose an electronic monitoring requirement on a person ("**P**") in a domestic abuse protection order.

(2) The requirement may not be imposed in P's absence.

(3) If there is a person (other than P) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person's consent.

(4) The court may impose the requirement only if —

(a) electronic monitoring arrangements are available; and

(b) it is satisfied that the necessary provision can be made under the arrangements currently available.

(5) A domestic abuse protection order that includes an electronic monitoring requirement must specify the person who is to be responsible for the monitoring ("**the responsible person**").

(6) Where a domestic abuse protection order imposes an electronic monitoring requirement on a person, the person must (among other things) —

(a) submit, as required by the responsible person, to —

(i) being fitted with, or the installation of, any necessary apparatus; and

(ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring;

(b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring; and

(c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.

(7) The obligations under subsection (6) have effect as requirements of the order.

[UK Domestic Abuse Act 2021 s.37]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108L. Duration of orders

(1) Subject to subsection (2), a domestic abuse protection order takes effect on the day on which it is made.

(2) If, on the day on which a domestic abuse protection order ("**the new order**") is made against a person, the person is subject to another domestic abuse protection order ("**the previous order**"), the new order may be made so as to take effect on the previous order ceasing to have effect.

(3) A domestic abuse protection order has effect —

(a) for a specified period;

(b) until the occurrence of a specified event; or

(c) until further order.

"**Specified**" means specified in the order.

(4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.

(5) A domestic abuse protection order may not provide for an electronic monitoring requirement to have effect for more than 12 months.

(6) Subsection (5) is subject to any variation of the order under sections 108Q to 108R.

[UK Domestic Abuse Act 2021 s.38]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022; S.36 Ord. 7/2024/w.e.f. 03/02/2025]

108M. Breach of order

(1) A person who is subject to a domestic abuse protection order commits an offence if without reasonable excuse the person fails to comply with any requirement imposed by the order.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) Where a person is convicted of an offence under this section in respect of any behaviour, that behaviour is not punishable as a contempt of court.

(3) A person may not be convicted of an offence under this section in respect of any behaviour which has been punished as a contempt of court.

(4) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014 (conditional discharge).

[UK Domestic Abuse Act 2021 s 39]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108N. Notification requirements

(1) Subsections (2) to (6) apply where a person is subject to a domestic abuse protection order.

(2) The person must, within the period of three days beginning with the day on which the order is made, notify the police of the information in subsection (3).

(3) The information referred to in subsection (2) is —

(a) the person's name and, if the person uses one or more other names, each of those names; and

(b) the person's home address.

(4) If the person uses a name which has not been notified under this section, the person must, within the period of three days beginning with the day on which the person first uses that name, notify the police of that name.

(5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of the new home address.

(6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.

(7) The requirements imposed by subsections (2) to (6) do not apply where —

(a) the person is subject to another domestic abuse protection order (and accordingly those requirements already apply); or

(b) the person is subject to notification requirements under Part 11 or section 154I.

(8) If on any day the person ceases to be subject to any notification requirements as mentioned in subsection (7)(a) or (b), the requirements imposed by subsections (2) to (6) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day.

(9) For provision about how to give a notification under subsection (2), (4), (5) or (6), see section 108O.

[UK Domestic Abuse Act 2021 s.41]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108O. Further provision about notification under section 108N

(1) A person gives a notification under section 108N(2), (4), (5) or (6) by —

(a) attending at a police station; and

(b) giving an oral notification to —

(i) a police officer; or

(ii) any person authorised for the purpose by the officer in charge of the station.

(2) A notification given in accordance with this section must be acknowledged in writing.

(3) When a person ("**P**") gives a notification under section 108N, P must, if requested to do so by the person to whom notification is given, allow that person to do any of the following things—

(a) take P's fingerprints;

(b) photograph, or otherwise produce an image of, P or any part of P.

(4) The power in subsection (3) is exercisable for the purpose of verifying P's identity.

[UK Domestic Abuse Act 2021 s.42]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108P. Offences relating to notification

(1) A person ("**P**") commits an offence if P —

(a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 108N, or

(b) notifies the police, in purported compliance with such a requirement, of any information which P knows to be false.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who fails, without reasonable excuse, to comply with section 108O(3) commits an offence.

Penalty: Imprisonment for 12 months or a fine, or both.

(3) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 108N.

(4) The person continues to commit the offence throughout any period during which the failure continues.

(5) The person may not be prosecuted more than once in respect of the same failure.

[UK Domestic Abuse Act 2021 s.43]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108Q. Variation and discharge of orders

(1) A domestic abuse protection order (made under this Ordinance) may be varied or discharged—

(a) on application under section 108QA(1), (2) or (3);

(b) by a court on its own initiative without an application in accordance with section 108QB; or

(c) by a civil or family court under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024.

(2) A Civil or Family DAP order may be varied or discharged (under this Ordinance) —

(a) on application under section 108QA(3); or

(b) by a court on its own initiative without an application in accordance with section 108QB.

(3) Subsection (2) does not limit Part 4 of the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024.

(4) An order that is varied under this section and sections 108QA to 108R —

(a) remains an order of the court that originally made it even if it is varied by a different court; and

(b) in the case of a Civil or Family DAP order, remains an order made under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024 even if it is amended under this Ordinance.

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

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

[S.37 Ord. 7/2024/w.e.f. 03/02/2025]

108QA. Application to vary or discharge

(1) An application to vary or discharge a domestic abuse protection order may be made to the court that made the order by —

(a) the person for whose protection the order was made;

(b) the person against whom the order was made;

(c) the Attorney General.

(2) If the order was made by the Summary Court and that court is not sitting, the application may be made to the Magistrate's Court.

(3) If the defendant in any criminal proceedings is subject to a domestic abuse protection order or a Civil or Family DAP order, the Attorney General may apply to the court hearing those proceedings to vary or discharge the order.

(4) If an application is made under subsection (3), the court must deal with the application in the way it considers most appropriate in the circumstances.

(5) Without limiting subsection (4), the court may do any of the following —

(a) deal with the application as part of the criminal proceedings referred to in subsection (3);

(b) refer the application to the court that made the order;

(c) adjourn the proceedings referred to in subsection (3) while the application is dealt with;

(d) make any other orders the court considers appropriate.

(6) If an application is referred to another court under subsection (5)(b), that court is to deal with it as an application made under subsection (1) or section 21 of the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024 (as the case requires).

[S.37 Ord. 7/2024/w.e.f. 03/02/2025]

108QB. Order may be varied or discharged without application

(1) This section applies if —

(a) the defendant in any criminal proceedings is subject to a domestic abuse protection order or a Civil or Family DAP order;

(b) it appears to the court that it may be appropriate to vary or discharge the order; and

(c) no application is made under section 108QA(3).

(2) The court may consider varying or discharging (and if appropriate vary or discharge) the order on its own initiative without an application being made.

(3) For that purpose, this Ordinance and all other applicable laws (including the laws of evidence and court rules) apply as if the Attorney General had made an application under section 108QA(3).

[S.37 Ord. 7/2024/w.e.f. 03/02/2025]

108R. Consideration of applications to vary or discharge

(1) This section applies in relation to the variation or discharge of a domestic abuse protection order or a Civil or Family DAP order under sections 108Q to 108QB.

(2) Before deciding whether to vary or discharge the order, the court must hear from —

(a) the Attorney General, if they wish to be heard; and

(b) in a case where the person for whose protection the order was made ("**V**") is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, V.

(3) Section 108H (matters to be considered before making an order) applies in relation to the variation or discharge as it applies in relation to the making of an order, but as if references to the person for whose protection the order would be made were references to V.

(4) Subject to subsections (5) to (9), the court may vary or discharge the order as it considers appropriate.

(5) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect only if it is satisfied that it is necessary and proportionate for the purposes set out in section 108I(1).

(6) The court must not extend the period for which an electronic monitoring requirement has effect by more than 12 months at a time.

(7) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary and proportionate for the purposes set out in section 108I(1).

(8) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court —

(a) must not extend the requirement; and

(b) must remove the requirement.

(9) The court may discharge the order only if satisfied that the order is no longer necessary for the purposes set out in section 108I(1).

[UK Domestic Abuse Act 2021 s.45]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

[S.37 Ord. 7/2024/w.e.f. 03/02/2025]

108S. Appeals

(1) A person listed in subsection (2) may appeal against any decision of a court —

(a) to grant, vary, or discharge a domestic abuse protection order (whether that decision was made on an application or by the court on its own initiative); or

(b) to refuse an application to grant, vary or discharge a domestic abuse protection order.

[S.38 Ord. 7/2024/w.e.f. 03/02/2025]

(2) The persons referred to in subsection (1) are —

(a) the person for whose protection the order was sought or made;

(b) the person against whom the order was sought or made; and

(c) the Attorney General.

[S.38 Ord. 7/2024/w.e.f. 03/02/2025]

(3) An appeal arising by virtue of subsection (1) —

(a) in the case of a decision made by the Summary Court, is to be made to the Magistrate's Court;

(b) in the case of a decision made by the Magistrate's Court, is to be made to the Supreme Court; and

(c) in the case of a decision made by the Supreme Court, is to be made to the Court of Appeal.

[UK Domestic Abuse Act 2021 s.46]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108T. Further provision about appeals

(1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 108S), the court must hear from the Attorney General.

(2) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against —

(a) confirm, vary or revoke any part of the decision;

(b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;

(c) make any order which the court that made the decision appealed against could have made; or

(d) make any incidental or consequential orders that appear to it to be just.

(3) For the purposes of section 108R (variation and discharge: supplementary) —

(a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (2)(a) or otherwise) remains an order of the court that first made it; and

(b) a domestic abuse protection order made by a court on an appeal (whether under subsection (2)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

[UK Domestic Abuse Act 2021 s.47]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108U. Nature of certain proceedings

(1) In proceedings before a court by virtue of sections 108F and 108Q to 108R, the court —

(a) is not restricted to considering evidence that would have been admissible in proceedings in which the person concerned was convicted or (as the case may be) acquitted; and

(b) may adjourn any proceedings even after sentencing or acquitting the person concerned or allowing the person's appeal.

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

[S.39 Ord. 7/2024/w.e.f. 03/02/2025]

(2) A domestic abuse protection order may be made or varied in addition to an order discharging the person conditionally or absolutely despite sections 502 and 505 of the Criminal Procedure and Evidence Ordinance 2014 (which relate to orders discharging a person conditionally or absolutely and their effect).

(3) In proceedings before a court by virtue of sections 108C, 108F and 108Q to 108R, the court may make a special measures direction under sections 434 to 442 of the Criminal Procedure and Evidence Ordinance 2014 in relation to any person giving evidence in the proceedings.

[UK Domestic Abuse Act 2021 (UK), ss.48, 49 modified]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

[S.39 Ord. 7/2024/w.e.f. 03/02/2025]

108V. Interpretation of sections 105 to 108U

(1) In sections 105 to 108U —

"**Civil or Family DAP order**" means a domestic abuse protection order made under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024;

[S.40 Ord. 7/2024/w.e.f. 03/02/2025]

"**domestic abuse protection notice**" has the meaning given by section 105(2);

"**domestic abuse protection order**" has the meaning given by section 108B(1);

"**electronic monitoring requirement**" has the meaning given by section 108I(6);

"**home address**", in relation to a person, means —

(a) the address of the person's sole or main residence in the Falkland Islands, or

(b) if the person has no such residence —

(i) the address or location of a place in the Falkland Islands where the person can regularly be found;

(ii) if there is more than one such place, the address or location of whichever one of those places the person selects;

"**requirement**", in relation to a domestic abuse protection order, is to be read in accordance with section 108I(1);

"**senior police officer**" has the meaning given by section 105(1).

(2) Any reference to changing home address includes a reference to a case where —

(a) a person acquires a home address at any time; and

(b) immediately before that time, the person did not have a home address.

[UK Domestic Abuse Act 2021 s.56]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

Domestic abuse protection: offences

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

108W. Offence of breaching non-molestation order

(1) A person who without reasonable excuse does anything that is prohibited by a non-molestation order commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of subsection (1) a "**non-molestation order**" means an order containing either or both of the following provisions —

(a) provision prohibiting a person from molesting another person;

(b) provision prohibiting the person from molesting a child.

(3) In the case of a non-molestation order that was made ex parte a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

(4) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.

(5) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

[UK Protection from Harassment Act 1997 s.3]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108X. Controlling or coercive behaviour in intimate or family relationships

(1) A person ("**A**") commits an offence if —

(a) A repeatedly or continuously engages in behaviour towards another person ("**B**") that is controlling or coercive;

(b) at the time of the behaviour, A and B are personally connected (as defined by section 103(1));

(c) the behaviour has a serious effect on B; and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A does not commit an offence under this section if at the time of the behaviour in question —

(a) A —

(i) has parental responsibility for B for the purposes of section 5 of the Children Ordinance 2014;

(ii) is otherwise legally liable to maintain B; or

(iii) has care of B; and

(b) B is under 16.

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

(3) A's behaviour has a "**serious effect**" on B if —

(a) it causes B to fear, on at least two occasions, that violence will be used against B; or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

(4) For the purposes of subsection (1)(d), A "**ought to know**" that which a reasonable person in possession of the same information would know.

(5) In proceedings for an offence under this section it is a defence for A to show that —

(a) in engaging in the behaviour in question, A believed that A was acting in B's best interests; and

(b) the behaviour was in all the circumstances reasonable.

(6) ...

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

(7) The defence in subsection (5) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

[UK Serious Crime Act 2015 s.76]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

108Y. Offences under section 108X committed outside the Falkland Islands

If —

(a) a person's behaviour consists of or includes behaviour in a country outside the Falkland Islands; and

(b) the behaviour would constitute an offence under section 108X if it occurred in the Falkland Islands,

the person is guilty in the Falkland Islands of that offence.

[UK Serious Crime Act 2015 s.76A(1)]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

Guidance for police

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

108Z. Guidance

(1) The Attorney General may from time to time issue guidance relating to the exercise of functions by police officers under sections 105 to 108U.

(2) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

[UK Domestic Abuse Act 2022 s. 50 modified]

[S.6 Ord. 8/2022/w.e.f. 16/05/2022]

Human organ transplants

109. Prohibition of commercial dealings in human organs

(1) A person who —

(a) makes or receives any payment for the supply of, or for an offer to supply, an organ which has been or is to be removed from a dead or living person and which is intended to be transplanted into another person whether in the Falkland Islands or elsewhere;

(b) seeks to find a person willing to supply for payment such an organ as is mentioned in paragraph (a), or to offer to supply such an organ for payment;

(c) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, such an organ; or

(d) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements,

commits an offence.
Penalty: Imprisonment for 3 years.

(2) Without limiting subsection (1)(b), a person who causes to be published or distributed, or knowingly publishes or distributes in the Falkland Islands an advertisement —

(a) inviting persons to supply for payment any such organs as are mentioned in subsection (1)(a) or offering to supply any such organs for payment; or

(b) indicating that the advertiser is willing to initiate or negotiate any such arrangement as is mentioned in subsection (1)(c),

commits an offence.
Penalty: Imprisonment for 3 years or a fine, or both.

(3) In this section "**payment**" means payment in money or money's worth but does not include any payment for defraying or reimbursing —

(a) the cost of removing, transporting or preserving the organ to be supplied; or

(b) any expenses or loss of earnings incurred by a person reasonably and directly attributable to the person's supplying an organ from his or her body.

(4) In this section "**advertisement**" includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons.

[UK Human Organs Transplant Act 1989 ss.1 to 3]

110. Restriction on transplants between persons not genetically related

(1) A person who —

(a) removes from a living person an organ intended to be transplanted into another person; or

(b) transplants an organ removed from a living person into another person,

commits an offence unless the person into whom the organ is to be or, as the case may be, is transplanted is genetically related to the person from whom the organ is removed.
Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section a person is genetically related to —

(a) his or her natural parents and children;

(b) his or her brothers and sisters of the whole or half blood;

(c) the brothers and sisters of the whole or half blood of either of his or her natural parents; and

(d) the natural children of his or her brothers and sisters of the whole or half blood or of the brothers and sisters of the whole or half blood of either of his or her natural parents,

but a person is not in any particular case to be treated as related in any of those ways unless the fact of the relationship has been established by means specified by regulations made by the Governor.

(3) The prohibition in subsection (1) does not apply if —

(a) the authority constituted under section 111(1)(a) is satisfied —

(i) that no payment has been or is to be made in contravention of section 109; and

(ii) that any other conditions specified in the regulations are satisfied; and

(b) any other requirements specified in the regulations under that section are complied with.

[UK Human Organs Transplant Act 1989 ss.1 to 3]

111. Human organ transplants: Supplementary

(1) The Governor may make regulations —

(a) constituting or designating an authority to exercise powers under section 110 and this section;

(b) requiring the persons specified in the regulations to supply to the authority information so specified with respect to transplants that have been or are proposed to be carried out in the Falkland Islands using organs removed from dead or living persons;

(c) providing for other matters for which regulations are required by section 110.

(2) The authority must keep a record of information supplied to it pursuant to the regulations made under this section.

(3) A person who without reasonable excuse fails to comply with regulations made under subsection (1)(b) commits an offence.
Penalty: A fine at level 3 on the standard scale.

(4) A person who, in purported compliance with such regulations, knowingly or recklessly supplies information which is false or misleading in a material respect commits an offence.
Penalty: A fine at level 5 on the standard scale.

(5) The power to make regulations under this section and section 110 is exercisable by the Governor in Council after consulting the Criminal Justice Council.

(6) The expenses of the authority must be defrayed by the Governor out of money provided by the Legislative Assembly.

[UK Human Organs Transplant Act 1989 ss.1 to 3]

Crimes against humanity

112. Genocide, crimes against humanity and war crimes

(1) It is an offence against the law of the Falkland Islands for a person to commit genocide, a crime against humanity or a war crime.
Penalty: As provided in subsections (3) and (4).

(2) It is an offence against the law of the Falkland Islands for a person to engage in conduct ancillary to an offence under subsection (1).
Penalty: As provided in subsections (3) and (4).

(3) A person convicted of —

(a) an offence under this section involving murder; or

(b) an offence ancillary to an offence involving murder,

must be sentenced as for an offence of murder.

(4) In any other case a person convicted of an offence under this section is liable to imprisonment for 30 years.

(5) An offence under subsection (1) or (2) is triable on indictment only.

[UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57]

113. Genocide, etc.: Supplementary provisions

(1) For the purposes of this Part —

"**crime against humanity**" means a crime against humanity as defined in Article 7 of the Statute;

"**genocide**" means an act of genocide as defined in Article 6 of the Statute;

"**war crime**" means a war crime as defined in Article 8.2 of the Statute; and

"**the Statute**" means the Rome Statute of the International Criminal Court which entered into force on 1 July 2002, as amended from time to time.

(2) In interpreting and applying the provisions of the Articles mentioned in subsection (1) a court must take into account —

(a) any relevant Elements of Crimes adopted in accordance with Article 9 of the Statute; and

(b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30 June 2000.

(3) The Articles referred to in subsection (1) are for the purposes of this Part to be construed subject to and in accordance with any relevant reservation or declaration made by the United Kingdom when ratifying any treaty or agreement relevant to the interpretation of those Articles.

(4) In interpreting and applying the provisions of the Articles referred to in subsection (1) the court must take into account any relevant judgment or decision of the International Criminal Court. Account may also be taken of any other relevant international jurisprudence.

(5) Section 112(1) and (2) apply to acts committed —

(a) in the Falkland Islands; or

(b) outside the Falkland Islands by a person who has Falkland Islands status or a person ordinarily resident in the Falkland Islands.

(6) Subsection (5) applies to an act that if committed in the Falkland Islands would constitute an offence under section 112 (1) or (2) but which, being committed (or intended to be committed) outside the Falkland Islands, does not constitute such an offence.

(7) No proceedings for an offence under section 112 may be commenced except by, or with the consent of, the Attorney General.

(8) In section 112(3) "**murder**" means the killing of a person in such circumstances as would, if committed in the Falkland Islands, constitute murder.

[UK International Criminal Court (OT) Order 2001 Schedule 2 Arts. 55 to 57]

Miscellaneous offences

114. Piracy endangering life

(1) A person who, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel —

(a) assaults, with intent to murder, any person who is on board of or belongs to the ship or vessel;

(b) stabs, cuts, or wounds any such person; or

(c) unlawfully does any act by which the life of any such person may be endangered,

commits an offence.
Penalty: Life imprisonment.

(2) For purposes of this Part, "**piracy**" means piracy *jure gentium* as understood in the courts of England and Wales, and includes, but is not limited to, piracy as defined in Articles 101 to 103 United Nations Convention on the Law of the Sea.

(3) An offence under this section is triable on indictment only.

[UK Piracy Act 1837 s.2 adapted]

115. Kidnapping and false imprisonment

(1) A person who, by force or fraud, takes or carries away a person —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.
Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who imprisons another person or restrains another person from freely moving from any place —

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

116. Torture

(1) A person who is —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person in the performance or purported performance of official duties, commits the offence of torture.
Penalty: Imprisonment for life.

(2) A person who does not fall within subsection (1) above and who, in the Falkland Islands or elsewhere, intentionally inflicts severe pain or suffering on another person at the instigation or with the consent or acquiescence of —

(a) a public officer; or

(b) a person of any nationality acting in an official capacity,

who is performing or purporting to perform official duties when he or she instigates the commission of the offence or consents to or acquiesces in it, commits the offence of torture.
Penalty: Imprisonment for life.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It is a defence for a person charged with an offence under this section in respect of any conduct to prove that the person had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section "**lawful authority, justification or excuse**" means —

(a) in relation to pain or suffering inflicted in the Falkland Islands – lawful authority, justification or excuse under the law of the Falkland Islands;

(b) in relation to pain or suffering inflicted outside the Falkland Islands —

(i) if it was inflicted by a the Falkland Islands public officer acting under Falkland Islands law or by a person acting in an official capacity under that law - lawful authority, justification or excuse under that law;

(ii) in any other case - lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) No prosecution for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

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

(7) An offence under subsection (1) or (2) is triable on indictment only.

[UK CJ Act 1988 ss.134, 135; CJ Act (OT) Order 1988]

117. Slavery, servitude and forced or compulsory labour

(1) A person ('**A**') commits an offence if —

(a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held; or

(b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (Convention for the Protection of Human Rights and Fundamental Freedoms) agreed by the Council of Europe at Rome on 4 November 1950.

[UK Coroners and Justice Act 2009 s.71]

118. Bigamy

(1) Subject to subsection (2), a married person ('**A**') who marries any other person during the life of A's former husband or wife commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) Subsection (1) does not apply to a person ('**A**') who marries a second time if —

(a) A's husband or wife has been continually absent from A for at least 7 years up to the date of the second marriage and has not been known by A to be living within that time;

(b) at the time of the second marriage, A has been divorced from the bonds of the first marriage; or

(c) A's first marriage has been annulled or declared void by a court of competent jurisdiction.

[UK OAP Act 1861 s.57]

Use of force

119. Use of force in making arrest, etc.

Section 782 of the Criminal Procedure and Evidence Ordinance 2014 applies in relation to the use of force in effecting an arrest or in assisting in the prevention of crime.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

120. Self-defence

(1) This section applies if in proceedings for an offence —

(a) an issue arises as to whether a person charged with the offence ("**D**") is entitled to rely on a defence within subsection (2); and

(b) the question arises whether the degree of force used by D against a person ("**V**") was reasonable in the circumstances.

(2) The defences are —

(a) the common law defence of self-defence;

(b) the common law defence of defence of property; and

(c) the defence provided by section 119.

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances —

(a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but

(b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not —

(i) it was mistaken; or

(ii) if it was mistaken - the mistake was a reasonable one to have made.

(5) Subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) —

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

(9) Subsection (7) is not to be read as preventing other matters from being taken into account if they are relevant to deciding the question mentioned in subsection (3).

(10) In this section —

(a) "**legitimate purpose**" means —

(i) the purpose of self-defence under the common law; or

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.

[UK Criminal Justice & Immigration Act 2008 s.76 am. by LASPO Act 2012 s.148]

PART 5 - CORPORATE MANSLAUGHTER AND ENDANGERMENT OF LIFE

[S. 13/Ord 3/2019/w.e.f. 10/04/19]

Preliminary

121. Interpretation of Part

[S.R. & O. 6/2017/w.e.f. 13/4/2017]
(1) In this Part —

"**corporation**" does not include a corporation sole but includes any corporate body wherever incorporated;

"**employee**" means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly;

"**employers' association**" means an organisation which consists wholly or mainly of employers and whose principal purposes include the regulation of relations between employers and workers or trade unions; or any constituent or affiliated organisation having the same purposes;

"**enforcement authority**" means an authority responsible for the enforcement of any health and safety legislation of or applicable to the Falkland Islands;

"**exempt department**" means a department of the Government that is exempted from the application of this Part by an order made under subsection (2) in relation to the whole or any provision of this Part;

"**health and safety legislation**" means any enactment of or applied to the Falkland Islands that deals with health and safety matters;

"**partnership**" means a partnership within the Companies and Private Partnership Ordinance 1922 or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

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

"**premises**" includes land, buildings and moveable structures;

"**public authority**" includes any person any of whose functions are functions of a public nature, but does not include —

(a) any court or tribunal;

(b) the Legislative Assembly or a person exercising functions in connection with proceedings in the Legislative Assembly;

"**publicity order**" means an order under section 134(1);

"**remedial order**" means an order under section 133(1);

"**trade union**" has the meaning given by the Trade Unions and Trade Disputes Ordinance 1942.

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

(2) The Governor may by order exempt any department of the Government from the application of this Part, or any provision of this Part, if the Governor considers it to be in the public interest to do so.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.25 adapted; Human Rights Act 1998 s.6; UK Trade Union and Labour (Consolidation) Act 1992 s.122]

122. Corporate manslaughter

(1) An organisation to which this section applies commits the offence of corporate manslaughter if the way in which its activities are managed or organised —

(a) causes a person's death; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Penalty: A fine.

(2) The organisations to which this section applies are —

(a) a corporation;

(b) a department of the Government (other than an exempt department);

(c) a police force;

(d) a partnership, or a trade union or employers' association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part —

(a) "**relevant duty of care**" has the meaning given by section 123, read with sections 124 to 128;

(b) a breach of a duty of care by an organisation is a "**gross**" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;

(c) "**senior management**", in relation to an organisation, means the persons who play significant roles in —

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence of corporate manslaughter is triable on indictment only

(6) This section applies only if the harm resulting in death is sustained —

(a) in the Falkland Islands (including its territorial waters);

(b) on a ship or aircraft registered in the Falkland Islands; or

(c) on, under or above an installation in waters to which section 179 of the Criminal Procedure and Evidence Ordinance 2014 applies, or any waters within 500 metres of any such installation.

(7) For the purposes of subsection (6)(b), harm sustained on a ship or aircraft includes harm sustained by a person who —

(a) is then no longer on board the ship or aircraft in consequence of the wrecking of it or of some other mishap affecting it or occurring on it; and

(b) sustains the harm in consequence of that event.

122A. Corporate endangerment of life

(1) An organisation to which this section applies commits the offence of corporate endangerment of life if the way in which its activities are managed or organised —

(a) causes a person (A) grievous bodily harm; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to A.

Penalty: A fine.

(2) The organisations to which this section applies are —

(a) a corporation;

(b) a department of the Government (other than an exempt department);

(c) a police force;

(d) a partnership, or a trade union or employers' association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part —

(a) "**relevant duty of care**" has the same meaning given by section 123, read with sections 124 to 128;

(b) a breach of a duty of care by an organisation is a "**gross**" breach if the act alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances; and

(c) "**senior management**", in relation to an organisation, means the persons who play significant roles in —

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence of corporate endangerment of life is triable on indictment only.

(6) This section applies only if the harm resulting in grievous bodily harm is sustained —

(a) in the Falkland Islands (including in its territorial waters);

(b) on a ship or aircraft registered in the Falkland Islands; or

(c) on, under or above an installation in waters to which section 179 of the Criminal Procedure and Evidence Ordinance 2014 applies, or any waters within 500 metres of any such installation.

(7) For the purposes of subsection (6)(b), harm sustained on a ship or aircraft includes harm sustained by a person who —

(a) is no longer on board the ship or aircraft in consequence of the wrecking of it or of some other mishap affecting it or occurring on it; and

(b) sustains the harm in consequence of that event.

[S. 14/Ord 3/2019/w.e.f. 10/04/19]

Relevant duty of care

123. Meaning of "relevant duty of care"

(1) A "**relevant duty of care**", in relation to an organisation, means any of the following duties owed by it under the law of negligence —

(a) a duty owed to its employees or to other persons working for the organisation or performing services for it;

(b) a duty owed as occupier of premises;

(c) a duty owed in connection with —

(i) the supply by the organisation of goods or services (whether for consideration or not);

(ii) the carrying on by the organisation of any construction or maintenance operations;

(iii) the carrying on by the organisation of any other activity on a commercial basis; or

(iv) the use or keeping by the organisation of any plant, vehicle or other thing;

(d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.

(2) A person is within this subsection if the person —

(a) is detained at a prison or in a custody area at a court or police station;

(b) is being transported in a vehicle, or being held in any premises, pursuant to prison escort arrangements or immigration escort arrangements;

(c) is detained under the Mental Health Ordinance 2010.

(3) Subsection (1) is subject to sections 124 to 129.

(4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

(5) For the purposes of this Part —

(a) whether a particular organisation owes a duty of care to a particular individual is a question of law; and

(b) the judge must make any findings of fact necessary to decide that question.

(6) For the purposes of this Part there is to be disregarded —

(a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;

(b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of the person's acceptance of a risk of harm.

(7) In this section —

"**construction or maintenance operations**" means operations of any of the following descriptions—

(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of —

(i) any building or structure;

(ii) anything else that forms, or is to form, part of the land; or

(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

"**the law of negligence**" includes, but is not limited to, health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

124. Public policy decisions, exclusively public functions and statutory inspections

(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a "relevant duty of care".

(2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a "relevant duty of care" unless it falls within paragraph (a), (b) or (d) of section 123(1).

(3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a "relevant duty of care" unless it falls within paragraph (a) or (b) of section 123(1).

(4) In this section —

"**exclusively public function**" means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred —

(a) by the exercise of that prerogative; or

(b) by or under a statutory provision;

"**statutory function**" means a function conferred by or under a statutory provision.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

125. Military activities

(1) Any duty of care owed by the Ministry of Defence of the United Kingdom or by the Government in relation to the Falkland Islands Defence Force in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,

is not a "relevant duty of care".

(2) The operations within this subsection are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces or of the Falkland Islands Defence Force, as the case may be, come under attack or face the threat of attack or violent resistance.

(3) Any duty of care owed by the Ministry of Defence in respect of activities carried on by members of the special forces is not a "relevant duty of care".

(4) In this section "**the special forces**" means those units of the armed forces the maintenance of whose capabilities is the responsibility of the Commander British Forces, South Atlantic Islands, or which are for the time being subject to the operational command of the Commander.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

126. Policing and law enforcement

(1) Any duty of care owed by a public authority in respect of —

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a "relevant duty of care".

(2) Operations are within this subsection if —

(a) they are operations for dealing with terrorism, civil unrest or serious disorder;

(b) they involve the carrying on of policing or law-enforcement activities; and

(c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a "relevant duty of care" unless it falls within paragraph (a), (b) or (d) of section 123(1).

(4) In this section "**policing or law-enforcement activities**" includes —

(a) activities carried on in the exercise of functions that are —

(i) functions of the police force; or

(ii) functions of the same or a similar nature exercisable by public authorities other than the police force;

(b) activities carried on in the exercise of functions of police officers employed by a public authority;

(c) activities carried on to enforce any provision contained in or made under the Immigration Ordinance 1999.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

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

127. Emergencies

(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a "relevant duty of care" unless it falls within paragraph (a), (b) or (d) of section 123(1)..

(2) The organisations within this subsection are —

(a) a fire and rescue authority;

(b) any other organisation providing a service of responding to emergency circumstances either —

(i) pursuant to an arrangement made with the Government; or

(ii) (if not pursuant to such an arrangements) otherwise than on a commercial basis;

(c) a public hospital;

(d) an organisation providing ambulance services pursuant to an arrangement made with the Government;

(e) an organisation providing services for the transport of organs, blood, equipment or personnel pursuant to an arrangement with the Government;

(f) the armed forces;

(g) Falkland Islands Defence Force.

(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which —

(a) medical treatment is carried out; or

(b) decisions within subsection (4) are made.

(4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.

(5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a "relevant duty of care" unless it falls within section 123(1)(a) or (b).

(6) Any duty of care owed in respect of action taken in order to comply with a safety direction under the Merchant Shipping Ordinance 2001 or any UK enactment applied by the Merchant Shipping (Adoption of Legislation) Ordinance 1992, or with action in lieu of direction, is not a "relevant duty of care" unless it falls within section 123(1)(a) or (b).

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

(7) In this section —

"**emergency circumstances**" means circumstances that are present or imminent and —

(a) are causing, or are likely to cause, serious harm or a worsening of such harm; or

(b) are likely to cause the death of a person;

"**medical treatment**" includes any treatment or procedure of a medical or similar nature;

"**serious harm**" means —

(a) serious injury to or the serious illness (including mental illness) of a person;

(b) serious harm to the environment (including the life and health of plants and animals);

(c) serious harm to any building or other property.

(8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

128. Child protection and probation functions

(1) A duty of care to which this section applies is not a "relevant duty of care" unless it falls within paragraph (a), (b) or (d) of section 123(1).

(2) This section applies to any duty of care that the Crown owes in respect of the exercise by it of functions conferred by or under the Children Ordinance 2014.

(3) This section also applies to any duty of care that a public authority owes in respect of the exercise by it of supervision or similar functions conferred by or under the Criminal Procedure and Evidence Ordinance 2014.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

129. Gross breach: Factors

(1) This section applies if —

(a) it is established that an organisation owed a relevant duty of care to a person; and

(b) it falls to the court, or the jury, if there is one, to decide whether there was a gross breach of that duty.

(2) The court or jury, as the case may be, must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so —

(a) how serious that failure was;

(b) how much of a risk of death or grievous bodily harm it posed.

[S. 15/Ord 3/2019/w.e.f. 10/04/19]

(3) The court or jury, as the case may be, may also —

(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;

(b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the court or jury, as the case may be, from having regard to any other matters they consider relevant.

(5) In this section "**health and safety guidance**" means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.1 to 8]

Application to particular categories of organisation

130. Application to public bodies

(1) An organisation that is a servant or agent of the Crown is not by virtue of its status immune from prosecution under this Part.

(2) For the purposes of this Part —

(a) every department of the Government (other than an exempt department); and

(b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government or servant or agent of the Crown.

(3) For the purposes of sections 122 and 122A —

[S. 16/Ord 3/2019/w.e.f. 10/04/19]

(a) a person who is —

(i) employed by or under the Crown for the purposes of a department of the Government; or

(ii) employed by a person whose staff constitute such a department,

is to be treated as employed by that department; and

(b) any premises occupied for the purposes of —

(i) a department of the Government; or

(ii) a person whose staff constitute such a department,

are to be treated as occupied by that department.

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

(4) For the purposes of sections 122 to 127, anything purporting to be done by a department or body of the Government, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.11]

131. Application to police force

(1) For the purposes of this Part, the police force is to be treated as owing whatever duties of care it would owe if it were a corporate body.

(2) For the purposes of sections 122 and 122A —

[S. 17(1)/Ord 3/2019/w.e.f. 10/04/19]

(a) a member of the police force is to be treated as employed by the force;

(b) a reserve police officer is to be treated as employed by the police force;

(c) a probationary police officer undergoing training with a view to becoming a member of the police force is to be treated as employed by the force.

(3) For the purposes of sections 122 and 122A, any premises occupied for the purposes of the police force are to be treated as occupied by the force.

[S. 17(1)/Ord 3/2019/w.e.f. 10/04/19]

(4) For the purposes of sections 122 to 127, anything that would be regarded as done by the police force if the force were a corporate body is to be so regarded.

(5) If —

(a) by virtue of subsection (3) a person is treated for the purposes of section 122 or 122A as employed by the police force; and

(b) by virtue of any other statutory provision (whenever made) the person is, or is treated as, employed by another organisation,

the person is to be treated for those purposes as employed by both the force and the other organisation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.13]

[S. 17(2)/Ord 3/2019/w.e.f. 10/04/19]

132. Application to partnerships

(1) For the purposes of this Part a partnership is to be treated as owing whatever duties of care it would owe if it were a corporate body.

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

(2) Proceedings for an offence under this Part alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of its members).

(3) A fine imposed on a partnership on its conviction of an offence under this Part is to be paid out of the funds of the partnership.

(4) This section does not apply to a partnership that is a legal person under the law by which it is governed.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.14]

Enforcement and procedure

133. Power to order breach, etc. to be remedied

(1) A court before which an organisation is convicted of corporate manslaughter or corporate endangerment of life may make an order (a "remedial order") requiring the organisation to take specified steps to remedy —

[S. 18(1)/Ord 3/2019/w.e.f. 10.04/19]

(a) the breach mentioned in section 122(1) or 122A(1) (" the relevant breach");

[S. 18(2)/Ord 3/2019/w.e.f. 10/04/19]

(b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death or grievous bodily harm;

[S. 18(3)/Ord 3/2019/w.e.f. 10/04/19]

(c) any deficiency, as regards health and safety matters, in the organisation's policies, systems or practices of which the relevant breach appears to the court to be an indication.

(2) A remedial order —

(a) may be made only on an application by the prosecution specifying the terms of the proposed order;

(b) must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the organisation.

(3) Before making an application for a remedial order the prosecution must consult such enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach.

(4) A remedial order —

(a) must specify a period within which the steps referred to in subsection (1) are to be taken;

(b) may require the organisation to supply to an enforcement authority consulted under subsection (3), within a specified period, evidence that those steps have been taken.

(5) A period specified under subsection (4) may be extended or further extended by order of the court on an application made before the end of that period or extended period.

(6) An organisation that fails to comply with a remedial order commits an offence, the maximum penalty for which is a fine.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.9]

134. Power to order conviction, etc. to be publicised

(1) A court before which an organisation is convicted of corporate manslaughter or corporate endangerment of life may make an order (a "**publicity order**") requiring the organisation to publicise in a specified manner —

[S. 19/Ord 3/2019/w.e.f. 10/04/19]

(a) the fact that it has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(2) In deciding on the terms of a publicity order that it is proposing to make, the court must —

(a) ascertain the views of such enforcement authority or authorities (if any) as it considers appropriate; and

(b) have regard to any representations made by the prosecution or on behalf of the organisation.

(3) A publicity order —

(a) must specify a period within which the requirements referred to in subsection (1) are to be complied with;

(b) may require the organisation to supply to any enforcement authority whose views have been ascertained under subsection (2), within a specified period, evidence that those requirements have been complied with.

(4) An organisation that fails to comply with a publicity order commits an offence, and liable on conviction on indictment to a fine.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.10]

135. Procedure, evidence and sentencing

(1) Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under this Part against —

(a) a department of the Government;

(b) the police force;

(c) a partnership;

(d) a trade union; or

(e) an employers' association that is not a corporation,

as it applies in relation to proceedings against a corporation.

(2) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter or corporate endangerment of life.

[S. 20/Ord 3/2019/w.e.f. 10/04/19]

(3) No proceedings for an offence of corporate manslaughter or corporate endangerment of life may be commenced except by, or with the consent of, the Attorney General.

[S. 20/Ord 3/2019/w.e.f. 10/04/19]

(4) In this section —

"**prescribed**" means prescribed by criminal procedure rules made under the Criminal Procedure and Evidence Ordinance 2014;

"**provision about criminal proceedings**" includes —

(a) provision about procedure in or in connection with criminal proceedings;

(b) provision about evidence in such proceedings;

(c) provision about sentencing, or otherwise dealing with, persons convicted of offences.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 ss.15, 17 and 18]

136. Convictions under this Part and under health and safety legislation

(1) If in the same proceedings there is —

(a) a charge of corporate manslaughter or corporate endangerment of life arising out of a particular set of circumstances; and

[S. 21/Ord 3/2019/w.e.f. 10/04/19]

(b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances,

the court, or the jury, if there is one, may, if the interests of justice so require, be invited to return a verdict on each charge.

(2) An organisation that has been convicted of corporate manslaughter or corporate endangerment of life arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances.

[S. 21/Ord 3/2019/w.e.f. 10/04/19]

(3) In this section "**health and safety offence**" means an offence under any health and safety legislation.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.19]

Miscellaneous

137. Transfer of functions

(1) This section applies if —

(a) a person's death or grievous bodily harm has occurred, or is alleged to have occurred, in connection with the carrying out of functions by a relevant public organisation; and

[S. 22/Ord 3/2019/w.e.f. 10/04/19]

(b) subsequently there is a transfer of those functions, with the result that they are still carried out but no longer by that organisation.

(2) In this section "**relevant public organisation**" means —

(a) a department of the Government (other than an exempt department);

(b) a corporation that is a servant or agent of the Crown or Government;

(c) the police force.

(3) Subject to subsection (4), any proceedings commenced against a relevant public organisation after the transfer for an offence under this Part in respect of the person's death or grievous bodily harm are to be commenced against —

[S. 22/Ord 3/2019/w.e.f. 10/04/19]

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are currently carried out;

(b) if no such organisation currently carries out the functions - the relevant public organisation by which the functions were last carried out.

(4) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (3) may be commenced, or (if they have already been commenced) may be continued, against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (3)(a) or (b)) specified in the order.

(5) Subject to subsection (6), if the transfer occurs while proceedings for an offence under this Part in respect of the person's death or grievous bodily harm are in progress against a relevant public organisation, the proceedings are to be continued against —

[S. 22/Ord 3/2019/w.e.f. 10/04/19]

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are carried out as a result of the transfer;

(b) if as a result of the transfer no such organisation carries out the functions - the same organisation as before.

(6) If an order made by the Governor so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (5) may be continued against —

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (5)(a) or (b)) specified in the order.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.16]

138. Abolition of liability of corporations for manslaughter at common law

The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which section 122 applies.

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.20]

139. Power to extend section 122 to other organisations

(1) The Governor may by order amend section 122 or 122A so as to extend the categories of organisation to which that section applies.

[S. 23/Ord 3/2019/w.e.f. 10/04/19]

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.21]

140. Power to extend section 123(2)

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend section 123(2) to make it include any category of person (not already included) who is —

(a) required by virtue of a statutory provision to remain or reside on particular premises; or

(b) otherwise subject to a restriction of his or her liberty.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

[UK Corporate Manslaughter and Corporate Homicide Act 2007 s.23]

PART 6 – PROTECTION FROM HARASSMENT AND STALKING

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

141. Interpretation of Part

(1) This section applies for the interpretation of this Part.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

(4) A "course of conduct" must involve —

(a) in the case of conduct in relation to a single person (see section 142(1)), conduct on at least 2 occasions in relation to that person; or

(b) in the case of conduct in relation to 2 or more persons (see section 142(2)), conduct on at least one occasion in relation to each of those persons.

(5) A person's ('**A**') conduct on any occasion, if aided, abetted, counselled or procured by another ('**B**'), is to be taken to be —

(a) conduct on that occasion of B (as well as conduct of A); and

(b) conduct in relation to which B's knowledge and purpose, and what B ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) "**Conduct**" includes speech.

[UK Protection from Harassment Act 1997 s.7 am. by Serious Organised Crime & Police Act 2005]

Harassment and stalking

142. Prohibition of harassment

(1) A person must not pursue a course of conduct which —

(a) amounts to harassment of another; and

(b) the person knows or ought to know amounts to harassment of the other.

(2) A person ('**A**') must not pursue a course of conduct —

(a) which involves harassment of 2 or more persons;

(b) which A knows or ought to know involves harassment of those persons, and

(c) by which A intends to persuade any person (whether or not one of those mentioned in (a) or (b)) —

(i) not to do something that that person is entitled or required to do; or

(ii) to do something that that person is not under any obligation to do.

(3) For the purposes of this section or section 143, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(4) Subsection (1) or (2) does not apply to a course of conduct if the person who pursued it shows —

(a) that it was pursued for the purpose of preventing or detecting crime;

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

[UK Protection from Harassment Act 1997 s.1 am. by Serious Organised Crime & Police Act 2005]

143. Offence of harassment

A person who pursues a course of conduct in breach of section 142(1) or (2) commits an offence. Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[UK Protection from Harassment Act 1997 s.2]

144. Offence of stalking

(1) A person commits an offence if —

(a) the person pursues a course of conduct in breach of section 142; and

(b) the course of conduct amounts to stalking.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of subsection (1)(b) and section 146(1)(a), a person's course of conduct amounts to stalking of another person if —

(a) it amounts to harassment of that person;

(b) the acts or omissions involved are ones associated with stalking; and

(c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking —

(a) following a person;

(b) contacting, or attempting to contact, a person by any means;

(c) publishing any statement or other material —

(i) relating or purporting to relate to a person; or

(ii) purporting to originate from a person;

(d) monitoring the use by a person of the internet, e-mail or any other form of electronic communication;

(e) loitering in any place (whether public or private);

(f) interfering with any property in the possession of a person;

(g) watching or spying on a person.

(4) This section does not limit the effect of section 146.

[UK Protection from Harassment Act 1997 s.2A ins. by Protection of Freedoms Act 2012 s.111]

145. Putting people in fear of violence

(1) A person ('**A**') whose course of conduct causes another person ('**B**') to fear that violence will be used against B, commits an offence if A knows or ought to know that his or her course of conduct will cause B so to fear on each of those occasions.

Penalty: Imprisonment for 5 years or a fine, or both.

[Revision w.e.f. 21/10/2024]

(2) For the purposes of this section, A ought to know that his or her course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that —

(a) the course of conduct was pursued for the purpose of preventing or detecting crime;

(b) the course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of the course of conduct was reasonable for the protection of the defendant or another or for the protection of property of the defendant another.

(4) If on the trial of a person charged with an offence under this section the court or jury finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(5) If by virtue of subsection (4) a person is convicted of an offence under section 143, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

[UK Protection from Harassment Act 1997 s.4]

146. Stalking involving fear of violence or serious alarm or distress

(1) A person ("**A**") whose course of conduct —

(a) amounts to stalking; and

(b) either —

(i) causes another ("**B**") to fear, on at least 2 occasions, that violence will be used against B; or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities,

commits an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of

the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that —

(a) A's course of conduct was pursued for the purpose of preventing or detecting crime;

(b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.

(5) If on the trial of a person charged with an offence under this section the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 143 or 144.

(6) If by virtue of subsection (5) a person is convicted of an offence under section 143 or 144, the court has the same powers and duties in relation to the person as it would have on convicting the person of that offence.

(7) This section does not limit the effect of section 145.

[UK Protection from Harassment Act s.2A ins. by Protection of Freedoms Act 2012 s.111]

147. Harassment outside a house

(1) A person ('**A**') commits an offence if —

(a) A is present outside or in the vicinity of any premises that are used by any individual ("the resident") as his or her dwelling;

(b) A is present there for the purpose (by his or her presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his or her dwelling), or of persuading the resident or such another individual —

(i) that he or she should not do something that he or she is entitled or required to do; or

(ii) that he or she should do something that he or she is not under any obligation to do;

(c) A —

(i) intends his or her presence to amount to the harassment of, or to cause alarm or distress to, the resident; or

(ii) knows or ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and

(d) the presence of A —

(i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2); or

(ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person falls within this subsection if he or she is —

(a) the resident;

(b) a person in the resident's dwelling; or

(c) a person in another dwelling in the vicinity of the resident's dwelling.

(3) The references in subsection (1)(c) and (d) to a person's presence are references to his or her presence either alone or together with that of any other persons who are also present.

(4) For the purposes of this section a person ('A') ought to know that his or her presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.

(5) A police officer in uniform may arrest without warrant any person he or she reasonably suspects is committing or has committed an offence under this section.

[UK Criminal Justice & Police Act 2001 s.42A ins. by Serious & Organised Crime and Police Act 2005 s.126]

147A. Offences under sections 143 and 144 committed outside the Falkland Islands

(1) If —

(a) a person's course of conduct consists of or includes conduct in a country outside the Falkland Islands; and

(b) the course of conduct would constitute an offence under section 143 or 144 if it occurred in the Falkland Islands,

the person is guilty in the Falkland Islands of that offence.

(2) In this section "**country**" includes a British Overseas Territory as defined in section 50 of the British Nationality Act 1981.

[UK Protection from Harassment Act 1997 s.4B]

Ancillary provisions

148. Civil remedy for breach of section 142(1)

(1) An actual or apprehended breach of section 142(1) may be the subject of a claim in civil proceedings in the Magistrate's Court by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) If —

(a) in such proceedings the Magistrate's Court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment; and

(b) the claimant considers that the defendant has done anything which the defendant is prohibited from doing by the injunction,

the claimant may apply for the issue of a warrant for the arrest of the defendant.

(4) The court on an application under subsection (3) may only issue a warrant if —

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the defendant has done anything which the defendant is prohibited from doing by the injunction.

(5) If —

(a) the court grants an injunction for the purpose mentioned in subsection (3)(a); and

(b) without reasonable excuse the defendant does anything which the defendant is prohibited from doing by the injunction,

the defendant commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(6) If a person is convicted of an offence under subsection (5) in respect of any conduct, that conduct is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (5) in respect of any conduct which has been punished as a contempt of court.

[UK Protection from Harassment Act 1997 s.3]

149. Injunction for breach of section 142(2)

(1) This section applies if there is an actual or apprehended breach of section 142(2) by any person ("**the relevant person**").

(2) In such a case, any person who is or may be —

(a) a victim of the course of conduct in question; or

(b) a person falling within section 142(2)(c),

may apply to the Magistrate's Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 148(3) to (7) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 148(3)(a).

[UK Protection from Harassment Act 1997 s.3A ins. by Serious & Organised Crime Act 2005 s.125]

150. Power of entry in relation to offence of stalking

(1) A justice of the peace may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that —

(a) an offence under section 144 or 146 has been, or is being, committed;

(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

(c) the material —

(i) is likely to be admissible in evidence at a trial for the offence; and

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by Part 2 of the Criminal Procedure & Evidence Ordinance 2014; and

(d) either —

(i) entry to the premises will not be granted unless a warrant is produced; or

(ii) the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(2) A police officer may —

(a) seize and retain anything for which a search has been authorised under subsection (1);

(b) use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

[UK Protection from Harassment Act s.2B ins. by Protection of Freedoms Act 2012 s.112]

151. Restraining orders on conviction

(1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing the person or dealing with the person in any other way) make an order under this section.

(2) For the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which —

(a) amounts to harassment; or

(b) will cause a fear of violence,

the court may prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 148.

(5) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(6) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (5).

(7) A defendant who without reasonable excuse does anything which the defendant is prohibited from doing by an order under this section commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(8) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

[UK Protection from Harassment Act 1997 s.5 am. by Domestic Violence, Crime and Victims Act 2004 s.12]

152. Restraining orders on acquittal

(1) A court before which a person ("the defendant") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment or fear of violence by the defendant, make an order prohibiting the defendant from doing anything described in the order.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) Subsections (2) to (8) of section 151 apply to an order under this section as they apply to an order under that section.

(3) If the Supreme Court allows an appeal against conviction it may remit the case to the Magistrate's Court or Summary Court, as the case may be to consider whether to proceed under this section.

(4) If a case is remitted to the Magistrate's Court or Summary Court under subsection (3), the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person who is subject to an order under this section has the same right of appeal against the order as if —

(a) the person had been convicted of the offence in question before the court which made the order; and

(b) the order had been made under section 151.

[UK Protection from Harassment Act 1997 s.5A ins. by Domestic Violence, Crime and Victims Act 2004 s.12]

(6) A defendant who without reasonable excuse does anything which the defendant is prohibited from doing by an order under this section commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Protection from Harassment Act 1997 s.5A(2D)]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

Communications offences

[S. 12/Ord. 10/2024/w.e.f. 14.08.2024]

153. Indecent or grossly offensive communications with intent to cause distress or anxiety

[S. 13/Ord. 10/2024/w.e.f. 14.08.2024]

(1) A person who sends to another person —

(a) a letter, communication, or article of any description which conveys a message which is indecent or grossly offensive; or

(b) any article or communication which is, in whole or part, of an indecent or grossly offensive nature,

commits an offence if the conditions in subsection (2) are met.
Penalty: Imprisonment for 2 years or a fine or both.

[S. 13/Ord. 10/2024/w.e.f. 14.08.2024]

(2) The conditions are that the defendant's purpose, or one of the defendant's purposes, in sending the letter, article or communication is that it should cause distress or anxiety to the recipient or to any other person to whom the defendant intends that it or its contents or nature should be communicated.

(3) ...

(4) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted, and "**sender**" is to be construed accordingly.

[UK Malicious Communications Act 1988 s.1]

153A. Interpretation for sections 153B to 153G

(1) This section applies for the purposes of sections 153B to 153G, and references in this section to an offence are to an offence under section 153B or 153G.

(2) A person "**sends a message**" if the person —

(a) sends, transmits or publishes a communication (including an oral communication) by electronic means; or

(b) sends, or gives to an individual, a letter or thing of any other description.

(3) A person also "**sends a message**" if the person —

(a) causes a communication (including an oral communication) to be sent, transmitted or published by electronic means; or

(b) causes a letter or a thing of any other description to be —

(i) sent; or

(ii) given to an individual.

(4) But a provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends a message.

(5) "**Encounter**", in relation to a message, means read, view, hear or otherwise experience the message.

(6) It does not matter whether the content of a message is created by the person who sends it (so for example, in the online context, an offence may be committed by a person who forwards another person's direct message or shares another person's post).

(7) In the application of sections 153B to 153G to the sending by electronic means of a message consisting of or including a hyperlink to other content —

(a) references to the message are to be read as including references to content accessed directly via the hyperlink; and

(b) an individual who is a likely audience in relation to the hyperlink for the purposes of section 153B is to be assumed to be a likely audience in relation to the linked content.

(8) In the application of sections 153B to 153G to the sending of an item on which data is stored electronically, references to the message are to be read as including content accessed by means

of the item to which the recipient is specifically directed by the sender (and in this subsection "**sending**" includes giving, and "**sender**" is to be read accordingly).

[UK Online Safety Act 2023 Part 10]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153B. False communications offence

(1) A person commits an offence if —

(a) the person sends a message;

(b) the message conveys information that the person knows to be false;

(c) at the time of sending it, the person intended the message, or the information in it, to cause non-trivial psychological or physical harm to a likely audience; and

(d) the person has no reasonable excuse for sending the message.

Penalty: Imprisonment for 2 years or a fine or both.

(2) For the purposes of this offence an individual is a "**likely audience**" of a message if, at the time the message is sent, it is reasonably foreseeable that the individual —

(a) would encounter the message; or

(b) in the online context, would encounter a subsequent message forwarding or sharing the content of the message.

(3) If several or many individuals are a likely audience, it is not necessary for the purposes of subsection (1)(c) that the person intended to cause harm to any one of them in particular (or to all of them).

[UK Online Safety Act 2023 s 179]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153C. Threatening communications offence

(1) A person commits an offence if —

(a) the person sends a message;

(b) the message conveys a threat of death or serious harm; and

(c) at the time of sending it, the person —

(i) intended an individual encountering the message to fear that the threat would be carried out; or

(ii) was reckless as to whether an individual encountering the message would fear that the threat would be carried out.

Penalty: Imprisonment for 5 years or a fine or both.

(2) "**Serious harm**" means —

(a) serious injury amounting to grievous bodily harm within the meaning of Part 4;

(b) rape;

(c) assault by penetration within the meaning of section 204; or

(d) serious financial loss.

(3) In proceedings for an offence under this section relating to a threat of serious financial loss, it is a defence for the person to show that —

(a) the threat was used to reinforce a reasonable demand; and

(b) the person reasonably believed that the use of the threat was a proper means of reinforcing the demand.

[UK Online Safety Act 2023 s181]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153D. Flashing electronic images offences

(1) A person ("**A**") commits an offence if —

(a) A sends a communication by electronic means which consists of, or includes, flashing images;

(b) either condition 1 or condition 2 is met; and

(c) A has no reasonable excuse for sending the communication.

Penalty: Imprisonment for 5 years or a fine or both.

(2) Condition 1 is that —

(a) at the time the communication is sent, it is reasonably foreseeable that an individual with epilepsy would be among the individuals who would view it; and

(b) A sends the communication with the intention that such an individual will suffer harm as a result of viewing the flashing images.

(3) Condition 2 is that, when sending the communication —

(a) A believes that an individual ("**B**") —

(i) whom A knows to be an individual with epilepsy; or

(ii) whom A suspects to be an individual with epilepsy,

will, or might, view it; and

(b) A intends that B will suffer harm as a result of viewing the flashing images.

(4) In subsections (2)(a) and (3)(a), references to viewing the communication are to be read as including references to viewing a subsequent communication forwarding or sharing the content of the communication.

(5) For the purposes of subsection (1), a provider of an internet service by means of which a communication is sent is not to be regarded as a person who sends a communication.

(6) In the application of subsection (1) to a communication consisting of or including a hyperlink to other content, references to the communication are to be read as including references to content accessed directly via the hyperlink.

(7) A person ("**A**") commits an offence if —

(a) A shows an individual ("**B**") flashing images by means of an electronic communications device;

(b) when showing the images —

(i) A knows that B is an individual with epilepsy; or

(ii) A suspects that B is an individual with epilepsy;

(c) when showing the images, A intends that B will suffer harm as a result of viewing them; and

(d) A has no reasonable excuse for showing the images.

Penalty: Imprisonment for 5 years or a fine or both.

(8) An offence under subsection (1) or (7) cannot be committed by a healthcare professional acting in that capacity.

(9) For the purpose of this section, it does not matter whether flashing images may be viewed at once (for example, a GIF that plays automatically) or only after some action is performed (for example, pressing play).

(10) In this section —

(a) references to sending a communication include references to causing a communication to be sent; and

(b) references to showing flashing images include references to causing flashing images to be shown.

