

LEGISLATIVE ASSEMBLY

OF THE

FALKLAND ISLANDS



ORDER PAPER

09.00 AM

THURSDAY 27 AUGUST 2015

IN THE COURT AND ASSEMBLY CHAMBER

STANLEY

LEGISLATIVE ASSEMBLY

THURSDAY 27 AUGUST 2015

IN THE LEGISLATIVE ASSEMBLY CHAMBER

TOWN HALL

ORDER PAPER

09.00

1. Prayers
2. Confirmation of the Record of Legislative Assembly held on 30 July 2015
3. Papers to be laid on the table by the Honourable Chief Executive
4. Questions for Oral Answer
5. Motions:

Motion Number 8 of 2015 to accept the response from the Governor (in Council) on the Response to the Public Accounts Committee Report on the Internal Audit Report on Business Continuity Planning.

(This is dependent on Executive Council approval on 26th August)

6. Portfolio Reports:
 - The Honourable Jan Cheek
 - The Honourable Roger Edwards
7. Order of the Day Bills:
 - Taxes (Oil and Gas) Bill 2015
8. Motion for Adjournment

LEGISLATIVE ASSEMBLY

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THURSDAY 27 AUGUST 2015

PAPERS TO BE LAID ON THE TABLE BY THE HONOURABLE CHIEF EXECUTIVE

Copies of Subsidiary Legislation published in the Falkland Islands Gazette since the last sitting of the Legislative Assembly and Laid on the Table pursuant to section 35(1) of the Interpretation and General Clauses Ordinance 1977.

- Defamation (Amendment) Ordinance 1998 (Correction) Order 2015
- Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 (Commencement of Schedule) Order 2015

SUBSIDIARY LEGISLATION

TORT

Defamation (Amendment) Ordinance 1998 (Correction) Order 2015

S. R. & O. No: 9 of 2015

Made: 17 July 2015

Published: 31 July 2015

Coming into force: see article 2

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

1. Title

This order is the Defamation (Amendment) Ordinance 1998 (Correction) Order 2015.

2. Commencement

This order is deemed to have come into force on 1 July 1999.

3. Correction of Defamation (Amendment) Ordinance 1998

The Defamation (Amendment) Ordinance 1998 (No 20 of 1998) is amended in the Schedule by omitting from the new section 4 to the Defamation Ordinance the word “is” appearing in subsection (1) and replacing it with the word “if”.

Made 17th July 2015

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

EXPLANATORY NOTE
(not forming part of the order)

This order corrects typographical errors.

SUBSIDIARY LEGISLATION

ANTARCTICA

Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 (Commencement of Schedule) Order 2015

S. R. & O. No. 10 of 2015

Made: 30 July 2015

Published: 31 July 2015

Coming into force: on publication

IN EXERCISE of my powers under article 1(2) of the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 (SI 2015/823), I make the following Order —

1. Title

This order is the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 (Commencement of Schedule) Order 2015.

2. Commencement

This order comes into force on publication.

3. Commencement of Schedule to the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015

The Schedule to the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 comes into force in respect of the Falkland Islands on 31 July 2015.

Made 30th July 2015

J. S. Tyler-Haywood,
Acting Governor.

EXPLANATORY NOTE
(not part of the order)

The Antarctic Act 1994 was made to apply to the Falkland Islands through several Orders: the Antarctic Act 1994 (Overseas Territories) Order 1997 (S. R. & O. No. 12) of 1997 and the Antarctic Act 1994 (Overseas Territories) Order 1998 (S. R. & O. No. 1 of 1998).

The Antarctic Act 1994 (as it applies to the Falkland Islands) has been amended through the Antarctic Act 2013. These amendments were extended to the Falkland Islands through the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 (SI 2015/823).

