

**LEGISLATIVE ASSEMBLY
OF THE
FALKLAND ISLANDS**



ORDER PAPER

09.00 AM

THURSDAY 24 NOVEMBER 2016

IN THE COURT & ASSEMBLY CHAMBERS

STANLEY

LEGISLATIVE ASSEMBLY
THURSDAY 24 NOVEMBER 2016
IN THE COURT & ASSEMBLY CHAMBERS

ORDER PAPER
09.00

1. Prayers
2. Election to Executive Council
3. Confirmation of the Record of Legislative Assembly held on 26 October 2016
4. Questions for Oral Answer
5. Motions
6. Portfolio Reports:
 - The Honourable Phyl Rendell MBE
 - The Honourable Gavin Short
7. Order of the Day: Bills
8. Motion for Adjournment

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

ELECTION TO EXECUTIVE COUNCIL

- The Clerk** “Election of Elected Members Executive Council.”
- Mr Speaker** Appoints the Attorney General and The Acting Financial Secretary as tellers for the purpose of the election.
- (Ballot Papers will have been distributed to each Elected Members’ place at the table.)
- Voting takes place:
- First for Stanley Representative;
 - Then for Camp Representative; and
 - Finally for Representative of either Stanley or Camp
- The Clerk** Collects the ballot papers and delivers them to the tellers after each election. The result is then passed to Mr Speaker who announces the name of the Member elected in each round of voting
- Mr Speaker** **Announces the overall result**

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

QUESTIONS FOR ORAL RESPONSE

Question Number 25/16 by the Honourable Michael Poole

Can the Honourable Ian Hansen please provide this House the Human Resources Department statistics on the average length of time it takes from a role being advertised to a formal appointment letter and/or contract being issued for the last 2 full financial years and this financial year to date.

Question Number 26/16 by the Honourable Phyl Rendell MBE

Can the Honourable Mike Summers update this House on the timing of when the changes to the Immigration Ordinance agreed at Executive Council a year ago will come to the Assembly for ratification and when the Points System for Permanent Residence Permit holders will be reviewed and amended to reflect current and future needs for the Islands.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

MOTION

Motion No 16 of 2016 by the Honourable Michael Poole

This House believes that incentives could be an effective way of encouraging students to consider a career in areas where there are skill shortages in the Falklands.

Proposed: The Honourable Michael Poole

Seconded: The Honourable Dr Barry Elsby

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

Portfolio Reports:

The Honourable Phyl Rendell MBE

The Honourable Gavin Short

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

Order of the Day: Bills

Animals (Welfare and Protection) Bill 2016

Communications Bill 2016

LEGISLATIVE ASSEMBLY

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

CLERK	“Orders of the Day – Bills”
CLERK	Animals (Welfare and Protection) Bill 2016
HON PHYL RENDELL MBE	“Mr Speaker, this Bill etc.....(explanation) I beg to move the second reading of the Bill”
HON IAN HANSEN	“I second the motion”.
MR SPEAKER	“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	Animals (Welfare and Protection) Bill 2016
MR SPEAKER	Declares that the Assembly is in Committee
CLERK	Clauses 1 to 61
HON PHYL RENDELL MBE	I beg to move the Clauses 1 to 61 stand part of the Bill
MR SPEAKER	“The Motion is that Clauses 1 to 61 stand part of the Bill. Is there any objection to the Motion?”
	No objection, Clauses to stand part of the Bill”
CLERK	Schedule

HON PHYL RENDELL I beg to move the Schedule stand part of the Bill
MBE

MR SPEAKER “The Motion is that Schedule stand part of the Bill. Is there any
objection to the Motion?