(11) In this section —

"**electronic communications device**" means equipment or a device that is capable of transmitting images by electronic means;

"**flashing images**" means images which carry a risk that an individual with photosensitive epilepsy who viewed them would suffer a seizure as a result;

"**harm**" means —

(a) a seizure; or

(b) alarm or distress;

"**individual with epilepsy**" includes, but is not limited to, an individual with photosensitive epilepsy;

"**send**" includes transmit and publish.

[UK Online Safety Act 2023 s 183]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153E. Exemptions from false communications and flashing images offences

(1) An offence under section 153B or 153D cannot be committed by —

(a) the Falkland Islands Media Trust under the Media Trust Ordinance 1989;

(b) Falkland Islands Television Limited;

(c) BFBS Media Limited;

(d) any other entity which —

(i) has as its principal purpose the publication of news;

(ii) has a registered office or other business address in the Falkland Islands; and

(iii) has been prescribed by the Governor by Order for the purposes of this section.

(2) An offence under section 153B or 153D cannot be committed by the holder of —

(a) a licence under the Broadcasting Ordinance 2004; or

(b) a licence under Part 5 or 7 of the Communications Ordinance 2017,

in connection with anything done under the authority of the licence.

(3) An offence under section 153B or 153D cannot be committed in connection with the showing of a film made for cinema to members of the public.

[UK Online Safety Act 2023 s 180]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153F. Encouraging or assisting serious self-harm

(1) A person ("**A**") commits an offence if —

(a) A does a relevant act capable of encouraging or assisting the serious self-harm of another person; and

(b) A's act was intended to encourage or assist the serious self-harm of another person.

Penalty: Imprisonment for 5 years or a fine or both.

(2) A "**does a relevant act**" if A —

(a) communicates in person;

(b) sends, transmits or publishes a communication by electronic means;

(c) shows a person such a communication;

(d) publishes material by any means other than electronic means;

(e) sends, gives, shows or makes available to a person —

(i) material published as mentioned in paragraph (d); or

(ii) any form of correspondence; or

(f) sends, gives or makes available to a person an item on which data is stored electronically.

(3) "**Serious self-harm**" means self-harm amounting to grievous bodily harm within the meaning of Part 4, and includes successive acts of self-harm which cumulatively reach that threshold.

(4) The person referred to in subsection (1)(a) and (b) need not be a specific person (or class of persons) known to, or identified by, A.

(5) A may commit an offence under this section whether or not serious self-harm occurs.

(6) If a person ("**A1**") arranges for another person ("**A2**") to do an act that is capable of encouraging or assisting the serious self-harm of a third person and A2 does that act, A1 is to be treated as also having done it.

(7) In the application of subsection (1) to an act by A involving an electronic communication or a publication in physical form, it does not matter whether the content of the communication or publication is created by A (so for example, in the online context, the offence under this section may be committed by forwarding another person's direct message or sharing another person's post).

(8) In the application of subsection (1) to the sending, transmission or publication by electronic means of a communication consisting of or including a hyperlink to other content, the reference in subsection (2)(b) to the communication is to be read as including a reference to content accessed directly via the hyperlink.

(9) In the application of subsection (1) to an act by A involving an item on which data is stored electronically, the reference in subsection (2)(f) to the item is to be read as including a reference to content accessed by means of the item to which the person in receipt of the item is specifically directed by A.

(10) A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends, transmits or publishes it.

(11) Any reference in this section to doing an act that is capable of encouraging the serious self-harm of another person includes a reference to doing so by threatening another person or otherwise putting pressure on another person to seriously self-harm.

(12) Any reference to an act in this section, except in subsection (3), includes a reference to a course of conduct, and references to doing an act are to be read accordingly.

(13) In subsection (3) "**act**" includes omission.

[UK Online Safety Act 2023 s 184]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

153G. Extra-territorial application

(1) Sections 153, 153B(1), 153C(1) and 153D(1) apply to an act done outside the Falkland Islands, but only if the act is done by a person within subsection (2).

(2) A person is within this subsection if the person is —

(a) an individual who is habitually resident in the Falkland Islands; or

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

(3) Section 153F(1) applies to an act done outside the Falkland Islands, but only if the act is done by a person within subsection (4).

(4) A person is within this subsection if the person is —

(a) an individual who is habitually resident in the Falkland Islands; or

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

[UK Online Safety Act 2023 s 185]

[S. 14/Ord. 10/2024/w.e.f. 14.08.2024]

154. Improper use of public electronic communications network

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

(1) A person who —

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent,

commits an offence.

Penalty: Imprisonment for 2 years or a fine or both.

[S. 15/Ord. 10/2024/w.e.f. 14.08.2024]

(2) A person who persistently makes use of a public electronic communications network for the purpose of causing annoyance, inconvenience or needless anxiety to another person commits an offence.

Penalty: Imprisonment for 2 years or a fine or both.

[S. 8/Ord. 5/2017/w.e.f. 21/04/2017; S. 15/Ord. 10/2024/w.e.f. 14.08.2024]

(3) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service.

(4) In this section, "**electronic communications network**" means —

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals —

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; and

(iii) software and stored data.

[UK Communications Act 2003 ss.127 and 32]

Stalking protection orders

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154A. Applications for orders

(1) The Attorney General may apply to the Summary Court for an order (a "**stalking protection order**") in respect of a person (the "**defendant**") if it appears to the Attorney General that —

(a) the defendant has carried out acts associated with stalking;

(b) the defendant poses a risk associated with stalking to another person; and

(c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

(2) A stalking protection order is an order which, for the purpose of preventing the defendant from carrying out acts associated with stalking —

(a) prohibits the defendant from doing anything described in the order; or

(b) requires the defendant to do anything described in the order.

(3) A "**risk associated with stalking**" —

(a) may be in respect of physical or psychological harm to the other person; or

(b) may arise from acts which the defendant knows or ought to know are unwelcome to the other person even if, in other circumstances, the acts would appear harmless in themselves.

(4) It does not matter —

(a) whether the acts mentioned in subsection (1)(a) were carried out in the Falkland Islands or elsewhere; or

(b) whether they were carried out before or after the commencement of this section.

[UK Stalking Protection Act 2019 s.1]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154B. Power to make orders

(1) The court may make a stalking protection order on an application under section 154A(1) if satisfied that —

(a) the defendant has carried out acts associated with stalking;

(b) the defendant poses a risk associated with stalking to another person; and

(c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

(2) The court may include a prohibition or requirement in a stalking protection order only if satisfied that the prohibition or requirement is necessary to protect the other person from a risk associated with stalking.

(3) Prohibitions or requirements must, so far as practicable, be such as to avoid —

(a) conflict with the defendant's religious beliefs; and

(b) interference with any times at which the defendant normally works or attends an educational establishment.

(4) It does not matter —

(a) whether the acts mentioned in subsection (1)(a) were carried out in the Falkland Islands or elsewhere; or

(b) whether they were carried out before or after the commencement of this section.

(5) Subsection (6) applies where the court makes a stalking protection order in relation to a defendant who is already subject to such an order (whether made by that court or another).

(6) The court may not include any prohibition or requirement in the new stalking protection order which is incompatible with a prohibition or requirement in the earlier stalking protection order.

[UK Stalking Protection Act 2019 s.2]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154C. Duration of orders

(1) A stalking protection order has effect —

(a) for a fixed period specified in the order; or

(b) until a further order.

(2) Where a fixed period is specified it must be a period of at least 2 years beginning with the day on which the order is made.

(3) Different periods may be specified in relation to different prohibitions or requirements.

[UK Stalking Protection Act 2019 s.3]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154D. Variations, renewals and discharges

(1) The defendant or the Attorney General may apply to the Summary Court for an order varying, renewing or discharging a stalking protection order.

(2) Before making a decision on an application under subsection (1), the court must hear—

(a) the defendant; and

(b) the Attorney General if they wish to be heard.

(3) On an application under subsection (1) the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

(4) The court may not —

(a) in renewing or varying an order, impose an additional prohibition or requirement unless satisfied that it is necessary to do so in order to protect a person from a risk associated with stalking; or

(b) discharge an order before the end of 2 years beginning with the day on which the order was made without the consent of the defendant and the Attorney General.

[UK Stalking Protection Act 2019 s.4]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154E. Interim stalking protection orders

(1) This section applies where an application for a stalking protection order (the "**main application**") has not been determined.

(2) The Summary Court may make an order (an "**interim stalking protection order**") in respect of the defendant on an application by the Attorney General.

(3) The court may, if it considers it appropriate to do so, make an interim stalking protection order —

(a) prohibiting the defendant from doing anything described in the order; or

(b) requiring the defendant to do anything described in the order.

(4) Prohibitions or requirements must, so far as practicable, be such as to avoid —

(a) conflict with the defendant's religious beliefs; and

(b) interference with any times at which the defendant normally works or attends an educational establishment.

(5) An interim stalking protection order —

(a) has effect only for a fixed period specified in the order; and

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(6) The defendant or the Attorney General may apply to the court for an order varying, renewing or discharging the interim stalking protection order.

(7) On an application under subsection (6), the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

[UK Stalking Protection Act 2019 s.5]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154F. Content of orders

A stalking protection order and an interim stalking protection order must specify —

(a) the date on which the order is made;

(b) whether it has effect for a fixed period and, if it does, the length of that period;

(c) each prohibition or requirement that applies to the defendant;

(d) whether any prohibition or requirement is expressly limited to a particular locality and, if it is, what the locality is; and

(e) whether any prohibition or requirement is subject to a fixed period which differs from the period for which the order has effect and, if it is, what that period is.

[UK Stalking Protection Act 2019 s.6]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154G. Appeals

(1) A defendant may appeal to the Magistrate's Court against —

(a) the making of a stalking protection order;

(b) the making of an interim stalking protection order;

(c) the making of an order under section 154D; and

(d) the refusal to make an order under section 154D on an application by the defendant.

(2) The Attorney General may appeal to the Magistrate's Court against —

(a) the refusal to make a stalking protection order,

(b) the refusal to make an interim stalking protection order,

(c) the refusal to make an order under section 154D, or

(d) the making of an order under section 154D on an application by the defendant.

(3) On any such appeal, the Magistrate's Court may make —

(a) such orders as may be necessary to give effect to its determination of the appeal, and

(b) such incidental or consequential orders as appear to it to be appropriate.

[UK Stalking Protection Act 2019 s.7]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154H. Offence of breaching stalking protection order etc

(1) A person who, without reasonable excuse, breaches a stalking protection order or an interim stalking protection order commits an offence.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order under subsection (1)(b) (**conditional discharge**) of section 502 of the Criminal Procedure and Evidence Ordinance 2014.

(3) In proceedings for an offence under this section, a copy of the original stalking protection order or interim stalking protection order, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

[UK Stalking Protection Act 2019 s.8]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154I. Notification requirements

(1) A person subject to —

(a) a stalking protection order (other than one which replaces an interim stalking protection order); or

(b) an interim stalking protection order,

must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2).

(2) The information is —

(a) the person's name and, where the person uses one or more other names, each of those names; and

(b) the person's home address.

(3) A person who —

(a) is subject to a stalking protection order or an interim stalking protection order; and

(b) uses a name which has not been notified under this section,

must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police that name.

(4) A person who —

(a) is subject to a stalking protection order or an interim stalking protection order; and

(b) changes home address,

must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police the new home address.

(5) The requirements imposed by this section do not apply to a person who is subject to notification requirements under Part 11 of the Crimes Ordinance 2014 (**sexual offence orders**).

(6) Subsection (7) applies where —

(a) a person is subject to a stalking protection order or an interim stalking protection order;

(b) at the time the order is made, the requirements imposed by this section do not apply to the person as a result of subsection (5);

(c) the person ceases on a subsequent day ("**the final day**") to be subject to the notification requirements mentioned in that subsection; and

(d) the order remains in effect on the final day.

(7) The requirements imposed by this section apply to the person as from the final day, but as if the reference in subsection (1) to the date of service of the order were a reference to the final day.

[UK Stalking Protection Act 2019 s. 9]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154J. Method of notification and related matters

(1) A person gives a notification under section 154I(1), (3) or (4) by —

(a) attending at a police station; and

(b) giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) In relation to a person giving a notification under section 154I(4), the references in subsections (1) and (2) to the person's home address are references to —

(a) the person's new home address if the person gives the notification after changing home address; or

(b) the person's old home address if the person gives the notification before changing home address.

(3) A notification given in accordance with this section must be acknowledged —

(a) in writing; and

(b) in such form as the Chief Police Officer may direct.

(4) When a person gives notification under section 154I(1), (3) or (4), the person must, if requested to do so by the police officer or person mentioned in subsection (1)(b), allow that officer or person to —

(a) take the person's fingerprints;

(b) photograph any part of the person; or

(c) do both of these things.

(5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the person.

[UK Stalking Protection Act 2019 s.10]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154K. Offences relating to notification

(1) A person commits an offence if the person —

(a) fails, without reasonable excuse, to comply with section 154I(1), (3) or (4), or with section 154J(4); or

(b) notifies to the police, in purported compliance with section 154I(1), (3) or (4), any information which the person knows to be false.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section 154I(1), (3) or (4).

(3) The person continues to commit the offence throughout any period during which the failure continues.

(4) The person may not be prosecuted more than once in respect of the same failure.

[UK Stalking Protection Act 2019 s.11]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

154L. Interpretation - sections 154A to 154K

In sections 154A to 154K —

"**acts**" includes omissions;

"**defendant**" has the meaning in section 154A(1);

"**home address**", in relation to a person, means —

(a) the address of the person's sole or main residence in the Falkland Islands; or

(b) if the person has no such residence, the address or location of a place in the Falkland Islands where the person can regularly be found and, if there is more than one such place, such of those places as the person may select;

"**interim stalking protection order**" has the meaning in section 154E(2);

"**Summary Court**", in relation to a defendant under the age of 18, means youth court;

"**photograph**" includes any process by means of which an image may be produced; and

"**stalking protection order**" has the meaning in section 154A(1).

(2) References to "**risk associated with stalking**" are to be read in accordance with section 154A(3).

[UK Stalking Protection Act 2019 s.14]

[S.7 Ord. 8/2022/w.e.f. 16/05/2022]

PART 7 – OFFENSIVE WEAPONS

155. Interpretation of Part

In this Part, unless the context otherwise requires —

"**caravan**" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"**further education premises**" means a college or other institution conducting further education;

[S. 16/Ord. 10/2024/w.e.f. 14.08.2024]

"**implement**" means a flick knife, razor blade, axe or other article of the kind described in section 160(2) or 161(2);

"**knife**" means an instrument which has a blade or is sharply pointed;

"**offensive weapon**" means any article —

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person who has possession of it for such use by them or by some other person;

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

"**publication**" includes publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"**school**" means an institution in which education is provided to persons under the age of 18, whether or not the institution also provides education to persons above the age of 18 years, and whether or not any person is at the time in question present upon the premises for the purpose of education;

"**school premises**" means land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school;

"**suitable for combat**" means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

"**vehicle**" includes —

(a) any vehicle, whether or not it is in a fit state for use on roads;

(b) any chassis or body, with or without wheels, which appears to have formed part of such a vehicle;

(c) any load carried by, and anything attached to, such a vehicle; and

(d) a caravan;

"**violent behaviour**" means an unlawful act inflicting injury on a person or causing a person to fear injury.

Knives

156. Unlawful marketing of knives

(1) It is an offence for a person to market a knife in a way which —

(a) indicates, or suggests, that it is suitable for combat; or

(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 4 years or a fine, or both.

[S. 17/Ord. 10/2024/w.e.f. 14.08.2024]

(2) For the purposes of this Part, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description —

(a) applied to the knife;

(b) on the knife or on any packaging in which it is contained; or

(c) included in any advertisement which, expressly or by implication, relates to the knife.

(3) For the purposes of this Part, a person markets a knife if the person —

(a) sells or hires it;

(b) offers, or exposes, it for sale or hire; or

(c) has it in their possession for the purpose of sale or hire.

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

[UK Knives Act 1997 ss.1 to 4]

157. Publications

It is an offence for a person to publish any written, pictorial or other material in connection with the marketing of any knife which —

(a) indicates, or suggests, that the knife is suitable for combat; or

(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

Penalty: Imprisonment for 4 years or a fine, or both.

[UK Knives Act 1997 ss.1 to 4; S. 18/Ord. 10/2024/w.e.f. 14.08.2024]

158. Exempt trades

(1) It is a defence for a person charged with an offence under section 156 to prove that —

(a) the knife was marketed —

(i) for use by the armed forces of any country;

(ii) as an antique or curio; or

(iii) as falling within some other prescribed category;

(b) it was reasonable for the knife to be marketed in that way; and

(c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) It is a defence for a person charged with an offence under section 157 to prove that —

(a) the material was published in connection with marketing a knife —

(i) for use by the armed forces of any country;

(ii) as an antique or curio; or

(iii) as falling within some other prescribed category;

(b) it was reasonable for the knife to be marketed in that way; and

(c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the publishing of the material would use it for an unlawful purpose.

(3) The Governor, after consulting the Criminal Justice Council, may by order prescribe the categories for the purpose of subsection (1)(a)(iii) or (2)(a)(iii) by reference to the type of knife or the circumstances of the marketing or publication, as the case may be.

[UK Knives Act 1997 ss.1 to 4]

159. Other defences

(1) It is a defence for a person charged with an offence under section 156 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed —

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) It is a defence for a person charged with an offence under section 157 to prove that the person did not know or suspect, and had no reasonable grounds for suspecting, that the material—

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(3) It is a defence for a person charged with an offence under section 156 or 157 to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

[UK Knives Act 1997 ss.1 to 4]

160. Flick knives, etc.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]
(1) It is an offence for a person to —

(a) manufacture;

(b) sell or hire or offer for sale or hire, or to expose for sale or hire;

(c) have in the person's possession for the purpose of sale or hire; or

(d) lend or give to any other person,

a weapon to which this section applies.
Penalty: Imprisonment for 1 year or a fine or both.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]
(1A) It is an offence for a person to have possession of a weapon to which this section applies.

Penalty: Imprisonment for 1 year or a fine, or both.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]
(1B) The importation of a weapon to which this section applies is prohibited.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(2) This section applies to —

(a) any knife which has a blade which opens automatically —

(i) from the closed position to the fully opened position; or

(ii) from a partially opened position to the fully opened position,

by manual pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a "flick knife" or "flick gun";

(b) a knife which has a blade which is released from the handle or sheath by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a "gravity knife".

[Gibraltar Criminal Offences Act s.41; S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(3) It is a defence for a person charged with an offence under subsection (1) to show that the conduct was only for the purposes of making the weapon available to a museum or gallery.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(4) It is a defence for a person charged with an offence under subsection (1A) to show that they possessed the weapon only in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(5) If the operator of, or a person acting on behalf of, a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for them to show that they had reasonable grounds for believing that the person to whom they hired or lent it would use it only for cultural, artistic or educational purposes.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(6) It is a defence for a person charged with an offence under section 43(2) or (3) of the Customs Ordinance 2003 in respect of a weapon to which this section applies to show that the conduct was only for the purposes of making the weapon available to a museum or gallery.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(7) Subsections (3), (5), and (6) apply to a museum or gallery only if it does not distribute profits.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

(8) In this section, "**museum or gallery**" includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.

[S. 19/Ord. 10/2024/w.e.f. 14.08.2024]

161. Sale of knives etc. to persons under 16

(1) A person who sells to a person under the age of 16 an article to which this section applies commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) This section applies to —

(a) any knife, knife blade or razor blade;

(b) any axe; and

(c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(2A) This section does not apply to —

(a) a weapon to which section 160 applies;

(b) a folding knife if the cutting edge of its blade does not exceed 7.62 centimetres (3 inches); or

(c) razor blades permanently enclosed in a cartridge or housing where less than 2 millimetres of any blade is exposed beyond the place which intersects the highest point of the surfaces preceding and following such blades.

[S. 20/Ord. 10/2024/w.e.f. 14.08.2024]

(3) Subject to section 161A, it is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

[S. 20/Ord. 10/2024/w.e.f. 14.08.2024]

[UK CJ Act 1988 s.141A ins. by Offensive Weapons Act 1996]

161A. Limitations on defence for remote sales

(1) This section applies if —

(a) a person (the "**seller**") is charged with an offence under section 161 (sale of knives etc. to persons under 16); and

(b) the seller was not in the presence of the person (the "**buyer**") to whom the article to which the charge relates was sold at the time of the sale.

(2) For the purposes of subsection (1)(b), the seller was not in the presence of the buyer at the time of the sale if —

(a) if the seller is an individual, the seller or a person acting on the seller's behalf was not in the presence of the buyer at that time; or

(b) if the seller is not an individual, a person acting on the seller's behalf was not in the presence of the buyer at that time.

(3) The seller is not to be regarded as having proved that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence unless, as a minimum, they show that the following conditions are met.

(4) Condition A is that, at the time the offence is alleged to have been committed —

(a) the seller operated a system for checking that persons who bought articles to which section 161 applied by the same or a similar method of purchase to that used by the buyer were not under the age of 16; and

(b) that system was likely to prevent persons under the age of 16 from buying such articles by that method.

(5) Condition B is that when the package containing the article was dispatched by the seller, it was clearly marked to indicate —

(a) that it contained an article with a blade or which was sharply pointed (as the case may be); and

(b) that, when finally delivered, it should only be delivered into the hands of a person aged 16 or over.

(6) Condition C is that the seller took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 16 or over.

(7) Condition D is that the seller did not deliver the package, or arrange for its delivery, to a locker.

(8) If the article was dispatched by the seller to a place from which it was to be collected by the buyer or a person acting on behalf of the buyer, references in subsections (5) and (6) to the final delivery of the article are to be read as its supply to the buyer or a person acting on behalf of the buyer from that place.

(9) In subsection (7) "**locker**" means a lockable container to which the package was delivered with a view to its collection by the buyer, or a person acting on behalf of the buyer, in accordance with arrangements made between the seller and the buyer.

[UK Criminal Justice Act 1988 s. 141B]

[S. 21/Ord. 10/2024/w.e.f. 14.08.2024]

162. Entry, seizure and retention

(1) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 156, 160 or 161 in relation to knives or other implements of a particular description; and

(b) knives or implements of that description and in the person's possession or under the person's control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the knives or implements and seize and remove any that the officer finds.

(2) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that —

(a) a person has committed an offence under section 157 in relation to particular material; and

(b) publications consisting of or containing that material and in the person's possession or under the person's control are to be found on particular premises,

the justice of the peace may issue a warrant authorising a police officer to enter those premises, search for the publications and seize and remove any that the officer finds.

(3) A police officer, in the exercise of the powers under a warrant issued under this section, may if necessary use reasonable force.

(4) Any knives, implements or publications which have been seized and removed by a police officer under a warrant issued under this section in respect of a person may be retained until the conclusion of proceedings against the person.

(5) For the purposes of this section, proceedings in relation to a person are concluded if —

(a) the person is convicted and sentenced or otherwise dealt with for the offence;

(b) the person is acquitted;

(c) proceedings for the offence are discontinued; or

(d) it is decided not to prosecute the person.

[UK Knives Act 1997 ss.5 to 7]

163. Forfeiture of knives and publications

(1) If a person is convicted of an offence under section 156, section 160 or section 161 in relation to a knife or other implement of a particular description, the court may make an order for forfeiture in respect of any knives or implements of that description —

(a) seized under a warrant issued under section 162; or

(b) in the person's possession or under the person's control at the relevant time.

(2) If a person is convicted of an offence under section 157 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which —

(a) have been seized under a warrant issued under section 162; or

(b) were in the person's possession or under the person's control at the relevant time.

(3) The court may make an order under subsection (1) or (2) —

(a) whether or not it also deals with the convicted person in respect of the offence in any other way; and

(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make an order, the court must have regard —

(a) to the value of the property; and

(b) to the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section "**relevant time**", in relation to an offence under section 156 or 157, means the time of the arrest for the offence or of the issue of a summons in respect of it.

[UK Knives Act 1997 ss.5 to 7]

164. Effect of a forfeiture order

(1) An order under section 163 (a "forfeiture order") operates to deprive the convicted person of that person's rights, if any, in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).

(3) The court may, on an application made by a person who —

(a) claims property to which a forfeiture order applies; but

(b) is not the person from whom it was forfeited,

make an order (a "**recovery order**") for delivery of the property to the applicant if it appears to the court that the applicant owns it.

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

(4) No application for a recovery order may be made later than 6 months after the date on which the forfeiture order was made.

(5) No application for a recovery order may succeed unless the applicant satisfies the court that the applicant —

(a) did not consent to the convicted person having possession of the property; or

(b) did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) Any right to recover property which is in the possession of another in pursuance of a recovery order —

(a) is not affected by the making of the recovery order for up to 6 months from the date on which the order was made; but

(b) is lost at the end of that period.

(7) Section 622 of the Criminal Procedure and Evidence Ordinance 2014 applies in relation to property forfeited under section 163 if —

(a) no application for a recovery order has been made within 6 months of the forfeiture order being made; or

(b) no such application has succeeded.

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

[UK Knives Act 1997 ss.5 to 7]

Crossbows

165. Sale, etc., of crossbows to young persons

(1) Subject to subsection (2), it is an offence for a person ('**A**') to sell or hire a crossbow or a part of a crossbow to a person ('**B**') under the age of 17 years.
Penalty: A fine at level 4 on the standard scale.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) It is a defence for a person ("**A**") charged with an offence under subsection (1) to show that —

(a) A believed the person ("**B**") to whom the crossbow or part was sold or let on hire was aged 17 or over; and

(b) either —

(i) A had taken reasonable steps to establish B's age; or

(ii) no reasonable person could have suspected from B's appearance that they were under the age of 17.

[S. 22/Ord. 10/2024/w.e.f. 14.08.2024]

(2A) For the purposes of subsection (2)(b)(i), A is to be treated as having taken reasonable steps to establish B's age if, and only if —

(a) A was shown a document purporting to be a passport or driving licence; and

(b) the document would have convinced a reasonable person.

[S. 22/Ord. 10/2024/w.e.f. 14.08.2024]

(3) A person under the age of 17 who buys or hires a crossbow or part of a crossbow commits an offence.
Penalty: A fine at level 4 on the standard scale.

(4) Nothing in subsection (1) or (3) applies to a toy crossbow, that is to say a crossbow with a draw weight of less than 1.4 kilograms.

[Crimes Ord. s.17; UK Crossbows Act 1987 ss.1, 2 and 6]

166. Possession of crossbow by person under the age of 17

(1) Except as provided by subsection (2), a person under the age of 17 commits an offence if the person has possession of —

(a) a crossbow (other than a toy crossbow) which is capable of discharging a missile; or

(b) parts of a crossbow (other than a toy crossbow) which together (and without any other parts) can be assembled to form a crossbow capable of discharging a missile.

Penalty: A fine at level 4 on the standard scale.

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

(2) No offence is committed under subsection (1) if —

(a) the person under the age of 17 is under the supervision of a person who aged 21 or more; or

(b) the crossbow is within the dwelling-house within which the person under the age of 17 usually resides.

[Crimes Ord. s.18; UK Crossbows Act 1987 ss.3 and 6]

167. Prohibited use of crossbows

(1) It is an offence for a person to discharge a crossbow (other than a toy crossbow) —

(a) in any road or public place;

(b) on any beach;

(c) on any other land without the permission of the occupier of that land;

(d) in any sanctuary or reserve (including Stanley Common); or

(e) in any place so that a bolt or missile discharged by the crossbow falls in or traverses a place in which, had the crossbow been discharged there, an offence would have been committed under any of paragraphs (a) to (d).

Penalty: A fine at level 4 on the standard scale.

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

(2) A person who uses at night a crossbow (other than a toy crossbow) in any place outside a building commits an offence.

Penalty: A fine at level 4 on the standard scale.

[Crimes Ord. s.19]

168. Forfeiture of crossbows

(1) A court which convicts a person of an offence under section 165, 166, or 167 may, on conviction, order that the crossbow (or, as the case may be, the parts of a crossbow) be delivered up to the court and be forfeited to the Crown.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(2) A person who fails to deliver up the crossbow (or, as the case may be, the parts of a crossbow) in question within 7 days of the making of the order under subsection (1) or any longer time the court allows when making the order, commits an offence.

Penalty: Imprisonment for 3 months or to a fine at level 4 on the standard scale, or both.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) An appeal lies against an order under subsection (1) as if it were a sentence imposed on conviction.

[Crimes Ord. s.20; UK Crossbows Act 1987 s.7 (part)]

Offensive weapons generally

169. Having an article with blade or point in a public place

(1) Subject to subsections (4) and (5), any person who has an article to which this section applies in their possession in a public place commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

[S. 23/Ord. 10/2024/w.e.f. 14.08.2024; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(2) This section applies, subject to subsection (3), to any article which has a blade or is sharply pointed.

(3) This section does not apply to a folding pocket knife unless the cutting edge of its blade exceeds 3 inches.

(4) It is a defence for a person charged with an offence under this section to prove that the person had good reason or lawful authority for having the article in their possession in a public place.

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

(5) Without limiting subsection (4), it is a defence for a person charged with an offence under this section to prove that the person had the article in their possession —

(a) for use at work;

(b) for religious reasons; or

(c) as part of a national costume.

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

[Crimes Ord. s.16; UK CJ Act 1988 s.139]

170. Having an offensive weapon, etc. on school premises or further education premises

[S. 24/Ord. 10/2024/w.e.f. 14.08.2024]

(1) A person who has an article to which section 169 applies in their possession on school premises or further education premises commits an offence.
Penalty: Imprisonment for 4 years or a fine, or both.

[S. 24/Ord. 10/2024/w.e.f. 14.08.2024]

(2) A person who has any other offensive weapon in their possession on school premises or further education premises commits an offence.
Penalty: Imprisonment for 4 years or a fine, or both.

[S. 24/Ord. 10/2024/w.e.f. 14.08.2024]

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had good reason or lawful authority for having the article or weapon in their possession on those premises.

[S. 24/Ord. 10/2024/w.e.f. 14.08.2024]

(4) Without limiting subsection (3), it is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person had the article or weapon in question in their possession —

(a) for use at work;

(b) for educational purposes;

(c) for religious reasons; or

(d) as part of a national costume.

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

[Crimes Ord. s.16A; UK CJ Act 1988 s.139A]

171. Threatening with offensive weapon, etc. on school premises or further education premises

[S. 25/Ord. 10/2024/w.e.f. 14.08.2024]

(1) A person who —

(a) has an article to which this section applies in their possession on school premises or further education premises;

(b) unlawfully and intentionally threatens another person ("**A**") with the article; and

(c) does so in such a way that a reasonable person ("**B**") who was exposed to the same threat as A would think that there was an immediate risk of physical harm to B,

commits an offence.
Penalty: Imprisonment for 4 years or a fine, or both.

[S. 25/Ord. 10/2024/w.e.f. 14.08.2024]
(2) This section applies to an offensive weapon and any article to which section 169 applies.

(3) ...

[S. 25/Ord. 10/2024/w.e.f. 14.08.2024]

(4) ...

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

[UK CJ Act 1988 s.139AA ins. by LASPO Act 2012 s.142]

172. Entry and search of school premises or further education premises for offensive weapons, etc.

[S. 26/Ord. 10/2024/w.e.f. 14.08.2024]
(1) A police officer may enter school premises or further education premises and search those premises and any person on those premises for —

(a) an article to which section 169 applies;

(b) an offensive weapon; or

(c) a corrosive substance (as defined in section 173B),

if the officer has reasonable grounds for believing that an offence under section 170 or 171 or, in relation to a corrosive substance, section 173B is being, or has been, committed.

[S. 26/Ord. 10/2024/w.e.f. 14.08.2024]
(2) If in the course of a search under this section a police officer discovers an article, weapon or substance which they have reasonable grounds for suspecting to be an article, weapon or substance of a kind described in subsection (1), the officer may seize and retain it.

[S. 26/Ord. 10/2024/w.e.f. 14.08.2024]
(3) A police officer may use any reasonable force that is necessary in the exercise of the power of entry conferred by this section.

[UK CJ Act 1988 s.139B]

173. Carrying offensive weapon

(1) A person who, without lawful authority or reasonable excuse, which the person must prove, has with him or her in any public place any offensive weapon commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) If a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture or disposal of the weapon in respect of which the offence was committed.

[UK Prevention of Crime Act 1953 s.1 am. by Offensive Weapons Act 1996 and s.1A ins. by LASPO Act 2012]

173A. Threatening with offensive weapon in public place

A person commits an offence if they —

(a) have an offensive weapon in their possession in a public place;

(b) unlawfully and intentionally threaten another person ("**A**") with the weapon; and

(c) do so in such a way that a reasonable person ("**B**") who was exposed to the same threat as A would think that there was an immediate risk of physical harm to B.

Penalty: Imprisonment for 4 years or a fine, or both.

[UK Prevention of Crime Act 1953 s. 1A and Offensive Weapons Act 2019 s.50]

[S. 27/Ord. 10/2024/w.e.f. 14.08.2024]

173B. Threatening with offensive weapon or corrosive substance in private place

(1) A person ("**A**") commits an offence if —

(a) while in a private place, A unlawfully and intentionally threatens another person ("**B**") with an article or substance to which this subsection applies; and

(b) they do so in such a way that there is an immediate risk of serious physical harm to B.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) Subsection (1) applies to an article or substance if it is —

(a) an offensive weapon;

(b) an article to which section 169 (having article with blade or point in public place) applies; or

(c) a corrosive substance.

(3) In the application of subsection (1) to an article within subsection (2)(a) or (b), "**private place**" means a place other than —

(a) a public place;

(b) a place which is part of school premises; or

(c) a place which is part of further education premises.

(4) In the application of subsection (1) to a corrosive substance, "**private place**" means a place other than a public place.

(5) For the purposes of subsection (1) physical harm is "**serious**" if it amounts to grievous bodily harm for the purposes of section 64.

(6) In this section, "**corrosive substance**" means a substance that is capable of burning human skin by corrosion.

[UK Offensive Weapons Act 2019 s.52]

[S. 27/Ord. 10/2024/w.e.f. 14.08.2024]

174. Listed offensive weapons

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(1) A person who —

(a) manufactures, sells or hires or offers for sale or hire;

(b) exposes or has in the person's possession for the purpose of sale or hire;

(c) lends or gives to any other person; or

(d) imports,

an offensive weapon to which this section applies commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(1A) A person who has possession of a weapon to which this section applies in private commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(1B) For the purposes of subsection (1A), a person has possession of a weapon "**in private**" if they have possession of it at a place other than —

(a) a public place;

(b) school premises;

(c) further education premises; or

(d) a prison.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(2) This section applies to the following weapons, other than weapons of those descriptions which are antique weapons —

(a) a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;

(b) a swordstick, that is, a hollow walking-stick or cane containing a blade which may be used as a sword;

(c) the weapon sometimes known as a "handclaw", being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;

(d) the weapon sometimes known as a "belt buckle knife", being a buckle which incorporates or conceals a knife;

(e) the weapon sometimes known as a "push dagger", being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;

(f) the weapon sometimes known as a "hollow kubotan", being a cylindrical container containing a number of sharp spikes;

(g) the weapon sometimes known as a "footclaw", being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;

(h) the weapon sometimes known as a "shuriken", "shaken" or "death star", being a hard non-flexible plate having three or more sharp radiating points and designed to be thrown;

(i) the weapon sometimes known as a "balisong" or "butterfly knife", being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;

(j) the weapon sometimes known as a "telescopic truncheon", being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;

(k) the weapon sometimes known as a "blowpipe" or "blow gun", being a hollow tube out of which hard pellets or darts are shot by the use of breath;

(l) the weapon sometimes known as a "kusari gama", being a length of rope, cord, wire or chain fastened at one end to a sickle;

(m) the weapon sometimes known as a "kyoketsu shoge", being a length of rope, cord, wire or chain fastened at one end to a hooked knife;

(n) the weapon sometimes known as a "manrikigusari" or "kusari", being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;

(o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person

or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);

(p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

(q) a straight, side-handled or friction-lock truncheon (sometimes known as a baton);

(r) a sword with a curved blade of 50 cms or over in length; and for the purposes of this sub-paragraph, the length of the blade is the straight line distance from the top of the handle to the tip of the blade;

(s) the weapon sometimes known as a "zombie knife", "zombie killer knife" or "zombie slayer knife", being a blade with —

(i) a cutting edge;

(ii) a serrated edge; and

(iii) images or words (whether on the blade or handle) that suggest that it is to be used for the purpose of violence;

(t) the weapon sometimes known as a "cyclone knife" or "spiral knife" being a weapon with —

(i) a handle;

(ii) a blade with two or more cutting edges, each of which forms a helix; and

(iii) a sharp point at the end of the blade.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(3) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2), but not so as to include in subsection (2) anything that is —

(a) a firearm (as defined in the Firearms and Ammunition Ordinance 1987); or

(b) a crossbow.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(3A) An order under subsection (3) which has the effect that possession in private of a weapon of a particular description is, or is to become, an offence under subsection (1A) may make provision —

(a) enabling arrangements to be made for the surrender of weapons of that description;

(b) as to the procedure to be followed in relation to the surrender of such weapons;

(c) for the payment of compensation in respect of weapons surrendered in accordance with the arrangements;

(d) as to the requirements that must be met by a person making a claim for compensation;

(e) as to the procedure to be followed in respect of a claim and for the determination of a claim;

(f) enabling a person to exercise a discretion in determining whether to make a payment in response to a claim and the amount of such a payment.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(3B) The importation of a weapon to which this section applies is prohibited.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(4) It is a defence for any person charged with an offence under this section or a customs offence to prove that the person's conduct was only for the purpose of —

(a) performing functions on behalf of the Crown or a visiting force; or

(b) making the weapon available to a museum or gallery in the Falkland Islands or elsewhere.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(4A) It is a defence for a person charged with an offence under subsection (1A) to show that the weapon is one of historical importance.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(4B) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(5) If the operator of, or a person acting on behalf of, a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for the person to prove that they had reasonable grounds for believing that the person to whom they lent or hired it would use it only for cultural, artistic or educational purposes.

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

(5A) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only for educational purposes.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(5B) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence to show that their conduct was only for the purpose of making the weapon available for one or more of the purposes specified in subsection (5D).

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(5C) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only for one or more of the purposes specified in subsection (5D).

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(5D) The purposes are —

(a) the purposes of theatrical performances and of rehearsals for such performances;

(b) the production of films; and

(c) the production of programme service.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that the weapon —

(a) was made before 1954; or

(b) was made at any other time according to traditional methods of making swords by hand.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6A) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence to show that their conduct was only for the purpose of making the weapon available for the holding of a permitted activity by an organisation which holds public liability insurance in relation to liabilities to third parties arising from or in connection with the organisation and the holding of the activity.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6B) It is a defence for a person charged with an offence under subsection (1A) in respect of a curved sword to show that their conduct was only for the purpose of participating in a permitted activity of a kind mentioned in subsection (6A).

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6C) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that their conduct was only for the purpose of making the sword available for the purposes of use in religious ceremonies for religious reasons.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6D) It is a defence for a person charged with an offence under subsection (1A) in respect of a curved sword to show that the person had possession of the sword only for religious reasons.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6E) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that their conduct was only for the purpose of making the sword available for presentation by a Sikh to another person at a religious ceremony or other ceremonial event.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6F) It is a defence for a person charged with an offence under subsection (1) of giving a curved sword to another person to show that their conduct consisted of the presentation of the sword by a Sikh to another person at a religious ceremony or other ceremonial event.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(6G) It is a defence for a person charged with an offence under subsection (1A) of possession of a curved sword in private to show that —

(a) they were a Sikh at the time the offence is alleged to have been committed and possessed the sword only for the purpose of presenting it to another person at a religious ceremony or other ceremonial event; or

(b) the sword was presented to the person by a Sikh at a religious ceremony or other ceremonial event.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

(7) ...

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

(8) In this section —

"**antique weapon**" means a weapon that is more than 100 years old;

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

"**curved sword**" means a weapon referred to in subsection (2)(r);

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

"**customs offence**" means an offence under section 43(2) or (3) of the Customs Ordinance 2003 in respect of an offensive weapon to which this section applies;

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

"**film**" means a recording on any medium from which a moving image may by any means be produced and the sound track accompanying a film shall be treated as part of the film;

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

"**historical re-enactment**" means any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past;

"**insurance**" means a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement;

[Revision w.e.f. 23/05/2019]

"**museum or gallery**" —

(a) includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it; but

(b) does not include an institution that distributes profits.

"**permitted activity**" means an historical re-enactment or a sporting activity;

"**Sikh**" means a follower of the Sikh religion;

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

"**sporting activity**" means the practising of a sport which requires the use of a weapon described in subsection (2)(r);

"**third parties**" includes participants in, and spectators of, a permitted activity and members of the public;

[Revision w.e.f. 23/05/2019]

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

"**visiting force**" means any body, contingent or detachment of the forces of a country to which the Visiting Forces Act 1952 applies (as defined in section 1 of that Act) that is present in the Falkland Islands with the permission of the Government or the Government of the United Kingdom.

[S. 28/Ord. 10/2024/w.e.f. 14.08.2024]

[UK CJ Act 1988 s.141; CJ Act 1988 (Offensive Weapons) Order 1988 (S.I. 1988/2019 as am. by 2002/1668, 2004/1271 and 2008/97)]

175. Authorisation in anticipation of violence in an area

(1) If the Chief Police Officer reasonably believes —

(a) that —

(i) incidents involving serious violence may occur in any area of the Falkland Islands; and

(ii) it is expedient to do so to prevent their occurrence; or

(b) that persons are carrying knives or offensive weapons in any area of the Falkland Islands without good reason,

the Chief Police Officer may authorise the powers to stop and search persons and vehicles conferred by section 176 to be exercised in that area for a specified period not exceeding 24 hours.

(2) The authorisation referred to in subsection (1) may be given by an officer of the rank of Inspector or above if the officer reasonably believes that incidents involving serious violence or use of knives or offensive weapons in the area are imminent and the Chief Police Officer is not available.

(3) If it appears to the Chief Police Officer or to the officer who gave the authorisation that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have,

been committed in connection with any incident or activity in the area, the officer may extend the authorisation for a further period not exceeding 24 hours.

(4) An authorisation or extension under this section must be in writing signed by the Chief Police Officer or the police officer who gives it, and must specify —

(a) the area in which and the period during which the powers conferred by section 176 are exercisable; and

(b) the grounds for the authorisation or extension.

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

(5) If an officer other than the Chief Police Officer gives an authorisation under subsection (1) or an extension under subsection (3) the officer must as soon as practicable inform the Chief Police Officer.

[UK Knives Act 1997 s.8 incorporating s.60 of the CJ and PO Act 1994 as am by Anti-terrorism, Crime & Security Act 2001]

176. Powers to search for and seize offensive weapons in an area

(1) An authorisation under section 175 in relation to an area of the Falkland Islands confers on any police officer in uniform power in the area and during the period specified in the authorisation —

(a) to stop any pedestrian and search the pedestrian or anything carried by the pedestrian for knives or offensive weapons;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for knives or offensive weapons.

(2) A police officer may, in the exercise of the power in subsection (1), stop any person or vehicle in the area and make any search the officer thinks fit, whether or not they have any grounds for suspecting that the person or vehicle is carrying knives or offensive weapons.

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

(3) If in the course of a search under this section a police officer discovers a knife or an article which the officer has reasonable grounds for suspecting to be an offensive weapon, the officer may seize it.

(4) This section applies (with the necessary modifications) to ships and aircraft as it applies to vehicles.

(5) A person who fails to stop or (as the case may be) to stop a vehicle when required to do so by a police officer in the exercise of the powers under this section commits an offence, for which the maximum penalty on conviction is imprisonment for 1 month.

(6) If —

(a) a vehicle is stopped by a police officer under this section; and

(b) the driver applies in writing within 12 months from the day on which the vehicle was stopped,

the Chief Police Officer must give the driver a written statement that the vehicle was stopped under the powers conferred by this section.

(7) If —

(a) a pedestrian is stopped and searched by a police officer under this section; and

(b) the pedestrian applies in writing within 12 months from the day on which they were stopped and searched,

the Chief Police Officer must give the pedestrian a written statement that they were stopped under the powers conferred by this section.

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

(8) Anything seized by a police officer under subsection (3) may be retained in accordance with Part 3 of the Criminal Procedure and Evidence Ordinance 2014 (Powers of Seizure).

(9) For the purposes of this section, a person carries a knife or an offensive weapon if the person has it in their possession.

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

(10) The powers conferred by this section are in addition to and do not limit any power of stopping, search and seizure otherwise conferred by any other law.

[UK Knives Act 1997 s.8 incorporating s.60 & 60A of the CJ and PO Act 1994 as am. by Anti-terrorism, Crime & Security Act 2001]

176A. Surrender of offensive weapons

(1) The Chief Police Officer may make such arrangements (a "**surrender scheme**") as they think fit to secure the orderly surrender of offensive weapons or other things to which provisions of this Part apply.

(2) A surrender scheme must provide for a payment to be made in respect of a surrendered weapon if —

(a) it is a weapon possession of which became unlawful by virtue of the amendments made to section 160 or 174 by the Criminal Laws (Amendment) Ordinance 2023;

(b) it is surrendered within the period (if any) specified in the surrender scheme;

(c) a person who, when that Ordinance commenced, owned the weapon or had a contractual obligation to acquire it applies for the payment in the manner and within the time (if any) specified in the surrender scheme.

(3) A surrender scheme may provide for a payment to be made in respect of any other surrendered weapon if the Chief Police Officer considers it appropriate in the circumstances.

(4) The amount payable under subsection (2) or (3) is an amount determined by the Chief Police Officer to be reasonable having regard to all of the circumstances (including, but not limited to —

(a) the price, if any, that was paid for the weapon by the person surrendering it; and

(b) the current value of the weapon in so far as it can reasonably be ascertained).

(5) It is a defence for a person charged with an offence under this Part in relation to the possession of a weapon or other thing to show that the person has surrendered the weapon in accordance with a surrender scheme (whether that surrender occurred before or after the offence is alleged to have been committed).

[UK Offensive Weapons Act 2019 s. 48]

[S. 29/Ord. 10/2024/w.e.f. 14.08.2024]

PART 8 - EXPLOSIVE SUBSTANCES

177. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**explosive**" —

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

"**explosive substance**" includes —

(a) explosives and ingredients for making explosives;

(b) any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance;

(c) any part of any such apparatus, machine, or implement;

(2) The Governor may by order declare that any substance which appears to the Governor to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture of it being liable to explosion, is deemed to be an explosive within

the meaning of this Part and the provisions of this Part (subject to any exceptions, limitations, and restrictions specified in the order) then extend to such a substance as if it were included in the term "explosive" in this Part.

[UK Explosives Act 1875 ss.3 and 104; Explosive Substances Act 1883 s.9]

Explosive substances offences

178. Causing grievous harm by explosion

A person who unlawfully and maliciously, by the explosion of any explosive substance, burns, maims, disfigures, disables or does any grievous bodily harm to any person, commits an offence.
Penalty: Imprisonment for 14 years.

[UK OAP Act 1861, s.28]

179. Causing explosion, etc. with intent

(1) A person who unlawfully and maliciously —

(a) causes any explosive substance to explode;

(b) sends or delivers to or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or

(c) puts or lays at any place, or casts or throws at or upon or otherwise applies to any person, any corrosive fluid or any destructive or explosive substance,

with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, commits an offence.
Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether any bodily injury is caused or not.

[UK OAP Act 1861, s.29]

180. Causing explosion likely to endanger life or property

(1) A person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to —

(a) endanger life; or

(b) cause serious injury to property,

commits an offence.
Penalty: Imprisonment for life.

(2) It is immaterial for the purposes of subsection (1) whether any injury to person or property is caused or not.

(3) An offence under subsection (1) is triable on indictment only.

[UK Explosive Substances Act 1883 s.2 am. by CJ Act 1975]

181. Acting or conspiring to cause explosion, or making or keeping explosives with intent

(1) A person who unlawfully and maliciously —

(a) does any act with intent to cause; or

(b) conspires to cause,

by an explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, commits an offence.
Penalty: Imprisonment for life.

(2) A person who unlawfully and maliciously makes or has in the person's possession or under the person's control an explosive substance with intent by means of it —

(a) to endanger life;

(b) to cause serious injury to property; or

(c) to enable any other person to endanger life or cause serious injury to property,

commits an offence.
Penalty: Imprisonment for life.

(3) It is immaterial for the purposes of subsection (1) or (2) whether —

(a) any explosion does or does not take place;

(b) any injury to person or property is caused or not.

(4) An offence under subsection (1) or (2) is triable on indictment only.

[UK Explosive Substances Act 1883 s.3 am. by CJ Act 1975]

182. Placing explosives with intent

(1) A person who unlawfully and maliciously places or throws in, into, upon, against or near any building, ship, or aircraft any explosive substance, with intent to do any bodily injury to any person, commits an offence.
Penalty: Imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether —

(a) any explosion takes place or not;

(b) any bodily injury is caused or not.

[UK OAP Act 1861 s.30]

183. Making explosives for an unlawful purpose

(1) A person ('A') who makes any explosive substance in circumstances that give rise to a reasonable suspicion that A made the substance, or is making it, for an unlawful purpose, commits an offence.
Penalty: Imprisonment for 14 years.

(2) A does not commit an offence under subsection (1) if A can show that A made or is making the explosive substance for a lawful purpose.

[UK Explosive Substances Act 1883 s.4 adapted]

184. Possession of explosives with intent

A person who has in the person's possession any explosive substance —

(a) with intent by means of the substance to commit an offence under this Ordinance; or

(b) for the purpose of enabling any other person to commit such an offence,

commits an offence.
Penalty: Imprisonment for 2 years.

[UK OAP Act 1861 s.64 adapted]

185. Ancillary offences

(1) A person who, by supplying or soliciting for money, providing premises, supplying materials, or in any other manner procures, counsels, aids, abets, or is accessory to, the commission of an offence under this Part commits that offence and is liable to be tried and punished for it as if the person had been a principal.

(2) A person who —

(a) knows that another person has an explosive substance in that person's possession or under that person's control;

(b) knows facts giving rise to a reasonable suspicion that that person did not have the substance in that person's possession or under that person's control for a lawful object; and

(c) was present actively encouraging or in some way helping that person in the commission of the offence,

commits the offence of aiding and abetting an offence under section 42 and is liable on conviction to the penalty there specified.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) A person may be prosecuted for an offence under this section, or under Part 3 for the offence of aiding and abetting an offence under this Part, but not for both offences arising out of the same facts.

[UK Explosive Substances Act 1883 s.5 amplified]

186. Explosives found on vessels

(1) If the master or owner of any vessel has reasonable cause to suspect that any explosive substance or other goods of a dangerous nature which, if found, the master would be entitled to throw overboard pursuant to the merchant shipping laws are concealed on board the vessel —

(a) the master may search any part of the vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel;

(b) if the master finds any such goods they may be dealt with in the manner provided by the merchant shipping laws; and

(c) if the master does not find any such goods, he or she is not subject to any liability, civil or criminal, if it appears to a tribunal before which the question of the master's liability is raised that he or she had reasonable cause to suspect that such goods were so concealed.

(2) In this section, "**the merchant shipping laws**" means merchant shipping legislation of the United Kingdom that applies to the Falkland Islands by its own force or by Order in Council, or any Ordinance of the Falkland Islands replacing that legislation.

[UK Explosive Substances Act 1883 s.8]

Offences relating to public safety

187. …

[Crimes Ord. s.12]

[S.8 Ord. 8/2022/w.e.f. 16/05/2022]

188. Possession of unexploded ordnance

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(1) A person who knowingly possesses any unexploded ordnance without lawful authority commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) For the purposes of this section —

"**unexploded ordnance**" means any grenade, mine, mortar round, rocket or shell containing any explosive substance; and

"**without lawful authority**" means without authority given by or on behalf of the Commander British Forces.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S.9 Ord. 8/2022/w.e.f. 16/05/2022]

(3) A person does not commit an offence under subsection (1) if the ordnance in question is upon any land or in any building of which the person is the occupier and the person or a predecessor in occupation has reported the presence of the ordinance to the Royal Engineers Explosive Ordnance Detachment or to the police; but the burden of proof of such report lies upon the person.

[Crimes Ord. s.13; and S.R. & O. 6/2017/w.e.f. 13/4/2017]

189. Sale of explosives

A person who —

(a) sells any explosive to any other person under the age of 16 years; or

(b) sells or offers for sale any explosive in any road, street, alleyway, thoroughfare or public place,

commits an offence.
Penalty: A fine at level 3 on the standard scale.

[Crimes Ord. s.14]

190. Casting fireworks, etc.

A person who casts any firework —

(a) in any road, street, alleyway, thoroughfare or public place; or

(b) without the authority of the occupier, into or upon any land or building,

commits an offence.
Penalty: A fine at level 2 on the standard scale.

[Crimes Ord. s.15]

Miscellaneous provisions

191. Procedure and saving

(1) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(2) This Part does not exempt any person from any proceeding for an offence punishable at common law, under the Explosives Act 1875 as applied to the Falkland Islands, or under any other written law other than this Ordinance, but no person may be punished twice for the same criminal act.

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

192. Seizure and detention of explosives liable to forfeiture

(1) If a police officer has reasonable cause to believe that any explosive substance found by the officer, whether in the course of a criminal investigation or otherwise, is liable to be forfeited under this Ordinance or the Criminal Procedure and Evidence Ordinance 2014, the officer may seize and detain the substance until the Magistrate's Court has decided, on an application by the Attorney General, whether or not it is liable to be forfeited.

(2) An officer who seizes an explosive substance pursuant to subsection (1) may —

(a) require the occupier of the place in which it was seized (whether a building or other place, including a vehicle, vessel or aircraft) to detain it in that place or in any place under the control of the occupier; or

(b) remove it in a manner and to a place that will in the officer's opinion least endanger the public safety, and there detain it and, if it appears necessary for the public safety, and on the written authority of a justice of the peace or a police officer of the rank of Inspector or above, cause it to be destroyed or otherwise rendered harmless.

(3) Before destroying or rendering harmless the explosive substance, the officer must —

(a) take and keep a sample of it; and

(b) if requested, give a portion of the sample to the person who owns the explosive substance, or has it under the person's control at the time of the seizure.

(4) A person who is an occupier of premises or a vehicle, vessel or aircraft and who —

(a) by that person or by others, fails to keep the explosive substance when required pursuant to subsection (2)(a) to detain it; or

(b) except with the authority of the officer who seized it, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with it while it is so detained,

commits an offence.
Penalty: A fine at level 4 on the standard scale.

(5) A person convicted of an offence under subsection (4) is liable to forfeit all explosive substances which are at the time of the offence in the person's possession or under the person's control at the place to which the offence relates.

(6) Proceedings before the Magistrate's Court to decide whether an explosive substance is liable to forfeiture must be commenced as soon as practicable after the seizure.

(7) A receptacle containing any explosive substance may be seized, detained, and removed in the same way as the contents of it.

(8) A police officer who seizes any explosive substance under this section —

(a) may use for the purposes of the removal and detention of it any vehicle, vessel or aircraft in which it was seized, and any equipment belonging to the vehicle, vessel or aircraft; and

(b) must pay to the owner reasonable compensation for such use, to be determined, in case of dispute, by the Magistrate's Court and recovered as a civil debt of the Government.

(9) The explosive substance must, as far as practicable, be kept and conveyed in accordance with the Explosives Act 1875 and regulations made under it, as applied to the Falkland Islands, and with all due care to prevent accident.

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

(10) A person who seizes, removes, detains, keeps or conveys the substance is not liable to any penalty or forfeiture under this or any other Ordinance, or to any damages, for keeping or conveying it, if the person does so using all due care as mentioned.

(11) A person who seizes an explosive substance, or deals with it pursuant to this section, is not liable for damage caused by the seizure or dealing, or any act incidental to or consequential on it, unless it is proved that the person acted without reasonable cause, or caused the damage by some wilful neglect or default.

[UK Explosives Act 1875 s.74]

193. Forfeiture of subject-matter of offence

(1) If a person is convicted of an offence against this Part, the court may order that the explosive substance in respect of which the offence was committed or any part of that substance be forfeited to the Crown.

(2) A receptacle containing any explosive substance may be forfeited, sold, destroyed, or otherwise disposed of, in the same way as the contents of it.

(3) Any explosive substance or receptacle forfeited pursuant to this Part may be sold, destroyed, or otherwise disposed of in the manner the court declaring the forfeiture directs, and the proceeds of any such sale or disposal must be paid as provided by section 90 of the Interpretation and General Clauses Ordinance 1977.

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

[UK Explosives Act 1875 s.89]

PART 9 - CRIMINAL DAMAGE

194. Meaning of "property"

(1) For purposes of this Part, "**property**" means property of a tangible nature, whether real or personal, including money and —

(a) includes wild creatures that have been tamed or are normally kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(b) does not include mushrooms growing wild on any land, or flowers, fruit, foliage or plants growing wild on any land.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) In subsection (1), "**mushroom**" includes any fungus and "**plant**" includes any shrub or tree.

(3) Property is to be treated for the purposes of this Part as belonging to any person who —

(a) has the custody or control of it;

(b) has in it any proprietary right or interest (other than an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) has a charge on it.

(4) If property is subject to a trust, the persons to whom it belongs are to be treated as including any person who has a right to enforce the trust.

(5) Property of a corporation sole is to be treated as belonging to the corporation even if there is a vacancy in the corporation.

(6) For the purposes of this Part, a modification of the contents of a computer is not to be regarded as damaging any computer or computer storage medium unless its effect on that computer or storage medium impairs its physical condition.

[UK Criminal Damage Act 1971 s.10 am. by Police & Justice Act 2006]

195. Destroying or damaging property

(1) A person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage the property or being reckless as to whether the property would be destroyed or damaged, commits an offence.
Penalty: Imprisonment for 10 years.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to that person or another —

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would be thereby endangered,

commits an offence.

Penalty: Imprisonment for life.