Article 1(2) of the Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2015 requires that the Schedule to the Order be brought into force in respect of the Falkland Islands on 31 July 2015. This Order does so.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 27 AUGUST 2015

QUESTIONS FOR ORAL ANSWER

Question Number 13/15 by the Honourable Gavin Short

There seems to be some uncertainty within some areas of the Government as to how the recently reintroduced incremental system works, so could the Honourable Ian Hansen please clarify the following points please:

1. If a pay award or increment has been approved by a Head of Department for an employee, under these circumstances is this decided by the Head of Department on their own or are they obliged to consult with other persons or bodies
2. Can you confirm that a Head of Department can authorise a pay increment or award and can seek advice from HR but does the Head of Department make the final call as it is their budget.
3. If this is the case, can an MLA influence these decisions made whilst they hold the portfolio for this department?

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 27 AUGUST 2015

MOTION

Motion Number 8 of 2015 by the Honourable Ian Hansen.

That this House accepts the response from the Governor (in Council) to the Public Accounts Committee Report on the Internal Audit Report on Business Continuity Planning.

(This is dependent on Executive Council approval on 26th August)

Proposed by: The Hon Ian Hansen

Seconded by: The Hon Dr Barry Elsby

Response to the Assembly on the PAC review of the Internal Audit Report of Business Continuity Planning in line with S14 of the Public Accounts Committee Ordinance

Recommendation - We urge Members to address this very real risk to FIG at your earliest convenience.

Response to Recommendation

The PAC letter stated the following:

- the lead officer has not received training in Business Continuity Planning;
- no up to date or uniform system in place across departments;
- only 12 plans were in place and some were out of date;
- no template/procedure for plans.

FIG recognises the importance of up-to-date tested Business Continuity Plans. Following receipt of the Internal Audit report the Chief Executive reminded Directors of their responsibilities and instructed all Directors and relevant Heads of Service undertake the Civil Service eLearning module and assessment on Business Continuity Planning as an introduction.

FIG also notes that progress had been made between the time the internal audit was carried out and the report being finalised, with the number of plans increasing to 25 by February 2015 (the number expected).

The Director of Emergency Services and Islands Security (DESI) has been appointed and is anticipated to arrive in the last quarter of the year. A key priority for the DESI will be to embed a programme of Business Continuity Planning in the organisation including ensuring officers are appropriately trained and procedures are in place and understood by all relevant stakeholders.

Recommendation accepted

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 27 AUGUST 2015

Portfolio Reports:

The Honourable Jan Cheek

The Honourable Roger Edwards

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 27 AUGUST 2015

ORDER OF THE DAY: BILLS

Taxes (Oil and Gas) Bill 2015.

LEGISLATIVE ASSEMBLY

PROCEDURE FOR TAKING GOVERNMENT BILLS WHICH HAVE BEEN PUBLISHED IN THE
GAZETTE

CLERK	“Orders of the Day – Bills”
CLERK	Taxes (Oil and Gas) Bill 2015
FINANCIAL SECRETARY	“Mr Speaker, this Bill etc.....(explanation) I beg to move the second reading of the Bill”
THE HON. EDWARDS MR SPEAKER	“I second the motion”. “Does any Honourable Member wish to speak on the Bill?” “There is no debate” Is there any objection to dealing with this Bill by the short procedure? No Objection Does any Member wish to propose any amendments to the wording of the Bill? No Amendments “I declare that the Bill will be read for a third time and do Pass”
Debate	
MR SPEAKER	The Motion is that the Bill be read a second time – any objection to the Motion? No Objection – the Bill will be read a second time.
CLERK	Reads the short title of the Bill
MR SPEAKER	Declares that the Assembly is in Committee
CLERK	Clauses 1 and/to.....
FINANCIAL SECRETARY MR SPEAKER	I beg to move the Clauses 1 and/to....stand part of the Bill “The Motion is that Clauses 1 and/to...stand part of the Bill. Is there any objection to the Motion? No objection, Clauses 1 and/to....stand part of the Bill”