No objection, Clauses to stand part of the Bill”

MR SPEAKER Declares that the **Assembly resumes.**

HON PHYL RENDELL I beg to move the Bill be read a third time and do pass
MBE

MR SPEAKER “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 Animals (Welfare and Protection) Bill 2016

Animals (Welfare and Protection) Bill 2016

(No: of 2016)

ARRANGEMENT OF PROVISIONS

PART 1 - PRELIMINARY

Clause

1. Title and commencement
2. Interpretation
3. Responsibility for animals
4. Meaning of “animal”
5. Application of the Ordinance

PART 2 - ANIMAL WELFARE

Unnecessary suffering - domestic animals

6. Unnecessary suffering

Promotion of welfare

7. Duty of person responsible for animal to ensure welfare
8. Improvement notices
9. Transfer of animals by way of sale or prize to persons under 16
10. Regulations to promote welfare
11. Licensing of activities involving animals

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12. Powers in relation to animals in distress
13. Power of entry for section 12 purposes
14. Orders in relation to animals taken under section 12(5)
15. Orders under section 14: Appeals

PART 3 - PROTECTION OF ANIMALS

Poison, etc.

16. Poisoning, etc. of domestic animals
17. Other offences in connection with poisons
18. Prohibited or restricted use of poisons

Traps

19. Inspection of traps
20. Restriction on type of trap
21. Open trapping of hares and rabbits

Performing animals

22. Prohibition of exhibiting and training performing animals

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- 23. Prohibition of films involving cruelty to domestic animals
- 24. Section 23: Supplementary

Mutilation of domestic animals

- 25. Mutilation
- 26. Docking of dogs' tails

Animals fighting

- 27. Fighting, etc.
- 28. Seizure of animals involved in fighting offences
- 29. Reimbursement of expenses relating to animals involved in fighting offences
- 30. Destruction of animals involved in fighting offences

Non-native and unsuitable animals

- 31. Prohibition of importing or keeping unsuitable animals
- 32. Inspection of premises
- 33. Power to seize and to dispose of animals without compensation

Dogs and cats

- 34. Identification of dogs and cats
- 35. Seizure and destruction of stray dogs and cats
- 36. Dogs and cats: Inspection powers

PART 4 – ENFORCEMENT POWERS

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- 37. Inspection powers generally
- 38. Entry and search under warrant in connection with offences
- 39. Conditions for issue of warrant

Disqualification and deprivation

- 40. Orders with respect to licences
- 41. Disqualification generally
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- 43. Seizure of animals in connection with disqualification
- 44. Deprivation orders
- 45. Destruction in the interests of the animal
- 46. Sections 43 to 45: Supplementary provisions
- 47. Forfeiture of equipment used in offences
- 48. Orders under sections 43 to 47: Pending appeals

Enforcement generally

- 49. Time limits for prosecutions
- 50. Power to stop and detain vehicles
- 51. Power to detain vessels and aircraft
- 52. Obtaining of documents in connection with carrying out orders, etc.

PART 5 - MISCELLANEOUS PROVISIONS

53. Service of documents
54. Regulations
55. Codes of practice
56. Amendment of Schedule
57. Repeal of laws
58. Savings
59. Transitional provisions
60. Consequential amendments - Schedule
61. Crown application

Schedule – Consequential amendments

“exhibit” means exhibit at any entertainment to which the public are admitted, whether on payment of money or otherwise; and “exhibitor” has the corresponding meaning;

“fowl” includes any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea-fowl, peacock, peahen, swan, or pigeon;

“goat” includes a kid;

“horse” includes any mare, gelding, pony, foal, colt, filly, or stallion;

“humanely destroy”, in relation to an animal, means —

(a) to put to death by means of the administration of a lethal injection in such a way as not to be likely to cause unnecessary pain or suffering to the animal; or

(b) otherwise to put to death in a way not likely to cause unnecessary pain or suffering to the animal;

“inspector” includes a veterinary officer or any person appointed by the Governor to be an inspector for the purposes of this Ordinance;

“keeper” has the meaning given that term by section 3(3);

“licence” means a licence issued under regulations made under section 54;

“non-native animal” has the meaning given that term by section 31;

“owner”, in relation to an animal, means the person to whom the animal lawfully belongs and includes an agent of the owner;