(3) In this part, "**damage**" includes not only permanent or temporary physical harm to property but also permanent or temporary impairment of value or usefulness of the property.

(4) An offence under subsection (2) is triable on indictment only.

[UK Criminal Damage Act 1971 ss.1 to 3]

196. Arson

(1) A person who commits an offence under section 195(1) by destroying or damaging property by fire commits the offence of arson.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who commits an offence under section 195(2) by destroying or damaging property by fire commits the offence of aggravated arson.
Penalty: Imprisonment for life.

(3) An offence under subsection (2) is triable on indictment only.

(4) The offence of arson at common law is abolished.

[UK Criminal Damage Act 1971 ss.1 to 3]

197. Threats to destroy or damage property

A person ('A') who without lawful excuse makes to another person ('B') a threat, intending that ('B') would fear it would be carried out —

(a) to destroy or damage any property belonging to B or a third person; or

(b) to destroy or damage A's own property in a way which A knows is likely to endanger the life of B or a third person,

commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Criminal Damage Act 1971 ss.1 to 3]

198. Possessing anything with intent to destroy or damage property

It is an offence for a person ('A') to have anything in A's custody or under A's control, if A intends without lawful excuse to use it or cause or permit another person ('B') to use it —

(a) to destroy or damage any property belonging to some other person ('C'); or

(b) to destroy or damage A's own or B's property in a way which A knows is likely to endanger the life of C or some other person.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Criminal Damage Act 1971 ss.1 to 3]

199. Lawful excuse

(1) This section applies to —

(a) any offence under section 195; and

(b) any offence under section 197 or 198 except one involving —

(i) a threat by the person charged to destroy or damage property in a way that the person knows is likely to endanger the life of another; or

(ii) an intent by the person charged to use or cause or permit the use of something in that person's custody or under that person's control so to destroy or damage property.

(2) A defendant charged with an offence to which this section applies is, whether or not the person would be treated for the purposes of this Part as having a lawful excuse apart from this subsection, to be treated for those purposes as having a lawful excuse —

(a) if at the time of the act or acts alleged to constitute the offence the defendant believed that the person or persons whom the defendant believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented if that person or persons had known of the destruction or damage and its circumstances; or

(b) if the defendant destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 198, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to the defendant or another, or a right or interest in property which was or which the defendant believed to be vested in the defendant or another, and at the time of the act or acts alleged to constitute the offence the defendant believed that —

(i) the property, right or interest was in immediate need of protection; and

(ii) the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section is not to be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

[UK Criminal Damage Act 1971 s.5]

200. Search for things intended for use in committing offences of criminal damage

(1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his or her custody or under his or her control or on his or her premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse —

(a) to destroy or damage property belonging to another; or

(b) to destroy or damage any property in a way likely to endanger the life of another,

the justice may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which the officer believes to have been used or to be intended to be used as aforesaid.

(3) Sections 621 to 623 of the Criminal Procedure and Evidence Ordinance 2014 (disposal of property in the possession of the police) apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in those sections.

[UK Criminal Damage Act 1971 s.6]

201. Evidence in connection with offences under this Part

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that to do so may incriminate the person or the person's spouse of an offence under this Part.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became partners after the making of the statement or admission) against the person's spouse or partner.

[UK Criminal Damage Act 1971 s.9]

PART 10 – SEXUAL OFFENCES

202. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**care worker**" has the meaning given to it by section 243;

"**consent**" has the meaning given to it by sections 292 to 294;

"**image**" means a moving or still image and includes an image produced by any means and, if the context permits, a three-dimensional image;

"**indecent**" in relation to an act or thing means an act or thing that right-thinking people will consider an affront to sexual modesty when applying the objective test of the recognised standards of propriety pertaining in the Falkland Islands at the time;

"**mental disorder**" has the meaning given by section 4 of the Mental Health Ordinance 2010;

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

"**penetration**" is a continuing act from entry to withdrawal;

"**touching**" includes touching —

(a) with any part of the body;

(b) with anything else;

(c) through anything,

and includes touching amounting to penetration;

"**vagina**" includes vulva.

(2) For the purposes of this Part —

(a) references to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery);

(b) references to an image of a person include references to an image of an imaginary person;

(c) references to observation (however expressed) are to observation whether direct or by looking at an image;

(d) in relation to an animal, references to the vagina or anus include references to any similar part.

(3) For the purposes of this Part (except sections 217A and 283A to 288), penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

[S. 30/Ord. 10/2024/w.e.f. 14.08.2024]

[UK Sexual Offences Act 2003 ss.78 and.79]

Rape and related offences

203. Rape

(1) A male person ('**A**') commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person ('**B**') with his penis;

(b) B does not consent to the penetration; and

(c) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

204. Assault by penetration

(1) A person ('**A**') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person ('**B**') with a part of A's body or anything else;

(b) the penetration is sexual;

(c) B does not consent to the penetration; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for life.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

205. Sexual assault

(1) A person ('**A**') commits an offence if —

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual;

(c) B does not consent to the touching; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

[UK Sexual Offences Act 2003 ss.1 to 14]

206. Causing a person to engage in sexual activity without consent

(1) A person ('**A**') commits an offence if —

(a) A intentionally causes another person ('**B**') to engage in an activity;

(b) the activity is sexual;

(c) B does not consent to engaging in the activity; and

(d) A does not reasonably believe that B consents.

Penalty: As provided in subsection (4) or (5).

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 292 to 294 (meaning of consent) apply to an offence under this section.

(4) The maximum penalty on conviction for an offence under this section, if the activity caused involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(5) If subsection (4) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

(6) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

Rape etc. against children under 13

207. Rape of a child under 13

(1) A male person commits an offence if —

(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and

(b) the other person is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

208. Assault of a child under 13 by penetration

(1) A person ('A') commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person with a part of A's body or anything else;

(b) the penetration is sexual; and

(c) B is under 13.

Penalty: Imprisonment for life.

(2) An offence under subsection (1) is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

209. Sexual assault of a child under 13

A male person ('**A**') commits an offence if –

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual; and

(c) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.1 to 14]

210. Causing or encouraging a child under 13 to engage in sexual activity

(1) A person ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to engage in an activity;

(b) the activity is sexual; and

(c) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum sentence is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.1 to 14]

Child sex offences

211. Sexual activity with a child

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

[UK Sexual Offences Act 2003 ss.1 to 14]

212. Causing or encouraging a child to engage in sexual activity

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to engage in an activity;

(b) the activity is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for 14 years.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years.

[UK Sexual Offences Act 2003 ss.1 to 14]

213. Engaging in sexual activity in the presence of a child

A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it —

(i) when another person ('**B**') is present or is in a place from which A can be observed;

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it; and

(d) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.1 to 14]

214. Causing a child to watch a sexual act

A person aged 18 or over ('**A**') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('**B**') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.1 to 14]

215. Child sex offences committed by youths

A person who is a youth commits an offence if the person does anything which would be an offence under any of sections 211 to 214 if the person were an adult.

Penalty: Imprisonment for 5 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.1 to 14]

216. Arranging or facilitating commission of a child sex offence

(1) A person ('**A**') commits an offence if —

(a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world; and

(b) doing it will involve the commission of an offence under any of sections 211 to 215.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person ('**A**') does not commit an offence under this section if —

(a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do; and

(b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if the person acts for the purpose of —

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

[UK Sexual Offences Act 2003 ss.1 to 14]

217. Meeting a child following sexual grooming etc.

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A has met or communicated with another person ('**B**') and subsequently —

(i) A intentionally meets B;

(ii) A travels with the intention of meeting B in any part of the world, or arranges to meet B in any part of the world; or

(iii) B travels with the intention of meeting A in any part of the world;

(b) A intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence;

(c) B is under 16; and

(d) A does not reasonably believe that B is 16 or over.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In subsection (1) —

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

(b) "**relevant offence**" means —

(i) an offence under this Part; or

(ii) anything done in a place outside the Falkland Islands which is not an offence in that place but would be an offence under this Part if done in the Falkland Islands.

[UK Sexual Offences Act 2003 s.15 am. by Criminal Justice & Immigration Act 2008]

217A. Sexual communication with children

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person ('**B**');

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual; and

(c) B is under 16 and A does not reasonably believe that B is 16 or over.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this section, a communication is sexual if —

(a) any part of it relates to sexual activity; or

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual.

(3) In subsection (2)(a), "**sexual activity**" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

[UK Sexual Offences Act 2003 s. 15A]

[S. 24/Ord 3/2019/w.e.f. 10/04/19]

Abuse of position of trust

218. Abuse of position of trust: Sexual activity with a child

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 ss.16 to 19]

219. Abuse of position of trust: Causing or encouraging a child to engage in sexual activity

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to engage in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 ss.16 to 19]

220. Abuse of position of trust: Sexual activity in the presence of a child

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it–

(i) when another person ('**B**') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) A is in a position of trust in relation to B;

(e) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(f) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A is —

(a) in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 ss.16 to 19]

221. Abuse of position of trust: Causing a child to watch a sexual act

(1) A person aged 18 or over ('**A**') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('**B**') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This subsection applies if A —

(a) is in a position of trust in relation to B by virtue of circumstances within section 222; and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(4) If in proceedings for an offence under this section —

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 222; and

(b) it is not proved that the defendant was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he or she was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know of those circumstances.

[UK Sexual Offences Act 2003 ss.16 to 19]

222. Positions of trust

(1) ...

[S. 31/Ord. 10/2024/w.e.f. 14.08.2024]

(2) For the purposes of sections 218 to 221, a person ("**A**") is in a position of trust in relation to another person ("**B**") if —

(a) A is a probation officer appointed to supervise B under the Criminal Procedure and Evidence Ordinance 2014 and in that capacity has regular unsupervised access to the child as a requirement of a court order made in criminal proceedings;

(b) A is a guardian for the child, appointed under the Children Ordinance 2014 or any other enactment relating to adoption, family proceedings or otherwise;

(c) A looks after persons under 18 who are detained in an institution by virtue of a court order, or under an enactment, and B is so detained in that institution;

(d) A looks after persons under 18 who are resident in a community home or other place in which accommodation and maintenance are provided under the Children Ordinance 2014 or any other enactment and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place;

(e) A looks after persons under 18 who are accommodated and cared for in a hospital, a nursing home, an independent clinic, a care home or a private hospital, and B is accommodated and cared for in that institution;

(f) A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution;

(g) A is engaged in the provision of services under, or pursuant to anything done under the Education Ordinance 1989 or the Education (Governance and Accountability) Ordinance 2022 and, in that capacity, looks after B on an individual basis;

(h) A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of the Crown;

(i) A, as a person who is to report to the court under the Children Ordinance 2014 or any other enactment on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means);

(j) B is subject to requirements imposed by or under an enactment on his or her release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and A looks after B on an individual basis pursuant to those requirements;

(k) B is subject to a care order or a supervision order under the Children Ordinance 2014 or any other enactment and A looks after B on an individual basis in the exercise of functions conferred on A by the order.

[Sch.1 Pt.2 para.3 Ord. 6/2022/w.e.f. 31/05/2022; S. 31/Ord. 10/2024/w.e.f. 14.08.2024]

[UK Sexual Offences Act 2003 s.21 am. by Children Act 2004 and adapted]

223. Positions of trust: Interpretation

(1) The following provisions apply for the purposes of section 222.

(2) Subject to subsection (3), a person ('**A**') looks after persons under 18 if A is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person ('**A**') looks after another person ('**B**') on an individual basis if —

(a) A is regularly involved in caring for, training or supervising B; and

(b) in the course of A's involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution who —

(a) is registered or otherwise enrolled as a pupil or student at the institution; or

(b) receives education at the institution under arrangements with another educational institution at which the person is so registered or otherwise enrolled.

(5) In section 222 —

"**care home**" means an establishment which provides accommodation, together with nursing or personal care for persons who —

(a) are or have been ill;

(b) have or have had a mental disorder;

(c) are disabled or infirm; or

(d) are or have been dependent on alcohol or drugs,

but an establishment is not a care home if it is a school, a hospital, an independent clinic or a children's home or the child's family home;

"**children's home**" means an establishment which provides care and accommodation wholly or mainly for children, other than a school, hospital or care home or the child's family home;

"**community home**" means a home provided by the Crown —

(a) for the care and accommodation of children looked after by the Crown; or

(b) for purposes connected with the welfare of children, (whether or not looked after by the Crown);

"**hospital**" means the King Edward VII Memorial Hospital Stanley and any other establishment the main purpose of which is provide medical or psychiatric treatment for illness or mental illness or palliative care;

"**independent clinic**" means an establishment, other than a hospital, in which services are provided by a medical practitioner (whether or not any services are also provided for the purposes of the establishment elsewhere).

[UK Sexual Offences Act 2003 ss.22 to26]

223A. Further positions of trust: sport or religion

(1) For the purposes of sections 218 to 221, a person ("**A**") is in a position of trust in relation to another person ("**B**") if —

(a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion; and

(b) A knows that they coach, teach, train, supervise or instruct B, on a regular basis, in that sport or religion.

(2) This section does not apply if A is in a position of trust in relation to B by virtue of circumstances within section 222.

(3) In this section —

"**religion**" includes —

(a) a religion which involves belief in one or more gods; and

(b) a religion which does not involve belief in a god;

"**sport**" includes —

(a) any game in which physical skill is the predominant factor; and

(b) any form of physical recreation which is also engaged in for purposes of competition or display.

[UK Sexual Offences Act 2003 s. 22A]

[S. 32/Ord. 10/2024/w.e.f. 14.08.2024]

224. Sections 218 to 221: Exception for spouses or civil partners

(1) Conduct by a person ('**A'**) which would otherwise be an offence under any of sections 218 to 221 against another person ('**B'**) is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 ss.22 to26]

225. Sections 218 to 221: Sexual relationships which pre-date position of trust

(1) Conduct by a person ('**A**') which would otherwise be an offence under any of sections 218 to 221 against another person ('**B**') is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 218 to 221 it is for the defendant to prove that such a relationship existed at that time.

[UK Sexual Offences Act 2003 ss.22 to26]

Familial child sex offences

226. Sexual activity with a child family member

(1) A person ('**A**') commits an offence if —

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual;

(c) the relation of A to B is within section 228;

(d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and

(e) either —

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') was under 18,A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('**A**') for an offence under this section it is proved that the relation of A to the other person ('**B**') was of a description falling within section 228, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence, is imprisonment for 14 years.

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, is imprisonment for 5 years.

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

(6) …

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

[UK Sexual Offences Act 2003 ss.22 to26]

227. Encouraging a child family member to engage in sexual activity

(1) A person ('**A**') commits an offence if —

(a) A intentionally encourages another person ('**B**') to touch, or allow himself or herself to be touched by, A;

(b) the touching is sexual;

(c) the relation of A to B is within section 228;

(d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and

(e) either −

(i) B is under 18 and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (4) or (5).

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') was under 18, A is to be taken not to have reasonably believed that B was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(3) If in proceedings against a person ('**A**') for an offence under this section it is proved that the relation of A to the other person ('**B**') was of a description falling within section 228, it is to be taken that A knew or could reasonably have been expected to know that A's relation to B was of that description, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that it was.

(4) The maximum penalty on conviction for an offence under this section, if the defendant is aged 18 or over at the time of the offence, is imprisonment for 14 years.

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

(5) The maximum penalty on conviction for an offence under this section if the defendant is under 18 at the time of the offence, is imprisonment for 5 years.

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

(6) …

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

[UK Sexual Offences Act 2003 ss.22 to26]

228. Family relationships

(1) The relation of one person ('**A**') to another ('**B**') is within this section if it is within any of subsections (2) to (4).

(2) The relation of A to B is within this subsection if —

(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, including by adoption; or

(b) A is or has been B's foster parent or guardian.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and —

(a) one of them is or has been the other's step-parent;

(b) A and B are cousins;

(c) one of them is or has been the other's stepbrother or stepsister; or

(d) the parent or present or former foster parent or guardian of one of them is or has been the other's foster parent or guardian.

(4) The relation of A to B is within this subsection if —

(a) A and B live in the same household; and

(b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section —

(a) "**aunt**" means the sister or half-sister of a person's parent, and "**uncle**" has a corresponding meaning;

(b) "**cousin**" means the child of an aunt or uncle;

(c) a person is a child's foster parent if the person fosters the child under arrangements made with the person by the Crown or fosters the child privately;

(d) a person is a child's guardian if he or she has been appointed guardian of the child under the Children Ordinance 2014;

(e) "**step-parent**" includes a parent's partner; and "**stepbrother**" and "**stepsister**" includes the child of a parent's partner;

(f) "**partner**" means either one of 2 people who live together in an enduring family relationship that is not marriage or a civil partnership.

[UK Sexual Offences Act 2003 s.27 am. by Criminal Justice & Immigration Act 2008]

229. Section 226 and 227: Exception for spouses and civil partners

(1) Conduct by a person ('**A**') which would otherwise be an offence under section 226 or 227 against another person ('**B**') is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 s.28]

230. Sections 226 and 227: Sexual relationships which pre-date family relationships

(1) Conduct by a person ('**A**') which would otherwise be an offence under section 226 or 227 against another person ('**B**') is not an offence under that section if —

(a) the relation of A to B is not within subsection (2) of section 228; or

(b) immediately before the relation of A to B first became such as to fall within section 228, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(b) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 226 or 227 it is for the defendant to prove the matters mentioned in subsection (1)(a) and (b).

[UK Sexual Offences Act 2003 s.29 am. by Criminal Justice & Immigration Act 2008]

Offences against persons with a mental disorder impeding choice

231. Sexual activity with a person with a mental disorder impeding choice

(1) A person ('A') commits an offence if —

(a) A intentionally touches another person ('B');

(b) the touching is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to the touching (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or

(b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.30 to 44]

232. Causing or encouraging a person with a mental disorder to engage in sexual activity

(1) A person ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to engage in an activity;

(b) the activity is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: As provided in subsection (3) or (4).

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to engaging in the activity caused or encouraged (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.30 to 44]

233. Engaging in sexual activity in the presence of a person with a mental disorder

(1) A person ('**A**') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it —

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(i) when another person ('**B**') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B is unable to refuse because of or for a reason related to a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to being present (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

[UK Sexual Offences Act 2003 ss.30 to 44]

234. Causing a person with a mental disorder to watch a sexual act

(1) A person ('**A**') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('**B**') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) B is unable to refuse if —

(a) B lacks the capacity to choose whether to agree to watching or looking (whether because B lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) B is unable to communicate such a choice to A.

[UK Sexual Offences Act 2003 ss.30 to 44]

Inducements, etc. to persons with a mental disorder

235. Inducement etc. to procure sexual activity with a person with a mental disorder

(1) A person ('**A**') commits an offence if —

(a) with the agreement of another person ('**B**'), A intentionally touches that person;

(b) the touching is sexual;

(c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;

(d) B has a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.30 to 44]

236. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, etc.

(1) A person ('**A**') commits an offence if —

(a) by means of an inducement offered or given, a threat made or a deception practiced by A for this purpose, A intentionally causes another person ('**B**') to engage in, or to agree to engage in, an activity;

(b) the activity is sexual;

(c) B has a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, if the activity caused or agreed to involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for life.

(3) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.30 to 44]

237. Engaging in sexual activity in the presence, procured by inducement, etc., of a person with a mental disorder

A person ('**A**') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it —

(i) when another person ('**B**') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;

(e) B has a mental disorder; and

(f) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.30 to 44]

238. Causing a person with a mental disorder to watch a sexual act by inducement, etc.

A person ('A') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('B') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;

(d) B has a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.30 to 44]

239. Care workers: Sexual activity with a person with a mental disorder

(1) A person ('**A**') commits an offence if —

(a) A intentionally touches another person ('**B**');

(b) the touching is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 243.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the touching involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is imprisonment for life.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 14 years or a fine, or both.

(5) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.30 to 44]

240. Care workers: Causing or encouraging sexual activity

(1) A person ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to engage in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 243.

Penalty: As provided in subsection (3) or (4).

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

(3) The maximum penalty on conviction for an offence under this section, if the activity caused or encouraged involved —

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is imprisonment for 14 years or a fine, or both.

(4) If subsection (3) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.30 to 44]

241. Care workers: Sexual activity in the presence of a person with a mental disorder

(1) A person ('**A**') commits an offence if —

(a) A intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, A engages in it —

(i) when another person ('**B**') is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;

(d) B has a mental disorder;

(e) A knows or could reasonably be expected to know that B has a mental disorder; and

(f) A is involved in B's care in a way that falls within section 243.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

[UK Sexual Offences Act 2003 ss.30 to 44]

242. Care workers: Causing a person with a mental disorder to watch a sexual act

(1) A person ('**A**') commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ('**B**') to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 243.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) If in proceedings against a person ('**A**') for an offence under this section it is proved that the other person ('**B**') had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know it.

[UK Sexual Offences Act 2003 ss.30 to 44]

243. Care workers: Interpretation

(1) For the purposes of sections 239 to 242, a person ('**A**') is involved in the care of another person ('**B**') in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if —

(a) B is accommodated and cared for in a care home, community home, children's home or voluntary home; and

(b) A has functions to perform in the home in the course of employment which have brought A, or are likely to bring A, into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided by the Crown or in an independent hospital or independent clinic, and A has functions to perform for the Crown or

hospital in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.

(4) This subsection applies if A —

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and

(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section —

"**care home**", "**children's home**", "community home", "hospital" and "independent clinic" each have the meanings given those terms by section 223(5);

"**employment**" means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship or under a contract for services or otherwise than under a contract and includes service under the Crown;

"**independent hospital**" means a hospital which is not a hospital operated by the Crown;

"**voluntary home**" means a children's home which is operated by a voluntary organisation which is not a community home.

[UK Sexual Offences Act 2003 ss.30 to 44]

244. Sections 239 to 242: Exception for spouses and civil partners

(1) Conduct by a person ('**A**') which would otherwise be an offence under any of sections 239 to 242 against another person ('**B**') is not an offence under that section if at the time —

(a) B is 16 or over; and

(b) A and B are lawfully married or are civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or were civil partners of each other.

[UK Sexual Offences Act 2003 ss.30 to 44]

245. Sections 239 to 242: Sexual relationships which pre-date care relationships

(1) Conduct by a person ('**A**') which would otherwise be an offence under any of sections 239 to 242 against another person ('**B**') is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 243, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 239 to 242, it is for the defendant to prove that such a relationship existed at that time.

[UK Sexual Offences Act 2003 ss.30 to 44]

246. Possession of indecent photograph of a youth

(1) Subject to section 248, it is an offence for a person to have any indecent photograph or pseudo-photograph of a youth in the person's possession.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is charged with an offence under subsection (1), it is a defence for the person to prove that —

(a) he or she had a legitimate reason for having the photograph or pseudo-photograph in his or her possession;

(b) he or she had not seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) the photograph or pseudo-photograph was sent to him or her without any prior request made by him or her or on his or her behalf and that he or she did not keep it for an unreasonable time.

[UK CJ Act 1988 s.160 am. by Criminal Justice & Public Order Act 1994]

247. Taking and publishing indecent photographs of youths

(1) Subject to section 248, it is an offence for a person ('**A**') —

(a) to take or permit to be taken, or to make, any indecent photograph or pseudo-photograph of a youth;

(b) to distribute or show such indecent photographs or pseudo-photographs;

(c) to have in A's possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by A or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

Penalty: Imprisonment for 10 years, or a fine, or both.

(2) For the purposes of subsection (1), a person ('**A**') is to be regarded as distributing an indecent photograph or pseudo-photograph if A parts with possession of it to, or exposes or offers it for acquisition by, another person.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) If a person ('**A**') is charged with an offence under subsection (1)(b) or (c), it is a defence for A to prove that —

(a) A had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his or her possession; or

(b) A had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

[UK Protection of Children Act 1978 s.1 as am. by Sexual Offences Act 2003]

248. Marriage or similar relationship

(1) This section applies if, in proceedings for an offence under section 246(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant ('**A**') proves that the photograph or pseudo-photograph was of the youth aged 16 or over, and that at the time of the offence charged the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies if, in proceedings for an offence under section 247(1) relating to an indecent photograph or pseudo-photograph of a youth, the defendant proves that the photograph or pseudo-photograph was of the youth aged 16 or over, and that at the time when A obtained it the youth and A —

(a) were married or civil partners of each other; or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph shows the youth alone or with the defendant, but not if it shows any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether —

(a) the youth consented to the photograph or pseudo-photograph being taken or made, distributed, or in the defendant's possession, as the case may be; or

(b) the defendant reasonably believed that the youth so consented,

the defendant is not guilty of the offence unless it is proved that the youth did not so consent and that the defendant did not reasonably believe that the youth so consented.

(5) In the case of an offence under section 247(1)(b), the defendant is not guilty of the offence unless it is proved that the distributing or showing was to a person other than the youth.

(6) In the case of an offence under section 247(1)(c), if sufficient evidence is adduced to raise an issue both as to whether —

(a) the youth consented to the photograph being in the possession of the defendant ('A'), or as to whether A reasonably believed that the youth so consented; and

(b) A had the photograph in A's possession with a view to its being distributed or shown to anyone other than the youth,

the defendant is not guilty of the offence unless it is proved either that —

(i) the youth did not so consent and that A did not reasonably believe that the youth so consented; or

(ii) A had the photograph in A's possession with a view to its being distributed or shown to a person other than the youth.

[UK CJ Act 1988 s.160A; UK Protection of Children Act 1978 s.1A ins. by Sexual Offences Act 2003]

249. Exception for criminal proceedings, investigations etc.

(1) In proceedings for an offence under section 247(1)(a) of making an indecent photograph or pseudo-photograph of a youth, the defendant ('**A**') is not guilty of the offence if A proves that it was necessary for A to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

(2) No proceedings for an offence under section 246 or 247 may be commenced except by, or with the consent of, the Attorney General.

[UK Protection of Children Act 1978 s.1B ins. by Sexual Offences Act 2003 and adapted]

250. Entry, search and seizure – Schedule 1

(1) The following subsections apply if a justice of the peace is satisfied by information on oath, laid by or on behalf of the Attorney General or by a police officer, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child.

(2) The justice of the peace may issue a warrant under his or her hand authorising any police officer to enter (if need be by force) and search the premises, and to seize and remove any articles which the officer believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, must be disposed of in accordance with Schedule 1.

(4) This section and Schedule 1 apply in relation to any stall, vehicle or vessel, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

[UK Protection of Children Act 1978 s.4 as am. by Sexual Offences Act 2003]

251. Indecent photographs: Interpretation

(1) The following subsections apply for the interpretation of sections 246 and 247 and Schedule 1.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film), if they show youths and are indecent, are to be treated for all purposes of this Part as indecent photographs of youths and similarly in respect of pseudo-photographs.

(4) References to a photograph include —

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) "**Film**" includes any form of video-recording.

(6) A person is to be taken as having been a youth at any material time if it appears from the evidence as a whole that he or she was then under the age of 18.

(7) "**Pseudo-photograph**" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a youth, the pseudo-photograph is to be treated for all purposes of this Ordinance as showing a youth and a pseudo-photograph is to be similarly treated if the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include —

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

[UK Protection of Children Act 1978 ss.2 and 7 as am. by Sexual Offences Act 2003]

Prohibited images of youths

252. Possession of prohibited images of youths

(1) It is an offence for a person to be in possession of a prohibited image of a youth.
Penalty: Imprisonment for 3 years or a fine, or both.

(2) A prohibited image is an image which —

(a) is pornographic;

(b) falls within subsection (6); and

(c) is grossly offensive, disgusting or otherwise of an obscene character.

(3) An image is "**pornographic**" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An image falls within this subsection if it —

(a) is an image which focuses solely or principally on a youth's genitals or anal region; or

(b) portrays any of the acts mentioned in subsection (7).

(7) Those acts are —

(a) the performance by a person of an act of intercourse or oral sex with or in the presence of a youth;

(b) an act of masturbation by, of, involving or in the presence of a youth;

(c) an act which involves penetration of the vagina or anus of a youth with a part of a person's body or with anything else;

(d) an act of penetration, in the presence of a youth, of the vagina or anus of a person with a part of a person's body or with anything else;

(e) the performance by a youth of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);

(f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a youth.

(8) For the purposes of subsection (7), penetration is a continuing act from entry to withdrawal.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(9) No proceedings for an offence under subsection (1) may be commenced except by, or with the consent of, the Attorney General.

[UK Coroners & Justice Act 2009 ss.62 and 66]

253. Exclusion of classified works

(1) Section 252(1) does not apply to excluded images.

(2) An "**excluded image**" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

(6) In this section —

"**classified**" in relation to a work means classified by the British Board of Film Censors or an equivalent authority in another jurisdiction as suitable for general viewing and unrestricted supply, with or without advice as to the desirability of parental guidance with regard to the viewing of the work by young children or as to its suitability for such viewing;

"**extract**" includes an extract consisting of a single image;

"**pornographic**" has the same meaning as in section 252;

"**recording**" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

[UK Coroners & Justice Act 2009 s.63]

254. Defences

(1) If a person is charged with an offence under section 252(1), it is a defence for the person to prove that —

(a) the person had a legitimate reason for being in possession of the image concerned;

(b) the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image of a child; or

(c) the person —

(i) was sent the image concerned without any prior request having been made by or on behalf of the person; and

(ii) did not keep it for an unreasonable time.

(2) In this section, "**prohibited image**" of a youth has the meaning given that term by section 252(2).

[UK Coroners & Justice Act 2009 s.64]

255. Sections 252 to 254: Supplementary

(1) For the purposes of sections 252 to 254, "**image**" includes —

(a) a moving or still image (produced by any means); and

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a),

but does not include an indecent photograph, or indecent pseudo-photograph, of a youth.

(2) If an image shows a person, the image is to be treated as an image of a youth if —

(a) the impression conveyed by the image is that the person shown is a youth; or

(b) the predominant impression conveyed is that the person shown is a youth, even if some of the physical characteristics shown are not those of a youth.

(3) References to an image of a person include references to an image of an imaginary person.

(4) References to an image of a youth include references to an image of an imaginary youth.

(5) The provisions of section 250 and Schedule 1 apply in relation to prohibited images of youths as they apply in relation to indecent photographs of youths.

(6) In this section —

"**prohibited image**" of a youth has the meaning given that term by section 252;

"**prohibited photograph**" and "**prohibited pseudo-photograph**" mean indecent photograph and indecent pseudo-photograph as in sections 246 and 247.

[UK Coroners & Justice Act 2009 ss.65 and 67]

Extreme pornographic images

256. Possession of extreme pornographic images

(1) It is an offence for a person to be in possession of an extreme pornographic image.

Penalty: (i) If the offence relates to an image that portrays an act within subsection (7)(a) or (b) - imprisonment for 3 years or a fine, or both.
(ii) In any other case – imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) An "**extreme pornographic image**" is an image which is both —

(a) pornographic, and

(b) an extreme image.

(3) An image is "**pornographic**" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) If (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, if —

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An "**extreme image**" is an image which —

(a) falls within subsection (7); and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following —

(a) an act which threatens a person's life;

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;

(c) an act which involves sexual interference with a human corpse; or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(8) In this section "**image**" means —

(a) a moving or still image (produced by any means); or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Criminal Justice & Immigration Act 1998 ss.63 and 67]

257. Exclusion of classified works

(1) Section 256 does not apply to excluded images.

(2) An "**excluded image**" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if —

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) If an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images,

and section 256(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements), is to be disregarded.

(6) In this section —

"**classified**" has the same meaning as in section 253(6);

"**extract**" includes an extract consisting of a single image;

"**image**" and "**pornographic**" have the same meanings as in section 256;

"**recording**" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

[UK Criminal Justice & Immigration Act 1998 s.64]

258. Defences

(1) If a person is charged with an offence under section 256, it is a defence for the person to prove that the person —

(a) had a legitimate reason for being in possession of the image concerned;

(b) had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;

(c) was sent the image concerned without any prior request having been made by or on behalf of the person and did not keep it for an unreasonable time.

(2) If —

(a) a person ("**D**") is charged with an offence under section 256; and

(b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but not paragraph (d)) of subsection (7) of that section,

subsection (3) below applies.

(3) In the circumstances mentioned in subsection (2), it is a defence for D to prove —

(a) that D directly participated in the act or any of the acts portrayed; and

(b) that the act or acts did not involve the infliction of any non-consensual harm on any person; and

(c) if the image portrays an act within section 256(7)(c), that what is portrayed as a human corpse was not in fact a corpse.

(4) For the purposes of this section harm inflicted on a person is "non-consensual" harm if —

(a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or

(b) the person can, in law, consent to it being so inflicted, but does not in fact consent to it being so inflicted.

[UK Criminal Justice & Immigration Act 1998 ss.65 and 66]

Sexual exploitation of children

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

259. Paying for sexual services of a child

(1) A person ('**A**') commits an offence if —

(a) A intentionally obtains for A, or for any other person, the sexual services of another person ('**B**');

(b) before obtaining those services, A has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment; and

(c) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: As provided in subsection (3), (4) or (5).

(2) In this section, "**payment**" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) The maximum penalty on a conviction for an offence under this section against a person under 13 is —

(a) if subsection (6) applies - imprisonment for life;

(b) in any other case - imprisonment for 14 years or a fine, or both.

(4) The maximum penalty on conviction for an offence under this section against a person under 16, but not under 13, is —

(a) if subsection (6) applies - imprisonment for 14 years or a fine, or both;

(b) in any other case - imprisonment for 10 years or a fine, or both.

(5) The maximum penalty on conviction for an offence under this section against a person under 18, but not under 16, is imprisonment for 7 years or a fine, or both.

(6) This subsection applies if the offence involved —

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of A's mouth with B's penis.

(7) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 s.47 adapted]

260. Causing or encouraging sexual exploitation of a child

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

A person ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person ('**B**') to be sexually exploited, in any part of the world; and

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.48 to 53]

261. Controlling a child in relation to sexual exploitation

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

A person ('**A**') commits an offence if —

(a) A intentionally controls any of the activities of another person ('**B**') relating to B's sexual exploitation in any part of the world, and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.48 to 53]

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

262. Arranging or facilitating sexual exploitation of a child

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

A person ('**A**') commits an offence if —

(a) A intentionally arranges or facilitates the sexual exploitation in any part of the world of another person ('**B**'); and

(b) either —

(i) B is under 18, and A does not reasonably believe that B is 18 or over; or

(ii) B is under 13.

Penalty: Imprisonment for 14 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.48 to 53]

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

263. Sections 259 to 262: Interpretation

(1) For the purposes of sections 259 to 262, a person ("B") is sexually exploited if —

(a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or

(b) an indecent image of B is recorded or streamed or otherwise transmitted; and "**sexual exploitation**" is to be interpreted accordingly.

(2) In this section, "**payment**" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

[UK Sexual Offences Act 2003 ss.48 to 53]

[S.10 Ord. 8/2022/w.e.f. 16/05/2022]

Exploitation of prostitution

264. Causing or encouraging prostitution for gain

A person ('**A**') commits an offence if —

(a) A intentionally causes or encourages another person to become a prostitute in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.48 to 53]

265. Controlling prostitution for gain

A person ('**A**') commits an offence if —

(a) A intentionally controls any of the activities of another person ('**B**') relating to B's prostitution in any part of the world; and

(b) A does so for or in the expectation of gain for A or a third person.

Penalty: Imprisonment for 7 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.48 to 53]

266. Paying for sexual services of a prostitute subjected to force, etc.

(1) A person ('**A**') commits an offence if —

(a) A makes or promises payment for the sexual services of a prostitute ('**B**');

(b) a third person ('**C**') has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment; and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

Penalty: A fine at level 3 on the standard scale.

(2) In relation to an offence under subsection (1), the following are irrelevant —

(a) where in the world the sexual services are to be provided;

(b) whether those services are provided; and

(c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) C engages in exploitative conduct if —

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion; or

(b) C practises any form of deception.

[UK Sexual Offences Act 2003 s.53A ins. by Policing and Crime Act 2009]

267. Loitering or soliciting for purposes of prostitution

(1) It is an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution.
Penalty: As provided in subsection (3).

(2) For the purpose of subsection (1) —

(a) conduct is persistent if it takes place on 2 or more occasions in any period of 3 months;

(b) a reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

(3) A person who commits an offence under this section is liable on conviction to —

(a) a fine at level 2 on the standard scale; or

(b) for an offence committed after a previous conviction for a similar offence - a fine at level 3 on the standard scale.

(4) A police officer may arrest without warrant a person the officer finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section.

[UK Street Offences Act 1959 s.1 am. by CJ Act 1982, Sexual Offences Act 2003 and Policing and Crime Act 2009]

268. Soliciting prostitution

(1) It is an offence for a person in a street or public place to solicit another ('B') for the purpose of obtaining B's sexual services as a prostitute.
Penalty: A fine at level 3 on the standard scale.

(2) The reference to a person in a street or public place includes a person in a motor vehicle in a street or public place.

[UK Sexual Offences Act 2003 s.51A ins. by Policing and Crime Act 2009]

269. Prostitution offences: Interpretation

In sections 264 to 268 and this section —

"**gain**" means —

(a) any payment; or

(b) the goodwill of any person which is or appears likely, in time, to bring payment;

"**payment**" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount;

"**prostitute**" means a person ("**B**") who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person;

"**prostitution**" means the activity of being a prostitute;

"**street**" includes —

(a) any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public;

(b) any doorways and entrances of premises abutting on a street; and

(c) any ground adjoining and open to a street.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 33/Ord. 10/2024/w.e.f. 14.08.2024]

[UK Sexual Offences Act 1985 s.4 am. by Sexual Offences Act 2003; Sexual Offences Act 2003 s.54]

Brothel-keeping

270. Keeping a brothel

(1) It is an offence for a person to keep, or to manage, or to act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).
Penalty: As provided in subsection (3) or (4)

(2) In this section "**prostitution**" has the meaning given by section 263(2).

(3) The maximum sentence on conviction for keeping a brothel, unless subsection (4) applies, is imprisonment for 3 months or a fine not exceeding level 3 on the standard scale, or both.

(4) If the defendant has previously been convicted of an offence under —

(a) this section;

(b) any of sections 271, 272 or 273; or

(c) any of sections 34, 35 or 36 of the Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for keeping a brothel is imprisonment for 7 years or a fine, or both.

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

[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]

271. Landlord letting premises for use as brothel

(1) It is an offence for a person who is the lessor or landlord of any premises or an agent of that person —

(a) to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel; or

(b) if the whole or part of the premises is used as a brothel - to be wilfully a party to that use continuing.

Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section, unless section (3) applies, is imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 272 or 273; or

(c) any of sections 33, 33A, 35 or 36 of the Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

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

[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]

272. Tenant permitting premises to be used as a brothel

(1) It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel.
Penalty: As provided in subsection (6) or (7).

(2) If the tenant or occupier of any premises is convicted of knowingly permitting the whole or part of the premises to be used as a brothel, the rights of the lessor or landlord with respect to the assignment or determination of the lease or other contract under which the premises are held by the person convicted are varied as set out in subsection (3).

(3) The variations referred to in subsection (2) are —

(a) the lessor or landlord may require the tenant to assign the lease or other contract under which the premises are held by the tenant to some person approved by the lessor or landlord;

(b) if the tenant fails to do so within 3 months, the lessor or landlord may determine the lease or contract (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination);

(c) if the lease or contract is determined under this subsection, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the lessor or landlord;

(d) the approval of the lessor or landlord for the purposes of paragraph (a) must not be unreasonably withheld.

(4) If the tenant or occupier of any premises is so convicted, or was so convicted under section 35 of the Sexual Offences Act 1956 before the commencement of this Part, and either —

(a) the lessor or landlord ('**A**'), after having the conviction brought to A's notice, fails or failed to exercise A's statutory rights in relation to the lease or contract under which the premises are or were held by the person convicted; or

(b) A, after exercising A's statutory rights so as to determine that lease or contract, grants or granted a new lease or enters or entered into a new contract of tenancy of the premises to, with or for the benefit of the same person, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease or contract,

then, if subsequently an offence under this section is committed in respect of the premises during the subsistence of the lease or contract referred to in paragraph (a) or (if paragraph (b) applies) during the subsistence of the new lease or contract, A is deemed to be a party to that offence unless A shows that he or she took all reasonable steps to prevent the recurrence of the offence.

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

(5) References in subsection (4) to the statutory rights of a lessor or landlord refer to his or her rights under subsection (3).

(6) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (7) applies.

(7) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 271 or 273; or

(c) any of sections 33, 33A, 34 or 36 of the Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

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

[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]

273. Tenant permitting premises to be used for prostitution

(1) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of prostitution.
Penalty: As provided in subsection (2) or (3).

(2) The maximum penalty on conviction for an offence under this section is imprisonment for 3 months or a fine at level 3 on the standard scale, or both, unless subsection (3) applies.

(3) If the person has previously been convicted of an offence under —

(a) this section;

(b) any of sections 270, 271 or 272; or

(c) any of sections 33, 33A, 34 or 35 of the Sexual Offences Act 1956 as applied to the Falkland Islands,

the maximum sentence on conviction for an offence under this section is imprisonment for 6 months or a fine at level 4 on the standard scale, or both.

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

[UK Sexual Offences Act 1956 ss.33 to 36 as am. by Sexual Offences Act 2003]

274. Allowing persons under 16 to be in a brothel

It is an offence for a person who has responsibility for a child or young person who has attained the age of 4 years and is under the age of 16 years to allow that child or young person to reside in or to frequent a brothel.
Penalty: Imprisonment for 6 months or a fine at level 2 on the standard scale, or both.

[UK Children & Young Persons Act 1933 s.3]

Sex trafficking

275. Trafficking people for sexual exploitation

(1) A person ('**A**') commits an offence if A intentionally arranges or facilitates —

(a) the arrival in, or entry into, the Falkland Islands or another country of another person ('**B**');

(b) the travel of B within the Falkland Islands or another country; or

(c) the departure of B from the Falkland Islands or another country,

with a view to the sexual exploitation of B.
Penalty: Imprisonment for 14 years or fine, or both.

(2) For the purposes of subsection (1)(a) and (c), A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, after B's arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(b), A's arranging or facilitating is with a view to the sexual exploitation of B if, and only if —

(a) A intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence; or

(b) A believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(4) A person who has Falkland Islands status commits an offence under this section regardless of —

(a) where the arranging or facilitating takes place; or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(5) A person who does not have Falkland Islands status commits an offence under this section if—

(a) any part of the arranging or facilitating takes place in the Falkland Islands; or

(b) the Falkland Islands are the country of arrival, entry, travel or (as the case may be) departure.

(6) In this section —

"**country**" includes any territory or other part of the world;

"**relevant offence**" means —

(a) any offence under this Part; or

(b) anything done outside the Falkland Islands which is not an offence within paragraph (a) but would be if done in the Falkland Islands.

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

[UK Sexual Offences Act s.59A ins.by Protection of Freedom Act 2012]

276. Forfeiture of land, vehicle, ship or aircraft

(1) This section applies if a person is convicted of an offence under section 275.

(2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person —

(a) owned the vehicle at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the vehicle;

(c) was at that time in possession of the vehicle under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or

(e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person —

(a) owned the ship or aircraft at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;

(c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;

(e) was at that time a charterer of the ship or aircraft; or

(f) committed the offence while acting as captain of the ship or aircraft.

(4) In a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

(a) in the case of a ship - if subsection (5) or (6) applies;

(b) in the case of an aircraft - if subsection (5) or (7) applies.

(5) This subsection applies if a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 275.

(6) This subsection applies if a ship's gross tonnage is less than 500 tons.

(7) This subsection applies if the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kgs.

(8) If a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

(9) Disposal of an item ordered to be forfeited under this section is governed by section 622 of the Criminal Procedure and Evidence Ordinance 2014.

[UK Sexual Offences Act 2003 s.60A ins. by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]

277. Detention of land, vehicle, ship or aircraft

(1) If a person has been arrested for an offence under section 275, a police officer of the rank of inspector or above may detain a relevant vehicle, ship or aircraft —

(a) until a decision is taken as to whether or not to charge the arrested person with that offence;

(b) if the arrested person has been charged, until the person is acquitted, the charge is dismissed or the proceedings are discontinued; or

(c) if the person has been charged and convicted - until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the police or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which the person was arrested, be the subject of an order for forfeiture under section 276.

(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that the applicant —

(a) owns the vehicle, ship or aircraft;

(b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or

(c) is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if —

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 276.

(5) In this section, "**court**" means —

(a) if the arrested person has not been charged, or the person has been charged but proceedings for the offence have not begun to be heard - the Magistrate's Court or the Youth Court;
(b) if the person has been charged and proceedings for the offence are being heard - the court hearing the proceedings.

[UK Sexual Offences Act 2003 s.60B ins.by Violent Crime Reduction Act 2006 and am. by Protection of Freedoms act 2012]

278. Sections 276 and 277: Interpretation

(1) In sections 276 and 277, unless the contrary intention appears —

"**aircraft**" includes hovercraft;

"**captain**" means master (of a ship) or commander (of an aircraft);

"**land vehicle**" means any vehicle other than a ship or aircraft;

"**ship**" includes every description of vessel used in navigation.

(2) In those sections a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

[UK Sexual Offences Act 2003 s.60C ins.by Violent Crime Reduction Act 2006]

Preparatory offences

279. Administering a substance with intent

A person ('**A**') commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person ('**B**') —

(a) knowing that B does not consent; and

(b) intending to stupefy or overpower B, so as to enable any other person (including A) to engage in a sexual activity that involves B.

Penalty: Imprisonment for 10 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.61 to 63]

280. Committing an offence with intent to commit a sexual offence

(1) A person who commits an offence with the intention of committing a relevant sexual offence commits an offence under this section.

Penalty: As provided in subsection (3)(a) or (b).

(2) In this section, "**relevant sexual offence**" means any offence under this Part (including an offence of encouraging, or aiding and abetting such an offence).

(3) The maximum sentence on conviction for an offence under this section is —

(a) if the offence is committed by kidnapping or false imprisonment - imprisonment for life;

(b) in other cases - imprisonment for 10 years.

(4) An offence under subsection (1) for which the maximum penalty is imprisonment for life is triable on indictment only.

[UK Sexual Offences Act 2003 ss.61 to 63]

281. Trespass with intent to commit a sexual offence

(1) A person commits an offence if the person —

(a) is a trespasser on any premises;

(b) intends to commit a relevant sexual offence on the premises; and

(c) knows that, or is reckless as to whether, he or she is a trespasser.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) In this section —

"**premises**" includes a structure or part of a structure;

"**relevant sexual offence**" has the same meaning as in section 280(2);

"**structure**" includes a tent, vehicle or vessel or other temporary or movable structure.

[UK Sexual Offences Act 2003 ss.61 to 63]

Sex with an adult relative (Incest)

282. Sex with an adult relative: Penetration

(1) A person ('**A**') aged 16 or over commits an offence if —

(a) A intentionally penetrates the vagina or anus of another person ('**B**') with a part of A's body or anything else, or (being a male) penetrates B's mouth with his penis;

(b) the penetration is sexual;

(c) B is aged 18 or over;

(d) A and B are related in a way mentioned in subsection (2); and

(e) A knows or could reasonably be expected to know of the relationship.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The relationship referred to in subsection (1) is that of parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2) —

"**parent**" includes an adoptive parent;

"**child**" includes an adopted child;

"**uncle**" means the brother of a person's parent, and "**aunt**" has a corresponding meaning;

"**nephew**" means the child of a person's brother or sister, and "**niece**" has a corresponding meaning.

(4) If subsection (1) applies in a case where A is related to B as B's child through adoption, A does not commit an offence unless A is 18 or over.

(5) If in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), it is to be taken that the defendant knew or could reasonably have been expected to know of the relationship, unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of it.

[UK Sexual Offences Act 2003 s.64 am. by Criminal Justice & Immigration Act 2008]

283. Sex with an adult relative: Consenting to penetration

(1) A person ('**A**') aged 16 or over commits an offence if —

(a) another person ('**B**') penetrates A's vagina or anus with a part of B's body or anything else, or penetrates A's mouth with B's penis;

(b) A consents to the penetration;

(c) the penetration is sexual;

(d) B is aged 18 or over;

(e) A is related to B in a way mentioned in section 282(2); and

(f) A knows or could reasonably be expected to know of the relationship.

Penalty: imprisonment for 2 years or a fine, or both.

[Revision w.e.f. 21/10/2024]

(2) Subsections (2) to (5) of section 282 apply to an offence under subsection (1) of this section as they apply to an offence under subsection (1) of that section.

[UK Sexual Offences Act 2003 s.65 am. by Criminal Justice & Immigration Act 2008]

Other sexual offences

283A. Interpretation for sections 283A to 288

(1) In this section and sections 283B to 288 —

"**breast-feeding**" a child includes re-arranging clothing —

(a) in the course of preparing to breast-feed the child; or

(b) having just finished breast-feeding the child;

"**consent**", in relation to the sharing of a photograph or film, includes general consent covering the particular act of sharing as well as specific consent to the particular act of sharing;

"**film**" means a moving image;

"**intimate state**" has the meaning given in section 283B;

"**operate equipment**" includes to enable or secure its activation by another person without that person's knowledge;

"**photograph**" includes the negative as well as the positive version;

"**photograph or film**" includes —

(a) an image, whether made or altered by computer graphics or in any other way, which appears to be a photograph or film;

(b) a copy of a photograph, film or image within paragraph (a); and

(c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a);

"**send or give**" in relation to a photograph or film, includes —

(a) to send it to another person by any means, electronically or otherwise;

(b) to show it to another person; and

(c) to place it for a particular person to find;

"**share**", in relation to a photograph or film, means to give or show it, or make it available, to another person (but see subsection (2));

"**structure**" includes a tent, vehicle or vessel or other temporary or movable structure.

(2) A provider of an internet service by means of which a photograph or film is shared is not to be regarded as a person who shares it.

[UK Sexual Offences Act 2003 s. 68]

[S. 34/Ord. 10/2024/w.e.f. 14.08.2024]

283B. Meaning of "intimate state"

(1) In sections 283A to 288, a person is in an "**intimate state**" if —

(a) the person is participating or engaging in an act which a reasonable person would consider to be a sexual act;

(b) the person is doing a thing which a reasonable person would consider to be sexual;

(c) all or part of the person's genitals, buttocks or breasts are exposed;

(d) the person is in an act of urination or defecation; or

(e) the person is carrying out an act of personal care associated with the person's urination, defecation or genital or anal discharge.

(2) Despite subsection (1), a photograph or film does not show a person in an intimate state to the extent that it shows or appears to show something, other than breast-feeding a child, that is of a kind ordinarily seen in public.

(3) In this section —

"**exposed**", in relation to a person's genitals, buttocks or breasts, includes —

(a) being visible through wet or otherwise transparent clothing;

(b) being exposed but for the fact of being covered only with underwear; and

(c) being exposed but for the fact of being obscured, if the area obscured is similar to or smaller than an area that would typically be covered by underwear worn to cover a person's genitals, buttocks or breasts (as the case may be);

"**obscured**" means obscured by an object, by part of a person's body, by digital alteration or by any means (other than by clothing that a person is wearing).

[UK Sexual Offences Act 2003 s. 68]

[S. 34/Ord. 10/2024/w.e.f. 14.08.2024]

283C. Sex-based harassment in a public place

A person commits an offence if the person —

(a) is in a public place;

(b) behaves in relation to another person ("**B**") in a way that causes B alarm, distress or humiliation;

(c) behaves in that way because of B's sex (or presumed sex); and

(d) knew, or ought to have known, that the behaviour would cause B alarm, distress or humiliation.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Protection from Sex-Based Harassment in Public Act 2023]

[S. 34/Ord. 10/2024/w.e.f. 14.08.2024]

284. Genital exposure

A person commits an offence if the person —

(a) intentionally exposes his or her genitals; and

(b) intends that someone will see them and be caused alarm, distress or humiliation.

Penalty: Imprisonment for 2 years or a fine, or both.

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

[UK Sexual Offences Act 2003 ss.66 to 71]

284A. Sending or giving photograph or film of genitals

A person ("**A**") who intentionally sends or gives a photograph or film of any person's genitals to another person ("**B**") commits an offence if —

(a) A intends that B will see the genitals and be caused alarm, distress or humiliation; or

(b) A sends or gives the photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Online Safety Act 2023 s 187]

[S. 35/Ord. 10/2024/w.e.f. 14.08.2024]

285. Voyeurism

(1) A person ('**A**') commits an offence if A —

(a) for the purpose of obtaining sexual gratification, observes another person ('**B**') doing a private act; and

(b) knows that B does not consent to being observed for A's sexual gratification.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person ('**A**') commits an offence if A —

(a) operates equipment with the intention of enabling another person ('**B**') to observe, for the purpose of obtaining sexual gratification, a third person ('**C**') doing a private act; and

(b) knows that C does not consent to A's operating equipment with that intention.

(3) A person ('**A**') commits an offence if A —

(a) records another person ('**B**') doing a private act;

(b) does so with the intention that A or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

(c) knows that B does not consent to A's recording the act with that intention.

(4) A person ('**A**') commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit an offence under subsection (1).

(5) For the purposes of this section, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and —

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;

(b) the person is using a lavatory; or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(6) ...

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

285A. Voyeurism: additional offences

(1) A person ("**A**") commits an offence if —

(a) A operates equipment beneath the clothing of another person ("**B**");

(b) A does so with the intention of enabling A or another person ("**C**"), for a purpose mentioned in subsection (3), to observe —

(i) B's genitals or buttocks (whether exposed or covered with underwear); or

(ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible; and

(c) A does so —

(i) without B's consent; and

(ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person ("**A**") commits an offence if —

(a) A records an image beneath the clothing of another person ("**B**");

(b) the image is of —

(i) B's genitals or buttocks (whether exposed or covered with underwear); or

(ii) the underwear covering B's genitals or buttocks;

in circumstances where the genitals, buttocks or underwear would not otherwise be visible;

(c) A does so with the intention that A or another person ("**C**") will look at the image for a purpose mentioned in subsection (3); and

(d) A does so —

(i) without B's consent; and

(ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

(2A) A person ("**A**") commits an offence if —

(a) A operates equipment;

(b) A does so with the intention of enabling A or another person ("**C**"), for a purpose mentioned in subsection (3), to observe a third person ("**B**") while B is breast-feeding a child; and

(c) A does so —

(i) without B's consent; and

(ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

[S. 36/Ord. 10/2024/w.e.f. 14.08.2024]

(2B) A person ("**A**") commits an offence if —

(a) A records an image of another person ("**B**") while B is breast-feeding a child;

(b) A does so with the intention that A or a third person ("**C**") will look at the image for a purpose mentioned in subsection (3); and

(c) A does so —

(i) without B's consent; and

(ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

[S. 36/Ord. 10/2024/w.e.f. 14.08.2024]

(3) The purposes are —

(a) obtaining sexual gratification (whether for A or C); or

(b) humiliating, alarming or distressing B.

[S.10 Ord. 8/2022/w.e.f. 16/05/2022; S. 36/Ord. 10/2024/w.e.f. 14.08.2024]

(4) For the purposes of subsections (2A) and (2B), it is irrelevant —

(a) whether or not B is in a public place while B is breast-feeding the child;

(b) whether or not B's breasts are exposed while B is breast-feeding the child; and

(c) what part of B's body —

(i) is, or is intended by A to be, visible in the recorded image; or

(ii) is intended by A to be observed.

[S. 36/Ord. 10/2024/w.e.f. 14.08.2024]

285B. Sharing or threatening to share intimate photograph or film

(1) A person ("**A**") commits an offence if —

(a) A intentionally shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state;

(b) B does not consent to the sharing of the photograph or film; and

(c) A does not reasonably believe that B consents.

Penalty: Imprisonment for 1 year or a fine, or both.

(2) A person ("**A**") commits an offence if —

(a) A intentionally shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state;

(b) A does so with the intention of causing B alarm, distress or humiliation; and

(c) B does not consent to the sharing of the photograph or film.

Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person ("**A**") commits an offence if —

(a) A intentionally shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state;

(b) A does so for the purpose of A or another person obtaining sexual gratification;

(c) B does not consent to the sharing of the photograph or film; and

(d) A does not reasonably believe that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

(4) A person ("**A**") commits an offence if —

(a) A threatens to share a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state; and

(b) A does so —

(i) with the intention that B or another person who knows B will fear that the threat will be carried out; or

(ii) being reckless as to whether B or another person who knows B will fear that the threat will be carried out.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) For the purposes of subsections (1) to (3), whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consents.

(6) If a person is charged with an offence under subsection (4), it is not necessary for the prosecution to prove —

(a) that the photograph or film mentioned in the threat exists; or

(b) if it does exist, that it is in fact a photograph or film which shows or appears to show a person in an intimate state.

(7) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for sharing the photograph or film.

[UK Sexual Offences Act 2003 s. 66B]

[S.10 Ord. 8/2022/w.e.f. 16/05/2022; S. 37/Ord. 10/2024/w.e.f. 14.08.2024]

285C. Sharing or threatening to share intimate photograph or film: exemptions

(1) A person ("**A**") who shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state does not commit an offence under section 285B(1), (2) or (3) if —

(a) the photograph or film was taken in a place to which the public or a section of the public had or were permitted to have access (whether on payment or otherwise);

(b) B had no reasonable expectation of privacy from the photograph or film being taken; and

(c) B was, or A reasonably believes that B was, in the intimate state voluntarily.

(2) For the purposes of subsection (1)(b), whether a person had a reasonable expectation of privacy from a photograph or film being taken is to be determined by reference to the circumstances that B reasonably believes to have existed at the time the photograph or film was taken.

(3) A person ("**A**") who shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state does not commit an offence under section 285B(1), (2) or (3) if —

(a) the photograph or film had, or A reasonably believes that it had, previously been publicly shared; and

(b) B had, or A reasonably believes that B had, consented to the previous sharing.

(4) For the purposes of subsection (3)(b), whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consented.