CLERK	Schedules (if any)
FINANCIAL SECRETARY MR SPEAKER	I beg to move the Schedule(s) stand part of the Bill. The Motion Is that Schedule(s) stand part of the Bill – any objection? No Objection, the schedule stands part of the Bill.
MR SPEAKER	Declares that the Assembly resumes.
FINANCIAL SECRETARY MR SPEAKER	“I beg to move the Bill be read a third time and do Pass” “The Motion is that the Bill be read a third time and do Pass – any objection to the Motion? No objection, the Bill will be read a third time and do Pass”
CLERK	Reads the short title of the Bill

Taxes (Oil and Gas) Bill 2015

(No: of 2015)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Valuation of petroleum
4. Leasing costs
5. Finance costs and intra-group charges
6. Drilling costs
7. Depreciation allowances
8. Petroleum extraction activities
9. Recovery of tax in respect of profits or gains on offshore petroleum activities: exemption certificates
10. Licence swaps
11. Contractors

TAXES (OIL AND GAS) BILL 2015

(No: of 2015)

(assented to: 2015)

(commencement: 1 October 2015)

(published: 2015)

A BILL

for

AN ORDINANCE

To amend the Taxes Ordinance (Title 69.1) in respect of the taxation of activities connected with oil and gas exploration, development and production.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Taxes (Oil and Gas) Ordinance 2015.

2. Commencement

This Ordinance comes into force on 1 October 2015.

3. Valuation of petroleum

(1) In section 151(3)(a) of the Taxes Ordinance (Title 69.1) (non-arm's length disposals and appropriations: valuation of petroleum) for "shall be determined in accordance with regulations made by the Governor for the purposes of this section" substitute "shall be determined in accordance with section 151A".

(2) After section 151 insert —

"151A. Determination of petroleum market value

(1) This section has effect for the determination of the market value of petroleum for the purposes of section 151.

(2) There shall be a Petroleum Pricing Panel; and —

(a) the Financial Secretary, or an individual nominated by the Financial Secretary, shall chair the Panel,

(b) the Director of Mineral Resources, or an individual nominated by the Director of Mineral Resources, shall also be a member of the Panel, and

(c) other members shall be appointed by, and on terms and conditions determined by, the Governor in Council.

(3) The Panel shall from time to time publish in the Gazette a price (the “norm price”) to be used as the market value of petroleum; and —

(a) the Panel shall specify the class of transactions in respect of which each norm price is to have effect,

(b) a class of transactions may be described by reference to dates or any other factor or combination of factors, and

(c) a class of transactions may be described in such a way that the norm price applies wholly or partly retrospectively.

(4) Before publishing a norm price the Panel must consult persons appearing to them to represent the petroleum industry.

(5) The Governor in Council having consulted the Panel must publish arrangements for an appeal to be brought against the specification of a norm price; and the arrangements —

(a) must specify to whom an appeal may be brought (which may be a court, tribunal, administrative person or a specified judicial, political or administrative officer),

(b) must specify the period within which an appeal must be brought,

(c) may include other procedural provision (including provision about costs),

(d) may specify criteria to be considered in determining the appeal, and

(e) must include arrangements to be followed in the event of a successful appeal.”

4. Leasing costs

After section 152 of the Taxes Ordinance (payments of interest: allowable deductions) insert —

“152A. Leasing costs

(1) Leasing costs incurred by a company shall not be allowable under section 97 as a deduction against the company’s ring-fence income except to the extent permitted by subsection (2) below, but subject to subsections (3), (4) and (5) below and section 155.

(2) Leasing costs may be deducted under this subsection if and to the extent that they are shown to have been incurred by the company in its ring-fence trade.

(3) Where it appears to the Commissioner that leasing costs are incurred to an extent which is not reasonable, having regard to all the circumstances including the terms of the lease and the level of profitability of the ring-fence trade, he may direct that all or any of those costs shall not be allowable as a deduction under section 97 against the company's ring-fence income.