“pig” includes any boar, hog, sow or piglet;

“post-conviction powers” means the powers in any of sections 40 to 47;

“premises” includes —

(a) any place;

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

(c) any tent or movable structure;

“Senior Veterinary Officer” means the person performing the duties of the senior veterinary officer of the Government;

“sheep” includes any lamb, ewe, or ram;

“suffering” means physical or mental suffering and related expressions are to be construed accordingly;

“train” means train for the purpose of exhibiting; and “trainer” has the corresponding meaning;

“unsuitable animal” means an animal specified as such by an order made under section 31;

“veterinary surgeon” means a person qualified in veterinary medicine and surgery and registered with a body established or recognised for that purpose under the laws of a country or territory.

(2) In this Ordinance —

(a) references to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied premises” are to be construed accordingly;

(b) references to a part of premises which is used as a private dwelling include any yard, garden, garage or outhouse which is used for purposes in connection with it;

(c) references to responsibility, in relation to an animal, are to be read in accordance with section 3;

(d) references to the needs of an animal are to be read in accordance with section 7(2).

[UK Animal Welfare Act 2006 s.3; Dangerous Wild Animals Act 1976 s.7]

3. Responsibility for animals

(1) In this Ordinance —

(a) references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis;

(b) references to being responsible for an animal include being in charge of it.

(2) For the purposes of this Ordinance —

(a) the owner of an animal is to be regarded as responsible for it;

(b) a person (‘A’) is to be regarded as responsible for any animal for which a person under the age of 16 years of whom A has actual care and control is responsible.

(3) In this Ordinance —

(a) “keeper”, in relation to an animal, means a person, not being the owner of that animal, by whom that animal is for the time being ordinarily kept;

(b) a person is a keeper of an animal if the person has it in the person’s possession;

(c) if at any time an animal ceases to be in the possession of a person, any person who immediately before that time was a keeper of the animal by virtue of paragraph (a) or (b) continues to be a keeper of the animal until another person becomes its keeper by virtue of those provisions;

(d) if an animal is in the possession of any person only so that the person can —

- (i) prevent it from causing damage;
- (ii) restore it to its owner;
- (iii) arrange for it to undergo veterinary treatment; or
- (iv) transport it on behalf of another person,

the person is not because of that possession to be treated for the purposes of this Ordinance as a keeper of the animal;

(e) expressions cognate with “keeper” must be construed in accordance with this subsection.

[Animals (Amendment) Ordinance; UK Protection of Animals Act 1911 s.15; Animal Welfare Act 2006 s.3 etc.]

4. Meaning of “animal”

(1) In this Ordinance, except subsections (4) and (5) of this section, “animal” means a vertebrate other than a human.

(2) Nothing in this Ordinance applies to an animal while it is in its foetal or embryonic form.

(3) The Governor may by order for all or any of the purposes of this Ordinance —

- (a) extend the definition of “animal” so as to include invertebrates of any description;
- (b) make provision in place of subsection (2) as respects any invertebrates included in the definition of “animal”; and
- (c) amend subsection (2) to extend the application of this Ordinance to an animal from an earlier stage of its development specified in the regulations.

(4) The power under subsection (3)(a) or (c) may only be exercised if the Governor is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.

(5) In this section, “vertebrate” means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and “invertebrate” means any animal not of that Sub-phylum.

[UK Animal Welfare Act 2006 ss.1 and 59]

5. Application of the Ordinance

(1) This Ordinance applies to all animals, including animals of a kind that are commonly kept for slaughter, except that —

(a) provisions that are stated to apply to domestic animals apply only to the animals specified in subsection (3);

(b) if there is any conflict between the requirements of or under this Ordinance and the requirements of or under the Livestock and Meat Products Ordinance in relation to animals kept for slaughter, the latter requirements prevail.