(5) A person ("**A**") who shares a photograph or film that shows, or appears to show, another person ("**B**") in an intimate state does not commit an offence under section 285B(1) if —

(a) B is under 16;

(b) B lacks, or A reasonably believes that B lacks, capacity to consent to the sharing of the photograph or film; and

(c) the photograph or film is shared —

(i) with a healthcare professional acting in that capacity; or

(ii) otherwise in connection with the care or treatment of B by a healthcare professional.

(6) A person who shares a photograph or film that shows, or appears to show, a child in an intimate state does not commit an offence under section 285B(1) if the photograph or film is of a kind ordinarily shared between family and friends.

(7) A person who threatens to share a photograph or film that shows, or appears to show, another person in an intimate state does not commit an offence under section 285B(4) if, by reason of this section, the person would not commit an offence under section 285B(1), (2) or (3) by sharing the photograph or film in the circumstances conveyed by the threat.

[UK Sexual Offences Act 2003 s. 66C]

[S.10 Ord. 8/2022/w.e.f. 16/05/2022; S. 37/Ord. 10/2024/w.e.f. 14.08.2024]

[Revision w.e.f. 21/10/2024]

286. Intercourse with an animal

(1) A male person commits an offence if —

(a) he intentionally performs an act of penetration with his penis;

(b) what is penetrated is the vagina or anus of an animal (whether dead or alive); and

(c) he knows that, or is reckless as to whether, that is what is penetrated.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person of either gender ('**A**') commits an offence if —

(a) A intentionally causes, or allows, A's vagina or anus to be penetrated;

(b) the penetration is by the penis of an animal (whether dead or alive); and

(c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.66 to 71]

287. Sexual penetration of a corpse

A person ('**A**') commits an offence if —

(a) A intentionally performs an act of penetration with a part of A's body or anything else;

(b) what is penetrated is a part of the body of a dead person;

(c) A knows that, or is reckless as to whether, that is what is penetrated; and

(d) the penetration is sexual.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Sexual Offences Act 2003 ss.66 to 71]

288. Sexual activity in a public lavatory

(1) A person ('**A**') commits an offence if A —

(a) is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;

(b) A intentionally engages in an activity; and

(c) the activity is sexual.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances, but regardless of any person's purpose, consider it to be sexual.

[UK Sexual Offences Act 2003 ss.66 to 71]

Miscellaneous provisions

289. Sexual offences outside the Falkland Islands – Schedule 2

(1) If —

(a) a person who has Falkland Islands status does an act in a place outside the Falkland Islands; and

(b) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(2) If —

(a) a person who is a resident of the Falkland Islands does an act in a place outside the Falkland Islands;

(b) the act constitutes an offence under the law in force in that place; and

(c) the act, if done in the Falkland Islands, would constitute a sexual offence to which this section applies,

the person is guilty in the Falkland Islands of that sexual offence.

(3) If —

(a) a person does an act in a place outside the Falkland Islands at a time when the person did not have Falkland Islands status nor was a resident of the Falkland Islands;

(b) the act constituted an offence under the law in force in that place;

(c) the act, if done in the Falkland Islands, would have constituted a sexual offence to which this section applies; and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in the Falkland Islands for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person has Falkland Islands status or is a resident of the Falkland Islands at the time when the proceedings are brought.

(5) An act punishable under the law in force in any place constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to prove that it is met.

(7) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(9) The sexual offences to which this section applies are those listed in Part A of Schedule 2.

[UK Sexual Offences Act 2003 s.72 replaced by s.72(1) Criminal Justice & Immigration Act 2008]

290. Encouraging, etc. the commission of certain sexual acts outside the Falkland Islands – Schedule 2

(1) This section applies if —

(a) any act done by a person in the Falkland Islands would amount to the offence of encouraging, or aiding and abetting, the commission of an offence to which this section applies but for the fact that what the person had in view would not be an offence in the Falkland Islands;

(b) the whole or part of what the person had in view was intended to take place in a place outside the Falkland Islands; and

(c) what the person had in view would involve the commission of an offence under the law of that place.

(2) If this section applies —

(a) what the person had in view is to be treated as that offence for the purposes of any charge of encouraging brought in respect of that act; and

(b) any such offence is accordingly triable in the Falkland Islands.

(3) Any act done by means of a message (however communicated) is to be treated as done in the Falkland Islands if the message is sent from or received in the Falkland Islands.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(4) Conduct punishable under the law of a place outside the Falkland Islands is an offence under that law for the purposes of subsection (1) and (2), however it is described in that law.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(5) Subject to subsection (6), a condition in subsection (1) is to be taken as met unless, not later than 28 days after the defendant is charged with the offence, the defendant serves on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to what the accused had in view, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to show that it is met.

(6) The court, if it thinks fit, may permit the defendant to require the prosecution to show that the condition is met without the prior service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(8) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the accused had Falkland Islands status at the time of any act or other event proof of which is required for conviction of the offence.

(9) The sexual offences to which this section applies are those listed in Part B of Schedule 2.

[UK Sexual Offences (Conspiracy & Encouragement) Act 1996 ss.2 and 3 and Schedule am. by Sexual Offences Act 2003]

291. Exceptions to encouraging, etc.

(1) A person is not guilty of encouraging, or aiding and abetting, the commission against a child of an offence to which this section applies if the person acts for the purpose of —

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to —

(a) an offence under any of sections 207 to 210 (rape etc. against children under 13);

(b) an offence under section 211 (sexual activity with a child);

(c) an offence under section 215 (child sex offences by youths) which would be an offence under section 211 if the offender were aged 18;

(d) an offence under any of sections 218, 226, 231, 235 and 239 (sexual activity) against a person under the age of 16.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of encouraging, or aiding and abetting an offence under this Part.

[UK Sexual Offences Act 2003 ss.73 to 77]

292. Meaning of "consent"

(1) For the purposes of this Part, a person consents only if the person agrees by choice, and has the freedom and capacity to make that choice.

(2) If in proceedings for an offence to which this section applies it is proved that —

(a) the defendant did the relevant act;

(b) any of the circumstances specified in subsection (3) existed; and

(c) the defendant knew that those circumstances existed,

then the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he or she consented and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) This section applies if —

(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him or her;

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;

(f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(4) In subsection (3)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

[UK Sexual Offences Act 2003 ss.73 to 77 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

293. Conclusive presumptions about consent

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that either or both of the circumstances specified in subsection (2) existed, it is to be conclusively presumed —

(a) that the complainant did not consent to the relevant act; and

(b) that the defendant did not believe that the complainant consented to the relevant act.

(2) This section applies if —

(a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

[UK Sexual Offences Act 2003 ss.73 to 77]

294. Sections 292 and 293: Relevant acts

In relation to an offence to which section 292 or 293 applies, references in those sections to the relevant act and to the complainant are to be read as follows —

Offence	*Relevant act*
An offence under section 203 (Rape)	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person ("the complainant")
An offence under section 204 (Assault by penetration)	The defendant intentionally penetrating, with a part of his or her body or anything else, the vagina or anus of another person ("the complainant"), if the penetration is sexual
An offence under section 205 (Sexual assault)	The defendant intentionally touching another person ("the complainant"), if the touching is sexual
An offence under section 206 (Causing a person to engage in sexual activity without consent)	The defendant intentionally causing another person ("the complainant") to engage in an activity, if the activity is sexual

[UK Sexual Offences Act 2003 ss.73 to 77]

294A. Continuity of sexual offences law

(1) This section applies in proceedings against a person (the "**defendant**") if —

(a) the defendant is charged, in respect of the same conduct, with 2 offences ("**offence A**" and "**offence B**");

(b) either —

(i) offence A is an offence under a provision of the Sexual Offences Act 1956 as it applied in the Falkland Islands and offence B is an offence under a provision of the Sexual Offences Ordinance 2005; or

(ii) offence A is an offence under a provision of the Sexual Offences Ordinance 2005 and offence B is an offence under a provision of Part 10 of the Crimes Ordinance 2014;

(c) the only thing preventing the defendant from being found guilty of offence A is that it has not been proved that the time of the offence was before the changeover date; and

(d) the only thing preventing the defendant from being found guilty of offence B is that it has not been proved that the time of the offence was on or after the changeover date.

(2) For the purpose of determining the guilt of the defendant —

(a) if the penalty for offence A is less than the penalty for offence B, the time of the offence is conclusively presumed to have been before the changeover date;

(b) if the penalties for offence A and offence B are the same, the time of the offence is conclusively presumed to have been on or after the changeover date; or

(c) if the penalty for offence A is greater than the penalty for offence B, the time of the offence is conclusively presumed to have been on or after the changeover date.

(3) This section applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of offence A or offence B before the commencement of this section.

(4) In this section —

"**changeover date**" means —

(a) if subsection (1)(b)(i) applies, 10 June 2005 (being the date on which the Sexual Offences Ordinance 2005 came into force); or

(b) if subsection (1)(b)(ii) applies, 21 April 2017 (being the date on which Part 10 of the Crimes Ordinance 2014 came into force);

"**inchoate offence**", in relation to offence A or offence B, means any of the following offences —

(a) inciting the commission of offence A or offence B;

(b) encouraging the commission of offence A or offence B;

(c) aiding, abetting or assisting the commission of offence A or offence B;

(d) conspiracy to commit offence A or offence B;

(e) attempting to commit offence A or offence B;

"**penalty**" in relation to an offence, means the maximum penalty on conviction for the offence;

"**time of the offence**" means the time when the conduct constituting the offence occurred.

(5) In this section —

(a) a reference to an offence (the "**substantive offence**") includes a reference to an inchoate offence in relation to the substantive offence; and

(b) in relation to such an inchoate offence, a reference to provision A or provision B (as the case requires) is a reference to the provision that would be provision A or provision B for the substantive offence.

[UK Violent Crime Reduction Act 2006 s. 55]

[S. 38/Ord. 10/2024/w.e.f. 14.08.2024]

295. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**absolute discharge**" means an absolute discharge granted under section 502(1)(a) of the Criminal Procedure and Evidence Ordinance 2014;

"**community order**" means an order under section 509 of the Criminal Procedure and Evidence Ordinance 2014;

"**conditional discharge**" means a conditional discharge granted under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014;

"**detained in hospital**" means detained in a hospital under either Part 3 or Part 8 of the Mental Health Ordinance 2010;

[Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024] [Revision w.e.f. 21/10/2024]

"**foreign travel order**" means an order made under section 114 of the Sexual Offences Act 2003;

"**harm**" from a defendant means physical or psychological harm caused by the defendant;

"**home address**" means, in relation to any person —

(a) the address of the person's sole or main residence in the Falkland Islands; or

(b) if the person has no such residence - the address or location of a place in the Falkland Islands where the person can regularly be found and, if there is more than one such place, such one of those places as the person selects;

"**interim notification order**" means an order made under section 319;

"**interim SHPO**" means an order made under section 326;

"**interim SRO**" means an order made under section 335;

"**notification order**" means an order made under section 316;

"**notification period**" has the meaning given by section 297;

"**notification provision**" means a provision that imposes any of the notification requirements of this Part;

[S. 39/Ord. 10/2024/w.e.f. 14.08.2024]

"**notification requirements of this Part**" means the requirement to give notification of certain matters under any of sections 298 to 301;

"**passport**" means —

(a) a document establishing a person's identity, nationality and citizenship for purposes of immigration laws, issued by or on behalf of the authorities of a country or territory, or by or on behalf of an international organisation;

(b) a document that can be used (in some or all circumstances) instead of a passport;

"**qualifying offender**" has the meaning given by section 322;

"**relevant finding**", in relation to an offence, means a finding that a person —

(a) is not guilty of the offence by reason of mental disorder; or

(b) is under a disability and did the act charged against him or her in respect of the offence;

"**relevant offender**" means a person for the time being subject to the notification requirements of this Part;

"**restriction order**" means an order under section 54 of the Mental Health Ordinance 2010 in relation to a person detained in a hospital;

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

"**risk of sexual harm order**" means an order made under section 123 of the Sexual Offences Act 2003;

"**RSHO**" means a risk of sexual harm order;

"**sexual harm**" from a person means physical or psychological harm caused —

(a) by the person committing one or more offences listed in Schedule 3; or

(b) (in the context of harm outside the Falkland Islands) by the person doing outside the Falkland Islands anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands;

"**sexual harm prevention order**" means an order made under section 321;

"**Sexual Offences Act 2003**" means the UK Act of that name as applied to the Falkland Islands by the Sexual Offences Ordinance 2005 and as modified by the Schedule to that Ordinance;

"**sexual offences prevention order**" means an order made under section 104 of the Sexual Offences Act 2003;

"**sexual risk order**" means an order made under section 332;

"**SHPO**" means a sexual harm prevention order;

"**SOPO**" means a sexual offences prevention order;

"**SRO**" means a sexual risk order;

"**the public**" means the public in the Falkland Islands;

"**vulnerable adult**" means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability, illness, old age, or otherwise.

(2) Any time-limit for making applications to the Magistrate's Court under any other enactment does not apply to an application under this Part.

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

(3) If the defendant on an application for an order under this Part, or for the variation, renewal or discharge of an order, is a youth, a reference in this Part to the Magistrate's Court is a reference to that court sitting as the Youth Court.

(4) For the purposes of this Part, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(5) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates —

(a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding; or

(b) to the age of any person,

is to be disregarded.

(6) This Part applies to a sentence of detention for a specified period imposed on a youth under sections 725 and 726 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to an equivalent sentence of imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

(7) This Part applies to an order for detention at the pleasure of the Monarch imposed on a youth under section 727 of the Criminal Procedure and Evidence Ordinance 2014 as it applies to a sentence of life imprisonment, and references in this Part to imprisonment are to be interpreted accordingly.

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

(8) In this Part —

(a) a reference to a conviction includes a reference to a finding of a court under section 762 of the Criminal Proceedings and Evidence Ordinance 2014 that the defendant did the act charged;

(b) a reference to a person being or having been found to be under a disability and to have done the act charged against him or her in respect of an offence means a finding under Part 34 of that Ordinance that the person is —

(i) unfit to be tried for the offence;

(ii) mentally disordered so that the trial for the offence cannot or could not proceed; or

(iii) unfit to be tried and to have done the act charged against him or her in respect of the offence.

[UK Sexual Offences Act 2003 ss.22, 113, 131, 135 and passim]

Notification requirements

296. Persons subject to notification requirements – Schedule 3

(1) A person is subject to the notification requirements of this Part for the period set out in section 298 ("**the notification period**") if, in respect of an offence listed in Schedule 3, the person has been since 10 June 2005 (the date of commencement of the Sexual Offences Ordinance 2005) —

(a) convicted of the offence;

(b) found not guilty of the offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged in respect of the offence; or

(d) cautioned in respect of the offence.

(2) For purposes of this section, an absolute discharge in respect of an offence does not count as a conviction.

(3) A person to whom subsection (1) applies is a relevant offender for purposes of this Part.

[UK Sexual Offences Act 2003 s.80]

297. The notification period

(1) The notification period for a relevant offender is the period in the second column of the following Table opposite the description that applies to the person.

TABLE	
Description of relevant offender	*Notification period*
A person who, in respect of the offence, is or has been sentenced to imprisonment for life, or to imprisonment for 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or	An indefinite period beginning with that date

finding, is or has been detained in a hospital subject to a restriction order	
A person who, in respect of the offence, is or has been sentenced to imprisonment for more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been detained in a hospital without being subject to a restriction order	7 years beginning with that date
A person who, in respect of the offence, is cautioned	2 years beginning with that date
A person in whose case an order for conditional discharge is made in respect of the offence	The period of conditional discharge
A person of any other description	5 years beginning with the relevant date

(2) If a person is or was under 18 on the relevant date, subsection (1) has effect as if for any reference a period of years specified in subsection (1) there were substituted a reference to one-half of that period.

(3) If a relevant offender is or has been sentenced in respect of 2 or more offences listed in Schedule 3 —

(a) to consecutive terms of imprisonment; or

(b) to terms of imprisonment which are partly concurrent,

the notification period is calculated as if the relevant offender was or had been sentenced, in respect of each of the offences, to a term of imprisonment which —

(i) in the case of consecutive terms - is equal to the aggregate of those terms;

(ii) in the case of partly concurrent terms (X and Y, which overlap for a period Z) - is equal to X plus Y minus Z.

(4) If a relevant offender who is the subject of a finding within section 296(1)(c) is or has been subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(5) In this section and section 298, "**relevant date**" means —

(a) in the case of a person within section 296(1)(a) - the date of the conviction;

(b) in the case of a person within section 296(1)(b) or (c) - the date of the finding;

(c) in the case of a person within section 296(1)(d) - the date of the caution.

[UK Sexual Offences Act 2003 s.82 am. by Violent Crime Reduction Act 2006]

298. Notification requirements: Initial notification

(1) A relevant offender must, within 3 days after the relevant date (or, if later, the commencement of this Part), give to the police the information set out in subsection (5).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 296(1) if the offender —

(a) immediately before the conviction, finding or caution was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event");

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 296(1) if the offender complied with section 83(1) of the Sexual Offences Act 2003 in respect of the conviction, finding, caution or order.

(4) If a notification order is or has been made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if the offender —

(a) immediately before the order was made was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event");

(b) at that time had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1) remains subject to the notification requirements as a result of the earlier event.

(5) The information to be given in relation to the relevant offender is —

(a) the date of birth;

(b) the Tax Identification Number or, in the case of a person who does not have Falkland Islands status, the work permit or immigration permit number;

(c) the name on the relevant date and, if more or other names were used on that date, each of those names;

(d) the home address on the relevant date;

(e) the name on the date on which notification is given and, if one or more other names are used on that date, each of those names;

(f) the home address on the date on which notification is given;

(g) the address of any other premises in the Falkland Islands at which, at the time the notification is given, the person regularly resides or stays;

(h) whether the person has any passport and the details set out in subsection (6) in relation to each passport.

(6) The details required in relation to each passport are —

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.

(7) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is —

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]

299. Notification requirements: Changes

(1) A relevant offender must, within 3 days after —

(a) using a name which has not been notified to the police under section 298;

(b) changing his or her home address;

(c) residing or staying for a qualifying period at any premises in the Falkland Islands the address of which has not been notified to the police under section 298;

(d) being released from custody pursuant to an order of a court or from imprisonment or detention in a hospital;

(e) losing or ceasing to have a passport notified to the police under section 298; or

(f) receiving a passport which has not been notified to the police under section 298(1) and (6),

notify to the police that name, new home address, address of those premises, date of release, details of losing or ceasing to have the passport (as set out in subsection (6) of section 298) and other information set out in that section.

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified —

(a) the notification does not affect the duty imposed by subsection (1); and

(b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 298(7) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 298(1).

(6) In this section, "**qualifying period**" means —

(a) a period of 7 days; or

(b) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.

[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]

300. Notification requirements: Periodic notification

(1) A relevant offender must, within the prescribed period after each event within subsection (2), notify to the police the information set out in section 298(5), unless within that period he or she has given a notification under section 299(1).

(2) The events are —

(a) the commencement of this Part (including persons who became relevant offenders before that commencement);

(b) any notification given by the relevant offender under section 298(1) or 299(1); and

(c) any notification given under subsection (1).

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) The prescribed period is one year, except that if the home address of the relevant offender given under section 298(1), 299(1) or subsection (1) of this section is not the person's sole or main residence in the Falkland Islands, the prescribed period is 7 days.

(4) If the period referred to in subsection (1) would (apart from this subsection) end while subsection (5) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (5) first ceases to apply.

(5) This subsection applies to a relevant offender who is —

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

[UK Sexual Offences Act 2003 ss.83 to 85 am. by Criminal Justice & Immigration Act 2008]

300A. Notification requirements: absence from notified residence

(1) This section applies to a relevant offender if the last address they notified under a notification provision was a home address within paragraph (a) of the definition of that term in section 295(1).

(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (the "**relevant period**"), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is —

(a) the date on which the relevant offender will leave that home address;

(b) such details as the relevant offender holds about —

(i) their travel arrangements during the relevant period;

(ii) their accommodation arrangements during that period; and

(iii) their date of return to that home address.

(4) If —

(a) a relevant offender has given a notification under subsection (2); and

(b) before the relevant offender leaves that address, any of that information (including the intended departure date) becomes inaccurate or incomplete, the relevant offender must give a further notification under subsection (2).

(5) If a relevant offender —

(a) has notified a date of return to their home address; but

(b) returns to that address on a different date,

the relevant offender must notify the date of their actual return to the police within 3 days of returning.

(6) Nothing in this section requires a relevant offender to notify any information they are required to notify under section 301.

(7) In calculating the relevant period for the purposes of this section the following periods are to be disregarded —

(a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 298(5)(g) that they have notified to the police under section 298 or 300;

(b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if their stay at those premises would give rise to a requirement to notify the address of those premises under section 299(1)(c).

(8) In this section —

"**travel arrangements**" include, in particular, details of the means of transport to be used and the dates of travel;

"**accommodation arrangements**" include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

[UK Sexual Offences Act 2003 s. 85A]

[S. 40/Ord. 10/2024/w.e.f. 14.08.2024]

301. Notification requirements: Travel outside the Falkland Islands

(1) A relevant offender who leaves the Falkland Islands must —

(a) at least 7 days before he or she leaves the Falkland Islands, notify the Chief Police Officer in accordance with this section;

(b) if he or she returns to the Falkland Islands, notify the Chief Police Officer at least 7 days before arriving, in accordance with this section.

(2) A notification under this section must disclose —

(a) the date on which the offender will leave or return to the Falkland Islands;

(b) the countries or territories to which he or she will travel and the point of arrival in those countries or territories;

(c) the identity of any carrier or carriers he or she intends to use to depart from and return to the Falkland Islands, and of travelling to any other place;

(d) details of his or her accommodation arrangements on arrival in a place outside the Falkland Islands;

(e) any other information which the offender has about his or her departure from or return to the Falkland Islands and which the Chief Police Officer reasonably requests.

(3) A notification under this section must include —

(a) the offender's name, address in the Falkland Islands and date of birth; and

(b) any other name the offender is using.

(4) If the information provided under subsection (2) changes before the offender departs from or returns to the Falkland Islands, he or she must notify the Chief Police Officer as soon as practicable.

(5) The Governor in Council, after consulting the Criminal Justice Council, may by regulations amend or add to the requirements of this section and the regulations may make different provision for different categories of person.

[UK Sexual Offences Act 2003 s.86 adapted; S.I 2004/1220]

302. Method of notification and related matters

(1) A person gives a notification under a notification provision by —

(a) attending at a police station; and

(b) giving an oral or written notification to the police officer in charge of the station.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 25/Ord 3/2019/w.e.f. 10/04/19; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(2) A notification under a notification provision must be acknowledged in writing in a form approved by the Chief Police Officer.

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

(3) If a notification is given under a notification provision, the relevant offender must, if requested to do so by the police officer referred to in subsection (1)(b), allow the officer to —

(a) take the offender's fingerprints;

(b) photograph any part of the offender; or

(c) do both those things,

for the purpose of verifying the identity of the offender.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(4) In this section, "**photograph**" includes any process by means of which an image may be produced.

[UK Sexual Offences Act 2003 ss.87 and 88]

303. Young offenders: Parental directions

(1) If a person within the first column of the following Table ("**the young offender**") is under 18 when before the court referred to in the second column of the Table, that court may direct that subsection (2) applies in respect of an individual ("**the parent**") having parental responsibility for the young offender.

TABLE	
Description of person	*Court which may make the direction*
A relevant offender within section 296(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 336(1)(a) to (b)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, SHPO or interim SHPO	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(2) If this subsection applies —

(a) the obligations that would (apart from this subsection) be imposed by or under a notification provision on the young offender are to be treated instead as obligations on the parent, and

(b) the parent must ensure that the young offender attends at the place of lawful custody with him or her, when a notification is being given.

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

(3) A direction under subsection (1) takes immediate effect and applies —

(a) until the young offender attains the age of 18; or

(b) for any shorter period that the court declares when giving the direction.

(4) The Attorney General may apply to the Youth Court for a direction under subsection (1) in respect of a relevant offender ("**the defendant**") who —

(a) resides in the Falkland Islands or whom the Attorney General believes is intending to come to the Falkland Islands; and

(b) is under 18.

[UK Sexual Offences Act 2003 ss.89 to 92]

304. Parental directions: Variation, renewal and discharge

(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 303(1).

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) The persons are —

(a) the young offender;

(b) the parent;

(c) the Attorney General.

(3) ...

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

(4) On an application under this section, the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

(5) In this section "**the appropriate court**" means —

(a) if the Supreme Court or the Court of Appeal gave the direction - the Supreme Court;

(b) if the Youth Court gave the direction - that court.

[UK Sexual Offences Act 2003 ss.89 to 92]

305. Offences relating to notification

(1) A person who —

(a) fails, without reasonable excuse, to comply with a notification provision or 302(3) or 303(2)(b); or

(b) notifies to the police, in purported compliance with a notification provision, any information which the person knows to be false,

commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[S. 41/Ord. 10/2024/w.e.f. 14.08.2024]

(2) Subject to subsection (3) —

(a) a person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with the relevant requirement; and

(b) continues to commit it throughout any period during which the failure continues.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) A person must not be prosecuted under subsection (1) more than once in respect of the same failure.

[UK Sexual Offences Act 2003 ss.89 to 92]

305A. Driving passengers for hire or reward prohibited

(1) A person who is subject to the notification requirements of this Part commits an offence if they drive a motor vehicle carrying a passenger for hire or reward or they agree or offer to do so.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) However, this section does not apply to a person who is subject to the notification requirements of this Part only because of section 303.

(3) A motor vehicle is taken to be carrying a passenger for hire or reward if any payment is made, or is payable, in relation to the carriage of a passenger in the vehicle.

(4) For the purposes of subsection (3) the following are immaterial —

(a) who the payment is made by or to;

(b) whether the payment is made in money or anything else of value;

(c) whether the payment is made in respect of other matters as well as the carriage of the passenger;

(d) whether the payment is made as a direct payment of a fare or as an indirect payment (for example, as a membership subscription);

(e) whether the payment is made in respect of the carriage of a particular person or a class of persons (for example, anyone who is at a specified place);

(f) whether any passenger is in fact carried (provided that the payment entitles a person to be carried).

(5) In this section, "**motor vehicle**" has the same meaning as in section 3 of the Road Traffic Ordinance 1948.

[S. 42/Ord. 10/2024/w.e.f. 14.08.2024]

305B. Supervising provisional driver for payment prohibited

(1) A person who is subject to the notification requirements of this Part commits an offence if, for payment or reward, they supervise the driving of a provisional driver or they agree or offer to do so.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) However, this section does not apply to a person who is subject to the notification requirements of this Part only because of section 303.

(3) Supervision of a provisional driver is taken be for payment or reward if any payment is made, or is payable, in relation to the supervision.

(4) For the purposes of subsection (3) the following are immaterial —

(a) who the payment is made by or to;

(b) whether the payment is made in money or anything else of value;

(c) whether the payment is made in respect of other matters as well as the supervision;

(d) whether the payment is made as a direct payment (for example, payment per lesson) or as an indirect payment (for example, paying for a training course which includes being taught to drive certain vehicles);

(e) whether the payment is made in respect of the supervision of a particular person or a class of person;

(f) whether any person is in fact supervised (provided that the payment entitles a person to be supervised).

(5) In this section —

"**motor vehicle**" has the same meaning as in section 3 of the Road Traffic Ordinance 1948;

"**provisional driver**" means the holder of a provisional driving licence within the meaning of the Road Traffic (Provisional) Regulations Order 1986.

[S. 42/Ord. 10/2024/w.e.f. 14.08.2024]

306. Certificates for purposes of this Part

(1) Subsection (2) applies when on any date a person is —

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of mental disorder; or

(c) found to be under a disability and to have done the act charged in respect of such an offence.

(2) If the court by or before which the person is so convicted or found —

(a) states in open court —

(i) that on that date the person has been convicted, found not guilty by reason of mental disorder or found to be under a disability and to have done the act charged; and

(ii) that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) Subsection (4) applies when on any date a person is cautioned in respect of an offence listed in Schedule 3.

(4) If the police officer who gives the caution —

(a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently, in writing in a form approved by the Chief Police Officer,

the certificate is, for the purposes of this Part, evidence of those facts.

[UK Sexual Offences Act 2003 ss.89 to 92]

Review of indefinite notification requirements

307. Review of indefinite notification requirements: General

(1) Sections 308 and 309 apply to a person who, at any time after 10 June 2005, became or becomes subject to the notification requirements of this Part for an indefinite period by virtue of section 297(1), 314A or 314B or a notification order made under section 316(4) (a "**relevant sex offender**").

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

(2) For the purposes of this Part, the date of discharge is —

(a) if the relevant sex offender was aged 18 or over on the relevant date - the date falling 15 years after that date;

(b) if the relevant sex offender was aged under 18 on the relevant date - the date falling 8 years after that date.

(3) In determining the date of discharge under subsection (2), there is to be disregarded any time when the relevant sex offender was —

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in hospital; or

(d) outside the Falkland Islands,

before the relevant sex offender first notified information to the police under section 83(1) of the Sexual Offences Act 2003 or section 298(1) of this Part.

(4) If a notification continuation order made under this Part has effect in respect of the relevant sex offender, for the purposes of this Part the further date of discharge is the date of expiry of the fixed period specified in that order.

(5) In this section —

"**relevant date**" has the same meaning as in section 297(5), 314C or 317(2) (as the case requires);

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

"**notification continuation order**" means an order made under section 308.

[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]

308. Review of indefinite notification requirements: Procedure and grounds

(1) The Chief Police Officer must no later than the date of discharge of a relevant sex offender either —

(a) make a notification continuation order in respect of the offender; or

(b) notify the offender that he or she ceases to be subject to the notification requirements of this Part on the date of discharge.

(2) A notification continuation order is an order making the relevant sex offender subject to the notification requirements of this Part for a fixed period of not more than 15 years from the date which would, but for the order, have been the date of discharge.

(3) The Chief Police Officer may make a notification continuation order only if satisfied, on the balance of probabilities, that the relevant sex offender poses a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands.

(4) In deciding whether to make a notification continuation order, the Chief Police Officer must take into account —

(a) the seriousness of the offence (or offences) —

(i) of which the relevant sex offender was convicted;

(ii) of which the relevant sex offender was found not guilty by reason of mental disorder;

(iii) in respect of which the relevant sex offender was found to be under a disability and to have done the act charged; or

(iv) in respect of which the relevant sex offender was cautioned,

which made the relevant sex offender subject to the notification requirements of this Part for an indefinite period;

(b) the period of time which has elapsed since the relevant sex offender committed the offence (or offences);

(c) whether the relevant sex offender has committed any offence under section 305;

(d) the age of the relevant sex offender at the time of the decision;

(e) the age of the relevant sex offender at the time the offence (or offences) referred to in paragraph (a) was (or were) committed;

(f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the relevant sex offender at the time the offence was committed;

(g) any convictions or findings made by a court in respect of the relevant sex offender for any other offence listed in Schedule 3;

(h) any caution which the relevant sex offender has received for an offence which is listed in Schedule 3;

(i) whether any criminal proceedings for any offences listed in Schedule 3 have been commenced against the relevant sex offender but have not concluded;

(j) any written submission or evidence of the risk of sexual harm posed by the relevant sex offender to the public, or any particular members of the public, in the Falkland Islands;

(k) any submission or evidence presented by or on behalf of the relevant sex offender which demonstrates that he or she does not pose a risk of sexual harm to the public, or any particular members of the public, in the Falkland Islands; and

(l) any other matter which the Chief Police Officer considers to be appropriate.

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

(5) A notification continuation order must state —

(a) the reasons why the order was made; and

(b) the reasons for the determination of the fixed period in the order.

(6) A notification continuation order must be notified in writing to the relevant sex offender.

(7) In this section, "**sexual harm**" means physical or psychological harm caused by the relevant sex offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the Falkland Islands.

[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]

309. Review of indefinite notification requirements: Further review and appeal

(1) If a notification continuation order has been made, the Chief Police Officer must no later than the further date of discharge —

(a) make another notification continuation order in respect of the relevant sex offender; or

(b) notify the relevant sex offender that the offender ceases to be subject to the notification requirements of this Part on the further date of discharge.

(2) Section 308(2) to (7) apply in relation to this section, but a reference to the date of discharge is to be read as a reference to the further date of discharge.

(3) The decision of the Chief Police Officer —

(a) to make a notification continuation order; and

(b) setting the fixed period of the notification continuation order,

may be appealed to the Magistrate's Court by the relevant sex offender within 21 days after the offender receives notice of the decision.

(4) On an appeal under this section, the Magistrate's Court may —

(a) uphold or quash the decision of the Chief Police Officer;

(b) make a notification continuation order; or

(c) vary the fixed period in that order.

(5) The relevant sex offender remains subject to the existing notification requirements of this Part until the expiry of 21 days after the offender receives notice of the decision of the Chief Police Officer or an appeal is decided or abandoned, as the case may be.

[UK Sexual Offences Act 2003 ss.88A to 88G ins. by Sexual Offences (Remedial) Order 2012 and adapted]

Ending notification requirements for homosexual offences

310. Homosexual offences: Ending of notification requirement

(1) This section and section 311 apply if a relevant offender is subject to the notification requirements of this Part as a result of a conviction, finding or caution in respect of an offence under —

(a) section 12 or 13 of the Sexual Offences Act 1956 as applied to the Falkland Islands (buggery or indecency between men); or

(b) section 61 of the Offences against the Person Act 1861.

(2) The relevant offender may apply to the Governor for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery or gross indecency —

(a) if subsection (1)(a) applies - was aged 16 or over;

(b) if subsection (1)(b) applies - was aged 17 or over,

and consented to the act.

(3) An application must be in writing and state —

(a) the name, address and date of birth of the relevant offender;

(b) the offender's name and address at the time of the conviction, finding or caution;

(c) so far as known to the offender, the time when and the place where the conviction or finding was made or the caution given and, for a conviction or finding, the case number;

(d) any other information the Governor may reasonably require.

(4) An application may include representations by the relevant offender about the matters mentioned in subsection (2).

(5) In making the decision applied for, the Governor must consider —

(a) any representations included in the application; and

(b) any available record of the investigation of the offence and of any proceedings relating to it that appears to the Governor to be relevant,

but must not seek evidence from any witness.

(6) On making the decision the Governor must —

(a) record it in writing; and

(b) give notice in writing to the relevant offender.

(7) If the Governor decides that it appears as mentioned in subsection (2), the relevant offender ceases, from the beginning of the day on which the decision is recorded under subsection (6), to be subject to the notification requirements of this Part as a result of the conviction, finding or caution in respect of the offence.

(8) Subsection (7) does not affect the operation of this Part as a result of any other conviction, finding or caution or any court order.

(9) In this section a reference to an offence includes —

(a) a reference to an attempt, conspiracy or incitement to commit that offence; and

(b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(10) In the case of an attempt, conspiracy or incitement, references in subsection (1) to the act of buggery or gross indecency are references to the act of buggery or gross indecency to which the attempt, conspiracy or incitement related (whether or not that act occurred).

[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]

311. Homosexual offences: Right of appeal

(1) If the Governor decides that it does not appear as mentioned in section 310(2), and if the Supreme Court gives permission, the relevant offender may appeal to that court.

(2) On an appeal under this section the court may not receive oral evidence.

(3) The court —

(a) if it decides that it appears as mentioned in subsection 310(2), must make an order to that effect;

(b) otherwise, must dismiss the appeal.

(4) An order under subsection (3)(a) has the same effect as a decision of the Governor recorded under subsection (6) of section 310 has under subsection (7) of that section.

(5) There is no appeal from the decision of the Supreme Court under this section.

[UK Sexual Offences Act 2003 s.93 and Schedule 4, part]

Information relating to notification

312. Supply of information to Governor, etc. for verification

(1) This section applies to information notified to the police under sections 298 to 301.

(2) The Chief Police Officer may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to —

(a) the Governor; or

(b) a person providing services to the Governor in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to —

(a) checking its accuracy by comparing it with information held by a person within subsection (2)(b) in connection with the provision of the services; and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section does not breach any restriction on the disclosure of information (however arising or imposed).

(5) This section does not affect any power existing apart from this section to supply information.

(6) In this section, "**relevant function**" means —

(a) a function relating to social security, child support, employment or training;

(b) a function relating to passports;

(c) a function relating to the licensing of vehicles.

[UK Sexual Offences Act 2003 ss.94 to 96]

313. Supply of information by Governor, etc.

(1) A report compiled under section 312 may be supplied to the Chief Police Officer by —

(a) the Governor; or

(b) a person within section 312(2)(b).

(2) Such a report may contain any information held —

(a) by the Governor in connection with the exercise of a relevant function; or

(b) by a person within section 312(2)(b) in connection with the provision of services referred to there.

(3) If a report compiled under section 312 contains information within subsection (2), the Chief Police Officer may —

(a) retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Ordinance; and

(b) use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Ordinance), but for no other purpose.

(4) Subsections (4) to (6) of section 312 apply in relation to this section as they apply in relation to that section.

[UK Sexual Offences Act 2003 ss.94 to 96]

314. Information about release or transfer

(1) This section applies to a relevant offender who is serving a sentence of imprisonment, or is detained in a hospital.

(2) The person who is responsible for an offender must notify the Chief Police Officer, in the prescribed manner, of any occasion when the offender is released or a different person becomes responsible for the offender.

(3) The person who is responsible for an offender must, in giving notice, provide —

(a) any prescribed information about the offender; and

(b) a photograph of the offender.

(4) In this section, "**photograph**" includes any process by means of which an image may be produced.

(5) The Governor in Council, on the advice of the Criminal Justice Council, may make regulations to implement this section and in this section "**prescribed**" means prescribed by the regulations.

(6) The regulations may —

(a) make provision for determining who is to be treated for the purposes of this section as responsible for an offender;

(b) make different provision for different purposes;

(c) prescribe penalties for failure to comply with the requirements of this section or the regulations.

[UK Sexual Offences Act 2003 ss.94 to 96]

Offences outside the Falkland Islands: notification requirements

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

314A. Offences outside Falkland Islands: notification requirements

(1) If this section applies to a person, the person is subject to the notification requirements of this Part for the notification period set out in section 297. This is subject to sections 314B (young offenders: parental notices) and 314C (modifications of notification requirements).

(2) This section applies to a person if they have been given a notice under subsection (3) and that notice has not been cancelled.

(3) A police officer may give a notice to a person ("**P**") if —

(a) the conditions in subsections (6), (7) and (8) are met in respect of P; and

(b) a police officer of at least the rank of inspector has authorised the giving of the notice to P.

(4) A notice given to P under subsection (3) must be given to P in person and must contain details of —

(a) the notifications that P is required to give under this Part;

(b) when those notifications must be given; and

(c) where or how those notifications may be given.

(5) A notice given under subsection (3) may be cancelled by a police officer giving notice in writing to P in person but such a cancellation must be authorised by an officer of at least the rank of inspector.

(6) The first condition is that under the law in force in a country outside the Falkland Islands —

(a) P has been convicted of a relevant offence (whether or not P has been punished for it);

(b) a court exercising jurisdiction under that law has made, in respect of a relevant offence, a finding equivalent to a finding that P is not guilty by reason of insanity;

(c) a court exercising jurisdiction under that law has made, in respect of a relevant offence, a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence; or

(d) P has been cautioned in respect of a relevant offence.

(7) The second condition is that —

(a) the first condition is met because of a conviction, finding or caution which occurred on or after 10 June 2005; or

(b) the first condition is met because of a conviction or finding which occurred before that date, but P was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it.

(8) The third condition is that the period set out in section 297 (as it would have effect as modified by section 314C(2) and (3) if this section applied to P) in respect of the relevant offence has not expired.

(9) In this section, "**relevant offence**" means an act which —

(a) constituted an offence under the law in force in the country outside the Falkland Islands; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in the Falkland Islands.

(10) For the purposes of subsection (9)(a), an act punishable under the law in force in that place constitutes an offence under that law however it is described in that law.

[UK Sexual Offences Act 2003 s. 96ZA]

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

314B. Young offenders: parental notices

(1) If the person ("**P**") given a notice under section 314A is under 18, a police officer may also give a notice (a "**parental notice**") to a person (the "**parent**") with parental responsibility for P.

(2) Section 314A(3)(b), (4), and (5) apply to the giving and cancellation of a parental notice as if references to P were references to the parent.

(3) If a parental notice has been given to the parent and has not been cancelled or ceased to have effect —

(a) the obligations that would (apart from this section) be imposed on P by section 314A are to be treated instead as obligations on the parent; and

(b) the parent must ensure that P attends with them at the police station when a notification under this Part is being given.

(4) The parental notice ceases to have effect when P reaches the age of 18.

(5) If a parental notice is to be given, section 314A(4)(a) has effect in relation to the notice given to P as if the reference to the notifications that P is required to give under this Part were a reference to —

(a) the notifications that the parent is required to give under this Part; and

(b) the notifications (if any) that P is required to give under this Part once the parental notice ceases to have effect.

[UK Sexual Offences Act 2003 s. 96ZB]

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

314C. Modifications of notification requirements

(1) The application of this Part to a person ("**P**") to whom section 314A applies in respect of a conviction, finding or caution is subject to the modifications set out in this section.

(2) References to the "**relevant date**" —

(a) if P is within section 314A(6)(a), are to the date of the conviction;

(b) if P is within section 314A(6)(b) or (c), are to the date of the finding; and

(c) if P is within section 314A(6)(d), are to the date of the caution.

(3) In section 297 —

(a) references, except in the Table, to a person (or relevant offender) within any provision of section 296 are to be read as references to P;

(b) references to an order of any description are to be read as references to any corresponding disposal made in relation to P in respect of an offence or finding by reference to which a notice has been given to P under section 314A; and

(c) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences (as defined in section 314A(9)).

(4) Section 298 has effect as if, after subsection (1), there were inserted —

"(1A) In the case of a relevant offender who is subject to the notification requirements of this Part by virtue of a notice being given to the relevant offender under section 314A, the reference in subsection (1) to the period of 3 days beginning with the relevant date (or if later the commencement of this Part) is to be read as a reference to the period of 3 days beginning with the day on which the notice was given to the relevant offender.".

(5) Section 298(4) has effect as if —

(a) for the words "If a notification order is made" there were substituted "If a relevant offender is subject to the notification requirements of this Part by virtue of a notice given under section 314A"; and

(b) in paragraph (a) for the words "the order was made" there were substituted "the notice was given to the relevant offender".

[UK Sexual Offences Act 2003 s. 96ZC]

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

314D. Appeal against the issue of a notice under section 314A or 314B

(1) A person ("**P**") may appeal to the Magistrate's Court against a decision to give them a notice under section 314A.

(2) The grounds for bringing an appeal under subsection (1) include —

(a) that one or more of the conditions for the giving of the notice were not met in respect of P at the time the notice was given; and

(b) that the conviction, finding or caution by reason of which P was given the notice falls within subsection (3).

(3) A conviction, finding or caution falls within this subsection if —

(a) any investigations or proceedings leading to it were conducted in a way which contravened any rights under Chapter 1 of the Constitution or Convention rights (within the meaning of section 1 of the Human Rights Act 1998) which P would have had if those investigations or proceedings had taken place in the Falkland Islands; and

(b) that contravention was such that the conviction, finding or caution cannot be safely relied on for the purposes of meeting the condition in section 314A(6).

(4) A person (the "**parent**") may appeal to the Magistrate's Court against a decision to give them a parental notice under section 314B.

(5) The grounds for bringing an appeal under subsection (4) include —

(a) that one or more of the conditions for the giving of a notice under section 314A to the person ("**P**") for whom the parent has parental responsibility were not met in respect of P at the time the notice under section 314A was given;

(b) that the conviction, finding or caution by reason of which P was given a notice under section 314A falls within subsection (3); and

(c) that one or more of the requirements for giving the parent a parental notice under section 314B were not met at the time the parental notice was given.

(6) On an appeal under subsection (1) or (4) the Magistrate's Court may cancel or confirm the notice which is the subject of the appeal.

[UK Sexual Offences Act 2003 s. 96ZD]

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

Entry and examination of home address

[S. 43/Ord. 10/2024/w.e.f. 14.08.2024]

315. Power of entry and search for offender's home address

(1) If on an application made by or on behalf of the Chief Police Officer, a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, the justice of the peace may issue a warrant authorising a police officer —

(a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are that —

(a) the address of each set of premises specified in the application is an address falling within subsection (3);

(b) the relevant offender is not one to whom subsection (4) applies;

(c) it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and

(d) on at least 2 occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

(3) An address falls within this subsection if —

(a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his or her home address; or

(b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.

(4) This subsection applies to a relevant offender who is —

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside the Falkland Islands.

(5) A warrant issued under this section —

(a) must specify each of the premises to which it relates;

(b) may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises;

(c) may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(6) If a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(7) In this section a reference to the relevant offender to whom the warrant relates is a reference to a relevant offender —

(a) who has in accordance with this Part notified the police that the premises specified in the warrant are his or her home address; or

(b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

[UK Sexual Offences Act 2003 s.96B ins. by Violent Crime Reduction Act 2006]

316. Notification orders: Applications and grounds

(1) The Attorney General may apply to the Magistrate's Court for an order under this section (a "**notification order**") in respect of a person ("**the defendant**") if —

(a) it appears that the following conditions are met with respect to the defendant; and

(b) the defendant resides in the Falkland Islands or the Attorney General believes that the defendant is in, or is intending to come to, the Falkland Islands.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(2) The first condition is that under the law in force in a place outside the Falkland Islands —

(a) the defendant has been convicted of a relevant offence (whether or not he or she has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the defendant is under a disability and did the act charged in respect of the offence; or

(d) the defendant has been dealt with in a way equivalent to the giving of a caution in respect of a relevant offence.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) The second condition is that the notification period set out in section 297(1) (as modified by subsections (2) and (3) of that section) in respect of the relevant offence) has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 317 "relevant offence" has the meaning given by section 318.

[UK Sexual Offences Act 2003 ss.97 to 101]

317. Notification orders: Effect

(1) If a notification order is made —

(a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below; and

(b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 297.

(2) The "**relevant date**" means —

(a) in the case of a person within section 316(2)(a) - the date of the conviction;

(b) in the case of a person within section 316(2)(b) or (c) - the date of the finding;

(c) in the case of a person within section 316(2)(d) - the date of the caution.

(3) In section 296, the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(4) In sections 298 and 300, references to the commencement of this Part are to be read as references to the date of service of the notification order.

[UK Sexual Offences Act 2003 ss.97 to 101 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

318. Sections 316 and 317: Relevant offences

(1) In sections 316 and 317 the term "**relevant offence**" means an act which —

(a) constituted an offence under the law in force in the place concerned; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in the Falkland Islands.

(2) An act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, within 28 days of receiving notice of the application, the defendant serves on the applicant a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

[UK Sexual Offences Act 2003 ss.97 to 101]

319. Interim notification orders

(1) This section applies when an application for a notification order ("**the main application**") has not been determined.

(2) An application for an order under this section ("**an interim notification order**") —

(a) may be made in the main application; or

(b) if the main application has been made, may be made by supplementary application to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim notification order.

(4) An interim notification order —

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) While such an order has effect —

(a) the defendant is subject to the notification requirements of this Part;

(b) this Part applies to the defendant, subject to the modification set out in subsection (6).

(6) For purposes of this section, "**relevant date**" means the date of service of the order.

(7) The applicant or the defendant may apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

[UK Sexual Offences Act 2003 ss.97 to 101]

320. Notification orders: Appeals

A defendant may appeal to the Supreme Court against the making of a notification order or interim notification order.

[UK Sexual Offences Act 2003 ss.97 to 101]

Sexual harm prevention orders (SHPOs)

321. Sexual harm prevention orders: Applications and grounds – Schedules 3 and 4

(1) A court may make an order under this section (a "**sexual harm prevention order**" or "**SHPO**") in respect of a person ("**the defendant**") if subsection (2) or (3) applies to the defendant.

(2) This subsection applies to the defendant if —

(a) the defendant has been convicted of an offence listed in Schedule 3 or 4; and

(b) the court dealing with the defendant is satisfied on the balance of probabilities that it is necessary to make a SHPO for the purpose of —

(i) protecting the public or any particular members of the public from sexual harm from the defendant; or

(ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

[S. 44/Ord. 10/2024/w.e.f. 14.08.2024]

(3) This subsection applies to the defendant if —

(a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender; and

(b) the court is satisfied on the balance of probabilities that the defendant's behaviour since the appropriate date makes it necessary to make a SHPO, for the purpose of —

(i) protecting the public or any particular members of the public from sexual harm from the defendant; or

(ii) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

[S. 44/Ord. 10/2024/w.e.f. 14.08.2024]

(4) The Attorney General may apply to the Magistrate's Court for a SHPO in respect of a person if it appears to the Attorney General that —

(a) the person is a qualifying offender; and

(b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

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

(5) The Attorney General may make an application under subsection (4) only in respect of a person —

(a) who resides in the Falkland Islands; or

(b) whom the Attorney General believes is intending to come to the Falkland Islands.

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

322. Section 321: Supplementary provisions

(1) In section 321 —

"**appropriate date**", in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3) below;

"**qualifying offender**" means a person within subsection (2) or (3) below.

(2) A person is within this subsection if, whether before or after the commencement of this Part, the person —

(a) has been convicted of an offence listed in Schedule 3 or Schedule 4;

(b) has been found not guilty of such an offence by reason of mental disorder;

(c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence; or

(d) has been cautioned in respect of such an offence.

(3) A person is within this subsection if, under the law in force in a place outside the Falkland Islands, whether before or after the commencement of this Part —

(a) the person has been convicted of a relevant offence (whether or not the person has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence; or

(d) the person has been cautioned in respect of a relevant offence.

(4) In subsection (3), "**relevant offence**" means an act which —

(a) constituted an offence under the law in force in the country concerned; and

(b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in the Falkland Islands.

(5) For the purposes of subsection (4) an act punishable under the law in force in a place outside the Falkland Islands constitutes an offence under that law, however it is described in that law.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) Subject to subsection (7), on an application under section 321(4) the condition in subsection (3)(b) above (where relevant) is to be taken as met unless, not later than criminal procedure rules may provide, the defendant serves on the Attorney General a notice —

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the Attorney General to prove that the condition is met.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Revision w.e.f. 31/07/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

(7) The court, if it thinks fit, may permit the defendant to require the Attorney General to prove that the condition is met without service of a notice under subsection (6).

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 & Schedule 5]

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

323. Effect of a SHPO

A SHPO —

(a) prohibits the defendant from doing the things specified in the order as prohibitions; and

(b) requires the defendant to do the things specified in the order as requirements,

for the period specified in the order.

[UK Sexual Offences Act 2003 s. 103C]

[S. 45/Ord. 10/2024/w.e.f. 14.08.2024]

323A. SHPO: matters to be specified

(1) A SHPO must specify —

(a) the prohibitions and requirements imposed on the defendant by the order; and

(b) for each prohibition or requirement, the period for which it is to have effect (the "**specified period**").

(2) A specified period must be —

(a) a fixed period of not less than 5 years; or

(b) an indefinite period (so that the prohibition or requirement has effect until further order).

This is subject to sections 324(1) (prohibition on foreign travel) and 326A(7) (SHPOs and interim SHPOs: electronic monitoring requirements).

(3) A SHPO —

(a) may specify fixed periods for some of its prohibitions or requirements and an indefinite period for others;

(b) may specify different periods for different prohibitions or requirements.

(4) The only prohibitions and requirements that may be included in a SHPO are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from sexual harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.

(5) A SHPO order may require the defendant to submit to electronic monitoring of the defendant's compliance with the prohibitions and requirements imposed by the order (see section 326A for further provision about such a requirement).

(6) The prohibitions or requirements which are imposed on the defendant by a SHPO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant's religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject (but see subsection (7)).

(7) If a court makes a SHPO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

[UK Sexual Offences Act 2003 s. 103C]

[S. 45/Ord. 10/2024/w.e.f. 14.08.2024]

323B. SHPO: requirements included in order etc.

(1) A SHPO that imposes a requirement to do something on a defendant must specify a person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation.

(2) Before including such a requirement in a SHPO, the court must receive evidence about its suitability and enforceability from —

(a) if an individual is to be specified under subsection (1), that individual; or

(b) if an organisation is to be specified under subsection (1), an individual representing the organisation.

(3) Subsections (1) and (2) do not apply in relation to an electronic monitoring requirement (see instead, section 326A).

(4) It is the duty of a person specified under subsection (1) —

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility ("**relevant requirements**");

(b) to promote the defendant's compliance with the relevant requirements; and

(c) if the person considers that —

(i) the defendant has complied with all the relevant requirements; or

(ii) the defendant has failed to comply with a relevant requirement,

to inform the Chief Police Officer.

(5) A defendant subject to a requirement imposed by a SHPO must —

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time; and

(b) notify that person of any change of the defendant's home address.

These obligations have effect as requirements of the order.

[UK Sexual Offences Act 2003 s. 103CA]

[S. 45/Ord. 10/2024/w.e.f. 14.08.2024]

324. SHPOs: Prohibition on foreign travel

(1) A prohibition on foreign travel contained in a SHPO prevention order must be for a fixed period of not more than 5 years.

(2) A "**prohibition on foreign travel**" means —

(a) a prohibition on travelling to any country outside the Falkland Islands named or described in the order;

(b) a prohibition on travelling to any country outside the Falkland Islands other than a country named or described in the order; or

(c) a prohibition on travelling to any country outside the Falkland Islands.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 325.

(4) A SHPO that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a place of lawful custody specified in the order —

(a) on or before the date when the prohibition takes effect; or

(b) within a period specified in the order.

(5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a SHPO containing a prohibition within subsection (2)(c) unless the person is subject to an equivalent prohibition under another order).

(6) Subsection (5) does not apply in relation to —

(a) a passport issued by or on behalf of the authorities of a place outside the Falkland Islands if the passport has been returned to those authorities;

(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

325. SHPOs: Variation, renewal and discharge

(1) The defendant or the Attorney General may apply to the Magistrate's Court for an order varying, renewing or discharging a SHPO.

(2) Subject to subsections (3) to (5), on the application the court, after hearing the person making the application and (if that person wishes to be heard) the other person mentioned in subsection (1), may make any order varying, renewing or discharging the SHPO that the court considers appropriate.

(3) Sections 323A, 323B, 324 and 326A apply in relation to a renewed or varied order and any new or varied prohibitions or requirements.

(4) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and the Attorney General.

(5) Subsection (4) does not apply to an order containing a prohibition on foreign travel and no other prohibitions or requirements.

[UK Sexual Offences Act 2003 s. 103E]

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Revision w.e.f. 31/07/2017; S. 46/Ord. 10/2024/w.e.f. 14.08.2024]

326. Interim SHPOs

(1) This section applies if an application under section 321(4) (the "**main application**") has not been determined.

(2) The Attorney General may apply to the court for an interim SHPO.

(3) The court may, if it considers it just to do so, make an interim SHPO —

(a) prohibiting the defendant from doing the things specified in the order as prohibitions; and

(b) requiring the defendant to do the things specified in the order as requirements.

(4) The prohibitions or requirements which are imposed on the defendant by an interim SHPO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant's religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject.

(5) An interim SHPO may require the defendant to submit to electronic monitoring of the defendant's compliance with the prohibitions and requirements imposed by the order (see section 326A for further provision about such a requirement).

(6) An interim SHPO —

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(7) The Attorney General or defendant may apply to the court for an interim SHPO to be varied, renewed, or discharged.

[UK Sexual Offences Act 2003 s. 103F]

[S. 46/Ord. 10/2024/w.e.f. 14.08.2024]

326A. SHPOs and interim SHPOs: Electronic monitoring requirements

(1) Subsections (2) and (3) apply for the purpose of determining whether a court may impose, under section 323A(5) or section 326(5), an electronic monitoring requirement on the defendant in a sexual harm prevention order or interim sexual harm prevention order.

(2) If there is a person (other than the defendant) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person's consent.

(3) The court may impose the requirement only if —

(a) electronic monitoring arrangements are available; and

(b) it is satisfied that the necessary provision can be made under the arrangements currently available.

(4) A SHPO or interim SHPO that includes an electronic monitoring requirement must specify the person (the "responsible person") who is to be responsible for the monitoring.

(5) Where a SHPO or interim SHPO imposes an electronic monitoring requirement on the defendant, the defendant must (among other things) —

(a) submit, as required from time to time by the responsible person, to —

(i) being fitted with, or the installation of, any necessary apparatus, and

(ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,

(b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and

(c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purpose of the monitoring.

These obligations have effect as requirements of the sexual harm prevention order or interim sexual harm prevention order under which the electronic monitoring requirement is imposed.

(6) A SHPO or interim SHPO must not provide for an electronic monitoring requirement to have effect for more than 12 months.

(7) Subsection (6) does not prevent an electronic monitoring requirement from being extended for a further period (of no more than 12 months each time) under section 325.

[UK Sexual Offences Act 2003 s. 103FA]

[S. 46/Ord. 10/2024/w.e.f. 14.08.2024]

327. SHPOs and interim SHPOs: Notification requirements

(1) If —

(a) a SHPO is made in respect of a defendant who was a relevant offender immediately before the making of the order; and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(2) If a SHPO is made in respect of a defendant who was not a relevant offender immediately before the making of the order —

(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date of service of the order.

(3) Subsections (1) to (3) apply to an interim SHPO as if references to a SHPO were references to an interim SHPO, and with the omission of "(as renewed from time to time)" in both places.

(4) If —

(a) a SHPO is in effect in relation to a relevant offender; and

(b) by virtue of sections 311 and 312 the relevant offender ceases to be subject to the notification requirements of this Part,

the SHPO ceases to have effect.

(5) On an application for a SHPO, the court must make a notification order in respect of the defendant (either in addition to or instead of a SHPO) if —

(a) the Attorney General invites the court to do so; and

(b) it is proved that the conditions in section 316(2) to (4) are met.

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

(6) On an application for an interim SHPO, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim SHPO).