(4) The Commissioner shall publish guidance on the criteria to be considered in the application of subsection (3); and before publishing guidance the Commissioner shall consult persons appearing to be representative of the petroleum industry.

(5) Leasing costs paid by a company in respect of plant or machinery leased from a connected person shall not be allowable under section 97.

(6) Leasing costs incurred by a company shall not be allowable under section 97 as a deduction against income which is not ring-fence income except to the extent that they are shown to have been incurred by the company otherwise than in its ring-fence trade.

(7) In the case of a contractor within the meaning of section 150(11), interest is allowable as a deduction in accordance with this section only —

(a) in so far as attributable (through just and reasonable apportionment if necessary) to assets used in the Falkland Islands, and

(b) by application to the contractor's interest expenses net of interest received.”

5. Finance costs and intra-group charges

(1) Section 155 of the Taxes Ordinance (certain interest not deductible) is amended as follows (and its heading becomes “Finance costs: deductibility”).

(2) For subsection (2) (interest on loans) substitute —

“(2) Subsection (2A) applies where —

(a) finance charges are incurred by a company to which this section applies (“C”) in respect of a financial transaction, and

(b) C has a special relationship with one or more of the parties to the transaction (“SR”).

(2A) The finance charges shall not be deductible in ascertaining C's chargeable income, unless and to the extent that the Commissioner directs that the charges may be deducted.

(2B) For the purpose of subsection (2A) —

(a) “financial transaction” includes loans, leasing arrangements and any other transaction which is wholly or partly of a financial nature;

(b) “special relationship” means any relationship as a result of which C and SR are not dealing, or may not be dealing, at arms' length;

(c) “finance charge” includes interest, leasing charges, discount, deferred payment, prepayment and any other payment or arrangement that represents all or part of the cost of the financial transaction;

(d) a direction may be specific or general, and conditional or absolute;

(e) the Commissioner shall publish guidance on the criteria to be considered in determining whether or not to give a direction;

(f) before publishing guidance the Commissioner shall consult persons appearing to be representative of the petroleum industry.

(2C) In the case of a contractor within the meaning of section 150(11), finance charges are deductible in accordance with this section only —

(a) in so far as attributable (through just and reasonable apportionment if necessary) to assets used in the Falkland Islands, and

(b) by application to the contractor's finance charge expenses net of finance charges received."

(3) In subsection (3) omit "of interest".

(4) For subsection (4) substitute —

"(4) Where C enters into a financial transaction in respect of which subsection (2A) applies C shall notify the Commissioner of that fact not later than 4 weeks after entering into the transaction."

(5) Omit subsection (5).

(6) For subsection (6) substitute —

"(6) This section applies to a company carrying on any exploration or exploitation activities."

(7) Omit subsection (8).

6. Drilling costs

For the definition of "intangible drilling costs" in section 110(1) of the Taxes Ordinance (petroleum extraction activities: general provisions) substitute —

"**"intangible drilling costs"** means capital costs directly attributable to the drilling of development or production wells, other than costs which are directly attributable to the creation or acquisition of plant or machinery with a salvage value;"

7. Depreciation allowances

After section 124 of the Taxes Ordinance (which is no longer in force) insert —

“124A. Restriction of depreciation by reference to asset value in accounts

(1) This section applies where a person (P) claims an allowance under this Chapter in respect of plant or machinery brought into the Falkland Islands in connection with a ring-fence trade.

(2) A depreciation allowance must be calculated by reference to the reduction in the value of the plant or machinery as specified in P’s accounts.

(3) If the Commissioner is not satisfied that the provision in P’s accounts is not in accordance with accounting policies which are operated by P and which reflect proper accounting practice, he may direct that this section is to apply in relation to the relevant plant and machinery with such modifications as the direction may specify.

(4) In this section a reference to P’s accounts includes a reference to the accounts of a person connected to P.”