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

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

328. SHPOs and interim SHPOs: Appeals

(1) A defendant may appeal against the making of a SHPO —

(a) if the order was made by virtue of section 321(2)(a)(i) - as if the order were a sentence passed on the defendant for the offence;

(b) if the order was made by virtue of section 321(2)(a)(ii) or (iii) - as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;

(c) if the order was made by virtue of section 321(3) - to the Supreme Court.

(2) A defendant may appeal to the Supreme Court against the making of an interim SHPO.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) A defendant may appeal against the making of an order under section 325, or the refusal to make such an order —

(a) if the application for such an order was made to the Supreme Court - to the Court of Appeal;

(b) in any other case - to the Supreme Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme Court may make —

(a) any order necessary to give effect to its determination of the appeal; and

(b) any incidental or consequential order as appear to the court to be just.

(5) Any order made by the Supreme Court on an appeal under subsection (1)(c), (2) or (3)(b) (other than an order directing that an application be reheard by the Magistrate's Court is for the purposes of section 325(1) or 326(7) to be treated as if it were an order of the court from which the appeal was brought, and not an order of the Supreme Court.

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 & Schedule 5]

[S.R. & O. 6/2017/w.e.f. 13/4/2017; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

329. Offence: Breach of SHPO or interim SHPO, etc.

(1) A person who, without reasonable excuse, fails to comply with —

(a) a SHPO;

(b) an interim SHPO;

(c) a SOPO;

(d) an interim SOPO; or

(e) a foreign travel order,

commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

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

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 324(4) commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

330. SHPOs and interim SHPOs: Guidance

The Attorney General may issue guidance for police officers in relation to the exercise of their functions under sections 321 to 331.

[S. 47/Ord. 10/2024/w.e.f. 14.08.2024]

331. SHPOs and interim SHPOs: Supplementary

(1) The Youth Court may give permission for an application under section 321(4) against an adult to be made to the Youth Court if —

(a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and

(b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 321, 325, 326 or 327(5) or (6) have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 326 with modifications).

[UK Sexual Offences Act 2003 ss.103A to 103K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

Sexual risk orders (SROs)

332. Sexual risk orders: Applications, grounds and effect

(1) The Attorney General may apply to the Magistrate's Court for an order under this section (a "**sexual risk order**" or "**SRO**") in respect of a person ("**the defendant**") if it appears to the Attorney General that the condition in subsection (2) is met.

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

(2) The condition is that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a SRO to be made.

(3) The Attorney General may make an application under subsection (1) only in respect of a person —

(a) who resides in the Falkland Islands; or

(b) whom the Attorney General believes is in the Falkland Islands or is intending to come to the Falkland Islands.

(4) On an application under subsection (1), the court may make a SRO if satisfied on the balance of probabilities that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(5) A SRO —

(a) prohibits the defendant from doing the things specified in the order as prohibitions; and

(b) requires the defendant to do the things specified in the order as requirements,

for the period specified in the order.

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(6) A SRO must specify —

(a) the prohibitions and requirements imposed on the defendant by order; and

(b) for each prohibition or requirement, the period for which it is to have effect (the "**specified period**").

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(7) A specified period must be —

(a) a fixed period of not less than 2 years; or

(b) an indefinite period (so that the prohibition or requirement has effect until further order).

This is subject to sections 333(1) (SROs: prohibition on foreign travel) and 335A(8) (SROs and interim SROs: electronic monitoring requirements).

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(8) A SRO —

(a) may specify fixed periods for some of its prohibitions or requirements and an indefinite period for others;

(b) may specify different periods for different prohibitions or requirements.

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(9) The only prohibitions and requirements that may be imposed are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(10) A SRO may require the defendant to submit to electronic monitoring of the defendant's compliance with the prohibitions and requirements imposed by the order (see section 335A for further provision about such a requirement).

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(11) The prohibitions or requirements which are imposed on the defendant by a SRO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant's religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject (but see subsection (12)).

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

(12) If a court makes a SRO in relation to a person who is already subject to such an order, the earlier order ceases to have effect.

[S. 48/Ord. 10/2024/w.e.f. 14.08.2024]

[UK Sexual Offences Act 2003 s. 122A]

332A. SRO: Requirements included in order etc.

(1) A SRO that imposes a requirement to do something on a defendant must specify a person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation.

(2) Before including such a requirement in a SRO, the court must receive evidence about its suitability and enforceability from —

(a) if an individual is to be specified under subsection (1), that individual; or

(b) if an organisation is to be specified under subsection (1), an individual representing the organisation.

(3) Subsections (1) and (2) do not apply in relation to an electronic monitoring requirement (see instead, section 335A).

(4) It is the duty of a person specified under subsection (1) —

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility ("**relevant requirements**");

(b) to promote the defendant's compliance with the relevant requirements; and

(c) if the person considers that —

(i) the defendant has complied with all the relevant requirements; or

(ii) the defendant has failed to comply with a relevant requirement,

to inform the Chief Police Officer.

(5) A defendant subject to a requirement imposed by a SRO must —

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time; and

(b) notify that person of any change of the defendant's home address.

These obligations have effect as requirements of the order.

[UK Sexual Offences Act 2003 s. 122BA]

[S. 49/Ord. 10/2024/w.e.f. 14.08.2024]

333. SROs: Prohibition on foreign travel

(1) A prohibition on foreign travel contained in a SRO must not be for a period of more than 5 years.

(2) A "**prohibition on foreign travel**" has the same meaning as in relation to a SHPO in section 324.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 334.

(4) Section 324(4) to (6) apply with necessary modifications in relation to a prohibition on foreign travel imposed as a condition of a SRO.

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

334. SRO: Variation, renewal and discharge

(1) The defendant or the Attorney General may apply to the Magistrate's Court for an order varying, renewing or discharging a SRO.

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

(2) Subject to subsections (3), (4) and (5), on the application of the court, after hearing the person making the application and (if he or she wishes to be heard) the other person mentioned in subsection (1), may make any order, varying, renewing or discharging the SRO, that the court considers appropriate.

[S.R. & O. 6/2017/w.e.f. 13/4/2017 and Revision w.e.f. 31/07/2017]

(3) Sections 332(6) to (11), 332A, 330 and 335A apply in relation to a renewed or varied order and any new or varied prohibitions or requirements.

[S. 50/Ord. 10/2024/w.e.f. 14.08.2024]

(4) ...

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 50/Ord. 10/2024/w.e.f. 14.08.2024]

(5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Attorney General.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(6) ...

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

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113, Schedule 5 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

335. Interim SROs

(1) This section applies if an application for a SRO ("**the main application**") has not been determined.

(2) The Attorney General may apply to the court for an interim SRO.

[S. 51/Ord. 10/2024/w.e.f. 14.08.2024]

(3) The court may, if it considers it just to do so, make an interim SRO —

(a) prohibiting the defendant from doing the things specified in the order as prohibitions; and

(b) requiring the defendant to do the things specified in the order as requirements.

[S. 51/Ord. 10/2024/w.e.f. 14.08.2024]

(3A) The prohibitions or requirements which are imposed on the defendant by an interim SRO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant's religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject.

[S. 51/Ord. 10/2024/w.e.f. 14.08.2024]

(3B) An interim SRO may require the defendant to submit to electronic monitoring of the defendant's compliance with the prohibitions and requirements imposed by the order (see section 335A for further provision about such a requirement).

[S. 51/Ord. 10/2024/w.e.f. 14.08.2024]

(4) An interim SRO —

(a) has effect only for a fixed period, specified in the order; and

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The Attorney General or defendant may apply to the court for an interim SRO to be varied, renewed or discharged.

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

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

335A. SROs and interim SROs: Electronic monitoring requirements

(1) Subsections (2) and (3) apply for the purpose of determining whether a court may impose, under section 332(10) or section 335(3B), an electronic monitoring requirement on the defendant in a SRO or interim SRO.

(2) If there is a person (other than the defendant) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person's consent.

(3) The court may impose the requirement only if —

(a) electronic monitoring arrangements are available; and

(b) it is satisfied that the necessary provision can be made under the arrangements currently available.

(4) A SRO or interim SRO that includes an electronic monitoring requirement must specify the person (the "responsible person") who is to be responsible for the monitoring.

(5) Where a SRO or interim SRO imposes an electronic monitoring requirement on the defendant, the defendant must (among other things) —

(a) submit, as required from time to time by the responsible person, to —

(i) being fitted with, or the installation of, any necessary apparatus; and

(ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring;

(b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring; and

(c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purpose of the monitoring.

These obligations have effect as requirements of the SRO or interim SRO under which the electronic monitoring requirement is imposed.

(6) A SRO or interim SRO must not provide for an electronic monitoring requirement to have effect for more than 12 months.

(7) Subsection (6) does not prevent an electronic monitoring requirement from being extended for a further period (of no more than 12 months each time) under section 334.

[UK Sexual Offences Act 2003 s. 103FA]

[S. 52/Ord. 10/2024/w.e.f. 14.08.2024]

336. SROs and interim SROs: Notification requirements

(1) A person in respect of whom a court makes —

(a) a SRO (other than one that replaces an interim SRO); or

(b) an interim SRO,

must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2) (unless the person is subject to the notification requirements of this Part on that date).

(2) The information is —

(a) the person's name and, if the person uses one or more other names, each of those names;

(b) the person's home address.

(3) A person who —

(a) is subject to a SRO or an interim SRO (but is not subject to other notification requirements of this Part); and

(b) uses a name which has not been notified under this section (or under any other provision of this Part), or changes his or her home address,

must, within 3 days after the date of the use or change, notify to the police that name or (as the case may be) the new home address.

(4) Sections 302 (Method of notification) and 305 (Offences relating to notification) apply for the purposes of this section —

(a) with references to section 298(1) being read as references to subsection (1) above; and

(b) with references to section 299(1) being read as references to subsection (3) above.

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

337. SROs and interim SROs: Appeals

(1) A defendant may appeal to the Supreme Court —

(a) against the making of a SRO;

(b) against the making of an interim SRO;

(c) against the refusal to vary or discharge a SRO.

(2) On any such appeal, the Supreme Court may make any order that is necessary to give effect to its determination of the appeal, and any incidental or consequential order that appears to the court to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be reheard by the Magistrate's Court is for the purposes of section 334 or 335(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

338. Offence: Breach of SRO or interim SRO, etc.

(1) A person who, without reasonable excuse, fails to comply with —

(a) a SRO;

(b) an interim SRO;

(c) a RSHO;

(d) an interim RSHO,

commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

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

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed under section 324(4) in relation to a SRO commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

339. Effect of conviction, etc. of an offence under section 338

(1) This section applies to a person ("the defendant") who is —

(a) convicted of an offence under section 338 of this Ordinance, or section 128 of the Sexual offences Act 2003 as applied to the Falkland Islands;

(b) found not guilty of such an offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged against him or her in respect of such an offence; or

(d) cautioned in respect of such an offence.

(2) If a defendant —

(a) was a relevant offender immediately before this section applied to the defendant; and

(b) would (apart from this subsection) cease to be subject to the notification requirements of this Part (other than those imposed by section 327 or section 336) while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to those notification requirements.

(3) If a defendant was not a relevant offender immediately before this section applied to the defendant —

(a) this section causes the defendant to become subject to the notification requirements of this Part (other than those imposed by section 327 or section 336) from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, except that the relevant date is the date on which this section first applies to the defendant.

(4) In this section "**relevant order**" means —

(a) if the conviction, finding or caution within subsection (1) is in respect of a breach of a SRO or a RSHO - that order;

(b) if the conviction, finding or caution within subsection (1) is in respect of a breach of an interim SRO or an interim RSHO - any SRO or RSHO made on the hearing of the application to which the interim order relates; or

(c) if no such order is made - the interim order.

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

340. SROs and interim SROs: Guidance

The Attorney General may issue guidance for police officers in relation to the exercise of their functions under sections 332 to 341.

[S. 53/Ord. 10/2024/w.e.f. 14.08.2024] [Revision w.e.f. 21/10/2024]

341. SROs and interim SROs: Supplementary

(1) The Youth Court may give permission for an application under section 333 against an adult to be made to the Youth Court if —

(a) an application to the Youth Court has been made, or is to be made, under that section against a youth; and

(b) the Youth Court thinks that it would be in the interests of justice for the applications to be heard together.

(2) The Chief Justice may by criminal procedure rules make provision in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 332, 334 or 335 have begun —

(a) prescribe circumstances in which the proceedings may or must remain in the Youth Court;

(b) make provision for the transfer of the proceedings from the Youth Court to the Magistrate's Court sitting other than as the Youth Court (including provision applying section 335 with modifications).

[UK Sexual Offences Act 2003 ss.122A to 122K ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5]

Miscellaneous provisions

342. Power to amend Schedules 3 and 4

(1) The Governor in Council, after consulting the Criminal Justice Council, may by order amend Schedule 3 or Schedule 4.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of this Part, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it —

(a) adds an offence;

(b) removes a threshold relating to an offence; or

(c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

[UK Sexual Offences Act 2003 s.130]

343. Schedules: Interpretation

(1) A reference in Schedule 3 or 4 to an offence includes a reference to —

(a) an attempt or conspiracy to commit that offence;

(b) encouraging the commission of that offence; and

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) A reference in either Schedule to a person's age is —

(a) a reference to the person's age at the time of the offence;

(b) in the case of an indecent photograph - a reference to the person's age when the photograph was taken;

(c) in any other case - a reference to the person's age at the time of the offence.

[UK Sexual Offences Act 2003 Sched.3]

344. Schedules: Offences with thresholds

(1) This section applies to an offence which is listed in Schedule 3 or 4 subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (if a relevant finding has been made in respect of the defendant) in respect of the finding (a "sentencing condition").

(2) If an offence is listed subject to a sentencing condition or a condition of another description, this section applies only to the offence as listed subject to that condition.

(3) For the purposes of this Part (including in particular section 297(4)) —

(a) a person is to be regarded as convicted of an offence to which this section applies; or

(b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

at the time when the sentencing condition is met.

(4) In the following subsections, references to a foreign offence are references to an act which—

(a) constituted an offence under the law in force in a place outside the Falkland Islands ("the relevant foreign law"); and

(b) would have constituted an offence to which this section applies if it had been done in the Falkland Islands.

(5) In relation to a foreign offence, references to the corresponding the Falkland Islands offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when the person is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

(7) If in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding the Falkland Islands offence.

[UK Sexual Offences Act 2003 s.132]

345. Saving for orders, etc. under the Sexual Offences Ordinance

(1) Notwithstanding the repeal by this Ordinance of the Sexual Offences Ordinance 2005, any notification given, and any order or direction made in respect of such notification, under Part 2 of the Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to that Ordinance continues in effect as if made under the equivalent provisions of this Part.

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

(2) If a court has before the commencement of this Part made in respect of a person a RSHO, a SOPO or a foreign travel order under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Sexual Offences Ordinance 2005, the order continues to have effect in accordance with its terms and that Act, notwithstanding the repeal of that Ordinance, but subject to subsection (3).

(3) If a court makes a SHPO or a SRO on a person in respect of whom a RSHO, SOPO or foreign travel order under the Sexual Offences Act 2003 is in force, the earlier order ceases to have effect unless the court orders otherwise.

[UK Sexual Offences Act 2003 s.136ZB ins. by Anti-social Behaviour, Crime & Policing Act 2014 s.113 and Schedule 5 adapted]

346. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**gain**" and "**loss**" are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent;

"**gain**" includes a gain by keeping what one has, as well as a gain by getting what one has not;

"**goods**", unless the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing;

"**loss**" includes a loss by not getting what one might get, as well as a loss by parting with what one has;

"**trustee**" means a trustee on an express trust created by a deed, will or instrument in writing and includes —

(a) the heir or personal representative of any such trustee and any other person on or to whom the duty of such trust has devolved or come; and

(b) an executor and administrator and an official receiver, trustee, assignee, liquidator or similar officer acting under any written law relating to joint stock companies or bankruptcy;

(2) Sections 350(1), 351(1) and 352 apply generally for the purposes of this Part as they apply for the purposes of section 348.

[UK Theft Act 1968 s. 34 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

Offence of theft

347. Offence of theft

(1) A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it commits theft; and "thief" and "steal" are to be construed accordingly.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Sections 348 to 352 have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Part, apply only for purposes of this section).

[UK Theft Act 1968 ss.1 and 7]

348. "Dishonestly"

(1) A person's appropriation of property belonging to another is not to be regarded as dishonest if the person who appropriates the property —

(a) believes that that person has in law the right to deprive the other of it, on behalf of the person who appropriates or of a third person;

(b) believes that that person would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (unless the property came to that person as trustee or personal representative) believes that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest even if the person who appropriates is willing to pay for the property.

[UK Theft Act 1968 ss.2 to 6]

349. "Appropriates"

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, if the person has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) If property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believed that person was acquiring amounts, by reason of any defect in the transferor's title, to theft of the property.

[UK Theft Act 1968 ss.2 to 6]

350. "Property"

(1) In this Part, "**property**" includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by that person or by that person's directions, except when that person —

(a) is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in that person; or

(b) is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) being in possession of the land under a tenancy, appropriates the whole or part of any fixture or structure let to be used with the land.

(3) For the purposes of subsection (2) —

(a) "**land**" does not include incorporeal hereditaments;

(b) "**tenancy**" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy;

(c) "**let**" is to be construed accordingly.

(4) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what is picked, unless the person does it for reward or for sale or other commercial purpose.

(5) For purposes of subsection (4) "**mushroom**" includes any fungus, and "**plant**" includes any shrub or tree.

(6) Wild creatures, tamed or untamed, are to be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

[UK Theft Act 1968 ss.2 to 6]

351. "Belonging to another"

(1) Property is to be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) If property is subject to a trust, the persons to whom it belongs are to be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust is to be regarded accordingly as an intention to deprive of the property any person having that right.

(3) If a person receives property from or on account of another person, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds is to be regarded (as against that person) as belonging to the other.

(4) If a person gets property by another person's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds are to be regarded (as against the person who gets the property) as belonging to the person entitled to restoration, and an intention not to make restoration is to be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole is to be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

[UK Theft Act 1968 ss.2 to 6]

352. "With the intention of permanently depriving the other of it"

(1) If a person ('**A**') appropriates property belonging to another person ('**B**') without meaning B permanently to lose the thing itself —

(a) A is to be regarded as having the intention of permanently depriving B of it if A's intention is to treat the thing as A's own to dispose of regardless of B's rights; and

(b) a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without limiting subsection (1), if A, having possession or control (lawfully or not) of property belonging to B, parts with the property under a condition as to its return which A may not be able to perform, this (if done for purposes of A's own and without B's authority) amounts to treating the property as A's own to dispose of regardless of B's rights.

[UK Theft Act 1968 ss.2 to 6]

Robbery, burglary, etc.

353. Robbery

(1) A person who —

(a) steals; and

(b) immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force,

commits robbery.
Penalty: Imprisonment for 18 years or a fine, or both.

(2) A person who assaults another person with intent to rob that person commits an offence.
Penalty: Imprisonment for 18 years or a fine, or both.

[UK Theft Act 1968 ss.8 to 10]

354. Burglary

(1) A person who —

(a) enters any building or part of a building as a trespasser and with intent to commit an offence mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser –

(i) steals or attempts to steal anything in the building or that part of it; or

(ii) inflicts or attempts to inflict on any person in the building any grievous bodily harm,

commits burglary.
Penalty: As provided in subsection (4).

(2) The offences referred to in subsection (1)(a) are —

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person in the building any grievous bodily harm;

(c) doing unlawful damage to the building or anything in it.

(3) References in subsections (1) and (2) to a building, and the reference in subsection (4) to a building which is a dwelling, apply also to an inhabited vehicle or vessel, and apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when the person is there.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(4) The maximum penalty on conviction for burglary is —
(a) imprisonment for 10 years or a fine, or both; or

(b) if the burglary was in a dwelling-house - imprisonment for 14 years or a fine, or both.

[UK Theft Act 1968 ss.8 to 10]

355. Aggravated burglary

(1) A person who commits any burglary and has with him or her at the time any firearm or imitation firearm, any weapon of offence, or any explosive, commits aggravated burglary.
Penalty: Imprisonment for 18 years or a fine, or both.

(2) For the purpose of subsection (1) —

"**explosive**" means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person who has it with him or her for that purpose.

"**firearm**" includes an airgun or air pistol;

"**imitation firearm**" means anything which has the appearance of being a firearm, whether capable of being discharged or not;

"**weapon of offence**" means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person who has it with him or her for such use; and

[UK Theft Act 1968 ss.8 to 10 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

356. Going equipped for stealing etc.

(1) A person who, when not at his or her place of abode, has with him or her any article for use in the course of or in connection with any burglary or theft commits an offence.
Penalty: Imprisonment for 3 years or a fine, or both.

(2) If a person is charged with an offence under this section, proof that the person had with him or her any article made or adapted for use in committing a burglary or theft is evidence that the person had it with him or her for such use.

(3) For purposes of this section an offence under section 362 of taking a conveyance is to be treated as theft.

[UK Theft Act 1968 s.25 as am. by Fraud Act 2006]

357. Theft of or from mails outside the Falkland Islands, and robbery, etc. on such a theft

(1) If a person —

(a) steals or attempts to steal any mail bag or postal packet in the course of transmission to or from the Falkland Islands, or any of the contents of such a mail bag or postal packet; or

(b) in stealing or with intent to steal any such mail bag or postal packet or any of its contents, commits any robbery, attempted robbery or assault with intent to rob,

then, even though the act is done outside the Falkland Islands, the person is guilty of committing or attempting to commit the offence against the relevant provision of this Part as if it were done in the Falkland Islands, and is liable to be prosecuted, tried and punished in the Falkland Islands without proof that the offence was committed there.

(2) For the purposes of this section a postal packet is deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed.

(3) In this section —

"**mail bag**" includes any form of container or covering in which postal packets in the course of transmission by post are enclosed by a postal operator in the Falkland Islands or elsewhere for the purpose of conveyance by post;

"**postal packet**" means a letter, parcel, packet or other article transmissible by post.

[UK Theft Act 1968 s.14; Postal Services Act 2000 s.125]

Offences relating to stolen goods

358. Scope of offences relating to stolen goods

(1) The provisions of this Part relating to goods which have been stolen apply whether the stealing occurred in the Falkland Islands or elsewhere, if the stealing (not being an offence under this Part) amounted to an offence where the goods were stolen; and references to stolen goods are to be construed accordingly.

(2) For the purposes of those provisions, references to stolen goods include, in addition to the goods originally stolen and parts of them (whether in their original state or not) —

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by the handler or of goods so representing them.

(3) No goods are to be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through that person have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Part relating to goods which have been stolen (including subsections (1) to (3) of this section), goods obtained in the Falkland Islands or elsewhere either by blackmail or, subject to subsection (5), by fraud (within the meaning of section 368) are to be regarded as stolen; and "steal", "theft" and "thief" are to be construed accordingly.

(5) Subsection (1) applies in relation to goods obtained by fraud.

[UK Theft Act 1968 s.24 as am. by Fraud Act 2006]

359. Handling stolen goods

A person who, otherwise than in the course of stealing, knowing or believing goods to be stolen —

(a) dishonestly receives the goods;

(b) dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person; or

(c) arranges to do (a) or (b),

commits the offence of handling stolen goods.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK Theft Act 1968 s.22 as am. by Fraud Act 2006]

360. Advertising rewards for return of goods stolen or lost

If any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that —

(a) no questions will be asked;

(b) the person producing the goods will be safe from arrest or inquiry; or

(c) money paid for the purchase of the goods or advanced by way of loan on them will be repaid,

the person advertising the reward and any person who prints or publishes the advertisement each commits an offence.
Penalty: A fine at level 3 on the standard scale.

[UK Theft Act 1978 s.23]

361. Search for stolen goods

(1) Subject to subsection (2), if it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in the person's custody or possession or on the person's premises any stolen goods, the justice may grant a warrant to search for and seize the same.

(2) No warrant to search for stolen goods may be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(3) A person who under this section is authorised to search premises for stolen goods may —

(a) enter and search the premises; and

(b) seize any goods the person believes to be stolen goods.

(4) This section is to be construed in accordance with section 358.

[UK Theft Act 1968 s.26]

Offences similar to theft

362. Taking a conveyance without authority

(1) Subject to subsections (4) and (7), a person ('**A**') who, without having the consent of the owner or other lawful authority —

(a) takes a conveyance for the use of A or another person; or

(b) knowing that a conveyance has been taken without such authority, drives it or allows himself or herself to be carried in or on it,

commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If on the trial for theft the court is not satisfied that the defendant committed theft, but is satisfied beyond reasonable doubt that the defendant committed an offence under subsection (1)—

(a) the court may convict the defendant of the offence under subsection (1); and

(b) the maximum penalty on conviction is as provided in subsection (1).

(3) Subsection (1) does not apply in relation to cycles.

[Sch./Ord. 18/2022/w.e.f. 09/11/2022]

(4) Subject to subsection (7), a person ('A') who, without having the consent of the owner or other lawful authority —

(a) takes a cycle for the use of A or another person; or

(b) rides a cycle knowing it to have been taken without such authority,

commits an offence.
Penalty: A fine at level 2 on the standard scale.

[Sch./Ord. 18/2022/w.e.f. 09/11/2022]

(5) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority to do the thing; or

(b) would have the owner's consent to do it if the owner knew of the person's doing it and the circumstances.

(6) The court, upon convicting a person of an offence under subsection (1), must order that the person's driver's licence be endorsed with particulars of the conviction and may disqualify the person from holding or obtaining a driver's licence for a period the court thinks fit.

(7) A police officer may arrest without warrant any person whom the officer reasonably suspects of having committed, being in the course of committing, having attempted or being in the course of attempting to commit an offence under this section.

(8) For purposes of this section —

"**conveyance**" —

(a) means any conveyance constructed or adapted for the carriage of a person or persons by land, water or air; but

(b) does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it;

"**drive**" is to be construed accordingly; and

"**owner**", in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

[Road Traffic Ordinance s.30, replacing UK Theft Act 1968 s.12]

363. Aggravated vehicle-taking

(1) Subject to subsection (3), a person ('**A**') commits aggravated taking of a vehicle if —

(a) A commits an offence under section 362 (in this section referred to as a "**basic offence**") in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by A or another person) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2).

Penalty: As provided in subsection (4).

(2) The circumstances referred to in subsection (1)(b) are that —

(a) the vehicle was driven dangerously on a road or other public place;

(b) owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) damage was caused to the vehicle.

(3) A is not guilty of an offence under this section if A proves that, as regards any proven driving, injury or damage as referred to in subsection (1)(b), either —

(a) the driving, accident or damage referred to in subsection (2) occurred before A committed the basic offence; or

(b) A was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) The maximum penalty on conviction for an offence under this section is —

(a) imprisonment for 2 years or a fine, or both; or

(b) if it is proved that, in circumstances falling within subsection (2)(b), the accident caused the death of a person - imprisonment for 14 years or a fine, or both.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that the person committed a basic offence, the person may be convicted of the basic offence.

(6) If by virtue of subsection (5) a person is convicted of a basic offence before the Supreme Court, the court has the same powers and duties as the Magistrate's Court or Summary Court would have on convicting the person of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if —

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody.

[UK Theft Act 1968 s.12A ins. by Aggravated Vehicle Taking Act 1992]

364. Removing articles from places open to the public

(1) Subject to subsections (2) to (4), if the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) For the purpose of subsection (1) —

(a) "**collection**" includes a collection got together for a temporary purpose; but

(b) references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) For purposes of subsection (1) —

(a) it is immaterial that the public's access to a building is limited to a particular period or particular occasion; but

(b) if anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless the person removes it on a day when the public have access to the building as mentioned in that subsection.

(4) A person does not commit an offence under this section if the person believes that he or she—

(a) has lawful authority for the removal of the thing in question; or

(b) would have such authority if the person entitled to give it knew of the removal and the circumstances of it.

[UK Theft Act 1968 s.11]

365. Making off without payment

(1) Subject to subsection (3), a person who, knowing that immediate payment for any goods supplied or service done is required or expected from the person, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) For purposes of this section "**immediate payment**" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) does not apply in cases in which the supply of the goods or the doing of the service is contrary to law, or in which the service done is such that payment is not legally enforceable.

[UK Theft Act 1978 s.3]

366. Abstracting of electricity

A person who dishonestly —

(a) uses without due authority; or

(b) causes to be wasted or diverted,

any electricity, commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[UK Theft Act 1968 s.13]

Blackmail

367. Blackmail

(1) A person who —

(a) with a view to gain for that person or another person; or

(b) with intent to cause loss to another person,

makes any unwarranted demand with menaces, commits the offence of blackmail.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purpose of this section, a demand with menaces is unwarranted unless the person making it does so in the belief that —

(a) the person has reasonable grounds for making the demand; and

(b) the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

[UK Theft Act 1968 s.21]

Fraud

368. Offence of fraud

A person who contravenes any of sections 369 to 372 (which provide for different ways of committing the offence) commits the offence of fraud.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Fraud Act 2006 ss.1 to 4]

369. Fraud by false representation

(1) A person ('**A**') is in breach of this section if A —

(a) dishonestly makes a false representation; and

(b) intends, by making the representation to –

(i) make a gain for A or another person; or

(ii) cause loss to another person or to expose another person to a risk of loss.

(2) A representation is false if —

(a) it is untrue or misleading; and

(b) the person making it knows that it is, or might be, untrue or misleading.

(3) In this section, "**representation**" means any representation as to fact or law, including a representation as to the state of mind of —

(a) the person making the representation; or

(b) any other person.

(4) For the purposes of this section a representation may be —

(a) express or implied;

(b) regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

[UK Fraud Act 2006 ss.1 to 4]

370. Fraud by failing to disclose information

A person ('**A**') is in breach of this section if A —

(a) dishonestly fails to disclose to another person information which A is under a legal duty to disclose; and

(b) intends, by failing to disclose the information —

(i) to make a gain for A or another person; or

(ii) to cause loss to another person or to expose another person to a risk of loss.

[UK Fraud Act 2006 ss.1 to 4]

371. Fraud by abuse of position

(1) A person ('**A**') is in breach of this section if A —

(a) occupies a position in which A is expected to safeguard, or not to act against, the financial interests of another person;

(b) dishonestly abuses that position; and

(c) intends, by means of the abuse of that position —

(i) to make a gain for A or another person; or

(ii) to cause loss to another person or to expose another person to a risk of loss.

(2) A may be regarded as having abused A's position even though A's conduct consisted of an omission rather than an act.

[UK Fraud Act 2006 ss.1 to 4]

372. Possession etc. of articles for use in frauds

A person ('**A**') who has in the possession or under the control of A any article for use in the course of or in connection with any fraud commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

[UK Fraud Act 2006 s.6]

373. Making or supplying articles for use in frauds

A person who makes, adapts, supplies or offers to supply any article —

(a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or

(b) intending it to be used to commit, or assist in the commission of, fraud,

commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Fraud Act 2006 s.6]

374. Participating in fraudulent business carried on by sole trader, etc.

(1) A person who is knowingly a party to the carrying on of a business to which this section applies commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) This section applies to a business which is —

(a) not governed by the Companies Act 1948 as applied to the Falkland Islands; and

(b) carried on with intent to defraud creditors of any person or for any other fraudulent purpose.

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

(3) This section is in addition to and does not derogate from any powers of investigation of fraudulent conduct under the Companies Act 1948 as applied to the Falkland Islands by section 2 of the Companies and Private Partnership Ordinance 1922 and by the Companies (Auditors) Ordinance 2003.

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

[UK Fraud Act 2006 s.9 adapted]

375. Obtaining services dishonestly

(1) A person ('**A**') who obtains services for A or another person —

(a) by a dishonest act; and

(b) in breach of subsection (2),

commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) A obtains services in breach of this subsection if —

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;

(b) A obtains them without any payment having been made for or in respect of them or without payment having been made in full; and

(c) when A obtains them, A knows that they —

(i) are being made available on the basis described in paragraph (a), or

(ii) might be so made available,

but intends that payment will not be made, or will not be made in full.

[UK Fraud Act 2006 s.11]

376. Fraud: Definitions

(1) For the purposes of sections 368 to 371, "**gain**" and "**loss**" —

(a) extend only to gain or loss in money or other property; and

(b) include any such gain or loss whether temporary or permanent,

and in this context, "**property**" means any property whether real or personal (including things in action and other intangible property).

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

(2) For the purposes of —

(a) sections 372 and 373; and

(b) the meaning of "**prohibited articles**" for the purposes of stop and search powers in the Criminal Procedure and Evidence Ordinance 2014,

so far as they relate to articles for use in the course of or in connection with fraud, "**article**" includes any programme or data held in electronic form.

[UK Fraud Act 2006 s.8 adapted]

377. Fraud: Evidence

(1) A person ('**A**') is not to be excused from —

(a) answering any question put to A in proceedings relating to property; or

(b) complying with any order made in proceedings relating to property,

on the ground that doing so may incriminate A or A's spouse of an offence under any of sections 368 to 375 or a related offence.

(2) In proceedings against a person for an offence under any of sections 368 to 375 or a related offence, a statement or admission made by the person in —

(a) answering such a question; or

(b) complying with such an order,

is not admissible in evidence against the person or (unless they married after the making of the statement or admission) the person's spouse.

(3) In this section —

"**proceedings relating to property**" means any proceedings for —

(a) the recovery or administration of any property;

(b) the execution of a trust; or

(c) an account of any property or dealings with property,

"**property**" means money or other property whether real or personal (including things in action and other intangible property);

"**related offence**" means —

(a) conspiracy to defraud;

(b) any other offence involving any form of fraudulent conduct or purpose.

[UK Fraud Act 2006 s.13]

Offences similar to fraud

378. False accounting

(1) A person ('**A**') who dishonestly, with a view to gain for A or another person or with intent to cause loss to another person —

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to A's knowledge is or may be misleading, false or deceptive in a material particular,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) For purposes of this section a person who —

(a) makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular; or

(b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

[UK Theft Act 1968 s.17]

379. False statements by company directors, etc.

(1) An officer of a corporate body or unincorporated association (or person purporting to act as such) who, with intent to deceive members or creditors of the corporate body or association about its affairs, publishes or concurs in publishing a written statement or account which to the officer's knowledge is or may be misleading, false or deceptive in a material particular, commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purposes of this section a person who has entered into a security for the benefit of a corporate body or association is to be treated as a creditor of it.

(3) If the affairs of a corporate body or association are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with the member's or her functions of management as if the member were an officer of the corporate body or association.

[UK Theft Act 1968 s.19]

380. Suppression etc. of documents

(1) A person ('**A**') who dishonestly, with a view to gain for A or another person, or with intent to cause loss to another person, destroys, defaces or conceals —

(a) any valuable security;

(b) any will or other testamentary document; or

(c) any original document of or belonging to, or filed or deposited in, any court of justice or any government department,

commits an offence.
Paenalty: Imprisonment for 7 years or a fine, or both.

(2) In this section, "**valuable security**" means any document —

(a) creating, transferring, surrendering or releasing any right to, in or over property;

(b) authorising the payment of money or delivery of any property; or

(c) evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

[UK Theft Act 1968 s.20]

381. Dishonestly retaining a wrongful credit

(1) A person commits an offence if —

(a) a wrongful credit has been made to an account kept by the person or in respect of which the person has any right or interest;

(b) the person knows or believes that the credit is wrongful; and

(c) the person dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) A credit to an account is wrongful to the extent that it derives from —

(a) theft;

(b) blackmail;

(c) fraud (contrary to section 369); or

(d) stolen goods.

(3) In determining whether a credit to an account is wrongful, it is immaterial whether the account is overdrawn before or after the credit is made.

(4) In this section —

"**account**" means an account kept with —

(a) a bank;

(b) a person carrying on a business which falls within subsection (5); or

(c) an issuer of electronic money (as defined in Part 2 of the Financial Services and Markets Act 2000 as applied to the Falkland Islands);

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

"**credit**" means a credit of an amount of money;

"**stolen goods**" include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(5) A business falls within this subsection if —

(a) in the course of the business money received by way of deposit is lent to others; or

(b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(6) For the purpose of subsection (5) —

(a) references to a deposit must be read with Part 2 of the Financial Services and Markets Act 2000 as applied to the Falkland Islands;

(b) any restriction on the meaning of "deposit" which arises from the identity of the person making it is to be disregarded;

(c) all the activities which a person carries on by way of business are to be regarded as a single business carried on by that person; and

(d) "**money**" includes money expressed in a currency other than sterling.

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

[UK Theft Act 1968 s.24A inserted by Theft (Am.) Act 1996]

382. Cheating the public revenue

It is an offence for a person to —

(a) make a false statement relating to tax, whether in writing or not, with intent to defraud the public revenue;

(b) deliver or cause to be delivered a false document relating to tax, with similar intent;

(c) fail to register for tax or to make the requisite returns and payments when due; or

(d) otherwise engage in fraudulent conduct (whether similar to the conduct mentioned in paragraphs (a) to (c) or not) which diverts taxation money from the public revenue or deprives it of taxation money to which it is entitled.

Penalty: Imprisonment for 14 years of a fine, or both.

[Common law]

Miscellaneous provisions

383. Prohibition on interception

(1) A person ('**A**') who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunications system commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) It is a defence for A to prove —

(a) that at the time of the alleged offence A had reasonable grounds for believing that the person to whom, or the person by whom, the communication was sent has consented to the interception;

(b) the communication was intercepted for purposes connected with the provision of postal or public telecommunication services or with the enforcement of any enactment relating to the use of those services; or

(c) the communication was intercepted with lawful authority.

[S. 10/Ord. 5/2017/w.e.f. 21/04/2017 and Revision w.e.f. 31/07/2017]

(3) No proceedings for an offence under subsection (1) may be brought except by or with the consent of the Attorney General.

[Crimes Ord. s.30; UK Regulation of Investigatory Powers Act 2000, s.1]

383A. Re-programming mobile telephone etc.

(1) A person commits an offence if —

(a) he or she changes a unique device identifier;

(b) he or she interferes with the operation of a unique device identifier;

(c) he or she offers or agrees to change, or interfere with the operation of, a unique device identifier; or

(d) he or she offers or agrees to arrange for another person to change, or interfere with the operation of, a unique device identifier.

(2) A unique device identifier is an electronic equipment identifier which is unique to a mobile wireless communications device.

(3) But a person does not commit an offence under this section if —

(a) he or she is the manufacturer of the device, or

(b) he or she does the act mentioned in subsection (1) with the written consent of the manufacturer of the device.

Penalty: Imprisonment for 5 years or a fine, or both.

[S. 11/Ord. 5/2017/w.e.f. 21/04/2017]

383B. Possession or supply of anything for re-programming purposes

(1) A person commits an offence if —

(a) he or she has in his or her custody or under his or her control anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and

(b) he or she intends to use the thing unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

(2) A person commits an offence if —

(a) he or she supplies anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and

(b) he or she knows or believes that the person to whom the thing is supplied intends to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

(3) A person commits an offence if —

(a) he or she offers to supply anything which may be used for the purpose of changing or interfering with the operation of a unique device identifier, and

(b) he or she knows or believes that the person to whom the thing is offered intends if it is supplied to him or her to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

(4) A unique device identifier is an electronic equipment identifier which is unique to a mobile wireless communications device.

(5) A thing is used by a person unlawfully for a purpose if in using it for that purpose he commits an offence under section 1.
Penalty: Imprisonment for 5 years or a fine, or both.

[S. 12/Ord. 5/2017/w.e.f. 21/04/2017]

384. Procedure and evidence on charge of theft or handling stolen goods

(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of 2 or more persons charged for jointly handling any stolen goods, the court may find any of the defendants guilty if the court is satisfied that the person handled all or any of the stolen goods, whether or not the person did so jointly with the other defendant or any of them.

(3) If a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of that person's having or arranging to have in that person's possession the goods the subject of the charge, or of that person's undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realisation, the following evidence is admissible for the purpose of proving that the person knew or believed the goods to be stolen goods —

(a) evidence that the person has had in that person's possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than 12 months before the offence charged; and

(b) if 7 days' notice in writing has been given to the person of the intention to prove the conviction - evidence that the person has within the 5 years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that that person despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by that person were in a particular

state or condition, is admissible as evidence of the facts stated in the declaration, subject to the following conditions —

(a) a statutory declaration is only admissible if and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration is only admissible if at least 7 days before the hearing or trial a copy of it has been given to the person charged, and that person has not, at least 3 days before the hearing or trial or within any further time the court in special circumstances allows, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) This section is to be construed in accordance with section 358.

[UK Theft Act 1968 s.27]

385. Effect on civil proceedings and rights

(1) A person is not to be excused from —

(a) answering any question put to the person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

on the ground that do so may incriminate the person or the person's spouse or civil partner of an offence under this Part.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Part, admissible in evidence against the person or (unless they married or became civil partners after the making of the statement or admission) against the person's spouse or civil partner.

(3) Regardless of any enactment to the contrary, if property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

[UK Theft Act 1968 s.31]

PART 13 - FORGERY AND COUNTERFEITING

386. Interpretation of Part

In this Part, unless the context otherwise requires —

"**currency note**" means any note —

(a) which —

(i) has been issued by the relevant authority in the Falkland Islands or the United Kingdom;

(ii) is or has been customarily used as money in the Falkland Islands; and

(iii) is payable on demand; or

(b) which —

(i) has been issued by the relevant authority in some country other than the Falkland Islands; and

(ii) is customarily used as money in that or another country;

"**protected coin**" means any coin which —

(a) is customarily used as money in any country; or

(b) is specified in an order made by the relevant authority for the purposes of this Part;

"**Register**" means the register kept at the Central Registry pursuant to the Registration Ordinance 1949;

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

"**relevant authority**", in relation to a coin or a currency note of any particular description, means the authority empowered by law to issue those coins, or notes of that description, as the case may be;

"**revenue stamp**" means a stamp for denoting any duty or fee, whether an adhesive stamp or a stamp impressed by means of a die;

"**share certificate**" means an instrument entitling or evidencing the title of a person to a share or interest —

(a) in any public stock, annuity, fund or debt of any government or territory, including a territory which forms part of a state; or

(b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in the Falkland Islands or elsewhere.

[UK Forgery & Counterfeiting Act 1981 passim; Stamp Duties Act 1981 s.127]

Forgery and kindred offences

387. Meaning of "instrument"

(1) Subject to subsection (2), in this Part "**instrument**" means —

(a) any document, whether of a formal or informal character;

(b) any stamp issued or sold by a postal operator;

(c) any revenue stamp; and

(d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) A currency note as defined in section 386 is not an instrument for the purposes of this Part.

(3) A mark denoting payment of postage which the postal operator authorises to be used instead of an adhesive stamp is to be treated for the purposes of this Part as if it were a stamp issued by the postal operator concerned.

[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]

388. Meaning of "false" and "making"

(1) An instrument is false for the purposes of this Part if it purports to have been —

(a) made in the form in which it is made by a person who did not in fact make it in that form;

(b) made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;

(c) made in the terms in which it is made by a person who did not in fact make it in those terms;

(d) made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;

(e) altered in any respect by a person who did not in fact alter it in that respect;

(f) altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;

(g) made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or

(h) made or altered by an existing person who did not in fact exist.

(2) A person is to be treated for the purposes of this Part as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]

389. Meaning of "prejudice" and "induce"

(1) Subject to subsections (2) and (4), for the purposes of this Part an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs, will —

(a) result in the person —

(i) losing property temporarily or permanently;

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(ii) being deprived of an opportunity to earn remuneration or greater remuneration; or

(iii) being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) result in somebody being given an opportunity to —

(i) earn remuneration or greater remuneration from the person; or

(ii) gain a financial advantage from the person otherwise than by way of remuneration; or

(c) be the result of the person having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person's performance of any duty.

(2) Doing something that a person has an enforceable duty to do and omitting to do something that a person is not entitled to do are to be disregarded for the purposes of this Part.

(3) In this Part references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.

(4) If subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy is to be treated as an act or omission to a person's prejudice.

(5) In this section, "**loss**" includes not getting what one might get as well as parting with what one has.

[UK Forgery & Counterfeiting Act 1981 ss.8 to 10]

390. Forgery

A person ('**A**') who makes a false instrument, with the intention that A or another person will use it to induce somebody ('**B**') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]

391. Copying a false instrument

A person ('**A**') who makes a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention that A or another will use it to induce somebody ('**B**') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]

392. Using a false instrument

A person ('**A**') who uses an instrument which is, and which A knows or believes to be, false, with the intention of inducing somebody ('**B**') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]

393. Using a copy of a false instrument

A person ('**A**') who uses a copy of an instrument which is, and which A knows or believes to be, a false instrument, with the intention of inducing somebody ('**B**') to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to the prejudice of B any other person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]

394. Offences relating to money orders, share certificates, passports, etc.

(1) A person ('**A**') who has in A's custody or under A's control an instrument to which this section applies which is, and which A knows or believes to be, false, with the intention that A or another person will use it to induce somebody ('**B**') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('**A**') who has in A's custody or under A's control, without lawful authority or excuse, an instrument to which this section applies which is, and which A knows or believes to be, false, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person ('**A**') who makes or has in A's custody or under A's control a machine or implement, or paper or any other material, which to A's knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention —

(a) that A or another person will make an instrument to which this section applies which is false; and

(b) that A or another person will use the instrument to induce somebody ('B') to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of B or any other person,

commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(4) A person ('**A**') who makes or has in A's custody or under A's control any machine, implement, paper or material as described in subsection (3), without lawful authority or excuse, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(5) The instruments to which this section applies are —

(a) money orders;

(b) postal orders;

(c) Falkland Islands postage stamps;

(d) revenue stamps;

(e) share certificates;

(f) passports and documents which can be used instead of passports;

(g) cheques;

(h) travellers' cheques;

(i) cheque cards;

(j) credit cards;

(k) certified copies relating to an entry in the Register; and

(l) certificates relating to entries in the Register.

[UK Forgery & Counterfeiting Act 1981 ss.1 to 6]

395. Abolition of offence of forgery at common law

The offence of forgery at common law is abolished for all purposes except in relation to offences committed before the commencement of this Part.

[UK Forgery & Counterfeiting Act 1981 s.13]

Counterfeiting and kindred offences

396. Counterfeiting notes and coins

(1) A person ('**A**') who makes a counterfeit of a currency note or of a protected coin, intending that A or another person will pass or tender it as genuine, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, without lawful authority or excuse, makes a counterfeit of a currency note or of a protected coin commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]

397. Passing, etc. counterfeit notes and coins

(1) A person ('**A**') who —

(a) passes or tenders as genuine anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin; or

(b) delivers to another anything which is, and which A knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another will pass or tender it as genuine,

commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('**A**') who, without lawful authority or excuse, delivers to another person anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]

398. Custody or control of counterfeit notes and coins

(1) A person ('**A**') who has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another person ('**B**') with the intention that A or B will pass or tender it as genuine, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('**A**') who, without lawful authority or excuse, has in A's custody or under A's control anything which is, and which A knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) It is immaterial for the purposes of subsections (1) and (2) that —

(a) that a coin or note is not in a fit state to be passed or tendered; or

(b) that the making or counterfeiting of a coin or note has not been finished or perfected.

[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]

399. Making, etc. of counterfeiting materials and implements

(1) A person ('**A**') who —

(a) makes; or

(b) has in A's custody or under A's control,

anything which A intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person ('**A**') who, without lawful authority or excuse —

(a) makes; or

(b) has in A's custody or under A's control,

anything which, to A's knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) Subject to subsection (4), a person ('**A**') who —

(a) makes; or

(b) has in A's custody or under A's control,

any implement which, to A's knowledge, is capable of imparting to anything a resemblance —

(i) to the whole or part of either side of a protected coin; or

(ii) to the whole or part of the reverse of the image on either side of a protected coin,

commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(4) It is a defence for a person ('**A**') charged with an offence under subsection (3) to show that A —

(a) made the implement or, as the case may be, had it in A's custody or under A's control, with the written consent of the relevant authority; or

(b) had lawful authority otherwise than by virtue of paragraph (a), or a lawful excuse, for making it or having it in A's custody or under A's control.

[UK Forgery & Counterfeiting Act 1981 ss.14 to 17 and 22]

400. Meaning of "counterfeit"

(1) For the purposes of this Part a thing is a counterfeit of a currency note or of a protected coin if —

(a) it is not a currency note or a protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or

(b) it is a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description.

(2) For the purpose of this Part —

(a) a thing consisting of one side only of a currency note, with or without the addition of other material is a counterfeit of such a note;

(b) a thing consisting —

(i) of parts of 2 or more currency notes; or

(ii) of parts of a currency note, or of parts of 2 or more currency notes, with the addition of other material,

is capable of being a counterfeit of a currency note.

(3) References in this Part to passing or tendering a counterfeit of a currency note or a protected coin are not to be construed as confined to passing or tendering it as legal tender.

[UK Forgery & Counterfeiting Act 1981 s.28]

401. Reproducing currency notes

(1) A person who reproduces any currency note or any part of a currency note, without the previous consent in writing of the relevant authority, commits an offence.
Penalty: A fine.

(2) Subsection (1) applies to reproduction on any substance whatsoever, and whether or not on the correct scale.

[UK Forgery & Counterfeiting Act 1981 ss.18 and 22 adapted]

402. Making, etc. imitation protected coins

(1) A person ('**A**') who —

(a) makes an imitation protected coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or

(b) sells or distributes imitation protected coins in connection with any such scheme, or has imitation coins in A's custody or under A's control with a view to such sale or distribution,

commits an offence, unless the relevant authority has previously consented in writing to the sale or distribution of such imitation coins in connection with that scheme.
Penalty: A fine.

(2) In this section "**imitation protected coin**" means anything which resembles a protected coin in shape, size and the substance of which it is made.

[UK Forgery & Counterfeiting Act 1981 ss.19 and 22]

403. Prohibition of importation or exportation of counterfeit notes and coins

(1) A person who imports, lands, loads or unloads a counterfeit of a currency note or of a protected coin without the consent of the relevant authority commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who exports a currency note or protected coin without the consent of the relevant authority commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) Without affecting subsection (1) or (2), the importation or exportation of a counterfeit of a currency note or of a protected coin without the consent of the relevant authority is prohibited as if such counterfeit were prohibited by an order of the Governor made under section 143 of the Customs Ordinance 2003 and the penalty were as specified in subsection (1) above.

[UK Forgery & Counterfeiting Act 1981 ss.20 to 22 adapted and Revision w.e.f. 31/07/2017]

Identity documents offences

404. Possession of false identity documents, etc.

(1) It is an offence for a person ('**A**') with an improper intention to have in A's possession or under A's control —

(a) an identity document that is false and that A knows or believes to be false;

(b) an identity document that was improperly obtained and that A knows or believes to have been improperly obtained; or

(c) an identity document that relates to another person.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) Each of the following is an improper intention for the purpose of subsection (1) —

(a) the intention of using the document for establishing personal information about A;

(b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about A or anyone else.

(3) In subsection (2)(b) the reference to A or anyone else does not include, in the case of a document within subsection (1)(c), the individual to whom it relates.

[UK Identity Documents Act 2010 ss.4 to 6]

405. Apparatus for the making of false identity documents

(1) It is an offence for a person ('A') with the prohibited intention to make, or to have in A's possession or under A's control —

(a) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents; or

(b) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of false identity documents.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) The prohibited intention for the purpose of subsection (1) is the intention —

(a) that A or another person will make a false identity document; and

(b) that the document will be used by some person for establishing, ascertaining or verifying personal information about any person.

[UK Identity Documents Act 2010 ss.4 to 6]

406. Possession of false identity documents etc without reasonable excuse

It is an offence for a person ('**A**') to have in A's possession or under A's control, without reasonable excuse —

(a) an identity document that is false;

(b) an identity document that was improperly obtained;

(c) an identity document that relates to another person;

(d) any apparatus which, to A's knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents; or

(e) any article or material which, to A's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Penalty: Imprisonment for 2 years or a fine, or both.

[UK Identity Documents Act 2010 ss.4 to 6]

407. False identity documents: Supplementary

(1) In sections 404 to 406 "**identity document**" means any document that is, or purports to be —

(a) an immigration document;

(b) a United Kingdom passport;

(c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation;

(d) a document that can be used (in some or all circumstances) instead of a passport;

(e) a Falkland Islands or United Kingdom driving licence; or

(f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.

(2) The Governor may by order amend the list of documents in subsection (1).

(3) In subsection (1), "**immigration document**" means —

(a) a document used for confirming the right of a person in respect of entry or residence in the United Kingdom or the Falkland Islands;

(b) a document that is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the United Kingdom or the Falkland Islands.

(4) In subsection (5) "**residential status**" of a person means —

(a) the person's nationality;

(b) the person's entitlement to remain in the Falkland Islands; and

(c) if that entitlement derives from a grant of leave to enter or remain in the Falkland Islands, the terms and conditions of that leave.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(5) In sections 404 and 405, "**personal information**" in relation to a person means —

(a) the person's full name;

(b) other names by which the person is or has previously been known;

(c) the person's gender;

(d) the person's date and place of birth;

(e) external characteristics of the person that are capable of being used for identifying the person;

(f) the address of the person's principal place of residence in the Falkland Islands;

(g) the address of every other place in the Falkland Islands or elsewhere where the person has a place of residence;

(h) where in the Falkland Islands and elsewhere the person has previously been resident;

(i) the times at which the person was resident at different places in the Falkland Islands or elsewhere;

(j) the person's current residential status;

(k) residential statuses previously held by the person;

(l) information about any numbers allocated to the person for identification purposes and about the documents (including stamps or labels) to which they relate.

(6) For the purposes of sections 404 to 406 and this section —

(a) the term "**apparatus**" includes any equipment, machinery or device and any wire or cable, together with any software used with it;

(b) an identity document is "**false**" only if it is false within the meaning of section 389;

(c) the term "**false**" information includes information containing any inaccuracy or omission that results in a tendency to mislead;

(d) an identity document was "**improperly obtained**" if —

(i) false information was provided in, or in connection with, the application for its issue to the person who issued it, or

(ii) false information was provided in, or in connection with, an application for its modification to a person entitled to modify it;

(e) "**information**" includes documents (including stamps and labels) and records;

(f) the "**issue**" of a document includes its renewal, replacement or re-issue (with or without modifications);

(g) references to the making of a false identity document include the modification of an identity document so that it becomes false.

[UK Identity Documents Act 2010 ss.7 to 9]

PART 14 - COMPUTER MISUSE

408. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**act**" includes a series of acts;

"**computer data**" means a representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

"**computer system**" means a device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

"**service provider**" means —

(a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and

(b) any other entity that processes or stores computer data on behalf of such communication service or users of such a service;

"**traffic data**" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

(2) For the purposes of this Part, a person secures access to any program or data held in a computer if by causing a computer to perform any function the person —

(a) alters or erases the program or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c) uses it; or

(d) has it output from the computer in which it is held (whether by having it displayed or in any other manner),

and references to access to a program or data (and to an intent to secure such access or to enable such access to be secured) are to be read accordingly.

(3) For the purposes of subsection (2)(c) a person uses a program if the function the person causes the computer to perform —

(a) causes the program to be executed; or

(b) is itself a function of the program.

(4) For the purposes of subsection (2)(d) —

(a) a program is output if the instructions of which it consists are output; and

(b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) For purposes of this Part, but subject to subsection (7), access of any kind by any person to any program or data held in a computer is unauthorised if —

(a) the person is not himself or herself entitled to control access of the kind in question to the program or data; and

(b) the person does not have consent to access by him or her of the kind in question to the program or data from any person who is so entitled.

(6) In this Part —

(a) references to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(b) an act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done) —

(i) is not himself or herself a person who has responsibility for the computer and who is entitled to determine whether the act may be done; and

(ii) does not have consent to the act from any such person;

(c) a reference to doing an act includes a reference to causing an act to be done;

(d) references to a program include references to part of a program.

(7) For the purposes of this Part, a person intercepts a communication in the course of its transmission by means of a telecommunication system only if the person —

(a) so modifies or interferes with the system, or its operation;

(b) so monitors transmissions made by means of the system; or

(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

(8) For the purposes of this Part —

(a) the times while a communication is being transmitted by means of a telecommunication system are to be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it;

(b) the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

[UK Computer Misuse Act 1990 s.17 and EU Convention Art.1]

Computer misuse offences

409. Unauthorised access to computer material

(1) A person commits an offence if —

(a) the person causes a computer to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured;

(b) the access the person intends to secure or to enable to be secured is unauthorised; and

(c) the person knows at the time when he or she causes the computer to perform the function that that is the case.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intent a person has to have to commit an offence under this section need not be directed at —

(a) any particular program or data;

(b) a program or data of any particular kind; or

(c) a program or data held in any particular computer.

[UK Computer Misuse Act 1990 s.1 am. by Police & Justice Act 2006 s.35]

410. Unauthorised access with intent to commit or facilitate commission of further offences

(1) A person commits an offence under this section if the person commits an offence under section 409 with intent to —

(a) commit an offence to which this section applies ("the further offence"); or

(b) facilitate the commission of such an offence (whether by himself or herself or any other person).

Penalty: Imprisonment for 5 years or a fine, or both.

(2) This section applies to offences for which —

(a) the sentence is fixed by law; or

(b) a person of or over the age of 18 years may be sentenced to imprisonment for 5 years or more.

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the offence under section 409 or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

[UK Computer Misuse Act 1990 s.2]

411. Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

(1) A person commits an offence if —

(a) the person does any unauthorised act in relation to a computer;

(b) at the time when the person does the act he or she knows that it is unauthorised; and

(c) either subsection (2) or (3) applies.

Penalty: Imprisonment for 10 years or a fine, or both.

(2) This subsection applies if the person intends by doing the act to —

(a) impair the operation of any computer;

(b) prevent or hinder access to any program or data held in any computer;

(c) impair the operation of any such program;

(d) impair the reliability of any such data or the authenticity of any such data resulting in it being considered or acted upon for legal purposes as authentic;

(e) cause a loss of property to any other person or to derive an economic benefit for himself or herself or any other person; or

(f) enable any of the things mentioned in paragraphs (a) to (e) to be done.