8. Petroleum extraction activities

(1) For the definition of “petroleum extraction activities” in section 140 of the Taxes Ordinance (ring fence trades: interpretation) substitute —

“**“petroleum extraction activities”** means any activities carried on in connection with —

(a) searching for petroleum;

(b) extracting petroleum;

(c) transporting petroleum;

(d) effecting initial treatment or initial storage of petroleum;

(e) decommissioning or abandoning plant or machinery previously used or designed to be used in connection with an activity within paragraphs (a) to (d);”.

(2) This section shall be treated as always having had effect.

9. Recovery of tax in respect of profits or gains on offshore petroleum activities: exemption certificates

In Schedule 6 (recovery of tax in respect of profits or gains on offshore petroleum activities, etc: supplementary provisions) omit paragraphs 5 and 7 (exemption certificates).

10. Licence swaps

(1) Section 145 of the Taxes Ordinance (licences exchanged for other licences or work obligation) is amended as follows.

(2) In subsection (2) —

(a) for “of another licence” substitute “of another petroleum licence”,

(b) for “in another licence” substitute “in another petroleum licence”, and

(c) for “the licence” substitute “the petroleum licence”.

(3) In subsection (3) —

(a) for “of a licence” substitute “of a petroleum licence”,

(b) for “of two or more licences” substitute “of two or more petroleum licences”,

(c) for “licence disposed of” substitute “petroleum licence disposed of”, and

(d) for “those two or more licences” substitute “those two or more petroleum licences”.

(4) In subsection (4) —

(a) for “disposal of a licence” substitute “disposal of a petroleum licence”,

(b) for “the licence in question” substitute “the petroleum licence in question”, and

(c) for “the whole of the licence” substitute “the whole of the petroleum licence”.

(5) This section shall be treated as always having had effect.

11. Contractors

(1) In section 150 of the Taxes Ordinance (ring-fencing of petroleum extraction activities, etc., for tax purposes) after subsection (10) add —

“(11) A reference in this Act to a ring-fence trade includes a reference to anything undertaken by one person (“C”) as a contractor for another person (“P”) who carries on a ring-fence trade for the purposes of this Chapter, if and in so far as C’s activities are undertaken for the purposes of P’s ring-fence trade.”

(2) In section 152 of the Taxes Ordinance (payments of interest) after subsection (5) add —

“(6) In the case of a contractor within the meaning of section 150(11), interest is allowable as a deduction in accordance with this section only —

(a) in so far as attributable (through just and reasonable apportionment if necessary) to assets used in the Falkland Islands, and

(b) by application to the contractor’s interest expenses net of interest received.”

OBJECTS AND REASONS

This Bill amends the law relating to the taxation of activities connected with petroleum extraction and related matters.

Clause 1 specifies the short title.

Clause 2 provides for the Ordinance to come into force on 1 October 2015.

Clause 3 provides for the market value of petroleum for tax purposes to be determined by a Petroleum Pricing Panel.

Clause 4 provides for leasing costs to be tax deductible expenses subject to rules similar to those for interest.

Clause 5 amends the rules about the tax deductibility of interest costs, notably by expanding the rules to include other finance costs.

Clause 6 redefines “intangible drilling costs”.

Clause 7 restricts tax allowances for depreciation by reference to the values shown in a company’s accounts.

Clause 8 clarifies the definition of “petroleum extraction activities”.

Clause 9 repeals the provisions for exemption certificates in relation to tax recovery.

Clause 10 clarifies the existing application of provisions about petroleum licence swaps.

Clause 11 makes provision about the position of contractors working for petroleum extraction companies.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 27 AUGUST 2015

PROCEDURE FOR THE MOTION FOR ADJOURNMENT

CLERK	“Motion for Adjournment”
CHIEF EXECUTIVE	“Mr Speaker I beg to move that House stands adjourned sine die.” Honourable Members may speak to the Motion.
THE SPEAKER	“The House stands adjourned accordingly.” Mr Speaker then departs