(3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in subsection (2)(a) to (f).

(4) The intention referred to in subsection (2), or the recklessness referred to in subsection (3), need not relate to —

(a) any particular computer;

(b) any particular program or data; or

(c) a program or data of any particular kind.

(5) In this section —

(a) "**impair**" includes damaging a computer; deleting, deteriorating, altering or suppressing data; inputting data to cause damage, deletion, deterioration, alteration or suppression; and introducing contaminants to cause the cessation of a computer's functions; and

(b) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

[UK Computer Misuse Act 1990 s.3 replaced by Police & Justice Act 2006 s.36]

412. Unauthorised interception of computer service

(1) A person commits an offence if —

(a) the person does any unauthorised act in relation to a computer;

(b) at the time the person does the act he or she knows that it is unauthorised; and

(c) the person intends by doing the act to intercept or cause to be intercepted, directly or indirectly, any non-public electronic transmission or electro-magnetic emission of computer data to, from or within a computer, by any electro-magnetic, acoustic, mechanical or other technical means.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) The intention referred to in subsection (1)(c) need not relate to —

(a) any particular computer;

(b) any particular transmission or emission;

(c) any particular data; or

(d) a transmission or emission of any particular kind.

[EU Convention Art 3]

413. Making, supplying or obtaining articles for use in relevant offences

(1) This section applies to an offence under any of sections 409, 411 or 412 (a "**relevant offence**").

(2) A person commits an offence if the person makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, a relevant offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person commits an offence if the person supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, a relevant offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(4) A person commits an offence if the person obtains or possesses any article with a view to its being supplied for use to commit, or to assist in the commission of, a relevant offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(5) In this section "**article**" includes any program or data held in electronic form.

[UK Computer Misuse Act 1990 s.3A ins. by Police & Justice Act 2006 s.37]

414. Unauthorised disclosure of access code

(1) A person commits an offence if the person, for any wrongful gain or unlawful purpose, and knowing that the access intended to be secured is unauthorised and is likely to cause wrongful loss to any other person —

(a) discloses any password, access code or any other means of gaining access to any program or data held in a computer; or

(b) possesses any password, access code or any other means of gaining access to any program or data in a computer with a view to its being used or supplied for use to commit, or to assist in the commission of an offence under any of sections 409, 411 or 412.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) The intention referred to in subsection (1) need not relate to —

(a) any particular computer;

(b) any particular program or data; or

(c) a program or data of any particular kind.

[EU Convention Art 11]

Jurisdiction

415. Territorial scope of offences under this Part

(1) Except as provided in this section, it is immaterial for the purposes of an offence under any of sections 409 to 414 —

(a) whether any act or other event proof of which is required for conviction of the offence occurred in the Falkland Islands; or

(b) whether the defendant was in the Falkland Islands at the time of any such act or event.

(2) Subject to subsection (3), in the case of such an offence at least one significant link with the Falkland Islands must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section 409 to be established in proof of an allegation to that effect in proceedings for an offence under section 410.

(4) Subject to section 418, if —

(a) any such link does in fact exist in the case of an offence under section 409; and

(b) commission of that offence is alleged in proceedings for an offence under section 410,

section 410 applies as if anything the defendant intended to do or facilitate in any place outside the Falkland Islands which would be an offence to which section 410 applies if it took place in the Falkland Islands were the offence in question.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

[UK Computer Misuse Act 1990 ss.4 to 9]

416. Significant links with the Falkland Islands

(1) The following provisions of this section apply for the interpretation of section 415.

(2) In relation to an offence under section 409, either of the following is a significant link with the Falkland Islands —

(a) that the defendant was in the Falkland Islands at the time when he or she did the act which caused the computer to perform the function; or

(b) that any computer containing any program or data to which the defendant by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the Falkland Islands at that time.

(3) In relation to an offence under section 411 or 412, either of the following is a significant link with the Falkland Islands —

(a) that the defendant was in the Falkland Islands at the time when he or she did the unauthorised act (or caused it to be done); or

(b) that the unauthorised act was done in relation to a computer in the Falkland Islands.

[UK Computer Misuse Act 1990 ss.4 to 9]

417. Territorial scope of ancillary offences related to offences under this Part

(1) On a charge of conspiracy to commit an offence under this Part the following questions are immaterial to the defendant's guilt —

(a) where any person became a party to the conspiracy; and

(b) whether any act, omission or other event occurred in the Falkland Islands.

(2) On a charge of attempting to commit an offence under section 411 or 412, the following questions are immaterial to the defendant's guilt —

(a) where the attempt was made; and

(b) whether it had an effect in the Falkland Islands.

(3) On a charge of encouraging the commission of an offence under any of sections 409 to 414, the question where the encouraging took place is immaterial to the defendant's guilt.

[UK Computer Misuse Act 1990 ss.4 to 9]

418. Relevance of external law

(1) A person commits an offence triable by virtue of section 415(4) only if what the person intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person commits an offence triable by virtue of section 417 only if what the person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) Conduct punishable under the criminal law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than criminal procedure rules may provide, the defence serve on the prosecution a notice —

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) "**the relevant conduct**" means —

(a) if the condition in subsection (1) is in question - what the defendant intended to do or facilitate;

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court the question whether the condition is satisfied is to be decided by the judge alone.

[UK Computer Misuse Act 1990 ss.4 to 9]

419. Search warrants for offences under this Part

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

(a) an offence under this Part has been or is about to be committed in any premises; and

(b) evidence that such an offence has been or is about to be committed is in those premises,

the justice may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as necessary, the police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(3) In executing a warrant issued under this section a police officer may seize an article if the officer reasonably believes that —

(a) it is evidence that an offence under this Part has been or is about to be committed; or

(b) the article has been acquired by a person as a result of an offence committed under this Part.

(4) In seizing any article referred to in subsection (3), a police officer must have due regard to the rights and interests of any person affected by such seizure to carry on that person's normal activities.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers granted under this section commits an offence.

(6) In this section —

"**article**" includes a computer or part of a computer, a computer system or part of it, a computer data storage system and a document.

"**premises**" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft;

[UK Computer Misuse Act 1990 s.11]

420. Warrant for access to computer and data for investigation of offences

(1) If a justice of the peace is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect that —

(a) a computer is being or has been used in connection with an offence; and

(b) evidence that such an offence is being or has been committed is in that computer,

the justice may issue a warrant authorising a police officer to do the things mentioned in subsection (2).

(2) A warrant under subsection (1) may authorise a police officer to enter any premises where the computer is kept, using such reasonable force as is necessary, and to —

(a) have access to and use the computer and examine the operation of that computer;

(b) search any data stored or available in the computer or in any computer data storage system forming part of the computer;

(c) have access to any password or access code or any other means of gaining access to the computer;

(d) have access to any program having the capability of retransforming or unscrambling encrypted data in the computer into readable and comprehensible format or into plain text;

(e) make and take any copies or take any samples of any data held in the computer; and

(f) require any person whom the police officer has reasonable cause to suspect is or has been using the computer, or any person having charge or control of or operating the computer, to provide the officer with any technical and other assistance that the officer reasonably requires for the purposes of carrying out the investigation authorised under this section.

(3) In taking any samples or copies of data or performing any of the actions referred to in subsection (2), a police officer must have due regard to the rights and interests of any person affected by such actions to carry on that person's normal activities.

(4) A warrant under this section —

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as may be necessary, a police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers under subsection (2)(a) to (e) or who fails to comply with a requirement under subsection (2)(f) commits an offence.

(6) An information given under subsection (1) may be combined with an information given for the purposes of section 368 and a warrant issued under this section may be combined with a warrant issued under that section.

(7) In this section "premises" has the meaning given by section 419(6).

[EU Convention Arts 15 & 19]

421. Record of seized articles, etc.

(1) If a computer, computer program or data has been removed following a search under section 419, the police officer who carried out the search must, at the time of the search or as soon as practicable after it —

(a) make an official record of the articles seized and removed, of the premises from where they were removed, and the date and time of seizure; and

(b) give a copy of the record to the owner, lessee or occupier of the premises if they are immovable property; to the master, captain or person in charge of a vehicle, vessel, aircraft or other movable structure; or to the person in charge or control of the articles seized and removed.

(2) Subject to subsection (3), if a computer has been used or its operation examined or a program or data has been accessed under section 420, the police officer who carried out the action may authorise a person who had charge or control of the computer to access and copy a program or data in the computer.

(3) The police officer may refuse to permit access to the computer under subsection (2) if the officer has reasonable grounds for believing that giving the access would lead to the commission of a criminal offence or would prejudice —

(a) the investigation in connection with which the search was carried out;

(b) another ongoing investigation; or

(c) any criminal proceedings which are pending or which may be brought in relation to any of those investigations.

[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]

422. Preservation of data

(1) If the Chief Police Officer is satisfied that —

(a) a program or data, including traffic data, stored in a computer is necessary for the purposes of a criminal investigation; and

(b) there is a risk that the program or data may be lost, destroyed or rendered inaccessible or modified,

the Chief Police Officer may by written notice given to a person in charge or in control of the computer require that person to ensure that the program or data specified in the notice be preserved for the period stated in the notice, which must not exceed 30 days.

(2) Before the period stated in the notice issued under subsection (1) has expired, a justice of the peace may, on the application of the Attorney General, order that the period stated in the notice be extended for a maximum of 90 days from the date of first issue.

(3) Traffic data may be ordered to be preserved under subsection (1) irrespective of how many service providers were involved in the transmission of the data.

(4) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Art. 16]

423. Interception of traffic data

(1) If traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, a justice of the peace may, on the application of the Attorney General, issue an order requiring a person in charge or in control of such data or to an internet service provider to —

(a) collect and record traffic data associated with the communication for the period specified in the notice; or

(b) permit and assist any named person with appropriate technical knowledge and expertise to collect and record the data.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Art. 20]

424. Order for disclosure of stored traffic

(1) If a justice of the peace is satisfied on an application by the Attorney General that specified data stored in a computer is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring a person in charge or in control of the computer to preserve and disclose to a police officer an amount of traffic data about specified communication sufficient to identify —

(a) the internet service providers; and

(b) the path through which the communication was transmitted.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Art. 17]

425. Order for production of data

(1) If a justice of the peace is satisfied on an application by the Attorney General that a specified computer program, data, printout of that data or any other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice of the peace may issue an order requiring —

(a) a person in charge or in control of a computer to produce to a police officer any computer program, data or printout of data specified in the order which is stored in the computer or in a computer data storage system in that person's possession or control; and

(b) an internet service provider with a place of business in the Falkland Islands to produce to a police officer any subscriber information specified in the order relating to a service provided by that service provider.

(2) In this section, "**subscriber information**" means any information in the form of computer data, or in any other form, which is held by a service provider, which relates to subscribers of its service other than traffic or content data, and by which can be established —

(a) the subscriber's identity, telephone or access number, postal address and billing and payment information;

(b) the type of communication service used by the subscriber, the technical provisions relating to it and the period of service; and

(c) any other information on the site relating to the installation of communication equipment.

(3) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Art. 18]

426. Order for interception of electronic communication

(1) If a justice of the peace is satisfied on an application by the Attorney General that the contents of electronic communication or any other information connected with such communication are reasonably required for the purpose of a criminal investigation or criminal proceedings, the justice may issue an order requiring an internet service provider with a place of business in the Falkland Islands to —

(a) apply such technical means as are necessary to collect and record; or

(b) permit or assist any named person with appropriate technical knowledge and expertise to collect and record,

content data associated with specified communications transmitted by means of a computer.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Penalty: A fine at level 11 on the standard scale.

[EU Convention Art. 21]

Miscellaneous provisions

427. Rights and duties of internet service providers

(1) An internet service provider is not liable under civil or criminal law for the disclosure of any data or other information that the provider discloses under any of sections 424 to 426.

(2) An internet service provider who without lawful authority discloses —

(a) the fact that a notice has been given under section 422 or that an order has been issued under any of sections 423 to 426;

(b) anything done under the notice or order; or

(c) any data collected or recorded under the notice or order,

commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Arts. 20.3, 21.3]

428. Saving for certain law enforcement powers

(1) Nothing in this Part affects the operation of other provisions of this Ordinance, the Criminal Procedure and Evidence Ordinance 2014 or any other enactment relating to powers of inspection, search or seizure.

(2) Nothing designed to indicate a withholding of consent to access to any program or data from persons as enforcement officers makes access unauthorised for the purposes of section 410(1).

(3) In subsection (2) —

(a) "**enforcement officer**" means a police officer or other person charged with the duty of investigating offences; and

(b) withholding consent from a person "as" an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.

[UK Computer Misuse Act 1990 s.10]

429. Offences by and for the benefit of corporate bodies

If an offence under any of sections 409 to 414 which was committed by any person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person

acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.
Penalty: The statutory maximum fine.

[EU Convention Art.12 and S.R. & O. 6/2017/w.e.f. 13/4/2017]

430. Forfeiture

(1) A court before which a person is convicted of an offence under any of sections 409 to 414 may, in addition to imposing any other penalty, make an order for the forfeiture of any computer, computer program or data, computer data storage system, or other apparatus, article or thing which is the subject matter of the offence or which was used in connection with the commission of the offence.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) Section 90 of the Interpretation and General Clauses Ordinance 1977 applies to the proceeds of any forfeiture under this Part.

[Gibraltar Crimes Bill - Not in EU Convention and Revision w.e.f. 31/07/2017]

431. Compensation

(1) The court before which a person is convicted of an offence under any of sections 409 to 412 may order the person to pay a sum fixed by the court by way of compensation to any other person for damage caused to that person's computer, computer data storage system, program or data by the offence for which the person is convicted.

[S. 17 Ord. 8/2022/w.e.f. 16/05/2022]

(2) A claim by a person for damage caused by an offence under any of sections 409 to 412 is deemed to have been satisfied to the extent of any amount ordered to be paid to the person by way of compensation under subsection (1), but the order does not affect any right to a civil remedy for the recovery of damages beyond the amount of such compensation.

[S. 17 Ord. 8/2022/w.e.f. 16/05/2022]

(3) Compensation awarded by an order under subsection (1) is recoverable as a civil debt.

[Gibraltar Crimes Act; SH Crimes Bill - Not in EU Convention]

432. Breach of confidentiality

(1) Except for the purpose of a prosecution for an offence under this Part, for other purposes of this Part, or pursuant to an order of a court, a person who has had access to —

(a) any computer, computer data storage system, program or data during the course of an investigation under this Part;

(b) any record, book, register, correspondence, information, document or any other material during the course of an investigation under this Part;

(c) any confidential information which may have been received from the competent authorities of another place for the purpose of an investigation under this Part,

must not disclose to any other person, or use for any purpose other than that for which the person obtained access or received information, the contents of the material mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.
Penalty: A fine at level 11 on the standard scale.

[EU Convention Art 28]

433. Codes of practice

(1) The Governor may issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part.

(2) Without limiting subsection (1), a code of practice made under this section may make provision limiting —

(a) the class of criminal offences in respect of which warrants and orders under this Part may be applied for;

(b) the class of criminal offences in respect of which notices under this Part may be issued;

(c) the class of person in respect of whom a notice under section 422 or an order under any of sections 423 to 426 may be issued;

(d) the duration of notices under section 422 and of orders under any of sections 423 to 426;

(e) the number of persons to whom any of the material or data obtained by virtue of this Part may be disclosed or otherwise made available;

(f) the extent to which any of the material or data may be disclosed or otherwise made available;

(g) the extent to which any of the material or data may be copied;

(h) the number of copies that may be made; and

(i) the use that can be made of the material or data.

(3) The Governor may by order prescribe the circumstances under which and the time within which material or data obtained under this Part must be destroyed, and the penalties for failure to comply with the order.

(4) In issuing a code of practice or an order under this section the Governor must have due regard to the fundamental rights and freedoms under the Constitution of the Falkland Islands and in particular to the right of privacy and the requirement of proportionality in the investigation and prevention of crime.

(5) The Governor must lay before the Legislative Assembly every code of practice and order issued or amended under this section.

(6) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under this section must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of a code of practice issued under this section does not of itself render the person liable to any criminal or civil proceedings but may be taken into account in deciding on the admissibility and weight of any evidence obtained in contravention of the provision.

(8) A code of practice issued under this section is admissible in evidence in any criminal or civil proceedings.

[Gibraltar Crimes Act; SH Crimes Bill – Not in EU Convention but required by FCO]

PART 15 - COMMERCIAL TRANSACTIONS

Auction sales

434. Auction bidding offences

(1) A dealer who —

(a) agrees to give;

(b) gives; or

(c) offers,

any gift or consideration to any other person as an inducement or reward for abstaining, or for having abstained, from bidding at a sale by auction either generally or for any particular lot, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who —

(a) agrees to accept;

(b) accepts; or

(c) attempts to obtain,

from any dealer any such gift or consideration as aforesaid, commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(3) If it is proved that a dealer has —

(a) previously to an auction entered into an agreement in writing with one or more persons to purchase goods at the auction in good faith on a joint account; and

(b) has before the goods were purchased at the auction deposited a copy of the agreement with the auctioneer,

such an agreement is not to be treated as an agreement made in contravention of this section.

(4) For the purposes of this Part, "**dealer**" means a person who in the normal course of his or her business attends sales by auction for the purpose of purchasing goods with a view to reselling them.

[S. 13/Ord. 5/2017/w.e.f. 21/04/2017]

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Auctions (Bidding Agreements) Act 1927 s.1 amended]

435. Auction bidding offences: Prohibition orders

(1) On conviction of a person under section 434, the court may order that —

(a) the person so convicted; or

(b) that person and any person appointed to bid on behalf of that person,

must not (without leave of the court) enter upon any premises where goods intended for sale by auction are on display or attend or participate in any way in any sale by auction.

(2) An order under subsection (1) must specify the period for which it lasts, which must be not more than 3 years from the date of the conviction.

(3) A person who contravenes an order under this section made in respect of the person commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(4) In proceedings against a person for contravention of an order under this section consisting in the entry upon premises where goods intended for sale by auction were on display, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that goods so intended were on display on the premises.

(5) In proceedings against a person for contravention of an order under this section consisting in the person having done something as the representative of another, it is a defence for the person to prove that he or she did not know, and had no reason to suspect, that that other person was the subject of such an order.

(6) A person does not commit an offence under this section only by selling property by auction or causing it to be so sold.

[Auctions (Bidding Agreements) Act 1969 s.2]

436. Rights of seller of goods by auction

(1) If —

(a) a person ('**A**') purchases goods at an auction and has entered into an agreement with another person ('**B**') or other persons that B or those others (or some of them) will abstain from bidding for the goods (not being an agreement to purchase the goods in good faith on a joint account); and

(b) A or B, or one of the other parties to the agreement is a dealer,

the seller may avoid the contract under which the goods are purchased.

(2) If a contract is avoided by virtue of subsection (1), and if the purchaser has obtained possession of the goods and restitution of them is not made, the persons who were parties to the agreement that one or some of them should abstain from bidding for the goods the subject of the contract are jointly and severally liable to make good to the seller any loss the seller sustained by reason of the operation of the agreement.

[Auctions (Bidding Agreements) Act 1969 s.3]

437. Notices to be exhibited at sale

(1) Every auctioneer, before beginning any auction, must display a notice containing the auctioneer's full name and place of residence and a copy of sections 434 to 436 of this Ordinance —

(a) in large letters publicly visible and legible; and

(b) in some conspicuous part of the room or place where the auction is held,

so that all persons present may easily read it.

(2) An auctioneer who fails to keep a notice as described in subsection (1) displayed as there described during the whole time that the auction is held commits an offence.
Penalty: A fine at level 1 on the standard scale for every day that the offence continues.

[UK Auctioneers Act 1845 s.7 applied by Auctions (Bidding Agreements) Acts 1927 and 1969]

438. Penalties for promoting or conducting mock auctions

(1) A person who —

(a) promotes;

(b) conducts; or

(c) assists in the conduct of,

a mock auction at which one or more lots to which this Part applies are offered for sale commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) For the purposes of this Part a sale of goods by way of competitive bidding is taken to be a mock auction if, but only if, during the course of the sale —

(a) any lot to which this Part applies is sold to a person bidding for it, and either it is sold to that person at a price lower than the amount of that person's highest bid for that lot, or part of the price at which it is sold to the person is repaid or credited to the person or is stated to be so repaid or credited;

(b) the right to bid for any lot to which this Part applies is restricted, or is stated to be restricted, to persons who have bought or agreed to buy one or more articles; or

(c) any articles are given away or offered as gifts.

(3) A sale of goods shall not be taken to be a mock auction by virtue of subsection (2)(a) if it is proved that the reduction in price, or the repayment or credit, as the case may be —

(a) was on account of a defect discovered after the highest bid in question had been made, being a defect of which the person conducting the sale was unaware when that bid was made; or

(b) was on account of damage sustained after that bid was made.

[UK Mock Auctions Act 1961 s.1]

439. Mock auctions: Interpretation

(1) In section 438 —

"**sale of goods by way of competitive bidding**" means any sale of goods at which the persons present, or some of them, are invited to buy articles by way of competitive bidding;

"**competitive bidding**" includes any mode of sale whereby prospective purchasers may be enabled to compete for the purchase of articles, whether by way of increasing bids or by the offer of articles to be bid for at successively decreasing prices or otherwise;

"**lot to which this section applies**" means a lot consisting of or including one or more prescribed articles;

"**prescribed articles**" means any plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament or any musical or scientific instrument or apparatus;

"**stated**", in relation to a sale of goods by way of competitive bidding, means stated by or on behalf of the person conducting the sale, by an announcement made to the persons for the time being present at the sale.

(2) For the purposes of section 438 and this section, any bid stated to have been made at a sale of goods by way of competitive bidding is conclusively presumed to have been made, and to have been a bid of the amount stated; and any reference in that section to the sale of a lot to a person who has made a bid for it includes a reference to a purported sale of it to a person stated to have bid for it, whether that person exists or not.

(3) For the purposes of section 438 and this section, anything done in or about the place where a sale of goods by way of competitive bidding is held, if done in connection with the sale, is taken to be done during the course of the sale, whether it is done at the time when any articles are being sold or offered for sale by way of competitive bidding or before or after any such time.

(4) Subject to section 6(6) of the Constitution (which relates to being tried twice for the same offence) nothing in this Part limits any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part.

[UK Mock Auctions Act 1961 s.3]

Unsolicited goods

440. Demands and threats regarding payment

(1) A person ('**A**') who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business —

(a) makes a demand for payment; or

(b) asserts a present or prospective right to payment,

for what A knows are unsolicited goods sent to another person ('**B**') with a view to that B acquiring them for the purposes of B's trade or business, commits an offence.
Penalty: A fine at level 4 on the standard scale.

(2) A person who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business and with a view to obtaining any payment for what the person knows are unsolicited goods sent as aforesaid —

(a) threatens to bring any legal proceedings;

(b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so; or

(c) invokes or causes to be invoked any other collection procedure or threatens to do so,

commits an offence.
Penalty: A fine at level 5 on the standard scale.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(3) In this section and section 441, "**unsolicited**" means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person's behalf.

441. Directory entries

(1) A purchaser ('**P**') is not liable to make any payment, and is entitled to recover any payment made by P, by way of charge for including or arranging for the inclusion in a directory of an entry relating to P or P's trade or business, unless —

(a) there has been signed by P or on P's behalf an order complying with this section;

(b) there has been signed by P or on P's behalf a note complying with this section of P's agreement to the charge and before the note was signed, a copy of it was supplied, for retention by P, to P or a person acting on P's behalf; or

(c) there has been transmitted by P or a person acting on P's behalf an electronic communication which includes a statement that P agrees to the charge and the relevant condition is satisfied in relation to that communication.

(2) If, when a payment in respect of a charge would, in the absence of an order or note of agreement to the charge complying with this section and in the absence of an electronic communication in relation to which the relevant condition is satisfied, be recoverable from a person in accordance with subsection (1), a person ('**A**') demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without knowing or having reasonable cause to believe that —

(a) the entry to which the charge relates was ordered in accordance with this section;

(b) a proper note of the agreement has been duly signed; or

(c) the requirement of subsection (1)(c) have been met,

A commits an offence.
Penalty: A fine at level 4 on the standard scale.

(3) For the purposes of subsection (1), an order for an entry in a directory must be made by means of an order form or other stationery belonging to P and bearing, in print, P's name and address (or one or more of P's addresses) and a note complying with subsection (4).

(4) The note required by subsections (1) and (3) is a note of P's agreement to the charge which —

(a) states the amount of the charge immediately above the place for signature; and

(b) identifies the directory or proposed directory, giving the following particulars of it —

(i) the proposed date of publication of the directory or of the issue in which the entry is to be included and the name and address of the person producing it;

(ii) if the directory or that issue is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;

(iii) if the directory or that issue is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed; and

(c) sets out or gives reasonable particulars of the entry in respect of which the charge would be payable.

(5) In relation to an electronic communication which includes a statement that P agrees to a charge for including or arranging the inclusion in a directory of any entry, the relevant condition is that —

(a) before the electronic communication was transmitted the information referred to in subsection (6) was communicated to P; and

(b) the electronic communication can readily be produced and retained in a visible and legible form.

(6) The information to be communicated to P is —

(a) the following particulars —

(i) the amount of the charge;

(ii) the name of the directory or proposed directory;

(iii) the name of the person producing the directory;

(iv) the geographic address at which that person is established;

(v) if the directory is or is to be available in printed form - the proposed date of publication of the directory or of the issue in which the entry is to be included;

(vi) if the directory or the issue in which the entry is to be included is to be put on sale - the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;

(vii) if the directory or the issue in which the entry is to be included is to be distributed free of charge (whether or not it is also to be put on sale) - the minimum number of copies which are to be so distributed;

(viii) if the directory is or is to be available in a form other than in printed form - adequate details of how it may be accessed; and

(b) reasonable particulars of the entry in respect of which the charge would be payable.

(7) In this section "**electronic communication**" means a communication by electronic means.

CHAPTER 3 - CRIMES AGAINST THE GENERAL PUBLIC

PART 16 – TREASON

442. Treason

(1) A person who, owing allegiance to the Monarch —

(a) kills, wounds or causes bodily harm to the Monarch;

(b) imprisons or restrains the Monarch;

(c) forms an intention to do (a) or (b) and manifests such intention by an overt act;

(d) levies war against the Monarch in the Falkland Islands or elsewhere —

(i) with the intent to depose the Monarch from the style, honour and royal name of the Crown of the United Kingdom or of any other of their dominions;

(ii) in order by force or constraint to compel the Monarch to change their measures or counsels; or

(iii) in order to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly, the United Kingdom Parliament, or the legislature of any other British overseas territory or of a Crown dependency;

(e) instigates any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a Crown dependency;

(f) assists by any means whatever any public enemy at war with the Monarch; or

(g) conspires with any other person to do anything mentioned in paragraph (a), (b) or (d),

commits the offence of treason.
Penalty: As provided in subsection (3)

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

(2) A person who murders —

(a) the Lord Chancellor;

(b) the First Lord of the Treasury;

(c) a judge of the Crown Court, High Court or Court of Appeal in England and Wales;

(d) any judge of the Supreme Court of the United Kingdom;

(e) the Chief Justice;

(f) the Senior Magistrate;

(g) the President of the Court of Appeal or any Justice of Appeal; or

(h) any other person holding judicial office in the Falkland Islands,

while any of them is performing the duties of the office, commits the offence of treason.
Penalty: As provided in subsection (3).

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

(3) A person convicted of the offence of treason must be sentenced to life imprisonment, but subject to section 728 of the Criminal Procedure and Evidence Ordinance 2014 if the person convicted is aged under 21.

(4) ...

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

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(5) An offence under this section is triable on indictment only.

[Treason Act 1351; Treason Act 1702, s.3]

443. Treasonable offences

(1) A person who forms an intention to —

(a) depose the Monarch from the style, honour and royal name of the Crown of the United Kingdom or of any other of the Monarch's dominions;

(b) levy war against the Monarch within the United Kingdom or the Falkland Island or any other British overseas territory or any Crown dependency in order —

(i) by force or constraint to compel the Monarch to change their measures or counsels; or

(ii) to put any force or constraint upon, or to intimidate or overawe, the Legislative Assembly or the United Kingdom Parliament or the legislature of any other British overseas territory or of a Crown dependency; or

(c) instigate any foreigner with force to invade the United Kingdom or the Falkland Islands or any other British overseas territory or a Crown dependency,

and manifests such intention by an overt act in the Falkland Islands or elsewhere or by publishing any printing or writing, commits an offence.
Penalty: Imprisonment for life.

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

(2) It is not a defence to a charge under this section that any act proved against the defendant amounts to treason under section 442; but a person convicted or acquitted of an offence under this section may not afterwards be prosecuted for treason under section 442 upon the same facts.

(3) An offence under subsection (1) is triable on indictment only.

[Treason Felony Act 1848, ss.3, 7]

444. Limitation and procedure

(1) A person may not be prosecuted for an offence under section 442 or 443 unless the prosecution is commenced within 3 years after the offence is committed.

(2) This section does not apply to cases in which the overt act alleged is the killing of the Monarch, or a direct attempt to endanger the life of the Monarch.

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

(3) The procedure on a trial for treason or any treasonable offence is the same as the procedure on a trial for murder.

[Treason Act 1695 ss.5, 6]

445. Assaults on the Monarch

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

(1) A person who wilfully —

(a) produces or has near the Monarch any arms or destructive or dangerous thing with intent to use the same to injure the Monarch;

(b) with intent to alarm or to injure the Monarch, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused —

(i) discharges, or points, aims or presents any arms at or near the Monarch;

(ii) causes any explosive substance to explode near the Monarch;

(iii) assaults the Monarch; or

(iv) throws anything at or upon the Monarch,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

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

(2) In this section, "**arms**" includes imitation and toy arms.

[Treason Act 1842 ss.2, 3]

446. Inciting disaffection

(1) A person who maliciously and wilfully endeavours to seduce any member of the armed forces of the Crown from his or her duty or allegiance to the Monarch commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

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

(2) A person who, with intent to commit or to aid, abet, counsel, or procure the commission of an offence under subsection (1), has in his or her possession or under his or her control a document of such a nature that the dissemination of copies of it among members of the armed forces of the Crown would constitute such an offence, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK Incitement to Disaffection Act 1934 ss.1 and 2 adapted]

447. Assisting, etc. desertion

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to assist or procure any person who is serving in the armed forces of the Crown to desert or improperly absent himself or herself from duty; or

(b) to conceal, employ or continue to employ any such person who is a deserter or so improperly absent from duty, knowing the person to be a deserter or so improperly absent.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

[UK Armed Forces Act 2006 ss.8 and 10 adapted]

448. Bringing contempt on uniform

It is an offence for a person who is not serving in the armed forces of the Crown —

(a) to wear without the permission of the Governor —

(i) the uniform of any of those forces; or a

(ii) any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform,

in such a manner or under such circumstances as to be likely to bring contempt upon that uniform; or

(b) to employ any other person so to wear that uniform or dress.

Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

[UK Uniforms Act 1894 s.3]

449. Unlawful drilling

(1) Any meeting or assembly of persons for the purpose of —

(a) training or drilling persons to the use of arms;

(b) being trained or drilled to the use of arms; or

(c) practising military exercises, movements, or evolutions,

without the written authority of the Governor, or of a public officer authorised by the Governor for the purpose, is prohibited.

(2) A person present at a prohibited meeting or assembly for the purpose mentioned in subsection (1)(a) commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

(3) A person who at a prohibited meeting or assembly aids or assists a person for the purpose mentioned in subsection (1)(a) commits an offence.
Penalty: Imprisonment for 7 years.

(4) A person present at a prohibited meeting for a purpose mentioned in subsection (1)(b) or (c) commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(5) A police officer may disperse any prohibited meeting or assembly and arrest without warrant any person present at or aiding and abetting any such meeting or assembly.

(6) A prosecution for an offence under this section —

(a) must be brought within 6 months after the date of the offence;

(b) may not be brought except by, or with the consent of, the Attorney General.

(7) In this section, "**prohibited meeting or assembly**" has the meaning given to that term by subsection (1).

[UK Unlawful Drilling Act 1819 ss.1, 2 and 7]

The police

450. Causing disaffection among police officers

It is an offence for a person —

(a) to cause, or attempt to cause, or do any act calculated to cause, disaffection amongst members of the police force; or

(b) to induce or attempt to induce or do any act calculated to induce any police officer to withhold his or her services or to commit a breach of discipline.
Penalty: Imprisonment for 2 years or a fine, or both.

[Crimes Ord. s.31; Police Ord. s.57; UK Police Act 1996 s.91]

451. Obstructing police officer in the performance of duty

A person who resists or wilfully obstructs —

(a) a police officer in the performance of the police officer's duty; or

(b) a person assisting the police officer in the performance of that duty,

commits an offence.
Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

[Crimes Ord. s.34 modified; UK Police Act 1996 s.89]

452. Impersonating a police officer, etc.

(1) A person who, with intent to deceive —

(a) pretends to be a police officer, customs officer or immigration officer; or

(b) makes any statement or does any act calculated falsely to suggest that he or she is such an officer,

commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A person who pretends to be a police officer, customs officer or immigration officer with a view to obtaining —

(a) admission to premises;

(b) information; or

(c) any other benefit,

commits an offence.
Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(3) A person who, not being a police officer, customs officer or immigration officer, wears any article of police uniform in circumstances where the article gives the person an appearance so nearly resembling that of such an officer as to be likely to deceive commits an offence.
Penalty: A fine at level 3 on the standard scale.

(4) A person who, not being a police officer, customs officer or immigration officer, has in his or her possession any article of the uniform of any such officer commits an offence, unless the person can prove that he or she obtained possession of the article in question lawfully and that his or her possession of it is for a lawful purpose.
Penalty: A fine at level 3 on the standard scale.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(5) In this section —

"**article of police uniform**" means any article of uniform or any distinctive badge or mark or document of identification issued to police, customs or immigration officers or which has the appearance of any such article, badge, mark or document;

"**customs officer**" has the meaning given to that term by the Customs Ordinance 2003;

"**immigration officer**" means a person appointed as such under section 3 of the Immigration Ordinance 1999.

[Revision w.e.f. 23/05/2019]

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

[UK Police Act 1996 s.90; Commissioners for Revenue and Customs Act 2005 s.30]

453. Offences of escaping

(1) A person who is —

(a) lawfully in the custody of a police officer or other public officer;

(b) lawfully detained in any place; or

(c) serving any sentence of imprisonment or other custodial sentence,

and who escapes, commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) If a person is —

(a) lawfully in the custody of a police officer or other public officer;

(b) lawfully detained in any place; or

(c) serving any sentence of imprisonment or other custodial sentence,

any police officer or other public officer who negligently allows that person to escape commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 5 on the standard scale, or both.

(3) An offence under subsection (1) is committed —

(a) whether the escape was effected by artifice or as a result of the negligence of the person or persons who had custody of the escapee; and

(b) whether the escape was made from a place of lawful custody or prison or elsewhere.

[Crimes Ord. ss.35 and 36]

454. Escaping: Ancillary offences

(1) A person who —

(a) encourages;

(b) aids and abets; or

(c) assists,

an offence under section 453(1) commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who, with intent to facilitate the escape of any prisoner —

(a) conveys anything into a prison or to a prisoner; or

(b) places anything anywhere with a view to it coming into the possession of a prisoner,

commits an offence, whether or not escape is effected.
Penalty: Imprisonment for 5 years or a fine, or both

(3) A person must not be —

(a) prosecuted for an offence under both subsection (1) and subsection (2) in respect of the same facts; nor

(b) prosecuted for an offence under subsection (1) and under Part 3 for an ancillary offence in relation to the same escape.

[Crimes Ord. s.38 modified and S.R. & O. 6/2017/w.e.f. 13/4/2017]

455. Escaping: Supplementary

(1) If a person, in committing an offence under section 453(1) uses —

(a) violence, explosives or any offensive weapon; or

(b) a threat of the use of anything mentioned in paragraph (a),

to assist in effecting his or her own escape, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(2) If a person, in committing an offence under section 454(1) uses —

(a) violence, explosives or any offensive weapon; or

(b) a threat of the use of anything mentioned in paragraph (a),

to encourage, aid and abet or assist the escape of another person, the maximum penalty for the offence under that section is imprisonment for 10 years or a fine, or both.

(3) For the purposes of sections 453 and 454, a person is deemed to be lawfully in custody —

(a) while confined in or being taken to or from any prison or place of lawful custody;

(b) while for any other reason outside a prison or place of lawful custody, in the custody or under the control of a police officer;

(c) while being taken to any place to which the person is required or authorised to be taken in custody; and

(d) while kept in custody in pursuance of any lawful requirement or authorisation.

[Crimes Ord. ss.37 and 39 modified]

456. Harbouring

(1) This section applies in relation to a person ('**A**') who —

(a) has escaped from a prison; or

(b) having been sentenced to imprisonment or detention, is otherwise unlawfully at large.

(2) A person who knowingly harbours A, or gives to A any assistance, with intent to prevent, hinder or interfere with A's being taken into custody, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

[UK CJ Act 1961 s.22]

False alarms, etc.

457. False alarms, etc.

(1) A person who knowingly gives or causes to be given a false alarm of fire to the police force or to the fire service commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) A person ('**A**') who causes any wasteful employment of any police officer by knowingly making to any other person a false report —

(a) likely to give rise to apprehension for the safety of any persons or property;

(b) saying or implying that an offence has been committed; or

(c) saying or implying that A has information material to any police inquiry,

commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(3) A person who, knowing that there is no sufficient reason to do so, summons or causes an ambulance or a medical practitioner to be summoned to attend at any place, commits an offence. Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

[Crimes Ord.ss.42, 43, 44]

PART 18 - JUDICIAL PROCEEDINGS

458. Restriction on reports of divorce and similar proceedings

(1) It is an offence for a person to print or publish, or cause or procure to be printed or published in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage or for judicial separation, any particulars other than —

(a) the names and occupations of the parties and witnesses;

(b) a concise statement of the charges, defences and countercharges in support of which evidence has been given

(c) submissions on any point of law arising in the course of the proceedings, and the decision of the court on them;

(d) the judgment of the court and observations made by the judge in giving judgment.
Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale.

(2) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(3) Nothing in this section applies to —

(a) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication of them to persons concerned in the proceedings;

(b) the printing or publishing of any notice or report in pursuance of the directions of a court; or

(c) the printing or publishing of any matter —

(i) in a separate volume or part of a *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; or

(ii) in a publication of a technical character *bona fide* intended for circulation among members of the legal or medical profession.

[UK CJ Act 1925 s.1 (repealed)]

459. Publication of information relating to proceedings in private

(1) Subject to subsection (3), the publication of information relating to proceedings before any court sitting in private is a contempt of court if —

(a) the proceedings —

(i) relate to the exercise of the inherent jurisdiction of the Supreme Court with respect to youths;

(ii) are brought under the Children Ordinance 2014; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a youth;

(b) the proceedings are brought in relation to the property of a person suffering from mental disorder;

(c) the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) the court (if it has power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without limiting subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not of itself contempt of court unless the court (having power to do so) expressly prohibits the publication.

(3) The court may in its discretion give leave for the publication of any information the publication of which under subsection (1) would otherwise be a contempt of court.

(4) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.

(5) Nothing in this section is to be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

[UK Administration of Justice Act 1960 s.12 adapted]

460. Restriction on reports of other judicial proceedings

(1) This Part is in addition to and does not limit the following provisions of the Criminal Procedure and Evidence Ordinance 2014 which restrict the reporting of publication of proceedings in criminal proceedings, namely —

(a) sections 200 to 206 in relation to the reporting of sending proceedings;

(b) section 251 to 253 in relation to preliminary rulings;

(c) section 484 to 486 in relation to derogatory assertions;

(d) sections 461 to 470 in relation to the reporting of judicial proceedings which involve vulnerable witnesses;

(e) section 753 in relation to judicial proceedings which involve young offenders.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) An offence under any of the provisions mentioned in subsection (1) committed in the face of the court may, instead of being prosecuted under those provisions, be treated as a contempt of court under the provisions of this Part.

(3) This Part applies to a breach of the restriction on reporting in section 691 of the Criminal Procedure and Evidence Ordinance 2014 (which relates to reporting of retrials) as provided by that section.

[UK Magistrates' Courts Act 1980 s.8; UK Crime & Disorder Act 1998 Sched. 3 expanded]

461. Taking photographs, etc. in court

(1) It is an offence for a person —

(a) to take or attempt to take in any court any photograph of the proceedings of the court;

(b) with a view to publication, to make or attempt to make in any court any portrait or sketch of the judge of the court, or a juror or witness in or a party to any proceedings before the court, whether civil or criminal; or

(c) to publish any photograph, portrait, or sketch taken or made in contravention of paragraph (a) or (b), or any reproduction of such a photograph, portrait or sketch.

Penalty: A fine at level 3 on the standard scale.

(2) For the purposes of this section —

(a) "**court**" means any court of justice, including a coroner's court;

(b) "**judge**" includes the Registrar, a justice of the peace and the coroner;

(c) a photograph, portrait or sketch of a person is deemed to be taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is taken or made of the person while the person is entering or leaving the courtroom or any such building or precincts.

[UK CJ Act 1925 s.41 adapted]

462. Perverting the course of justice, etc.

(1) A person who, with intent to pervert the course of public justice, does an act or a series of acts which have a tendency to pervert the course of public justice commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) If a person has committed an imprisonable offence, any other person who, knowing or believing that the offence or some other imprisonable offence has been committed, and that he or she has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) No proceedings may be commenced for an offence under this section except by or with the consent of the Attorney General.

[UK Criminal Law Act 1967 s.5 and common law]

463. Intimidation, etc. of witnesses, jurors and others

(1) A person commits an offence if the person —

(a) does an act which intimidates, and is intended to intimidate, another person ("**the victim**");

(b) does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and

(c) does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person commits an offence if the person —

(a) does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, threatens to do an act which would harm that other person;

(b) does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and

(c) does or threatens to do it because of that knowledge or belief.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made —

(a) otherwise than in the presence of the victim; or

(b) to a person other than the victim.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) If, in proceedings against a person for an offence under subsection (1), it is proved that the person did an act falling within subsection (1)(a) with the knowledge or belief required by subsection (1)(b), the person is presumed, unless the contrary is proved, to have done the act with the intention required by subsection (1)(c).

(7) If, in proceedings against a person ('A') for an offence under subsection (2), it is proved that within the relevant period —

(a) A did an act which harmed, and was intended to harm, another person ('B'); or

(b) intending to cause B fear of harm, A threatened to do an act which would harm B,

and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by subsection (2)(b), A is presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by subsection (2)(c).

(8) In this section —

"**investigation into an offence**" means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

"**offence**" includes an alleged or suspected offence;

"**potential**", in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

"**the relevant period**" means —

(a) in relation to a witness or juror in any proceedings for an offence - the period beginning with the commencement of the proceedings and ending a year after the conclusion of the trial or, if there is an appeal, the conclusion of the appeal;

(b) in relation to a person who has, or is believed by the defendant to have, assisted in an investigation into an offence, but who was not also a witness in proceedings for an offence -

the period of one year beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation; and

(c) in relation to a person who both has, or is believed by the defendant to have, assisted in the investigation into an offence and was a witness in proceedings for the offence - the period beginning with any act of the person, or any act believed by the defendant to be an act of the person, assisting in the investigation and ending as stated in (a) above.

(9) For the purposes of the definition of the relevant period in subsection (8) —

(a) proceedings for an offence are commenced at the earliest of the following times —

(i) when a justice of the peace issues a summons or warrant under section 258 of the Criminal Procedure and Evidence Ordinance 2014 (Issue of summons or warrant for arrest) in respect of the offence;

(ii) when a person is charged with the offence after being taken into custody without a warrant;

(iii) when a bill of indictment is preferred by virtue of section 290 of the Criminal Procedure and Evidence Ordinance 2014 (Bills of indictment);

(b) proceedings at a trial of an offence are concluded with the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the defendant or the sentencing of or other dealing with the defendant for the offence of which the defendant was convicted; and

(c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(10) This section is in addition to, and does not derogate from, any offence subsisting at common law relating to witnesses and jurors.

[Crimes Ord. s.50; UK Criminal Justice & Public Order Act 1994 s.51]

Contempt of court

464. Contempt of the Supreme Court or Court of Appeal

(1) Conduct, whether in the face of the court or otherwise, which constituted contempt of the Court of Appeal or the Supreme Court before the commencement of this Part —

(a) constitutes contempt of the respective court after that commencement, subject to section 469; and

(b) may be dealt with by the Court of Appeal or the Supreme Court respectively by imprisonment or a fine or both, after hearing representations both as to liability and as to penalty from or on behalf of the defendant, and subject to section 469.

(2) Nothing in this Part —

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

[Common law; UK Contempt of Court Act 1981 s.6]

465. Strict liability rule

(1) In this Part "**the strict liability rule**" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

(2) The strict liability rule applies —

(a) only in relation to publications, and for this purpose "**publication**" includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public;

(b) only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced;

(c) to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(3) Section 470 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

(4) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) the person does not know and has no reason to suspect that relevant proceedings are active.

(5) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) the person does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(6) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

(7) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(8) In any such proceedings the court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for a period the court thinks necessary for that purpose.

(9) For the purposes of subsection (7) a report of proceedings is to be treated as published contemporaneously —

(a) in the case of a report of which publication is postponed pursuant to an order under subsection (8) of this section - if published as soon as practicable after that order expires;

(b) in the case of a report of sending proceedings of which publication is permitted by virtue only of section 200 or 201 of the Criminal Procedure and Evidence Ordinance 2014 (reporting of sending proceedings) - if published as soon as practicable after publication is so permitted.

(10) A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

[Contempt of Court Ord. Schedule; UK Contempt of Court Act 1981 ss.1 to 5]

466. Confidentiality of jury's deliberations

(1) Subject to subsection (2), it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars —

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,

or to the publication of any particulars so disclosed.

[UK Contempt of Court Act 1981 s.8]

467. Use of tape recorders

(1) Subject to subsection (4), it is a contempt of court to —

(a) use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or

any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused at the discretion of the court, and if granted may be granted subject to conditions the court thinks proper with respect to the use of any recording made pursuant to the leave; and if leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without affecting any other power to deal with an act of contempt under subsection (1)(a), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to it to be the owner) be sold or otherwise disposed of in the manner the court directs.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

[UK Contempt of Court Act 1981 s.9]

468. Contempt of the Magistrate's Court or the Summary Court

(1) The Magistrates' Court has jurisdiction under this section to treat as in contempt of court any person who wilfully —

(a) insults the Senior Magistrate or justices of the peace, any witness before or officer of the court or any legal practitioner having business in the court, during his or her or their sitting or attendance in court or in going to or returning from the court;

(b) interrupts the proceedings of the court or otherwise misbehaves in court;

(c) commits a contempt of court of the kind mentioned in section 466 or 467.

(d) commits an offence under any of the provisions mentioned in section 460(1) in the face of the court.

(2) In any such case the Magistrate's Court or the Summary Court, as the case may be, may —

(a) order any officer of the court, or any police officer, to take the offender into custody and detain him or her until the rising of the court; and

(b) commit the offender to custody for a specified period not exceeding one month or impose on him or her a fine at level 4 on the standard scale, or both.

(3) The Magistrate's Court or the Summary Court, as the case may be, may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his or her discharge.

(4) Provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to fines, power to rectify mistakes and appeals to Supreme Court apply in relation to an order made by the Magistrate's Court or the Summary Court under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence by that court.

[UK Contempt of Court Act 1981 s.12]

469. Penalties and procedure

(1) If a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal must —

(a) (without affecting the power of the court to order the person's earlier discharge) be for a fixed term;

(b) not on any one occasion exceed 2 years in the case of committal by the Supreme Court or Court of Appeal, or one month in the case of committal by the Magistrate's Court or the Summary Court.

(2) In the Magistrate's Court and the Summary Court a fine for contempt of court must not exceed level 4 on the standard scale and is subject to section 468(4).

(3) A court has the same power to make a hospital order under Part 34 of the Criminal Procedure and Evidence Ordinance 2014 (Mentally Disordered Offenders) in the case of a person suffering from mental disorder who could otherwise be committed to prison for contempt of court as it has under that Part in the case of a person convicted of an offence.

(4) No proceedings for a contempt of court under this Part may be commenced except by, or with the consent of, the Attorney General, or on the motion of a court having jurisdiction to deal with it.

(5) A fine imposed under this section or section 468 is, for the purposes of any enactment, deemed to be a sum adjudged to be paid by a conviction and may be enforced accordingly.

[UK Contempt of Court Act 1981 ss.7, 14 and 16]

470. Times when proceedings are active

(1) Criminal, appellate and other proceedings are active for the purpose of section 469 at the times respectively prescribed by the following subsections; and in relation to proceedings in which more than one of the steps described in any of those subsections is taken, the reference in that subsection is a reference to the first of those steps.

(2) Subject to the following subsections, criminal proceedings are active from the relevant initial step specified in subsection (3) until concluded as described in subsection (4).

(3) The initial steps of criminal proceedings are —

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge;

(e) an oral charge.

(4) Criminal proceedings are concluded —

(a) by acquittal or, as the case may be, by sentence;

(b) by any other verdict, finding, order or decision which puts an end to the proceedings;

(c) by discontinuance or by operation of law.

(5) The reference in subsection (4)(a) to sentence includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events and a deferment of sentence under Part 23 of the Criminal Procedure and Evidence Ordinance 2014 (Sentencing: General Principles).

(6) Proceedings are discontinued within the meaning of subsection (4)(c) —

(a) if the charge or summons is withdrawn or a *nolle prosequi* entered;

(b) in the case of proceedings commenced by arrest without warrant - if the person arrested is released, otherwise than on bail, without having been charged.

(7) Criminal proceedings cease to be active if an order is made for the charge to lie on the file, but become active again if leave is later given for the proceedings to continue.

(8) Without affecting subsection (4)(b), criminal proceedings against a person cease to be active if —

(a) the defendant is found to be under a disability such as to render him or her unfit to be tried or unfit to plead; or

(b) a hospital order is made in his or her case under Part 34 of the Criminal Procedure and Evidence Ordinance 2014 (Mentally Disordered Offenders),

but become active again if they are later resumed.

[Revision w.e.f. 23/05/2019]

(9) Criminal proceedings against a person which become active on the issue of a warrant for the person's arrest cease to be active 12 months after the date of the warrant unless the person has been arrested within that period, but become active again if the person is subsequently arrested.

(10) Proceedings other than criminal proceedings and appellate proceedings are active from the time when a date for the trial or hearing is fixed until the proceedings are disposed of or

discontinued or withdrawn; and for the purposes of this subsection any motion or application made in or for the purposes of any proceedings is to be treated as a distinct proceeding.

(11) Appellate proceedings are active from the time when they are commenced by —

(a) application for leave to appeal or apply for review, or by notice of such an application;

(b) notice of appeal or of application for review; or

(c) other originating process,

until disposed of or abandoned, discontinued or withdrawn.

(12) If, in appellate proceedings relating to criminal proceedings, the court —

(a) remits the case to the court below; or

(b) orders a new trial,

any further or new proceedings which result are to be treated as active from the conclusion of the appellate proceedings.

[UK Contempt of Court Act 1981 Sched. 1]

471. Supplementary provisions

(1) No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which the person is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security, or for the prevention of disorder or crime.

(2) If a court that has power to do so allows a name or other matter to be withheld from the public in proceedings before the court, the court may give any directions prohibiting the publication of that name or matter in connection with the proceedings that appear to the court to be necessary for the purpose for which it was so withheld.

(3) Nothing in this Part —

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

[UK Contempt of Court Act 1981 ss. 10 and 11]

472. Interpretation of Part

(1) For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial, if —

(a) the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question; and

(b) the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him or her.

(2) The expression "**judicial proceedings**" includes proceedings before the European Court or any court attached to it or any other court, tribunal or person having by law power to hear, receive, and examine evidence on oath.

[UK Perjury Act 1911 s.15]

Perjury

473. Perjury in judicial proceedings

(1) A person lawfully sworn as a witness or as an interpreter in any judicial proceedings who wilfully makes a statement material in the proceeding, which the person knows to be false or does not believe to be true, commits the offence of perjury.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) If a statement made for the purposes of any judicial proceedings is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it is, for the purposes of this section, to be treated as having been made in judicial proceedings.

(3) A statement made by a person lawfully sworn in the Falkland Islands for the purposes of any judicial proceedings in a place outside the Falkland Islands is, for the purposes of this section, to be treated as a statement made in judicial proceedings in the Falkland Islands.

(4) If, for the purposes of judicial proceedings in the Falkland Islands, a person is lawfully sworn under the authority of any enactment —

(a) in any part of the Monarch's dominions;

(b) before a British officer in a foreign country; or

(c) within the jurisdiction of the Admiralty of England,

a statement made by the person (unless the enactment under which it was made otherwise specifically provides) is to be treated for the purposes of this section as having been made in the judicial proceedings in the Falkland Islands for the purposes of which it was made.

(5) The question whether a statement in respect of which perjury is alleged was material is a question of law to be determined by the court of trial.

[UK Perjury Act 1911 s.1]

474. Perjury in the European Court, etc.

(1) A person who, in sworn evidence before the European Court or any court attached to it, makes any statement which the person knows to be false or does not believe to be true, commits an offence and may be proceeded against and punished as for an offence under section 473(1).

(2) For the purposes of this section, it is immaterial whether the defendant does or does not have Falkland Islands status.

[UK European Communities Act 1972 s.11(1) adapted]

475. Subornation of perjury

Every person who counsels, procures or suborns another person to commit an offence under this Part commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[UK Perjury Act 1911 s.7 adapted]

False statements

476. Penalty for giving false unsworn evidence

(1) This section applies when a person gives unsworn evidence in criminal proceedings pursuant to section 352 of the Criminal Procedure and Evidence Ordinance 2014 (Reception of unsworn evidence).

(2) A person who wilfully gives false evidence in such circumstances that, had the evidence been given on oath, the person would have been guilty of perjury, commits an offence.
Penalty: (i) in the case of an adult - imprisonment for 6 months or a fine at level 5 on the standard scale, or both;
(ii) in the case of a youth – a fine at level 3 on the standard scale.

[UK Youth Justice and Criminal Evidence Act 1999 s.57]

477. False written statements tendered in evidence

A person who in a written statement tendered in evidence in criminal proceedings by virtue of section 411 of the Criminal Procedure and Evidence Ordinance 2014 (Proof by written statement) wilfully makes a statement material in those proceedings which the person knows to be false or does not believe to be true, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK CJ Act 1967 s.89]

478. False unsworn statements under the Evidence (Proceedings in Other Jurisdictions) Act 1975

A person who, in giving any evidence (either orally or in writing) otherwise than on oath, when required to do so by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, makes a statement —

(a) which the person knows to be false in a material particular; or

(b) which is false in a material particular and which the person does not believe to be true,

commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

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

[UK Perjury Act 1911 s.1A; Evidence (Proceedings in other Jurisdictions) Act 1975]

479. False statements on oath made otherwise than in judicial proceedings

A person who —

(a) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in judicial proceedings) wilfully makes a statement which is material for that purpose and which the person knows to be false or does not believe to be true; or

(b) wilfully uses any false affidavit for the purposes of the Bills of Sale Act 1878 as applied to the Falkland Islands,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

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

[UK Perjury Act 1911 s.2]

480. False statements, etc. with reference to marriage

(1) A person who, for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate, required under any enactment for the time being in force relating to marriage, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) A person who knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(3) A person who forbids any marriage or the issue of any certificate or licence for marriage by falsely representing himself or herself to be a person —

(a) whose consent to the marriage is required by law; or

(b) who is authorised to forbid the issue of such a certificate,

knowing such representation to be false, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK Perjury Act 1911 s.3; CJ Act 1925 s.28]

481. False statements, etc. as to births or deaths

A person who knowingly and wilfully —

(a) makes a false answer to any question put by or on behalf of the Registrar General relating to the particulars required to be registered concerning any birth or death;

(b) gives to the Registrar General any false information concerning any birth or death or the cause of any death;

(c) makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths;

(d) knowing any such certificate or declaration to be false, uses it as true or gives or sends it as true to any person;

(e) makes, gives or uses, any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin;

(f) falsely pretends that any child born alive was still-born; or

(g) makes any false statement with intent to have it inserted in any register of births or deaths,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

[UK Perjury Act 1911 s.4; CJ Act 1925 s.28]

482. False statutory declarations and other false statements

A person who knowingly and wilfully makes (otherwise than on oath) a statement that is false in a material particular commits an offence if the statement is made —

(a) in a statutory declaration;

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which the person is authorised or required to make, attest or verify, by any enactment then in force in the Falkland Islands;

(c) in any written statement which the person is required to make or makes for the purposes of or in connection with any civil proceedings; or

(d) in any oral declaration or oral answer which the person is required to make by, under, or in pursuance of any enactment,

commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK Perjury Act 1911 s.5]

483. False declarations, etc. to obtain registration, etc. for carrying on a vocation

A person who —

(a) procures or attempts to procure himself or herself to be registered on any register or roll kept under or pursuant to any enactment in force in the Falkland Islands of persons qualified by law to practise any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which the person knows to be false or fraudulent, commits an offence.
Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

[UK Perjury Act 1911 s.6]

484. False statement to procure passport

A person who, for the purpose of procuring a passport for himself or herself for any other person, makes a statement which is to his or her knowledge untrue, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

[UK CJ Act 1925 s.36]

485. Offences under the British Nationality Act 1981

(1) A person who, for the purpose of procuring anything to be done or not to be done under the British Nationality Act 1981 as applied to the Falkland Islands, makes a statement which the person knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence.
Penalty: Imprisonment for 3 months or a fine a level 4 on the standard scale, or both.

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

(2) A person who fails to comply with any requirement imposed on the person under the British Nationality Act 1981 with respect to the delivering up of certificates of naturalisation commits an offence.
Penalty: A fine at level 3 on the standard scale.

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

[UK British Nationality Act 1981 s.46 (part)]

486. Corroboration required

(1) A person is not liable to be convicted of any offence under this Part, or for any offence declared by any other enactment to be perjury or subornation of perjury, or to be punishable as perjury or subornation, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(2) The requirement for corroboration in relation to certain offences contained in subsection (1) applies also to an attempt to commit any of those offences.

[UK Perjury Act 1911 s.13 adapted]

487. Proof of former trial

On a prosecution —

(a) for perjury alleged to have been committed on the trial of an indictment or criminal information; or

(b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial may be proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information or charge and trial purporting to be signed by the Registrar or clerk of the court, or other person having the custody of the records of the court where the indictment or information was tried, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

[UK Perjury Act 1911 s.14]

488. Form of indictment or charge

(1) In an information or charge for an offence under this Part, it is sufficient to state the substance of the offence charged, and before which court or person (if any) the offence was committed, without stating the proceedings or any part of the proceedings in the course of which the offence was committed, and without stating the authority of any court or person before whom the offence was committed.

(2) In an information or charge for aiding, abetting, counselling, suborning, or procuring any other person to commit an offence under this Part, or for conspiring with any other person to commit any such offence, it is sufficient —

(a) if that offence has been committed - to allege that offence, and then to allege that the defendant procured the commission of that offence;

(b) if that offence has not been committed - to state the substance of the offence charged against the defendant without stating any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation that is an offence under this Part.

[UK Perjury Act 1911 s.12]

489. Saving for corrupt practice offence

If the making of a false statement by a person is not only an offence under this Part, but also by virtue of some other Part is a corrupt practice, the liability of the person under this Part is in addition to and not in substitution for the person's liability under that other Part.

[UK Perjury Act 1911 s.16(1)]

PART 20 – BRIBERY AND PUBLIC OFFICE OFFENCES

General bribery offences

490. Offences of bribing another person

(1) A person ('**P**') commits an offence in either of the following cases.

(2) Case 1 is where —

(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P intends the advantage —

(i) to induce a person to perform improperly a relevant function or activity; or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where —

(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In Case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In Cases 1 and 2 it is irrelevant whether the advantage is offered, promised or given by P directly or through a third party.

(6) The maximum penalty for an offence under this section is —

(a) if P is an individual - imprisonment for 10 years or a fine, or both;

(b) in any other case - a fine.

[UK Bribery Act 2010 ss.1 to 9 and 11]

491. Offences relating to being bribed

(1) A person ('**R**') commits an offence in any of the following cases.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.

(3) Case 4 is where —

(a) R requests, agrees to receive or accepts a financial or other advantage; and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—

(a) by R; or

(b) by another person at R's request ,or with R's assent or acquiescence.

(6) In Cases 3 to 6 it is irrelevant whether —

(a) R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party; or

(b) the advantage is (or is to be) for the benefit of R or another person.

(7) In Cases 4 to 6 it is irrelevant whether R knows or believes that the performance of the function or activity is improper.

(8) In Case 6, where a person other than R is performing the function or activity, it is also irrelevant whether that person knows or believes that the performance of the function or activity is improper.

(9) The maximum penalty for an offence under this section is —

(a) if P is an individual - imprisonment for 10 years or a fine, or both;

(b) in any other case - a fine.

[UK Bribery Act 2010 ss.1 to 9 and 11]

492. Function or activity to which bribe relates

(1) For the purposes of this Part, a function or activity is a relevant function or activity if —

(a) it falls within subsection (2); and

(b) meets one of more of conditions A to C.

(2) The following functions and activities fall within this subsection —

(a) any function of a public nature;

(b) any activity connected with a business;

(c) any activity performed by or on behalf of a body of persons (whether incorporated or not).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it —

(a) has no connection with the Falkland Islands; and

(b) is performed in a place outside the Falkland Islands.

(7) In this section, "**business**" includes trade or profession.

[UK Bribery Act 2010 ss.1 to 9 and 11]

493. Improper performance to which bribe relates

(1) For the purposes of this Part a relevant function or activity —

(a) is performed improperly if it is performed in breach of a relevant expectation; and

(b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1), "**relevant expectation**" —

(a) in relation a function or activity which meets condition A or B - means the expectation mentioned in the condition concerned; and

(b) in relation a function or activity which meets condition C - means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for purposes of this Part as being done (or omitted) by that person in the performance of that function or activity.

[UK Bribery Act 2010 ss.1 to 9 and 11]

494. Expectation test

(1) For the purposes of sections 492 and 493, the test of what is expected is a test of what a reasonable person in the Falkland Islands would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of the Falkland Islands, any local custom or practice is to be disregarded unless it is permitted or required by the written law of the place concerned.

(3) In subsection (2), "**written law**" means law contained in —

(a) any written constitution, or provision made by or under legislation, applicable to the place concerned; or

(b) any judicial decision which is so applicable and is evidenced in published written sources.

[UK Bribery Act 2010 ss.1 to 9 and 11]

Bribery of foreign public officials

495. Bribery of foreign public officials

(1) A person ('**P**') who bribes a foreign public official ('**F**') with intent to influence F in F's capacity as a foreign public official commits an offence if P's intention is to obtain or retain —

(a) business; or

(b) an advantage in the conduct of business.

Penalty: (i) If P is an individual - imprisonment for 10 years or a fine, or both;
(ii) in any other case - a fine.

(2) P bribes F if, and only if —

(a) directly or through a third party P offers, promises or gives any financial advantage —

(i) to F; or

(ii) to another person at F's request or with F's assent or acquiescence; and

(b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the promise, offer or gift.

(3) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes —

(a) any omission to exercise those functions; and

(b) any use of F's position as such an official, even if not within F's authority.

(4) The term "**foreign public official**" means an individual who —

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory);

(b) exercises a public function —

(i) for or on behalf of a country or territory outside the Falkland Islands (or any subdivision of such a country or territory); or

(ii) for any public agency or public enterprise of that country or territory (or subdivision); or

(c) is an official or agent of a public international organisation.

(5) In this section, "**public international organisation**" means an organisation whose members are any of the following —

(a) countries or territories;

(b) governments of countries or territories;

(c) other public international organisations;

(d) a mixture of any of the above.

(6) For the purpose of section (3)(b), the written law applicable to F is —

(a) if the performance of the functions of F which P intends to influence would be subject to the law of the Falkland Islands - that law;

(b) if paragraph (a) does not apply and F is an official or agent of a public international organisation - the applicable written rules of that organisation;

(c) if paragraphs (a) and (b) do not apply - the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in —

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(7) For the purposes of this section, a trade or profession is a business.

[UK Bribery Act 2010 ss.1 to 9 and 11]

Failure of commercial organisations to prevent bribery

496. Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation ('**C**') commits an offence under this section if a person ('**A**') associated with C bribes another person intending to —

(a) obtain or retain business for C; or

(b) obtain or retain an advantage in the conduct of business for C.

Penalty: A fine.

(2) It is a defence for C to show that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribed another person if, and only if, A —

(a) is, or would be, guilty of an offence under section 490 or 491 (whether or not A has been prosecuted for such an offence); or

(b) would be guilty of such an offence if section 501(1)(c) and (3) were omitted.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(4) Section 497 applies as regards the meaning of a person associated with C and section 498 applies as regards a duty on the Governor to publish guidance.

(5) In this section —

"**partnership**" means —

(a) a partnership within the meaning of the Companies and Private Partnership Ordinance 1922; and

(b) a limited partnership registered under that Ordinance,

or a firm or entity of a similar character formed under the law of a place outside the Falkland Islands;

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

"**relevant commercial organisation**" means —

(a) a body incorporated under the law of the Falkland Islands which carries on a business there or elsewhere;

(b) any other corporate body (wherever incorporated) which carries on business, or part of a business, in the Falkland Islands;

(c) a partnership formed under the law of the Falkland Islands which carries on a business (whether there or elsewhere); or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in the Falkland Islands,

and for purposes of this section, a trade or profession is a business.

[UK Bribery Act 2010 ss.1 to 9 and 11]

497. Meaning of "associated person"

(1) For the purposes of section 496 a person ('**A**') is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C is irrelevant, so that A may (for example) be C's employee, agent or subsidiary.

(3) Subject to subsection (4), the question of whether A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(4) In determining a question as mentioned in subsection (3), if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

[UK Bribery Act 2010 ss.1 to 9 and 11]

498. Guidance about commercial organisations preventing bribery

(1) The Governor, after consulting the Criminal Justice Council, may by order publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 496(1).

(2) The Governor, after consulting as aforesaid, may from time to time by order publish revisions to guidance published under this section, or to revised guidance.

(3) Expressions used in this section have the same meaning as in section 496.

[UK Bribery Act 2010 ss.1 to 9 and 11]

499. Misconduct in public office

A public officer who wilfully and without reasonable excuse or justification —

(a) neglects to perform his or her duty; or

(b) misconducts himself or herself to such a degree as to amount to an abuse of the public's trust in the office holder,

commits an offence.
Penalty: Imprisonment for 14 years or a fine, or both.

[Common law]

499A. Corrupt or other improper exercise of police powers and privileges

(1) A police officer commits an offence if they —

(a) exercise the powers and privileges of a police officer improperly; and

(b) know or ought to know that the exercise is improper.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) For the purposes of subsection (1) a police officer includes a reserve police officer or any other person exercising the powers and privileges of a police officer.

(3) For the purposes of this section, a police officer exercises the powers and privileges of a police officer improperly if —

(a) the police officer exercises a power or privilege of a police officer for the purpose of achieving —

(i) a benefit for themselves; or

(ii) a benefit or a detriment for another person; and

(b) a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.

(4) For the purposes of this section, a police officer is to be treated as exercising the powers and privileges of a police officer improperly in the cases described in subsections (5) and (6).

(5) The first case is where —

(a) the police officer fails to exercise a power or privilege of a police officer;

(b) the purpose of the failure is to achieve a benefit or detriment described in subsection (3)(a); and

(c) a reasonable person would not expect a police officer to fail to exercise the power or privilege for the purpose of achieving that benefit or detriment.

(6) The second case is where —

(a) the police officer threatens to exercise, or not to exercise, a power or privilege of a police officer;

(b) the threat is made for the purpose of achieving a benefit or detriment described in subsection (3)(a); and

(c) a reasonable person would not expect a police officer to threaten to exercise, or not to exercise, the power or privilege for the purpose of achieving that benefit or detriment.

(7) An offence is committed under this section if the act or omission in question takes place in the Falkland Islands or in Falkland Islands waters.

(8) In this section —

"**benefit**" and "**detriment**" mean any benefit or detriment, whether or not in money or other property and whether temporary or permanent; and

"**Falkland Islands waters**" means the sea and other waters within the seaward limits of the Falkland Islands territorial sea.

(9) References in this section to exercising, or not exercising, the powers and privileges of a police officer include performing, or not performing, the duties of a police officer.

(10) Nothing in this section affects what constitutes the offence of misconduct in public office contrary to section 499.

[UK Criminal Justice and Courts Act 2015 s.26]

[S.11 Ord. 8/2022/w.e.f. 16/05/2022]

Miscellaneous

500. Consent to prosecution

No proceedings under this Part may be commenced except by, or with the consent of, the Attorney General.

[UK Bribery Act 2010 ss.10]

501. Territorial application of this Part

(1) If —

(a) no act or omission which forms part of an offence under section 490, 491 or 495 takes place in the Falkland Islands;

(b) a person's acts or omissions done or made outside the Falkland Islands would form part of such an offence if done or made in the Falkland Islands; and

(c) that person has a close connection with the Falkland Islands,

proceedings for the offence may be taken in the Falkland Islands.

(2) An offence is committed under section 496 irrespective of whether the acts or omissions which form part of the offence take place in the Falkland Islands or elsewhere.

(3) For the purposes of subsection (1), a person has a close connection with the Falkland Islands if the person was at the time when the acts or omissions were done or made, the person was —

(a) an individual who was ordinarily resident in the Falkland Islands; or

(b) a corporate body incorporated by or under the law of or carrying on business in the Falkland Islands.

[UK Bribery Act 2010 ss.12 to 17(1)]

502. National security as a defence

(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for the proper exercise of the functions of —

(a) the functions of the Crown in relation to national security; or

(b) the armed forces when engaged on active service.

(2) For the purposes of subsection (1), a "**relevant bribery offence**" means —

(a) an offence under section 490 which would not also be an offence under section 495;

(b) an offence under section 491;

(c) an offence of attempting or conspiring to commit, the commission of an offence falling within paragraph (a) or (b);

(d) an offence committed by encouraging, or aiding and abetting, the commission of an offence falling within paragraph (a) or (b).

(3) In relation to the intelligence services operating in the Falkland Islands, the Governor must ensure that the service has in place arrangements designed to ensure that any conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).

(4) In relation to the armed services operating in the Falkland Islands, the Governor must ensure that the forces have in place arrangements designed to ensure that any conduct of —

(a) a member of the armed forces who is engaged on active service; or

(b) a civilian subject to service discipline when working in support of any person falling within paragraph (a),

which would otherwise be a relevant bribery offence, is necessary for a purpose falling within subsection (1)(b).

(5) In this section —

"**active service**" means service in —

(a) an action or operation against an enemy;

(b) an operation outside the British Islands for the protection of life or property; or

(c) the military occupation of a foreign country or territory;

"**civilian subject to service discipline**" and "**enemy**" have the same meaning as in the Armed Forces Act 2006.

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

[UK Bribery Act 2010 ss.12 to 17(1) and S.R. & O. 6/2017/w.e.f. 13/4/2017]

503. Bribery offences by corporate bodies

(1) This section applies if an offence under any of sections 490, 491 or 495 is committed by a corporate body.

(2) If the offence is proved to have been committed with the consent or connivance of —

(a) a senior officer of the corporate body; or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the corporate body) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Subsection (2) does not apply, in the case of an offence committed under section 490, 491 or 495 by virtue of section 501(1), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with the Falkland Islands (within the meaning given by section 501(3).

(4) In this section —

"**director**" means, in relation to a corporate body the affairs of which are managed by its members, a member of the body;

"**senior officer**" means, in relation to a corporate body, a director, manager, secretary or other similar officer of the body.

[UK Bribery Act 2010 ss.12 to 17(1)]

504. Bribery offences by partnerships

(1) Proceedings for an offence under section 496 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purpose of such proceedings —

(a) statutory provisions relating to the service of documents have effect as if the partnership were a corporate body; and

(b) the provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to proceedings against a corporate body apply as they apply in relation to such a body.

[UK Bribery Act 2010 ss.12 to 17(1)]

505. Application to Crown

This Part applies to individuals in the public service of the Crown as it applies to other individuals.

[UK Bribery Act 2010 ss.12 to 17(1)]

506. Abolition of common law offences

The common law offences of bribery and embracery are abolished.

[UK Bribery Act 2010 ss.12 to 17(1)]

PART 21 - PUBLIC ORDER

507. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**caravan**" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"**damage**", in relation to land, includes the deposit of any substance capable of polluting the land;

"**distribute**" means distribute to the public or a section of the public;

"**exempt person**", in relation to land (or any gathering on land), means the occupier, any member of the occupier's family, any employee or agent of the occupier and any person whose dwelling is situated on the land;

"**land**" means land in the open air and includes a place partly open to the air;

"**meeting**" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

"**music**" includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats;

"**night**" means the interval between 9.0 p.m. and 6.0 a.m. on the next succeeding day;

"**occupier**" in relation to land means the person entitled to possession of the land by virtue of an estate or interest that person holds, and in relation to assemblies on land includes the person reasonably believed by the person applying for or making the order to be the occupier;

"**owner**", in relation to land, means the person in whom the freehold estate is vested or who holds the land under a lease for a term of years or from year to year;

"**premises**" means any place and includes any vehicle, vessel, aircraft or hovercraft;

"**private land**" means land other than Crown land in terms of the Land Ordinance 1949;

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

"**public**" includes a section of the public;

"**public meeting**" includes any meeting in a public place and any meeting which the public or any section of it are permitted to attend, whether on payment or otherwise;

"**publication**" includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"**sound equipment**" means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment.

"**structure**" includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

"**trespass**", in relation to land, means trespass as against the occupier of the land;

"**vehicle**" includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan;

"**violence"** means any violent conduct, so that —

(a) except in the context of affray - it includes violent conduct towards property as well as violent conduct towards persons; and

(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct.

(2) For the purposes of this Part a person may be regarded as residing on any land even if the person has a home elsewhere.

[UK Public Order Act 1986 as am by Criminal Justice & Public Order Act 1994]

Riot, etc.

508. Riot

(1) If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence for the common purpose commits the offence of riot.
Penalty: Imprisonment for 10 years or a fine, or both.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

[UK Public Order Act 1986 s.1 adapted]

509. Violent disorder

(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence commits the offence of violent disorder.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

[UK Public Order Act 1986 s.2 adapted]

510. Affray

(1) If —

(a) a person ('**A**') uses or threatens unlawful violence towards another person; and

(b) A's conduct is such as would cause any person of reasonable firmness present at the scene to fear for his or her personal safety,

A commits the offence of affray.
Penalty: Imprisonment for 3 years or a fine, or both.

(2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

[UK Public Order Act 1986 s.3 adapted]

511. Fear or provocation of violence

(1) A person ('**A**') commits an offence if A —

(a) uses towards another person ('**B**') threatening, abusive or insulting words or behaviour; or

(b) distributes or displays to another person ('**B**') any writing, sign or other visible representation which is threatening, abusive or insulting,

either –

(c) with intent —

(i) to cause ('B') to believe that immediate unlawful violence will be used against ('B') or another by any person; or

(ii) to provoke the immediate use of unlawful violence by ('B') or another; or

(d) whereby ('B') is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

[UK Public Order Act 1986 s.4 adapted]

512. Intentionally abusive conduct

(1) A person ('**A**') who, with intent to cause another person ('**B**') harassment, alarm or distress—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

and thereby causes B or any other person harassment, alarm or distress, commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for A to prove that —

(a) A was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(b) A's conduct was reasonable.

[UK Public Order Act 1986 s.4A, inserted by Criminal Justice & Public Order Act 1994]

513. Disorderly conduct

(1) A person who —

(a) uses threatening or abusive words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening or abusive,

within the hearing or sight of a person likely to be caused harassment, alarm or distress by such words, behaviour or representation, commits an offence.
Penalty: A fine at level 3 on the standard scale.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the defendant to prove that —

(a) the defendant had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

(b) the defendant was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(c) the defendant's conduct was reasonable.

(4) A police officer may arrest without warrant any person who —

(a) engages in offensive conduct which the police officer warns the person to stop; and

(b) engages in further offensive conduct immediately or shortly after the warning.

[UK Public Order Act 1986 s.5 am. by Crime & Courts Act 2013]

514. Riot, etc.: Mental element

(1) A person commits riot only if he or she intends to use violence or is aware that his or her conduct may be violent.

(2) A person commits violent disorder or affray only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(3) A person commits an offence under section 512 only if he or she intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person commits an offence under section 513 only if the person —

(a) intends his or her words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive;

(b) is aware that they might be threatening or abusive; or

(c) (if the offence is constituted by behaviour) intends his or her behaviour to be, or is aware that it might be, disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which the person would be aware if not intoxicated, unless he or she shows either that the intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) "**intoxication**" means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

[UK Public Order Act 1986 s.6 am. by Crimes & Courts Act 2013]

515. Riot, etc.: Procedure

(1) No prosecution for an offence of riot or encouraging or assisting the offence of riot may be commenced except by, or with the consent of, the Attorney General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 508 to 513 creates one offence.

(3) If on the trial of a person charged with violent disorder or affray the court finds the person not guilty of the offence charged, it may find the person guilty of an offence under section 511.

[UK Public Order Act 1986 s.7]

516. Common law offences of riot etc. abolished

(1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) In any enactment coming into force or instrument taking effect after the coming into force of this Part, a reference to "riot", "rout", "unlawful assembly" or "affray", or their cognate expressions, is to be construed as a reference to the offences created by sections 508 to 510.

(3) Subject to subsection (2), and unless a different intention appears, nothing in this Part affects the meaning of "riot" or of any cognate expression in any enactment in force, or instrument taking effect, before the coming into force of this Part.

[UK Public Order Act 1986 ss.9 & 10]

Disguises

517. Authorisation relating to disguises

(1) If a police officer of the rank of inspector or above reasonably believes —

(a) that activities may take place in any locality in the Falkland Islands that are likely (if they take place) to involve the commission of offences; and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

the officer may authorise the power conferred by section 518 to be exercised in that locality for a specified period not exceeding 24 hours.

(2) If it appears to an officer of the rank of inspector or above that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the locality, the officer may extend the authorisation for a further period not exceeding 24 hours.

(3) An authorisation or extension under this section must be in writing signed by the police officer who gives it, and must specify —

(a) the locality in which and the period during which the powers conferred by section 518 are exercisable;

(b) the grounds for the authorisation or extension.

(4) The police officer who gives an authorisation under subsection (1) or an extension under subsection (2) must as soon as practicable inform the Chief Police Officer.

[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24]

518. Power to require removal of disguise

(1) An authorisation under section 517 confers on any police officer in uniform power in the locality and during the period specified in the authorisation —

(a) to require any person to remove any item which the officer reasonably believes the person is wearing wholly or mainly for the purpose of concealing his or her identity;

(b) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(2) A person who fails to remove an item he or she is wearing when required to do so by a police officer in the exercise of the powers under this section commits an offence.
Penalty: Imprisonment for one month or a fine at level 2 on the standard scale, or both.

(3) Anything seized by a police officer under subsection (1)(b) may be retained in accordance with regulations made by the Governor under the Criminal Procedure and Evidence Ordinance 2014.

[UK Criminal Justice & Public Order Act 1994 s.60AA & 60A as am by 1997 c.21 and 2001 c.24]

Causing public alarm or anxiety

519. Interference with goods with intention of causing public alarm or anxiety, etc.

(1) A person who, with the intention of causing —

(a) public alarm or anxiety;

(b) injury to members of the public consuming or using the goods;

(c) economic loss to any person by reason of the goods being shunned by members of the public; or

(d) economic loss to any person by reason of steps taken to avoid any such alarm or anxiety, injury or loss,

does any of the following —

(i) contaminates or interferes with goods;

(ii) makes it appear that goods have been contaminated or interfered with;

(iii) places goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied,

commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(2) A person who, with any such intention as is mentioned in paragraph (a), (c) or (d) of subsection (1), threatens that that person or another will do, or claims that that person or another has done, any of the acts mentioned in sub-paragraph (i), (ii) or (iii) of that subsection, commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(3) A person who is in possession of —

(a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with; or

(b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with,

with a view to the commission of an offence under subsection (1), commits an offence.
Penalty: Imprisonment for 10 years or a fine, or both.

(4) In this section "**goods**" includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

(5) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

[UK Public Order Act 1986 s.38]

520. Bomb hoaxes

(1) A person who —

(a) places any article or substance in any place whatever; or

(b) dispatches any article or substance by post or any other means whatever of sending things from one place to another,

with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property, commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(2) A person who communicates any information which he or she knows or believes to be false to another person with the intention of inducing in that or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location whatever commits an offence.
Penalty: Imprisonment for 5 years or a fine, or both.

(3) For a person to commit an offence against subsection (1) or (2) it is not necessary for the person to have any other particular person in mind as the person in whom he or she intends to induce the belief mentioned in that subsection.

[UK Criminal Law Act 1977 s.51]

521. Quasi-military organisations

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

(a) organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organized and either trained or equipped for that purpose,

any person who takes part in the control or management of the association, or in organising or training any members or adherents of it as described above, commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) In any proceedings against a person under subsection (1) it is a defence for the defendant to show that he or she did not consent to or connive at the organisation, training, or equipment of members or adherents of the association in contravention of subsection (1).

(3) No proceedings for an offence against this section may be commenced except by, or with the consent of, the Attorney General.

(4) If upon application by the Attorney General it appears to the court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of subsection (1), the court may —

(a) make an order to prevent any disposition without the leave of the court of property held by or for the association;

(b) direct an inquiry and report to be made as to any such property and as to the affairs of the association;

(c) make such further orders as appear to the court to be just and equitable for the application of such property in or towards —

(i) the discharge of the liabilities of the association lawfully incurred before the date of the application, or since that date with the approval of the court;

(ii) the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of the contravention;

(iii) any costs incurred in connection with any inquiry and report directed under paragraph (b) or in winding-up or dissolving the association,

(d) order that any property which is not directed by the court to be so applied is forfeited to the Crown.

(5) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organizing, training or equipping members or adherents of it is admissible as evidence of the purposes for which, or the manner in which, the members or adherents (whether those persons or others) were organized, trained or equipped.

(6) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission of it is to be found at any premises or place specified in the information, the justice may, on application by a police officer of the rank of inspector or above, grant a search warrant authorizing the officer, or another officer named in the warrant, together with any other persons named in the warrant and any other police officers to —

(a) enter the premises or place at any time within one month from the date of the warrant, if necessary by force;

(b) search the premises or place and every person found therein; and

(c) seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of the offence.

(7) Nothing in this section prohibits —

(a) the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises;

(b) making of arrangements for that purpose;

(c) instructing persons to be employed in their lawful duties as stewards; or

(d) providing them with suitable badges or other appropriate distinguishing signs.

[UK Public Order Act 1936 s.2]

522. Prohibition of uniforms in connection with political objects

(1) Subject to subsection (2), a person who in any public place or at any public meeting wears a uniform signifying his or her association with —

(a) any political organisation; or

(b) the promotion of any political object,

commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) If the Chief Police Officer is satisfied that the wearing of the uniform on any ceremonial, anniversary or other special occasion is not likely to involve risk of public disorder, the Chief Police Officer may, with the written consent of the Governor, issue a permit for the wearing of such uniform on that occasion either absolutely or subject to conditions specified in the permit.

[UK Public Order Act 1936 s.1]

Breaches of the peace

523. Behaviour likely to cause a breach of the peace

A person who in any public place behaves in such a manner that a breach of the peace is likely to be caused by the behaviour commits an offence.

Penalty: (i) Binding over with a recognisance to keep the peace; or
(ii) if the person refuses to be so bound over - imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[UK Public Order Act s.40(4); Magistrates Courts Act 1980 s.115(3)]

524. Disorderly conduct in a place of lawful custody

A person who in any place of lawful custody behaves in a riotous, indecent, disorderly or insulting manner commits an offence.

Penalty: Imprisonment for 1 month or a fine at level 1 on the standard scale, or both.

[UK Town Police Clauses Act 1847 s.29]

525. Disorderly or indecent behaviour while intoxicated

(1) It is an offence for a person, while intoxicated —

(a) to commit in any public place or police station any disorderly or indecent behaviour; or

(b) to be in possession of a firearm.

Penalty: (i) On first conviction - imprisonment for 2 months or a fine at level 1 on the standard scale, or both;
(ii) on a second or subsequent conviction - imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(2) In this section "**intoxication**" means physical or mental impairment, whether caused by the consumption of alcohol, drugs or other means, or by a combination of means, and "**intoxicated**" is to be construed accordingly.

[UK CJ Act 1967 s.91]

PART 22 - HATE CRIMES

[UK Hate Crime and Public Order (Scotland) Act 2021, Public Order Act 1986, Racial and Religious Hatred Act 2006, Sentencing Act 2020, Hate Crime Law: Law Commission Final Report 2021 No. 402]

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

526. Interpretation for Part

(1) In this Part —

"**aggravated by hostility**" has the meaning set out in section 536;

"**behaviour**" means behaviour of any kind, including doing something, saying something, or communicating information or material of any kind;

"**communicate**" in relation to information or material, means to disseminate it or make it available in any way, including by —

(a) displaying, publishing or distributing it; or

(b) giving, sending, showing or playing it;

"**disability**" includes —

(a) a physical or mental impairment of any kind; and

(b) a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature;

"**material**" means anything that is capable of being looked at, read, watched, or listened to (either directly in its current form, or after conversion from another form);

"**protected characteristic**" means each of the following —

(a) race;

(b) disability;

(c) religion;

(d) sexual orientation;

(e) transgender identity; and

(f) variations in sex characteristics;

"**race**" includes colour, nationality (including citizenship), or ethnic or national origins;

"**religion**" includes, in the case of a social or cultural group, perceived religious affiliation; also see subsection (2);

"**sexual orientation**" means sexual orientation towards —

(a) persons of the same sex;

(b) persons of a different sex; or

(c) both persons of the same sex and persons of a different sex;

"**transgender identity**", see subsection (3);

"**variations in sex characteristics**", see subsection (4).

(2) A group is defined by reference to religion if it is defined by reference to —

(a) religious belief or lack of religious belief;

(b) membership of, or adherence to, a church or religious organisation;

(c) support for the culture or traditions of a church or religious organisation; or

(d) participation in activities associated with the culture or traditions of a church or religious organisation.

(3) A person is a member of a group defined by reference to transgender identity if the person is —

(a) a female-to-male transgender person;

(b) a male-to-female transgender person;

(c) a non-binary person;

(d) a person who cross-dresses, and references to transgender identity are to be construed accordingly.

(4) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither —

(a) those typically associated with males, nor

(b) those typically associated with females, and references to variations in sex characteristics are to be construed accordingly.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

Offences of stirring up hatred

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

527. Intent to stir up hatred

A person commits an offence if they engage in behaviour with intent to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.

Penalty: Imprisonment for 7 years or a fine, or both.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

528. Stirring up hatred

(1) A person commits an offence if —

(a) the person engages in behaviour that —

(i) is threatening or abusive; and

(ii) is likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic; and

(b) the person knew, or ought to have known, that the behaviour —

(i) was threatening or abusive; and

(ii) was likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) Whether —

(a) behaviour is of a kind referred to in subsection (1)(a); and

(b) a person knew or ought to know of the matters referred to in subsection (1)(b),

is to be determined having regard to all of the circumstances in which the behaviour occurs.

(3) If the behaviour is part of the public performance of a dramatic, literary, artistic or journalistic work, that includes having regard to the work as a whole.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

529. Possession of material

A person commits an offence if the person —

(a) has possession of material that —

(i) is threatening or abusive; and

(ii) is likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic; and

(b) has possession of the material with the intention that it be used (by them or another person) to stir up such hatred.

Penalty: Imprisonment for 7 years or a fine, or both.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

530. Protection of freedom of expression

(1) This section applies for the purpose of determining whether behaviour or material —

(a) is threatening or abusive; or

(b) is intended or likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.

(2) Particular regard must be had to the importance of the right to freedom of expression protected by section 13 of the Constitution.

(3) To avoid doubt, behaviour or material is not to be taken to be threatening or abusive, or intended or likely to stir up such hatred, solely because it is or includes —

(a) discussion or the expression of views or opinions relating to any of the following —

(i) race;

(ii) cultural beliefs or practices (whether a particular belief or practice, the beliefs or practices of a particular culture, or cultural beliefs or practices generally);

(iii) the position of not holding cultural beliefs (whether a particular belief, the beliefs of a particular culture, or cultural beliefs generally);

(iv) a country, its political system or its government;

(v) immigration, citizenship or asylum;

(vi) disability;

(vii) religion (whether a particular religion, all religions, or religion generally);

(viii) religious beliefs or practices (whether a particular religious belief or practice, the beliefs and practices of a particular religion, or religious beliefs or practices generally);

(ix) the position of not holding religious beliefs (whether a particular religious belief or religious beliefs generally);

(x) sexual orientation;

(xi) transgender identity;

(xii) variations in sex characteristics;

(xiii) sexual behaviour or practices;

(xiv) marriage which concerns the sex of the parties to marriage;

(xv) the view that sex is binary and immutable and the use of language which expresses this;

(b) proselytising or promoting religious, cultural, or sexual beliefs, practices, or behaviours; or

(c) urging persons to cease holding, practising or engaging in, or to change, their religious, cultural, or sexual beliefs, practices or behaviours.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

531. Defence if behaviour is in private conversation

(1) It is a defence to a charge of an offence under section 527 or 528 for the defendant to show that they engaged in the behaviour as part of a private conversation.

(2) It is a defence to a charge of an offence under section 529 for the defendant to show that their intention (referred to in section 529(b)) was that the material be used only as part of a private conversation.

(3) A conversation is "**private**" if —

(a) the defendant intends the conversation to only be seen or heard by the parties to the conversation; and

(b) it occurs in circumstances in which it is reasonable for the defendant to expect that it will only be seen or heard by those parties.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

532. Defence for fair journalistic reporting

It is a defence to a charge of an offence under section 528 for the defendant to show that —

(a) they engaged in their behaviour for the purpose of journalistic reporting about behaviour engaged in by another person; and

(b) the reporting —

(i) fairly and accurately conveys the other person's behaviour; and

(ii) if it reports on the other person's intention, fairly and accurately conveys that intention.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

533. Protection for performers

(1) This section applies if a person ("**P**") commits an offence under section 527, 528, or 529 in respect of behaviour that is part of the public performance of a dramatic, literary, artistic or journalistic work.

(2) A person (other than P) who is a performer in the work is not to be treated as a party to the offence committed by P, or as having committed a related inchoate offence, solely by reason of being such a performer.

(3) In this section, "**related inchoate offence**", means any of the following —

(a) encouraging the commission of an offence under section 527, 528 or 529;

(b) aiding, abetting or assisting the commission of an offence under section 527, 528 or 529;

(c) conspiracy to commit an offence under section 527, 528 or 529.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

534. Defence of reporting proceedings in Legislative Assembly or court

(1) It is a defence to a charge of an offence under sections 527 to 529 for the defendant to show that —

(a) they engaged in their behaviour for the purpose of reporting on proceedings of the Legislative Assembly; and

(b) the report is a fair and accurate report of those proceedings.

(2) It is a defence to a charge of an offence under sections 527 to 529 for the defendant to show that —

(a) they engaged in their behaviour for the purpose of reporting on public proceedings in a Falkland Islands court or tribunal exercising judicial authority;

(b) the report is a fair and accurate report of those proceedings; and

(c) the report is made —

(i) contemporaneously with the proceedings; or

(ii) if contemporaneous reporting is not lawful or reasonably practicable, as soon as reporting is lawful and reasonably practicable.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

535. Commencing proceedings

No proceedings for an offence under sections 527 to 529 may be commenced except by, or with the consent of, the Attorney General.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

Aggravation of offences by hostility

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

536. Aggravation of offences by hostility

(1) An offence is "**aggravated by hostility**" if the offence is motivated (wholly or partly) by hostility towards a group of persons based on the group being defined by reference to a protected characteristic.

(2) If there is a specific victim of the offence, the offence is also aggravated by hostility if —

(a) at the time of committing the offence, or immediately before or afterwards, the offender demonstrates hostility towards the victim; and

(b) the hostility is (wholly or partly) based on the victim's membership (or presumed membership) of a group of persons that is defined by reference to a protected characteristic.

(3) If an offence is aggravated by hostility, section 537 applies when the offender is convicted and sentenced.

(4) In this section —

"**membership**" of a group, includes association with members of the group;

"**presumed**" means presumed by the offender.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

537. Sentencing when offence aggravated by hostility

(1) This section applies if —

(a) a person is convicted of an offence;

(b) it was alleged in the indictment, or specified in the information, that the offence was aggravated by hostility; and

(c) it is proved that the offence was aggravated by hostility.

(2) The court must state on conviction —

(a) that the offence was aggravated by hostility; and

(b) which of the protected characteristics the hostility was based on.

(3) When sentencing the offender, the court must —

(a) take the aggravation into account; and

(b) increase the sentence as a result of the aggravation, unless there are exceptional circumstances justifying not doing so.

(4) The court must state —

(a) if the sentence is increased as a result of the aggravation, the extent of the increase and reasons for it; or

(b) if the sentence is not increased, the exceptional circumstances that justify that.

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

538. ..

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

539. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

540. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

541. ...

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

542. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

543. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

544. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

545. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

546. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

547. ...

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S.12 Ord. 8/2022/w.e.f. 16/05/2022; S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

548. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

549. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

550. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

551. ...

[S. 54/Ord. 10/2024/w.e.f. 14.08.2024]

552. Noise nuisance

(1) Subject to section 553, it is an offence for a person, through the use of an instrument or by any other means, to —

(a) make noise; or

(b) cause noise to be made,

if the noise causes or is likely to cause —

(i) annoyance or distress to a reasonable person having regard to the time of day; or

(ii) a breach of the peace.

Penalty: A fine at level 4 on the standard scale.

(2) In having regard to the time of day, the hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a reasonable person and subparagraph (i) of subsection (1) is to construed accordingly.

(3) If the noise is emitted or caused by an animal, the owner and the person who is responsible for, or who has charge or control of the animal, are both liable as though each was making the noise himself or herself.

(4) In proceedings under subsection (1) it is immaterial whether the person making the noise is in a public place, a dwelling or elsewhere.

(5) If a person makes noise between the hours of 6 a.m. and 11 p.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or take any steps required to reduce the level of noise or to stop the making of it.

(6) If a person makes noise between the hours of 11 p.m. and 6 a.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to stop or take any steps required to stop the making of the noise.

(7) A person who fails to comply with a reasonable request by a police officer under subsection (5) or (6) commits an offence.

Penalty: A fine at level 4 on the standard scale.

(8) A person does not commit an offence under this section if the making of the noise is authorised under another enactment or is in accordance with the terms and conditions of a permit or licence issued under an enactment or under section 553.

[Gibraltar Crimes Act 2012; SH Crimes Bill]

553. Noise nuisance: Exemptions

(1) The Governor may issue a permit for the purposes of authorising a public performance, a fair or other event, to named persons, to make noise that is in breach of section 552, subject to any conditions the Governor considers necessary.

(2) In considering the application for a permit and the imposition of any conditions, the Governor must have regard to the interests of the persons whom the Governor foresees may be affected by the grant of the permit.

(3) A person who acts within the terms of a permit issued under subsection (1) is not liable to proceedings for an offence under section 552.

(4) If a condition of a permit is breached, the person to whom the permit is issued, as well as the person who commits the breach, may be proceeded with for an offence under section 552.

[Gibraltar Crimes Ord. and SH Crimes Bill]

554. Causing danger in a public place

It is an offence for a person —

(a) not sufficiently to fence any area, pit or sewer left open, or to leave such open area, pit or sewer without a sufficient light after sunset to warn and prevent persons from falling into it; or

(b) in any manner or from any place to throw or discharge any stone or other missile or thing whatsoever to the damage or danger of any person;

Penalty: A fine at level 3 on the standard scale.

[Metropolitan Police Act 1839 s.60(8); UK Town Police Clauses Act 1847 s.28]

555. Obstruction and other nuisances in streets, etc.

(1) Subject to subsection (2), it is an offence for a person to —

(a) obstruct the free passage of persons along a highway or road without lawful authority or reasonable excuse;

(b) place, hang up or otherwise expose to sale any goods, wares, merchandise, matter or thing so that it projects into or over any footway or beyond the line of any house, shop or building at which it is exposed so as to obstruct or incommode the passage of any person over or along the footway;

(c) throw or lay in any public place any building or construction materials or similar articles, or any wares, unless they are placed or enclosed so as to prevent any mischief happening to passers-by;

(d) cause a nuisance by the deposit of excrement, urine, or faecal matter of any kind in any public place, or upon or against any house, building, doorstep, doorway, wall, fencing or paling;

(e) follow, jostle, or otherwise annoy any person passing in any public place; or

(f) ride or drive dangerously any horse or carriage, or drive dangerously any livestock.

Penalty: A fine at level 2 on the standard scale.

(2) If any rubbish, lead, iron, wood, goods, commodity or other article, matter or thing is placed or allowed to remain in any public place so that it causes obstruction, annoyance or danger to any person, a police officer may —

(a) remove the thing or cause it to be removed and taken to a place of safety;

(b) detain it at the risk of the owner until the expenses of removal and detention are paid; and

(c) if such expenses are not paid within 7 days - sell or dispose of the thing and apply the proceeds as directed by the Governor.

[UK Metropolitan Police Act 1839 ss.54(17) and 60(2); UK Town Police Clauses Act 1847 s.28]

556. Posting bills

(1) It is an offence for a person to affix any poster, bill or other paper against or upon any building, wall, fence, or pole without the express consent of the owner or occupier of the premises or property concerned.

Penalty: A fine at level 2 on the standard scale.

(2) It is an offence for a person to allow the person's goods, trade, business occupation, profession or other concern to be given publicity by or to benefit from the affixing of a poster, bill or other paper in breach of subsection (1), unless the person shows that the affixing of the bill by which the publicity was given occurred without the person's consent.

Penalty: A fine at level 2 on the standard scale.

[UK Metropolitan Police Act 1839 ss.54 and 60; UK Town Police Clauses Act 1847 s.28]

PART 23A - DANGEROUS DOGS

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556A. Dangerous dogs bred for fighting

(1) This section applies to any dog of any type designated for the purposes of this section by the Governor, being a type appearing to the Governor to be bred for fighting or to have the characteristics of a type bred for that purpose.

(2) No person may —

(a) breed, or breed from, a dog to which this section applies;

(b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;

(c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;

(d) allow such a dog of which the person is the owner or of which they are for the time being in charge to be in a public place without being muzzled and kept on a lead; or

(e) abandon such a dog of which the person is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

(3) After such day as the Governor may by order appoint for the purposes of this subsection no person may have a dog to which this section applies in their possession or custody except—

(a) in pursuance of the power of seizure conferred by the subsequent provisions of this Part; or

(b) in accordance with an order for its destruction made under those provisions;

but the Governor must by order make a scheme for the payment to the owners of such dogs who arrange for them to be destroyed before that day of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

(4) Subsection (2)(b) and (c) does not apply to anything done with a view to the dog in question being removed from the Falkland Islands before the day appointed under subsection (3).

(5) The Governor may by order provide that the prohibition in subsection (3) does not apply in cases under subsection (3), subject to such conditions as are specified in the order and the order may provide for a scheme of exemption with such arrangements (including provision for the payment of charges or fees) as the Governor thinks appropriate.

(6) A person who contravenes this section commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(7) A person who publishes an advertisement in contravention of subsection (2)(b) or (c)—

(a) is not on being convicted, liable to imprisonment if they show that they published the advertisement to the order of someone else and did not devise it; and

(b) must not be convicted if, in addition, the person shows that they did not know and had no reasonable cause to suspect that it related to a dog to which this section applies.

(8) An order under subsection (1) adding dogs of any type to those to which this section applies may provide that subsections (3) and (4) apply in relation to those dogs with the substitution for the day appointed under subsection (3) of a later day specified in the order.

[UK Dangerous Dogs Act 1991 s.1]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556B. Other specially dangerous dogs

(1) If it appears to the Governor that dogs of any type to which section 556A does not apply present a serious danger to the public the Governor may by order impose in relation to dogs of that type restrictions corresponding, with such modifications, if any, as the Governor thinks appropriate, to all or any of those in section 556A(2)(d) and (e).

(2) An order under this section may provide for exceptions from any restriction imposed by the order in such cases and subject to compliance with such conditions as are specified in the order.

(3) An order under this section may contain such supplementary or transitional provisions as the Governor thinks necessary or expedient and may create offences punishable on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(4) In determining whether to make an order under this section in relation to dogs of any type and, if so, what the provisions of the order should be, the Governor must consult with such persons or bodies as appear to have relevant knowledge or experience, including a body concerned with animal welfare, a body concerned with veterinary science and practice and a body concerned with breeds of dogs.

[UK Dangerous Dogs Act s.2]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556C. Keeping dogs under proper control

(1) If a dog is dangerously out of control in any place, public or private —

(a) the owner; and

(b) if different, the person for the time being in charge of the dog,

commit an offence.

Penalty: As provided in subsection (2) or (4).

(2) The maximum penalty on conviction for an offence under this section, if the dog while out of control injures any person, is the relevant maximum term of imprisonment specified in subsection (3) or a fine or both.

(3) For the purposes of subsection (2), the relevant maximum is —

(a) imprisonment for 14 years if a person dies as a result of being injured;

(b) imprisonment for 5 years in any other case where a person is injured; or

(c) imprisonment for 3 years in any case where an assistance dog is injured (whether or not it dies).

(4) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(5) A person ("**D**") is not guilty of an offence where —

(a) the dog is dangerously out of control while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), and

(b) at that time —

(i) the person in relation to whom the dog is dangerously out of control ("**V**") is in, or is entering, the building or part as a trespasser; or

(ii) D (if present at that time) believed V to be in, or entering, the building or part as a trespasser.

(6) In proceedings for an offence under subsection (1) against a person who is the owner of a dog but was not at the material time in charge of it, it is a defence for the accused to prove that the dog was at the material time in the charge of a person whom they reasonably believed to be a fit and proper person to be in charge of it.

[UK Dangerous Dogs Act 1991 s.3]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556D. Destruction and disqualification orders

(1) Where a person is convicted of an offence under section 556A or 556C(1) or of an offence under an order made under section 556B the court —

(a) may order the destruction of any dog in respect of which the offence was committed and subject to subsection (2), must do so in the case of an offence under section 556A or an aggravated offence under section 556C(1) to which section 556C(2) applies; and

(b) may order the offender to be disqualified, for such period as the court thinks fit, from having custody of a dog.

(2) Nothing in subsection (1)(a) requires the court to order the destruction of a dog if the court is satisfied that the dog does not constitute a danger to public safety.

(3) For the purposes of subsection (2), when deciding whether a dog constitutes a danger to public safety, the court —

(a) must consider —

(i) the temperament of the dog and its past behaviour; and

(ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog; and

(b) may consider any other relevant circumstances.

(4) Where a court makes an order under subsection (1)(a) for the destruction of a dog owned by a person other than the offender the owner may appeal to the Supreme Court against the order.

(5) A dog must not be destroyed pursuant to an order under subsection (1)(a) —

(a) until the end of the period for giving notice of appeal against the conviction or, where the order was not one which the court was required to make, against the order; and

(b) if notice of appeal is given within that period, until the appeal is determined or withdrawn,

unless the offender and, in a case to which subsection (4) applies, the owner of the dog gives notice to the court that made the order that there is to be no appeal.

(6) Where a court makes an order under subsection (1)(a) it may —

(a) appoint a person to undertake the destruction of the dog and require any person having custody of it to deliver it up for that purpose; and

(b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.

(7) Any sum ordered to be paid under subsection (6)(b) must be treated for the purposes of enforcement as if it were a fine imposed on conviction.

(8) Any person who is disqualified for having custody of a dog by virtue of an order under subsection (1)(b) may, at any time after the end of the period of one year beginning with the date of the order, apply for a direction terminating the disqualification.

(9) An application pursuant to subsection (8) may be heard by the Summary Court, Magistrate's Court or Supreme Court.

(10) On an application under subsection (8) the court may —

(a) having regard to the applicant's character, conduct since the disqualification was imposed and any other circumstances of the case, grant or refuse the application; and

(b) order the applicant to pay all or any part of the costs of the application,

and where an application in respect of an order is refused no further application in respect of that order must be entertained if made before the end of the period of one year beginning with the date of the refusal.

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

(11) Any person who —

(a) has custody of a dog in contravention of an order under subsection (1)(b); or

(b) fails to comply with a requirement imposed on him under subsection (6)(a),

commits an offence.

Penalty: A fine at level 5 on the standard scale.

[UK Dangerous Dogs Act 1991 s.4]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556E. Contingent destruction orders

(1) Where —

(a) a person is convicted of an offence under section 556A or 556C(1);

(b) the court does not order the destruction of the dog under section 556D(1)(a); and

(c) in the case of an offence under section 556A, the dog is subject to the prohibition in section 556A(3);

the court must order that, unless the dog is exempted from that prohibition within the requisite period, the dog must be destroyed.

(2) Where an order is made under subsection (1) in respect of a dog, and the dog is not exempted from the prohibition in section 556A(3) within the requisite period, the court may extend that period.

(3) Subject to subsection (2), the requisite period for the purposes of such an order is the period of two months beginning with the date of the order.

(4) Where a person is convicted of an offence under section 556C(1), the court may order that, unless the owner of the dog keeps it under proper control, the dog will be destroyed.

(5) An order under subsection (4) —

(a) may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise; and

(b) if it appears to the court that the dog is a male and would be less dangerous if neutered, may require it to be neutered.

(6) Subsections (2) to (4) of section 556D apply in relation to an order under subsection (1) or (4) as they apply in relation to an order under subsection (1)(a) of that section.

[UK Dangerous Dogs Act 1991 s.4A]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556F. Destruction orders otherwise than on a conviction

(1) Where a dog is seized under section 556G(1) or (2) or in exercise of a power of seizure conferred by any other enactment and on an application to the Summary Court it appears to the court —

(a) that no person has been or is to be prosecuted for an offence under this Part (whether because the owner cannot be found or for any other reason); or

(b) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition in section 556A(3);

the court may order the destruction of the dog and, subject to subsection (2), must do so if it is one to which section 556A applies.

(2) Nothing in subsection (1)(b) requires the court to order the destruction of a dog if satisfied that the dog does not constitute a danger to public safety.

(3) For the purposes of subsection (2), when deciding whether a dog constitutes a danger to public safety, the court —

(a) must consider —

(i) the temperament of the dog and its past behaviour; and

(ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog; and

(b) may consider any other relevant circumstances.

(4) Where in a case falling within subsection (1)(b) the court does not order the destruction of the dog, the court must order that, unless the dog is exempted from the prohibition within the requisite period, the dog is destroyed.

(5) Subsections (2) to (4) of section 556D apply in relation to an order under subsection (1)(b) or (4) as they apply in relation to an order under subsection (1)(a) of that section.

(6) Subsections (2) and (3) of section 556E apply in relation to an order under subsection (3) as they apply in relation to an order under subsection (1) of that section.

[UK Dangerous Dogs Act 1991 s.4B]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556G. Seizure, entry of premises and evidence

(1) A police officer, customs officer or other person authorised by the Governor to exercise the powers conferred by this subsection may seize —

(a) any dog which appears to be a dog to which section 556A applies and which is in a public place —

(i) after the time when possession or custody of it has become unlawful by virtue of that section; or

(ii) before that time, without being muzzled and kept on a lead;

(b) any dog in a public place which appears to be a dog to which an order under section 556B applies and in respect of which an offence against the order has been or is being committed; and

(c) any dog in a public place (whether or not a dog to which that section or such an order applies) which appears to be dangerously out of control.

(2) A police officer, customs officer or other person authorised by the Governor may seize any dog not in a public place (whether or not a dog to which that section or such an order applies) which appears to be dangerously out of control.

(3) If in any proceedings it is alleged by the prosecution that a dog is one to which section 556A or an order under section 556B applies it is presumed that it is such a dog unless the contrary is shown by the accused by such evidence as the court considers sufficient; and the accused must not be permitted to adduce such evidence unless they have given the prosecution notice of intention to do so not later than the fourteenth day before that on which the evidence is to be adduced.

[UK Dangerous Dogs Act 1991 s.5]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556H. Dogs owned by young persons

Where a dog is owned by a person who is less than sixteen years old any reference to its owner includes a reference to any person who has responsibility for the young person.

[UK Dangerous Dogs Act 1991 s.6]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556I. Muzzling and leads

(1) In this Part —

(a) references to a dog being muzzled are to its being securely fitted with a muzzle sufficient to prevent it biting any person; and

(b) references to its being kept on a lead are to its being securely held on a lead by a person who is not less than sixteen years old.

(2) The Governor may by order prescribe the kind of muzzle or lead to be used for the purpose of complying with any provision contained in this Part.

(3) If a muzzle or lead of a particular kind is for the time being prescribed in relation to any provision contained in this Part then references to a muzzle or lead is to be construed as references to a muzzle or lead of that kind.

[UK Dangerous Dogs Act 1991 s.7]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556J. Dangerous dogs: Interpretation

In this Part —

(a) "**advertisement**" includes any means of bringing a matter to the attention of the public and "**advertise**" is construed accordingly;

"**assistance dog**" means —

(i) a dog which has been trained to guide a blind person;

(ii) a dog which has been trained to assist a deaf person;

(iii) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects; or

(iv) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind; and

"**public place**" means any street, road or other place (whether or not enclosed) to which the public have or are permitted to have access whether for payment or otherwise and includes the common parts of a building containing two or more separate dwellings;

(b) a dog is regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so; and

(c) references to a dog injuring a person or assistance dog or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a police officer or a person in the service of the Crown.

[UK Dangerous Dogs Act 1991 s.10]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

PART 23B - LASER MISUSE

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556K. Offence of shining or directing a laser beam towards a vehicle

(1) In sections 556K and 556L —

"**aircraft**" means any vehicle used for travel by air;

"**laser beam**" means a beam of coherent light produced by a device of any kind; and

"**vehicle**" means any vehicle used for travel by land, water or air.

(2) A person commits an offence if —

(a) the person shines or directs a laser beam towards a vehicle which is moving or ready to move; and

(b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle.

Penalty: Imprisonment for 5 years or a fine, or both.

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

(3) It is a defence to a charge of an offence under this section for the defendant to show —

(a) that the person had a reasonable excuse for shining or directing the laser beam towards the vehicle, or

(b) that the person —

(i) did not intend to shine or direct the laser beam towards the vehicle; and

(ii) exercised all due diligence and took all reasonable precautions to avoid doing so.

[Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024] [Revision w.e.f. 21/10/2024]

(4) ...

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

(5) A mechanically propelled vehicle which is not moving or ready to move but whose engine or motor is running is to be treated for the purposes of subsection (2)(a) as ready to move.

(6) In relation to an aircraft, the reference in subsection (2)(b) to "a person with control of the vehicle" is a reference to any person on the aircraft who is engaged in controlling it, or in monitoring the controlling of it.

(7) In relation to any vehicle used for travel by water, the reference in subsection (2)(b) to "a person with control of the vehicle" is a reference to the master, the pilot or any person engaged in navigating the vehicle.

[UK Laser Misuse (Vehicles) Act 2018 s.3]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022]

556L. Offences relating to air traffic services

(1) In this section —

"**air traffic facility**" means any building, structure, vehicle or other place from which air traffic services are provided;

"**air traffic services**" means —

(a) providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions (whether in the air or on the ground);

(b) providing instructions, information or advice with a view to securing safe and efficient flying;

(c) managing the flow of air traffic with a view to ensuring the most efficient use of airspace;

(d) providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft; or

(e) notifying organisations of aircraft needing search and rescue facilities, and assisting organisations to provide such facilities.

(2) A person commits an offence if —

(a) the person shines or directs a laser beam —

(i) towards an air traffic facility; or

(ii) towards a person providing air traffic services; and

(b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person providing air traffic services.

Penalty: Imprisonment for 5 years or a fine, or both.

(3) It is a defence to a charge of an offence under this section for the defendant to show —

(a) that the person had a reasonable excuse for shining or directing the laser beam towards the facility or person, or

(b) that the person —

(i) did not intend to shine or direct the laser beam towards the facility or person; and

(ii) exercised all due diligence and took all reasonable precautions to avoid doing so.

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

(4) ...

[UK Laser Misuse (Vehicles) Act 2018 s.2]

[S.13 Ord. 8/2022/w.e.f. 16/05/2022; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

PART 24 – CRIMINAL TRESPASS

Criminal trespass

557. Interpretation of Part

(1) In this Part, unless the context otherwise requires —

"**access**", in relation to any premises, means any part of any site or building within which the premises are situated which constitutes an ordinary means of access to the premises (whether or not that is its sole or primary use);

"**caravan**" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"**displaced residential occupier**" has the meaning given by section 559A;

"**firearm**" has the same meaning as in the Firearms and Ammunition Ordinance 1987;

"**intending residential occupier**" has the meaning given by section 559B;

"**land**" includes premises;

"**offensive weapon**" has the same meaning as in Part 7;

"**premises**" means any building, any part of a building under separate occupation, any land ancillary to a building and the site comprising any building or buildings together with any land ancillary thereto;

"**residential premises**" means premises that are or form part of premises used mainly for residential purposes, or intended by the owner to be used for those purposes, whether by the owner or some other person;

"**site**" means the whole or part of any building or buildings, or any land, or both;

"**vehicle**" includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan.

[Revision w.e.f. 31/07/2017; S.R. & O. 6/2017/w.e.f. 13/4/2017]

(2) References to a building apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for use for residential purposes; and for this purpose —

(a) a part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole;

(b) land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

[UK Criminal Law Act 1977 s.12 (part)]

558. Failing to obey directions to leave land

(1) If a police officer of the rank of Inspector or above reasonably believes —

(a) that a person is trespassing on land with the purpose of residing there for any period;

(b) that reasonable steps have been taken by or on behalf of the occupier to ask the person to leave; and

(c) that —

(i) the person has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier; or

(ii) the person has a vehicle on the land,

the officer may direct the person to leave the land and to remove any vehicles or other property the person has with him or her on the land.

(2) If the police officer reasonably believes that the person was not originally a trespasser but has become a trespasser, on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after the person became a trespasser before the officer can exercise the power conferred by subsection (1).

(3) A direction under subsection (1), if not communicated to the person referred to in that subsection by the police officer giving the direction, may be communicated to the person by any police officer at the scene.

(4) A person who, knowing that a direction under subsection (1) has been given which applies to the person —

(a) fails to leave the land as soon as reasonably practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(5) If a direction has been given under subsection (1) and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse —

(a) failed to remove from the land a vehicle which appears to the officer to belong to the person or to be in the person's possession or under the person's control; or

(b) entered the land as a trespasser with a vehicle within 3 months after the direction was given,

the officer may seize and remove the vehicle.

(6) In proceedings for an offence under this section it is a defence for the defendant to show -

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) A person may be regarded for the purposes of this section as having a purpose of residing in a place even if the person has a home elsewhere.

[UK Criminal Justice & Public Order Act 1994 ss.61 & 62 adapted]

559. Violence to secure entry

(1) Subject to the following subsections, any person ('A') who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for A or for any other person if —

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) A knows that that is the case,

commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) Subsection (1) does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the defendant adduces sufficient evidence that he or she was, or was acting on behalf of, such an occupier the defendant is presumed to have been, or to have been acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(3) Subject to subsection (2), the fact that A has any interest in or right to possession or occupation of any premises does not for the purposes of subsection (1) constitute lawful authority for the use or threat of violence by A or anyone else for the purpose of securing A's entry into those premises.

(4) It is immaterial for the purposes of this section —

(a) whether the violence in question is directed against the person or against property; or

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

[UK Criminal Law Act 1977 s.6]

559A. Meaning of "displaced residential occupier"

(1) Subject to subsection (2), a person ('A') who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser is a displaced residential occupier of the premises for the purposes of this Part so long as A continues to be excluded from occupation of the premises by the original trespasser or by any subsequent trespasser.

(2) A person who was occupying the premises in question as a trespasser immediately before being excluded from occupation is not by virtue of subsection (1) a displaced residential occupier of the premises for the purposes of this Part.

(3) A person who by virtue of subsection (1) is a displaced residential occupier of any premises is to be regarded for the purposes of this Part as a displaced residential occupier also of any access to those premises.

(4) Anyone who enters or is on or in occupation of any premises by virtue of —

(a) any title derived from a trespasser; or

(b) any licence or consent given by a trespasser or by a person deriving title from a trespasser;

(c) is to be treated as a trespasser for the purposes of this Part; and references in this Part to a person entering or being on or occupying any premises as a trespasser are to be construed accordingly.

(5) A person who is on any premises as a trespasser does not cease to be a trespasser for the purposes of this Part by virtue of being allowed time to leave the premises, nor does a person cease to be a displaced residential occupier of any premises by virtue of any such allowance of time to a trespasser.

[UK Criminal Law Act 1977 s.12 (part)]

[S. 14/Ord. 5/2017/w.e.f. 21/04/2017]

559B. Meaning of "intending residential occupier"

(1) For the purposes of this Part, an individual is an intending residential occupier of premises if —

(a) he or she has in those premises a freehold interest or a leasehold interest;

(b) he or she requires the premises for his or her own occupation as a residence or for occupation by a proposed tenant as a residence;

(c) he or she or the proposed tenant is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(2) An individual is also an intending residential occupier of premises if he or she —

(a) has a tenancy of those premises or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest in them;

(b) requires the premises for his or her own occupation as a residence; or

(c) is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(3) A person who is an intending residential occupier of any premises is to be regarded for the purposes of this Part as an intending residential occupier also of any access to those premises.

[UK Criminal Law Act 1977 s.12A and Schedule added by Criminal Justice & Public Order Act 1994 s.74 modified]

[S. 15/Ord. 5/2017/w.e.f. 21/04/2017]

560. Remaining in public premises

(1) A person who, having entered any public premises, persists without lawful excuse in remaining in the premises after being required to leave by a police officer acting on the request of a person in lawful occupation or control of the premises, commits an offence.
Penalty: A fine at level 2 on the standard scale.

(2) In this section, "**public premises**" means —

(a) any building or part of a building, any land ancillary to a building, and the site comprising any building or buildings together with any ancillary land, which belongs to or is occupied by the Government or any statutory public body; and

(b) any premises used for public worship or for education,

and for the purposes of this definition land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

(3) In this section, "**person in control**" includes (without limiting the scope of that expression) the owner, tenant or licensee of premises, and any person in lawful occupation of them, and, in relation to premises belonging to or occupied by the Government, includes any Government or Crown servant; and any employee or agent of a person mentioned in this definition.

[Gibraltar Crimes Act; SH Crimes Bill]

561. Squatting in a residential building

(1) A person commits an offence if —

(a) the person is in a residential building as a trespasser having entered it as a trespasser;

(b) the person knows or ought to know that he or she is a trespasser; and

(c) the person is living in the building or intends to live there for any period.
Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both

(2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).

(3) For the purposes of this section —

(a) "**building**" includes any structure or part of a structure (including a temporary or moveable structure); and

(b) a building is "**residential**" if it is designed or adapted, before the time of entry, for use as a place to live.

(4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.
(5) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.

[UK LASPO Act 2012 s.144]

Aggravated trespass

562. Offence of aggravated trespass

(1) A person ('**A**') commits the offence of aggravated trespass if A trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land in the open air, does there anything which is intended by A to have the effect of —

(a) intimidating those persons or any of them so as to deter them or any of them from engaging in that activity;

(b) obstructing that activity, or

(c) disrupting that activity.

Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(2) Activity on any occasion on the part of a person or persons on land is lawful for the purposes of this section if the person or persons may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

[UK Criminal Justice & Public Order Act 1994 s.68]

563. Power to remove persons committing or participating in aggravated trespass

(1) If the senior police officer present at the scene reasonably believes —

(a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air; or

(b) that 2 or more persons are trespassing on land in the open air and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity,

the officer may direct that person or those persons, or any of them, to leave the land.

(2) A direction under subsection (1), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(3) A person who, knowing that a direction under subsection (1) has been given which applies to the person —

(a) fails to leave the land as soon as practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence.
Penalty: Imprisonment for 3 months or a fine at level 4 on the standard scale, or both.

(4) In proceedings for an offence under subsection (2) it is a defence for the defendant to show—

(a) that the defendant was not trespassing on the land; or

(b) that the defendant had a reasonable excuse for failing to leave the land as soon as practicable or, as the case may be, for again entering the land as a trespasser.

(5) In this section "lawful activity" has the same meaning as in section 562(2).

[UK Criminal Justice & Public Order Act 1994 s.69]

564. Trespassing with an offensive weapon

A person who is on any premises as a trespasser, after having entered as such, commits an offence if, without lawful authority or reasonable excuse, the person has with him or her on the premises any offensive weapon or any firearm.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale.

[UK Criminal Law Act 1977 s.8]

Unauthorised camping

565. Camping without permission

(1) A person who camps on any land except with the permission, whether express or implied, of the occupier of the land commits an offence.
Penalty: Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.

(2) Nothing in this section applies to a police officer or other public officer when engaged in the execution of his or her duty.

[Gibraltar Criminal Offences Act s.165B to E]

Designated sites

566. Trespassing on a designated site

(1) A person who enters, or is on, any designated site as a trespasser, commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(2) A "**designated site**" means a site —

(a) specified or described (in any way) in an order made by the Governor; and

(b) designated for the purposes of this section by the order.

(3) The Governor may only designate a site for the purposes of this section if —

(a) it is comprised in Crown land; or

(b) it appears to the Governor that it is appropriate to designate the site in the interests of the security of the Falkland Islands.

(4) It is a defence for a person charged with an offence under this section to prove that the defendant did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a designated site.

(5) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

(6) For the purposes of this section a person who is on any designated site as a trespasser does not cease to be a trespasser by virtue of being allowed time to leave the site.

[UK Serious Organised Crime & Police Act 2005 s.128]

PART 25 – OBSCENE PUBLICATIONS

567. Interpretation and general provisions

(1) In this Part, unless the context otherwise requires —

"**article**" means —

(a) any writing, drawing, print, painting, photograph, book, card, lithographic or other engraving, printed matter, picture, poster, emblem, cinematograph film or any description of article containing or embodying matter to be read or looked at or both;

(b) any sound record; and

(c) any film or other record of a picture or pictures, moving or otherwise;

"**distribute**" has the meaning given that term by section 569;

"**film exhibition**" means an exhibition of moving pictures produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service;

"**import**" in relation to a publication means to bring or cause to be brought into the Falkland Islands, wherever the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

"**indecent**" has the same meaning as in Part 10;

"**periodical publication**" includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

"**plate**" includes a block, mould, matrix and stencil;

"**publication**" has the meaning given that term by the Interpretation and General Clauses Ordinance 1977.

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

(2) References in this Part to possession or distribution for gain —

(a) include possession or distribution by way of trade or for public exhibition;

(b) mean any such possession or distribution whether the gain is to accrue by way of consideration for the distribution or in any other way; and

(c) apply whether in fact any gain does accrue.

(3) This Part applies in relation to anything which is intended to be used, either alone or as one of a set, for the reproduction or manufacture from it of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying that matter so far as that matter is to be derived from it or from the set.

(4) No proceedings for an offence under this Part may be commenced except by, or with the consent of, the Attorney General.

(5) This Part is in addition to, and does not derogate from, the provisions of Part 10 relating to indecent photographs of youths, prohibited images of youths, or extreme pornographic images.

[UK Children and Young Persons (Harmful Publications) Act 1955 ss.1 and 4 (part); Customs Consolidation Act 1876; Customs & Excise Management Act 1979]

Obscene publications

568. Test of obscenity

(1) For the purposes of this Part a publication or article is deemed to be obscene if its effect (or, if the publication or article comprises 2 or more distinct items, the effect of any one of the items) is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In proceedings against a person for an offence under this Part, the question whether the publication or article is obscene is to be determined —

(a) by reference to such distribution as in the circumstances it may reasonably be inferred the person had in contemplation and to any further distribution that could reasonably be expected to follow from it, but not to any other publication or article;

(b) as if any reference to distribution of it were a reference to distribution of items reproduced from it;

(c) on the assumption that copies of it, and items reproduced or manufactured from it, would be distributed in any manner likely having regard to the circumstances in which it was found, but in no other manner.

[UK Obscene Publications Act 1959 s.1 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]

569. Meaning of 'distribute'

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

(1) For the purposes of this Part a person distributes a publication or article who —

(a) circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

(b) in the case of a publication or article containing or embodying matter to be looked at or a record - shows, plays or projects it, or, if the matter is data stored electronically, transmits the data.

(2) A person also distributes a publication or article to the extent that any matter recorded on it is included by the person in a programme included in a programme service.

(3) If the inclusion of any matter in a programme included in a programme service would, if that matter were recorded matter, constitute the distribution of an obscene publication or article for the purposes of this Part by virtue of subsection (4), this Part has effect in relation to the inclusion of that matter in that programme as if it were recorded matter.

(4) A publication or article is deemed to be had or kept for distribution if it is had or kept for the reproduction or manufacture from it of items for distribution.

[UK Obscene Publications Act 1959 s.2 am. by Criminal Law Act 1977 and Criminal Justice and Police Act 1994 adapted]

570. Distribution or possession of obscene publication or article

(1) A person who for gain —

(a) distributes an obscene publication or article; or

(b) has in the person's possession an obscene publication or article for distribution,

commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purpose of proceedings for an offence under this section, a person is deemed to have in the person's possession a publication or article for distribution for gain if with a view to such distribution the person has the publication or article in the person's ownership, possession or control.

(3) A person may not be convicted of an offence under this section in respect of a publication or article if the person proves that the person had not examined the publication or article and had no reasonable cause to suspect that it was such that having it would make the person liable to be convicted of an offence against this section.

[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977; Customs and Excise Management Act 1979]

571. Manufacture, etc. of obscene publication or article

(1) A person who for gain —

(a) manufactures or produces;

(b) imports or exports; or

(c) causes to be manufactured, produced, imported or exported,

any obscene publication or article commits an offence.
Penalty: Imprisonment for 7 years or a fine, or both.

(2) A person who advertises or makes known by any means, in order to assist in any of the acts mentioned in subsection (1), that another person is engaged in any of those acts commits an offence.
Penalty: Imprisonment for 3 years or a fine, or both.

(3) A person who advertises or makes known how or from whom any obscene publication or article can be procured, either directly or indirectly, commits an offence.
Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

[SH Obscene Publications Ordinance s.2 modified; UK Customs and Excise Management Act 1979]

572. Common law offence abolished

(1) No proceedings may be brought against a person at common law for the possession, distribution, manufacture, importation, exportation, advertising or promotion of an obscene publication or article.

(2) Subsection (1) does not prevent the prosecution of a person for any offence in relation to the possession, distribution, importation, manufacture or advertising of any publication or article under any other enactment.

(3) Without limiting subsection (1), no proceedings may be brought against a person for an offence at common law —

(a) in respect of a film exhibition or anything said or done in the course of such an exhibition, if it is of the essence of the common law offence that the exhibition or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

(b) in respect of an agreement to give a film exhibition or to cause anything to be said or done in the course of such an exhibition if the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

[UK Obscene Publications Act 1959 s.2 (part) as am. by Obscene Publications Act 1964 and Criminal Law Act 1977]

573. Arrest, search and seizure and forfeiture

(1) If a police officer has reasonable grounds for suspecting that a person has committed an offence under section 570 or 571, the officer may require the person to give his or her name and address and, if the person refuses or fails to do so or gives a name and address which the officer reasonably suspects to be false, may arrest the person without warrant.

(2) The powers of search and seizure in Part 3 of the Criminal Procedure and Evidence Ordinance 2014 apply to a publication or article which is the subject of an offence under section 570 or 571, including —

(a) any copies of the publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article.

(3) The power of search and seizure in relation to a suspected offence committed by a person under either of those sections extends to any premises, stall or vehicle used by the person for the purposes of trade or business and to the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle, which relate to a trade or business carried on at the premises or from the stall or vehicle.

(4) Subject to subsection (5), any article seized under subsection (2) or (3) must be brought before a justice of the peace, who may issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle, to appear on a day specified in the summons before the Magistrates' Court or the Summary Court to show cause why the publication or article should not be forfeited.

(5) If on a hearing under subsection (4) the court is satisfied, with respect to any publication or article, that at the time when it was seized it was obscene and kept for distribution for gain, the court must order the article to be forfeited.

(6) On the conviction of a person for an offence under this Part the provisions of section 617 of the Criminal Procedure and Evidence Ordinance 2014 apply to the publication or article which is the subject of the offence, including —

(a) any copies of the relevant publication or article; and

(b) any plate, film or other equipment prepared for the purpose of printing or producing copies of the publication or article,

found in the possession of the person or under that person's control.

(7) Subsection (6) does not apply in relation to any article seized under subsection (3) which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

(8) In addition to the person summoned under subsection (4) —

(a) the owner, author or maker of any publication or article brought before the court; and

(b) any other person through whose hands the publication or article had passed before being seized,

is entitled to appear before the court on the day specified in the summons to show cause why the publication or article should not be forfeited.

(9) If an order is made under subsection (5) for the forfeiture of any publication or article, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Supreme Court, and the order does not take effect until the expiration of the period within which notice of appeal to the Supreme Court may be given against the order.

(10) If as respects any article brought before it the court does not order forfeiture under subsection (5) —

(a) the court may order the person on whose information the warrant for the seizure of the article was issued to pay costs the court thinks reasonable to any person who has appeared before the court to show cause why the article should not be forfeited; and

(b) costs ordered to be paid under this subsection are enforceable as a civil debt.

[UK Obscene Publications Act 1959 s.3 (part) as am. by Courts Act 1971, Criminal Law Act 1977 and PACE Act 1984; Video Recordings Acts 1984 and 2010]

574. Defence of public good

(1) Subject to subsection (2), a person must not be convicted of an offence under section 570 or 571 in relation to a publication or article, and the powers of forfeiture under section 573 do not apply, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, the arts or learning, or of other objects of general public concern.

(2) The opinion of experts as to the scientific, literary, artistic, scientific, educational or other merits of a publication or article may be admitted in any proceedings under this Part either to establish or to negative the ground mentioned in subsection (1).

[UK Obscene Publications Act 1959 s.4 as am. by Criminal Law Act 1977]

575. Assisting the commission of an offence overseas

(1) It is an offence for a person in the Falkland Islands to —

(a) encourage, aid and abet, or assist the commission in any place outside the Falkland Islands of an offence punishable under the provisions of any law in force in that place corresponding to the provisions of section 570 or 571; or

(b) do any act preparatory to or in furtherance of any act which if committed in the Falkland Islands would constitute an offence under either of those sections.
Penalty: Imprisonment for 3 years or a fine, or both.

(2) For the purposes of subsection (1) —

(a) "**corresponding law**" means any law stated in a certificate purporting to be issued by or on behalf of the authorities of any place outside the Falkland Islands to be a law providing for the suppression of the circulation of and traffic in obscene publications in accordance with the provisions of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications 1923; and

(b) any statement in any such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, is conclusive.

[SH Obscene Publications Ordinance s.3]

Unsolicited publications

576. Unsolicited publications

(1) A person who sends or causes to be sent to another person —

(a) any book, magazine or leaflet; or

(b) advertising material for any such publication,

which the person knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques, commits an offence.
Penalty: (i) For a first offence – a fine at level 2 on the standard scale;
(ii) for a subsequent offence – a fine at level 5 on the standard scale.

(2) In this section, "**unsolicited**" means, in relation to goods sent to any person, that they are sent without any prior request made by the person or on the person's behalf.

(3) No proceedings for an offence under this section may be commenced except by, or with the consent of, the Attorney General.

[UK Unsolicited Goods and Services Act 1971 s.5]

Indecent displays

577. Indecent displays: Offence

(1) If any indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made each commits an offence.
Penalty: Imprisonment for 2 years or a fine, or both.

(2) Any matter which is displayed in or so as to be visible from any public place is, for the purposes of this section, deemed to be publicly displayed.

(3) In subsection (2), "**public place**", in relation to the display of any matter has the meaning given to that term by section 2(1).

(4) Nothing in this section applies in relation to any matter —

(a) included by any person in a programme service;

(b) included in the display of an art gallery or museum and visible only from within the gallery or museum;

(c) displayed by or with the authority of, and visible only from within a building occupied by, the Crown; or

(d) included in a performance of a play.

(5) In this section "**matter**" includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent —

(a) any part of that matter which is not exposed to view is to be disregarded; and

(b) account may be taken of the effect of juxtaposing one thing with another.

[UK Indecent Displays (Control) Act 1981 ss.1 and 4]

PART 25A – TERRORIST OFFENCES

Interpretation of Part

577A. Definitions

In this Part —

"**act**" includes —

(a) an omission and a course of action;

(b) one or more acts that are part of a series of acts;

(c) an act for a specific purpose and an act of a general nature;

(d) an act that occurs in or outside the Falkland Islands; and

(e) an act that is taken by or for the purposes of an organisation proscribed under an Act;

"**article**" includes —

(a) a device or thing for mechanically or electronically storing or recording data; and

(b) a device or thing by or from which data is capable of being reproduced with or without the aid of another article, device or thing;

"**document**" includes a photographic record;

"**glorification**" includes any form of praise or celebration;

"**government**" means the Government of Falkland Islands or the government of a country outside of the Falkland Islands;

"**publication**" includes matter that may be listened to or watched;

"**publish**" includes publish by or through using the internet or other electronic service;

"**provide**", in relation to money or other property, includes give, lend or make available, whether or not for consideration;

"**service**" includes a facility;

"**terrorism**" means engaging in a terrorist act that —

(a) is designed to influence a government or an international organisation;

(b) is designed to intimidate the public; and

(c) is made for the purpose of advancing a political, religious, racial, ethnic, cultural or ideological cause;

"**terrorist act**" means one or more acts taken, being taken or threatened to be taken that —

(a) involve serious violence against a person or serious damage to property, including by the use of firearms or explosives;

(b) endanger a person's life (other than the life of the person committing the action);

(c) create a serious risk to the health or safety of the public;

(d) are designed to interfere seriously with, or to disrupt seriously, an electronic system; or

(e) as part of a course of action, enable or will enable a terrorist act.

[UK Terrorism Act 2000 s.121]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577B. References in this Part to persons, property and the public

(1) A reference in this Part to a person is a reference to a person in the Falkland Islands or in a country outside the Falkland Islands.

(2) A reference in this Part to property is a reference to property in the Falkland Islands or in a country outside the Falkland Islands.

(3) A reference in this Part to the public includes a reference to people attending a meeting that members of the public may attend, whether the people's admission to the meeting is unconditional, on the payment of a fee or on satisfaction of another condition.

[UK Terrorism Act 2000 s.121]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

Offences relating to financing terrorism

577C. Fund raising for terrorism

(1) A person commits an offence if the person —

(a) asks or invites another person to provide money or other property; and

(b) intends, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person commits an offence if the person —

(a) receives money or other property; and

(b) intends, or has reasonable grounds to suspect, that the money or property will be or may be used for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(3) A person commits an offence if the person —

(a) provides money or other property to a person; and

(b) knows, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(4) An offence under this section is triable only on indictment.

(5) In subsection (2)(a), a reference to receiving money or other property is a reference to being given, lent or otherwise provided the money or other property, whether or not for consideration.

[UK Terrorism Act 2000 s. 15]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577D. Possession and use of money or other property for terrorism

(1) A person commits an offence if the person uses money or other property for terrorism.
Penalty: Imprisonment for 14 years or a fine, or both.

(2) A person commits an offence if the person —

(a) possesses money or other property; and

(b) intends to use the money or property for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(3) A person commits an offence if the person —

(a) possesses money or other property; and

(b) has reasonable grounds to suspect that the money or property will or may be used for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(4) An offence under this section is triable only on indictment.

[UK Terrorism Act 2000 s. 16]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577E. Entering into funding arrangements for terrorism

(1) A person commits an offence if —

(a) the person enters into, or becomes concerned in, an arrangement;

(b) as a result of the person entering into or becoming concerned in the arrangement, money or other property is, or will be, provided to another person; and

(c) the person knows, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

Penalty: Imprisonment for 14 years or a fine, or both.

(2) An offence under this section is triable only on indictment.

[UK Terrorism Act 2000 s. 17]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577F. Arrangements to deal with money or other property that funds terrorism

(1) In this section —

"**dealing with money or other property**" means —

(a) receiving, possessing or controlling the money or property;

(b) concealing or attempting to conceal the money or property;

(c) passing or transferring the money or property to another person; or

(d) disposing of the money or property in any other way.

(2) A person commits an offence if the person enters into, or becomes concerned in, an arrangement to deal with money or other property that is being used, or is intended to be used, for terrorism.
Penalty: Imprisonment for 14 years or a fine, or both.

(3) It is a defence for a person charged with an offence under this section to prove that the person did not know, and did not have reasonable grounds to suspect, that the arrangement related to money or other property that is being used, or is intended to be used, for terrorism.

(4) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for entering into, or becoming concerned in, the arrangement to deal with money or other property.

(5) An offence under this section is triable on indictment only.

[UK Terrorism Act 2000 s. 18]

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

Offences relating to information about terrorism

577G. Non-disclosure of information about acts of terrorism

(1) This section applies to a person who has information that the person knows or believes is of material assistance for —

(a) preventing another person from committing a terrorist act; or

(b) apprehending, prosecuting or convicting another person in the Falkland Islands for an offence under this Part or under the law of a country outside the Falkland Islands.

(2) The person commits an offence if the person does not disclose the information to a police officer.
Penalty: Imprisonment for 5 years or a fine, or both.

(3) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for not disclosing the information to a police officer.

(4) Proceedings for an offence under this section may be commenced in the Falkland Islands or, subject to subsection (5), in a country outside the Falkland Islands.

(5) Proceedings referred to in subsection (4) may be commenced in a country outside the Falkland Islands if —

(a) the person alleged to have committed the offence was in the country when the person became aware, or at any time after the person became aware, that the person had information referred to in subsection (1); and

(b) the acts constituting the offence constitute an offence under the law in that country.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577H. Collecting, recording, possessing information that may be used for terrorism

(1) A person commits an offence if the person —

(a) collects or records information of a kind likely to be useful to a person committing or preparing for a terrorist act; or

(b) possesses a document containing information referred to in paragraph (a).

Penalty: Imprisonment for 10 years or a fine, or both.

(2) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for collecting or recording the information or possessing the document.

(3) An offence under this section is triable only on indictment.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577I. Disseminating terrorist publications

(1) In this section —

"**act**" means an act for doing any of the following —

(a) distributing or circulating a terrorist publication;

(b) giving, selling or lending a terrorist publication;

(c) offering a terrorist publication for sale or loan;

(d) transmitting the content of a terrorist publication electronically;

(e) possessing a terrorist publication for the purposes of paragraph (a), (b), (c) or (d);

(f) providing a service by which another person is able to obtain, read, listen to or watch a terrorist publication; or

(g) providing a service by which another person may purchase or loan a terrorist publication or be gifted a terrorist publication;

"**lend**" or "**on loan**" includes let on hire;

"**terrorist publication**" means a publication or part of a publication —

(a) that contains material —

(i) which glorifies committing or preparing for a terrorist act or type of terrorist act (whether a current, future or past act);

(ii) from which a member of the public could reasonably be expected to infer that the act or type of act that is gloried is an act or type of act that the member should emulate; and

(iii) by which it is likely that a member of the public would be directly or indirectly encouraged or induced to commit, prepare for or instigate a terrorist act;

(b) that contains material that is likely to be useful for committing or preparing for a terrorist act; or

(c) that was likely published wholly or mainly for the purpose of being used by a member of the public to commit or prepare for a terrorist act.

(2) A person commits an offence if the person does an act with the intention that an effect of the act is to —

(a) directly or indirectly encourage or otherwise induce another person to commit, prepare for or instigate a terrorist act; or

(b) provide assistance to another person for committing or preparing for a terrorist act.

Penalty: Imprisonment for 7 years or a fine, or both.

(3) A person commits an offence if the person does an act recklessly as to whether, because of the act, the person —

(a) directly or indirectly encourages or otherwise induces another person to commit, prepare for or instigate a terrorist act; or

(b) provides assistance to another person for committing or preparing for a terrorist act.

Penalty: Imprisonment for 7 years or a fine, or both.

(4) In subsections (2) and (3), a reference to an effect of the act includes a reference to a terrorist publication becoming available to a person as a consequence of the act and, because of the availability of the publication to the person, it is likely that the person —

(a) is directly or indirectly encouraged or otherwise induced to commit, prepare for or instigate a terrorist act; or

(b) is provided assistance for committing or preparing for a terrorist act.

(5) In proving the commission of an offence under subsection (2) or (3), the question whether a publication is a terrorist publication must be determined —

(a) as at the time the defendant allegedly carried out the act the subject of the offence; or

(b) having regard to the whole contents of the publication and to the circumstances in which the defendant allegedly carried out the act.

(6) In proving the commission of an offence under subsection (2) or (3), the following is immaterial —

(a) whether all or some of the persons to whom the terrorist publication became available likely understood that the publication —

(i) was directly or indirectly encouraging or otherwise inducing a person to commit, prepare for or instigate a terrorist act; or

(ii) was providing assistance for committing or preparing for a terrorist act; and

(b) whether, as a consequence of the defendant's alleged act, a person was —

(i) directly or indirectly encouraged or otherwise induced to commit, prepare for or instigate a terrorist act; or

(ii) provided assistance for committing or preparing for a terrorist act.

(7) It is a defence for a person charged with an offence under subsection (2)(a) or (3)(a) to show that —

(a) the terrorist publication the subject of the alleged offence did not express the person's views or ideology or the person did not publicly express support for the publication;

(b) in the circumstances of the act the subject of the alleged offence, it is clear that the terrorist publication did not express the person's views or ideology or that the person did not publicly express support for the publication; and

(c) the defendant did not carry out the alleged act with the intention that an effect of the act was to directly or indirectly encourage or otherwise induce another person to commit, prepare for or instigate a terrorist act.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

577J. Use of information to encourage terrorism

(1) A reference in this section to a statement is a reference to a statement which is likely to be understood by one or more members of the public to whom is it made as directly or indirectly encouraging or otherwise inducing the member or members to commit, prepare for or instigate a terrorist act.

(2) For this section, a statement that is likely to be understood by one or more members of the public as directly or indirectly encouraging or otherwise inducing the member or members to commit, prepare for or instigate a terrorist act is a statement —

(a) which glorifies committing or preparing for a terrorist act or a type of terrorist act (whether a current, future or past act); and

(b) from which one or more members of the public could reasonably be expected to infer that the act or type of act that is gloried is an act or type of act that the member should emulate.

(3) A person commits an offence if the person publishes a statement, or causes another person to publish a statement, with the intention of directly or indirectly encouraging or inducing one or more members of the public to commit, prepare for or instigate a terrorist act.
Penalty: Imprisonment for 7 years or a fine, or both.

(4) A person commits an offence if the person publishes a statement, or causes another person to publish a statement and, at the time the statement is published, is reckless as to whether the statement will directly or indirectly encourage or induce one or more members of the public to commit, prepare for or instigate a terrorist act.
Penalty: Imprisonment for 7 years or a fine, or both.

(5) In a proceeding for an offence under this section, a question about how a statement is likely to be understood by a member of the public, or about what a member of the public could reasonably be expected to infer from a statement, must be determined having regard to —

(a) the whole content of the statement;

(b) the circumstances of its publication; and

(c) the manner in which it is published.

(6) It is a defence for a person charged with an offence under this section to show that —

(a) the statement did not express the person's views or ideology or the person did not publicly express support for the statement; and

(b) in the circumstances of the statement's publication, it is clear that the statement did not express the person's views or ideology or that the person did not publicly express support for the statement.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19; Sch. Pt. A/Ord. 10/2024/w.e.f. 14/08/2024]

Other offences relating to terrorism

577K. Possession of article for terrorism

(1) A person commits an offence if the person possesses an article in circumstances which give rise to a reasonable suspicion that the person possesses the article for a purpose connected with committing, preparing for or instigating a terrorist act.
Penalty: Imprisonment for 15 years or a fine, or both.

(2) In proceedings for an offence under this section, the court may assume that the defendant possessed the article if it is proved that an article was —

(a) on premises at the same time as the accused;

(b) on premises that the accused was occupying; or

(c) on premises that the accused habitually used other than as a member of the public.

(3) Subsection (2) does not apply if the defendant proves that the defendant —

(a) did not know that the article was on the premises; or

(b) had no control over the article.

(4) If a person charged with an offence under this section possesses the article, it is a defence for the person to prove that the person did not possess the article for a purpose connected with committing, preparing for or instigating a terrorist act.

(5) An offence under this section is triable only on indictment.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

577L. Preparing for committing terrorist act

(1) In this section —

"**person**" means a person who intends to —

(a) commit a terrorist act; or

(b) assist another person commit a terrorist act.

(2) A person commits an offence if the person does an act in preparation for giving effect to the person's intention.
Penalty: Imprisonment for life.

(3) An offence under this section is triable only on indictment.

[S. 26/Ord. 3/2019/w.e.f. 10/04/19]

CHAPTER 4 – SUPPLEMENTARY PROVISIONS

PART 26 – MISCELLANEOUS AND TRANSITIONAL

578. Service of documents

(1) Any notice or other document required or authorised by this Ordinance to be served on any person may be served by —

(a) delivering it to the person;

(b) leaving it at the person's usual or last known address (whether residential or otherwise);

(c) sending it to the person by post at that address; or

(d) sending it to the person by electronic means, if the person has facilities to receive such communications.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served on it if served on the secretary or clerk of the body.

(3) For the purposes of this section, the proper address of any person is, in the case of the secretary or clerk of a corporate body, that of the registered or principal office of that body, and in any other case the last address of the person to be served which is known to the Governor.

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

579. Criminal procedure rules and practice directions

(1) In addition to any other power in this Ordinance to make criminal procedure rules, the Chief Justice may make criminal procedure rules to implement this Ordinance.

(2) Rules made under this section or any other provision of this Ordinance —

(a) must be consistent with the Constitution and this Ordinance;

(b) must be made only after consulting the Criminal Justice Council;

(c) may create offences carrying a maximum penalty of 3 months' imprisonment or a fine at level 5 on the standard scale, or both;

(d) may make different provision for different cases or circumstances and may contain such incidental, supplemental, saving or transitional provisions as the Chief Justice, after consulting as required by paragraph (b), thinks fit.

(3) The Chief Justice, after consulting the Criminal Justice Council, may issue practice directions as to the practice to be adopted in the Supreme Court, the Magistrate's Court and the Summary Court on specific aspects of criminal procedure and practice arising under this Ordinance.

580. Amendment of Schedules

(1) The Governor, after consulting the Criminal Justice Council, may by order amend any Schedule to this Ordinance.

(2) An order under subsection (1) —

(a) may make such transitional and consequential provisions as appear to the Governor, after consulting as required by subsection (1), to be necessary or expedient;

(b) requires the approval of the Legislative Assembly.

581. Repeal and disapplication of laws – Schedule 5

(1) The Ordinances listed in Part 'A' of Schedule 5 (the "repealed Ordinances") are repealed.

(2) Consequently, the English Acts applied to the Falkland Islands by Schedule 1 to the Crimes Ordinance 2014 and by the Sexual Offences Ordinance 2005 ("the repealed Acts") cease to have effect as part of the law of the Falkland Islands.

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

(3) The provisions of the Ordinances listed in Part 'B' of Schedule 5 are repealed, and are included in the term "repealed Ordinances".

(4) The imperial enactments listed in Part 'C' of Schedule 5 (the "disapplied Acts"), being English Acts that apply to the Falkland Islands by virtue of Chapter X of the Interpretation and General Clauses Ordinance, are disapplied in relation to the Falkland Islands.

[S. 16/Ord. 5/2017/w.e.f. 21/04/2017]

(5) In this section, the term "**disapply**" has the same effect as an order by the Governor under section 79(2) of the Interpretation and General Clauses Ordinance 1977 declaring that a UK enactment has never been enacted, except that the disapplication only has effect from the date of commencement of this section.

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

(6) After the commencement of this section, there are no common law offences in the Falkland Islands, that is to say, no person may be prosecuted for an offence unless it is one created by or under an enactment.

(7) In particular, but without limiting subsection (6), the following are not offences in the Falkland Islands —

(a) sedition and seditious libel;

(b) defamatory libel;

(c) obscene libel;

(d) blasphemy.

(8) There is no defence of marital coercion in the Falkland Islands.

582. Saving provisions

(1) Except as expressly provided in this Ordinance, nothing in this Ordinance affects —

(a) the liability, trial or punishment of a person for an offence against any other law in force in the Falkland Islands other than this Ordinance;

(b) any of the written laws for the time being in force for the government of the police force or of the armed forces of the Crown.

(2) Subject to subsection (3), all items of subsidiary legislation made under any of the repealed Ordinances or repealed or disapplied Acts continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(3) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (2) could be made, the item is repealed or disapplied, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal or disapplication as provided by section 583.

(4) Any legislative instrument made by the Governor or Chief Justice under a repealed Ordinance or repealed or disapplied Act which could be made or issued by the Governor or Chief Justice under this Ordinance continues to have effect as if made or issued by the Governor or Chief Justice respectively under this Ordinance (irrespective of a requirement for consultation) until varied or revoked under this Ordinance.

(5) Any direction, exemption, notice or other non-legislative instrument made or issued by any person or body under any of the repealed Ordinances or repealed disapplied Acts which could be made or issued by an equivalent person or body under this Ordinance continues to have effect as if made or issued by that person or body under this Ordinance until varied or revoked under this Ordinance.

(6) Any delegation made, direction given or other action taken by a person under any of the repealed Ordinances or repealed or disapplied Acts which could be taken by an equivalent person under this Ordinance continues to have effect as if taken by that person under this Ordinance.

(7) This section is in addition to, and does not displace, section 345 as regards the effect of the repeal of the Sexual Offences Ordinance, 2005.

583. Transitional provisions

(1) Proceedings for an offence under any enactment or at common law that had commenced before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(2)…

[S. 27(1)/Ord. 3/2019/w.e.f. 10/04/19]

(3) Subsection (1) does not apply in relation to an offence of conspiracy if the agreement was entered into before the commencement of this Ordinance and the conspiracy continued to exist after that date.

[S. 27(2)/Ord. 3/2019/w.e.f. 10/04/19]

(4) For the purposes of this section, an offence is committed wholly or partly before the commencement of this Ordinance if any of the conduct or events alleged to constitute the offence occurred before that commencement.

(5) The maximum sentence for an offence under a repealed Ordinance or repealed or disapplied Act that can be imposed for an offence under that Ordinance or Act committed before the

commencement of this Ordinance is the maximum sentence for that offence under that Ordinance or Act.

(6) If an offence committed before the commencement of this Ordinance is by any enactment then in force made punishable only on summary conviction, it remains only so punishable.

(7) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Ordinance must be conducted as if this Ordinance had not been enacted.

(8) All sentences of imprisonment (including suspended sentences), fines, conditional discharges, disqualifications and forfeitures imposed before the commencement of this Ordinance continue to have effect and can be varied or appealed from as if this Ordinance had not been enacted.

(9) For purposes of this section, proceedings for an offence commence on —

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge; or

(e) an oral charge,

in respect of the offence.

[UK Criminal Justice & Public Order Act 1994 s.35]

584. Consequential amendments

(1) A reference in any other enactment to a repealed Ordinance or to a repealed or disapplied Act is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

(2) A reference in any other enactment to the Governor or Chief Justice exercising legislative functions in relation to criminal offences is, to the extent possible, to be read as a reference to the Governor or Chief Justice, as the case may be, exercising equivalent functions under this Ordinance after consulting the Criminal Justice Council.

(3) The Governor**,** after consulting the Criminal Justice Council, may by order make such modifications or adaptations of any enactment as the Governor considers necessary or expedient in consequence of the repeal of the repealed Ordinances, the repeal of the repealed Acts, and the disapplication of the disapplied enactments.

(4) An order under subsection (3) may make such transitional and consequential provisions as the Governor, after consulting the Criminal Justice Council, considers necessary or expedient.

(5) Without affecting the powers in subsections (3) and (4), the Ordinance listed in Part D of Schedule 5 is amended in the manner set out in that Schedule.

585. Ordinance binds the Crown

This Ordinance is binding on the Crown.

SCHEDULES

Schedule 1- Forfeiture of indecent photographs of children

Schedule 2 - Sexual offences to which sections 289 and 290 apply

Schedule 3 - Sexual offences for purposes of Part 11

Schedule 4 - Other offences for purposes of Part 11

Schedule 5 - Repealed and disapplied laws

SCHEDULE 1

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN

(*section 251(3)*)

Application of Schedule

1. (1) This Schedule applies if —

(a) property which has been lawfully seized in the Falkland Islands is in the custody of a police officer;

(b) apart from this Schedule, there is no legitimate reason for the officer to retain custody of the property;

(c) the officer is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property; and

(d) apart from this Schedule, the officer is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.

(2) The term "**forfeitable property**" means —

(a) any indecent photograph or pseudo-photograph of a child;

(b) any property which it is not reasonably practicable to separate from any property within sub-paragraph (a).

(3) For the purposes of this paragraph —

(a) a part of any property is a "readily separable part" of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property; and

(b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.

(4) The circumstances mentioned in paragraph (3)(a) include the time and costs involved in separating the property.

Possession pending forfeiture

2. (1) The property must be retained in the custody of a police officer until it is returned or otherwise disposed of in accordance with this Schedule.

(2) The provisions of the Criminal Procedure and Evidence Ordinance 2014 relating to property seized in the investigation of an offence do not apply to property held under this Schedule.

The relevant officer

3. "**The relevant officer**", in relation to any property, is the police officer who for the time being has custody of the property.

Notice of intended forfeiture

4. (1) The relevant officer must give notice of the intended forfeiture of the property ("**notice of intended forfeiture**") to —

(a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property;

(b) if the property was seized from premises - every person whom he believes to have been an occupier of the premises at that time; and

(c) if the property was seized as a result of a search of any person - that person.

(2) The notice of intended forfeiture must set out —

(a) a description of the property; and

(b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.

(3) Subject to paragraph (4), the notice of intended forfeiture may be given to a person only by—

(a) delivering it to the person personally;

(b) addressing it to the person and leaving it for the person at the appropriate address; or

(c) addressing it to the person and sending it to the person at that address by post.

(4) A notice given in accordance with paragraph (1)(b) may, if it is not practicable to give the notice in accordance with paragraph (3), be given by —

(a) addressing it to "the occupier" of those premises, without naming the person; and

(b) leaving it for the person at those premises or sending it to the person at those premises by post.

(5) Property may be treated or condemned as forfeited under this Schedule only if —

(a) the requirements of this paragraph have been complied with in the case of the property; or

(b) it was not reasonably practicable for them to be complied with.

(6) In this paragraph "**the appropriate address**", in relation to a person, means —

(a) in the case of a corporate body - its registered or principal office in the Falkland Islands;

(b) in the case of a firm - the principal office of the partnership;

(c) in the case of an unincorporated body or association - the principal office of the body or association;

(d) in any other case – the person's usual or last known place of residence in the Falkland Islands or last known place of business in the Falkland Islands.

(7) In the case of —

(a) a company registered outside the Falkland Islands;

(b) a firm carrying on business outside the Falkland Islands; or

(c) an unincorporated body or association with offices outside the Falkland Islands,

the references in this paragraph to its principal office include references to its principal office within the Falkland Islands (if any).

Notice of claim

5. (1) A person claiming to have a legitimate reason for possessing the property or a part of it may give notice of the claim to a police officer at any police station.

(2) Oral notice is not sufficient for this purpose.

Time and form of notice

6. (1) A notice of claim may not be given more than one month after —

(a) the date of the giving of the notice of intended forfeiture; or

(b) if no such notice has been given - the date on which the property began to be retained under this Schedule (see paragraph 2).

(2) A notice of claim must specify —

(a) the name and address of the claimant;

(b) a description of the property, or part of it, in respect of which the claim is made;

(c) in the case of a claimant who is outside the Falkland Islands, the name and address of a person in the Falkland Islands who is authorised to accept service, and to act, on behalf of the claimant.

(3) Service upon a person so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.

(4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference in relation —

(a) to a person to whom notice of intended forfeiture was given - to the day on which that notice was given to that person; and

(b) to any other person - to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

Automatic forfeiture if no claim is made

7. (1) If the property is unclaimed it is treated as forfeited.

(2) The property is "**unclaimed**" if, by the end of the period for the giving of a notice of claim —

(a) no such notice has been given in relation to it or any part of it; or

(b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.

(3) Paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose paragraph (2) applies as if references to the property were to the part.

(4) In this paragraph "readily separable part" has the meaning given by paragraph 1.

Decision whether to take court proceedings to condemn property as forfeited

8. (1) If a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.

(2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

Return of property if no forfeiture proceedings

9. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides not to take proceedings —

(a) for condemnation of the property; or

(b) for condemnation of a part of the property.

(2) The relevant officer must return the property or part to the person who appears to the officer to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.

(3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

Forfeiture proceedings

10. (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it ("**the relevant property**").

(2) Subject to sub-paragraphs (5) and (7), the court must condemn the relevant property if it is satisfied that —

(a) the relevant property is forfeitable property; and

(b) no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

(3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

(4) If the court is satisfied that —

(a) the relevant property is forfeitable property; and

(b) a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,

the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.

(5) If the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.

(6) For this purpose a part of any property is a "separable part" of the property if —

(a) it can be separated from the remainder of that property; and

(b) if a person has a legitimate reason for possessing the remainder of that property or any part of it - the separation will not prejudice the remainder or part.

(7) If the court is satisfied that —

(a) a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property; and

(b) although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property,

the court may order the return of that part to that person.

(8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

Supplementary orders

11. (1) If the court condemns property under sub-paragraph 10(2), the court —

(a) may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(2) A court order under any of sub-paragraphs 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.

(3) If the court makes an order under sub-paragraph 10(7) for the return of a part of the relevant property, the court —

(a) may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(4) For the purposes of this paragraph, "**specified**" means specified in, or determined in accordance with, the court order.

Magistrate's Court or Summary Court

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

12. Proceedings by virtue of this Schedule are civil proceedings and may be instituted in the Magistrate's Court or in the Summary Court.

Appeals

13. (1) Either party may appeal against the decision of the Magistrate's Court or the Summary Court to the Supreme Court.

(2) This paragraph does not affect any right to require the statement of a case for the opinion of the Supreme Court.

(3) If an appeal has been made (whether by case stated or otherwise) against the decision of the Magistrate's Court or the Summary Court in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a police officer pending the final determination of the matter.

Effect of forfeiture
14. If property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

Disposal of property which is not returned
15. (1) If —

(a) property is required to be returned to a person under this Schedule;

(b) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose; and

(c) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,

section 622 of the Criminal Procedure and Evidence Ordinance 2014 as to disposal of property applies.

(2) If property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on payment of costs within specified period), the relevant officer may dispose of the property in any manner the officer thinks fit.

Provisions as to proof
16. (1) In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.

(2) In any proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either —

(a) the order of condemnation; or

(b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

Saving for owner's rights
17. Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects —

(a) the rights in relation to that property, or any part of it, of any other person; or

(b) the right of any other person to enforce his rights against the person to whom it is returned.

Interpretation
18. (1) In this Schedule —

"**the court**" is to be construed in accordance with paragraph 12;

"**forfeitable property**" is to be construed in accordance with paragraph 1(2);

"**premises**" has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014; and

"**the relevant officer**" is to be construed in accordance with paragraph 3.

(2) For the purposes of this Schedule the circumstances in which a person ('**P**') has a legitimate reason for possessing an indecent photograph of a child ('**C**') include —

(a) the photograph was of C aged 16 or over;

(b) one or both of the following apply —

(i) P and C are married or civil partners or are living together in an enduring family relationship;

(ii) P and C were married or civil partners or were so living together at the time P obtained the photograph;

(c) the photograph shows C alone or with P, but does not show any other person;

(d) C has consented to the photograph being in P's possession (and that consent has not been withdrawn); and

(e) P owns the photograph, or is authorised (directly or indirectly) by the owner to possess it.

SCHEDULE 2
(*sections 289(9) and 290(10)*)

SEXUAL OFFENCES TO WHICH SECTIONS 289 AND 290 APPLY

PART A
SEXUAL OFFENCES TO WHICH SECTION 289 APPLIES

1. The following are sexual offences to which section 289 (Sexual offences outside the Falkland Islands) applies —

(Aa) an offence under any of sections 203 to 206 where the victim of the offence was 18 or over at the time of the offence.

(a).an offence under any of sections 207 to 210 (sexual offences against children under 13);

(b) an offence under any of sections 211 to 217 (child sex offences);

(c) an offence under any of the following sections if the victim of the offence was under 13 at the time of the offence —

- sections 203 to 206 (Rape and related offences)

- sections 218 to 221 (Abuse of position of trust)

- sections 226 and 227 (Familial child sex offences)

- sections 231 to 234 (Offences against persons with a mental disorder impeding choice)

- sections 235 to 238 (Inducements, etc. to persons with a mental disorder)

- sections 239 to 242 (Care workers for persons with a mental disorder)

- sections 259 to 262 (Abuse of children through prostitution and pornography)

- section 279 (Administering a substance with intent);

(d) an offence under section 246, 247 or 252 (Indecent photographs or images of youths) in relation to a photograph or pseudo-photograph or image showing a person under 13;

(e) an offence under section 20, 279 or 281 (Preparatory offences) if the intended offence was an offence against a person under 13.

[S.R. & O. 6/2017/w.e.f. 13/4/2017; S. 14 Ord. 8/2022/w.e.f. 16/05/2022]

2. A reference in paragraph 1 to an offence includes —

(a) an attempt or conspiracy to commit that offence;

(b) encouraging the commission of that offence; and

(c) aiding and abetting the commission of that offence.

PART B
SEXUAL OFFENCES TO WHICH SECTION 290 APPLIES

Section 290 (Encouraging, etc. the commission of certain sexual acts outside the Falkland Islands) applies to an offence under any of sections 203 to 214 and sections 216 to 221 in which the victim of the offence has not attained the age of 16 years.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

SCHEDULE 3

(*section 2 and Part 11*)

SEXUAL OFFENCES FOR PURPOSES OF PART 11

Offences under the Sexual Offences Act 1956

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

1. An offence under section 1 (Rape).

2. An offence under section 5 (Intercourse with girl under 13).

3. An offence under section 6 (Intercourse with girl under 16) if the offender was 20 or over.

4. An offence under section 10 (Incest by a man) if the victim or (as the case may be) other party was under 18.

5. An offence under section 12 (Buggery) if —

(a) the offender was 20 or over; and

(b) the victim or (as the case may be) other party was under 18.

6. An offence under section 13 (Indecency between men) if —

(a) the offender was 20 or over; and

(b) the victim or (as the case may be) other party was under 18.

7. An offence under section 14 (Indecent assault on a woman) if —

(a) the victim or (as the case may be) other party was under 18; or

(b) the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment for not less than 30 months; or

(ii) admitted to a hospital subject to a restriction order.

8. An offence under section 15 (Indecent assault on a man) if —

(a) the victim or (as the case may be) other party was under 18; or

(b) the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment for a term of not less than 30 months; or

(ii) admitted to a hospital subject to a restriction order.

9. An offence under section 16 (Assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.

10. An offence under section 28 (Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).

Offences under the Sexual Offences Act 2003 as applied to the Falkland Islands by the Schedule to the Sexual Offences Ordinance 2005

1. An offence under section 1 or 2.

2. An offence under section 3 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —
(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

3. An offence under any of sections 4 to 6.

4. An offence under section 7 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

5. An offence under any of sections 8 to 12.

6. An offence under section 13, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.

7. An offence under section 14 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

8. An offence under section 15.

9. An offence under any of sections 16 to 19 of the Sexual Offences Act 2003 (Abuse of position of trust) if the offender, in respect of the offence, is or has been —

(a) sentenced to a term of imprisonment;

(b) detained in a hospital; or

(c) made the subject of a community order of at least 120 hours.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

10. An offence under section 25 or 26 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

11. An offence under any of sections 30 to 37.

12. An offence under any of sections 38 to 41 if —

(a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case, the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment;

(ii) detained in a hospital; or

(iii) made the subject of a community order of at least 120 hours.

13. An offence under section 47 if the victim or (as the case may be) other party was under 16, and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under section 48 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

15. An offence under section 49 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 50 (Arranging or facilitating child prostitution or pornography) if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 61.

18. An offence under section 62 or 63 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

19. An offence under section 64 or 65 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

20. An offence under section 66 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 67 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

22. An offence under section 69 or 70 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

Offences under Part 10 of this Ordinance

1. An offence under section 203 or 204.

2. An offence under section 205 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

3. An offence under any of sections 206 to 208.

4. An offence under section 209 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

5. An offence under any of sections 210 to 214.

6. An offence under section 215, if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.

7. An offence under section 216 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

8. An offence under section 217 or 217A.

[S. 55/Ord. 10/2024/w.e.f. 14.08.2024]

9. An offence under any of sections 218 to 221 if the offender, in respect of the offence, is or has been —

(a) sentenced to a term of imprisonment;

(b) detained in a hospital; or

(c) made the subject of a community order of at least 120 hours.

10. An offence under section 226 or 227 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

11. An offence under any of sections 231 to 238.

12. An offence under any of sections 239 to 242 if —

(a) in the case of an offender under 18, he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case, the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment;

(ii) detained in a hospital; or

(iii) made the subject of a community order of at least 120 hours.

13. An offence under 246 or 247 if —

(a) the indecent photograph or pseudo-photograph showed persons under 16; and

(b) the offender was 18 or over or is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

14. An offence under 252 if —

(a) the offender was 18 or over; and

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 2 years.

15. An offence under section 256 if the victim or (as the case may be) other party was under 16, and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

16. An offence under section 257 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

17. An offence under section 259 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

18. An offence under section 260 or 261 if the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

19. An offence under section 279.

20. An offence under section 280 or 281 if —

(a) in the case of an offender under 18 – he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

21. An offence under section 282 or 283 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

22. An offence under section 284 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

22A. An offence under section 284A (sending or giving photograph or film of genitals) if —

(a) if the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; or

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community sentence of at least 12 months.

[S. 55/Ord. 10/2024/w.e.f. 14.08.2024]

22B. An offence under section 285B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification) if —

(a) if the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community sentence of at least 12 months.

[S. 55/Ord. 10/2024/w.e.f. 14.08.2024]

23. An offence under section 285 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case —

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been —

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community order of at least 120 hours.

23A.(1) An offence under section 285A if —

(a) the offence was committed for the purpose mentioned in section 285A(3)(a) (sexual gratification); and

(b) the relevant condition is met.

(2) Where the offender was under 18, the relevant condition is that the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

(3) In any other case, the relevant condition is that —

(a) the victim was under 18; or

(b) the offender, in respect of the offence or finding, is or has been —

(i) sentenced to a term of imprisonment;

(ii) detained in a hospital; or

(iii) made the subject of a community sentence of at least 12 months.

[S. 15 Ord. 8/2022/w.e.f. 16/05/2022]

24. An offence under section 286 or 287 if —

(a) in the case of an offender under 18 - he or she is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been —

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

Other offences

1. An offence under section 1 of the Indecency with Children Act 1960 (Indecent conduct towards young child).

2. An offence under section 54 of the Criminal Law Act 1977 (Inciting girl under 16 to have incestuous sexual intercourse).

3. An offence under section 160 of the Criminal Justice Act 1988 (Possession of indecent photograph of a child) if the indecent photograph or pseudo-photograph showed persons under 16 and the offender —

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.

4. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (Abuse of position of trust), if the offender was 20 or over.

5. An offence under the Customs Ordinance 2003 in relation to the import of prohibited articles if —

(a) the prohibited articles included indecent photographs of persons under 16; and

(b) the offender was 18 or over.

6. Conspiracy to commit any of the offences listed in this Schedule.

7. Attempting to commit any of those offences.

8. Encouraging any of those offences.

9. Aiding and abetting any of those offences.

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

SCHEDULE 4
(sections 321 and 322)

OTHER OFFENCES FOR THE PURPOSES OF PART 11

Murder at common law or under section 46

Manslaughter at common law or under section 50

An offence under section 52 (Soliciting murder)

An offence under section 53 (Threats to kill)

An offence under section 56 (Infanticide)

An offence under section 57 (Child destruction)

An offence under section 64 (Wounding, etc. with intent to cause grievous bodily harm)

An offence under section 65 (Malicious wounding)

An offence under section 66 (Attempting to choke etc. with intent to facilitate serious offence)

An offence under section 67 (Using drugs to facilitate serious offence)

An offence under section 68 (Administering poison)

An offence under section 69 (Setting spring guns, etc.)

An offence under section 71 (Assault occasioning actual bodily harm)

An offence under section 71A (Strangulation or suffocation)

[S. 16 Ord. 8/2022/w.e.f. 16/05/2022]

An offence under section 73 (Assault to prevent arrest)

An offence under section 74 (Assaulting persons when preserving wrecks)

An offence under section 77 (Causing or allowing the death of a child or vulnerable adult)

An offence under section 80 (Abandoning young child)

An offence under section 82 (Cruelty to or neglect of person under 16)

An offence of abduction under section 84 or 85

An offence under section 87 (Trafficking for labour)

An offence under section 88 (Offence of female genital mutilation)

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

An offence under section 90 (Offence of forced marriage)

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

Kidnapping under section 115(1)

False imprisonment at common law or under section 115(2)

Torture under section 116

An offence under 153B (false communications)

[S. 56/Ord. 10/2024/w.e.f. 14.08.2024]

An offence under 153C (threatening communications)

[S. 56/Ord. 10/2024/w.e.f. 14.08.2024]

An offence under section 178 (Causing grievous harm by explosion)

An offence under section 179 (Causing explosion, etc. with intent)

An offence under section 182 (Placing explosives with intent)

An offence under section 184 (Possession of explosives with intent)

An offence under section 195 (Destroying or damaging property)

An offence under section 196 (Arson)

An offence under section 259 (Paying for sexual services of a child) if the victim or (as the case may be) other party was 16 or over

An offence under any of sections 260 to 263 (Abuse of children through prostitution and pornography)

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

An offence under section 275 (Trafficking people for sexual exploitation)

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

An offence under section 347 (Offence of theft)

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

An offence under section 353 (Robbery)

An offence under section 354 (Burglary)

An offence under section 355 (Aggravated burglary)

An offence under section 363 (Aggravated vehicle-taking) involving an accident which caused the death of any person

An offence of riot at common law or under section 508

An offence under section 509 (Violent disorder)

An offence of affray at common law or under section 510

An offence under section 87 of the Mental Health Ordinance (Ill-treatment of patients)

An offence under section 14 of the Road Traffic Ordinance (Causing death by reckless driving)

An offence under section 23 of the Firearms and Ammunition Ordinance 1987 (Possessing firearm with intent to injure)

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

An offence under section 24 of the Firearms and Ammunition Ordinance 1987 (Use of firearm or imitation firearm to effect unlawful purpose)

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

An offence under any provision of the Communications Ordinance 2017

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

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

The following offences insofar they apply to the Falkland Islands —

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

An offence under section 1 of the Aviation Security Act 1982 (Hijacking)

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

An offence under section 2 of that Act (Destroying, damaging or endangering safety of aircraft)

An offence under section 3 of that Act (Other acts endangering or likely to endanger safety of aircraft)

An offence under section 4 of that Act (Offences in relation to certain dangerous articles)

An offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes)

An offence under section 9 of that Act (Hijacking of ships)

An offence under section 10 of that Act (Seizing or exercising control of fixed platforms)

An offence under section 11 of that Act (Destroying ships or fixed platforms or endangering their safety)

An offence under section 12 of that Act (Other acts endangering or likely to endanger safe navigation)

An offence under section 13 of that Act (Offences involving threats)

An offence under section 1 of the Taking of Hostages Act 1982

[S.R. & O. 6/2017/w.e.f. 13/4/2017]

Conspiracy to commit any of the offences listed in this Schedule

Attempting to commit any of those offences

Encouraging any of those offences

Aiding and abetting any of those offences

SCHEDULE 5
(*section 581*)

REPEALED AND DISAPPLIED LAWS

PART 'A'
REPEALED ORDINANCES

Crimes Ordinance, including Schedules 1 and 2
Contempt of Court Ordinance
Sexual Offences Ordinance 2005
Protection from Harassment Ordinance 2014
Bribery and Corruption Overseas Ordinance 2006

[S. 28/Ord. 3/2019/w.e.f. 10/04/19]

PART 'B'
REPEALED PROVISIONS

Police Ordinance, sections 55 and 57
Road Traffic Ordinance, section 30

PART 'C'
DISAPPLIED IMPERIAL ENACTMENTS

Accessories and Abettors Act 1861
Uniforms Act 1894 section 2
Children and Young Persons (Harmful Publications) Act 1955
Obscene Publications Acts 1959 and 1964
Abortion Act 1967
Prohibition of Female Circumcision Act 1985
Human Organs Transplants Act 1989
Protection from Harassment Act 1997
Sex Offenders Act 1997
Crime and Disorder Act 1998
Anti-Terrorism, Crime and Security Act 2001

PART 'D'
CONSEQUENTIAL AMENDMENTS

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