(2) This Ordinance —

(a) does not apply in relation to anything which occurs in the normal course of fishing;

(b) does not displace or affect any of the written laws relating to fishing and fisheries;

(c) does not displace or affect any enactment relating to animals except as provided in Schedule 2.

(3) An animal is a “domestic animal” for the purposes of this Ordinance if it is —

(a) a horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl;

(b) an animal of any other kind or species, whether a quadruped or not, which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man;

(c) under the control of man whether on a permanent or temporary basis; or

(d) not living in a wild state.

[UK Animal Welfare Act 2006 s.2 adapted]

PART 2 – ANIMAL WELFARE

Unnecessary suffering - domestic animals

6. Unnecessary suffering

(1) A person (‘A’) commits an offence if —

(a) an act of A, or a failure of A to act, causes an animal to suffer;

(b) A knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so;

(c) the animal is a domestic animal; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if—

(a) A is responsible for an animal;

(b) an act, or failure to act, of another person ('B') causes the animal to suffer;

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening; and

(d) the suffering is unnecessary.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) For the purposes of this Ordinance, any pain or suffering is unnecessary if, in all the circumstances of the case, it is reasonably avoidable or preventable.

(4) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include whether—

(a) the suffering could reasonably have been avoided or reduced;

(b) the conduct which caused the suffering was in compliance with this Ordinance, or any provisions of a licence or code of practice issued under this Ordinance;

(c) the conduct which caused the suffering was for a legitimate purpose, such as—

(i) the purpose of benefiting the animal; or

(ii) the purpose of protecting a person, property or another animal;

(d) the suffering was proportionate to the purpose of the conduct concerned;

(e) the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

(5) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

[UK Animal Welfare Act 2006 s.4]

Promotion of welfare

7. Duty of person responsible for animal to ensure welfare

(1) A person who is responsible for any animal commits an offence if the person does not take such steps as are reasonable in all the circumstances to ensure that the needs of the animal are met to the extent required by good practice.

Penalty: Imprisonment for 12 months or a fine at level 6 on the standard scale, or both.

(2) For the purposes of this Part, an animal's needs are to be taken to include—

- (a) its need for a suitable environment;
- (b) its need for a suitable diet;
- (c) its need to be able to show normal behaviour patterns;
- (d) any need it has to be housed with, or apart from, other animals; and
- (e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular —

- (a) any lawful purpose for which the animal is kept; and
- (b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

[UK Animal Welfare Act 2006 s.9]

8. Improvement notices

(1) If an inspector is of the opinion that a person is failing to comply with section 7(1), the inspector may serve on the person a notice which —

- (a) states that the inspector is of that opinion;
- (b) specifies the respects in which he or she considers the person is failing to comply with that provision;
- (c) specifies the steps he or she considers need to be taken in order to comply with the provision;
- (d) specifies a period for the taking of those steps (“the compliance period”); and
- (e) explains the effect of subsections (3) and (4).

(2) An improvement notice may —

- (a) be in the form of a letter;
- (b) specify a compliance period according to the severity of the harm and the nature of the conditions.

(3) If a notice under subsection (1) (“an improvement notice”) is served, no proceedings for an offence under section 7(1) may be instituted before the end of the compliance period in respect of —

- (a) the non-compliance which gave rise to the notice; or
- (b) any continuation of that non-compliance.

(4) If the steps specified in an improvement notice are taken at any time before the end of the compliance period, no proceedings for an offence under section 7(1) may be instituted in respect of —

- (a) the non-compliance which gave rise to the notice; or
- (b) any continuation of that non-compliance prior to the taking of the steps specified in the notice.

(5) An inspector may extend, or further extend, the compliance period specified in an improvement notice.

[UK Animal Welfare Act 2006 s.10]

9. Transfer of animals by way of sale or prize to persons under 16

(1) A person who sells an animal to a person under the age of 16 years commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(2) For the purposes of subsection (1), selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

(3) Subject to subsections (4) to (6), a person ('A') who enters into an arrangement with a person ('B') under which B has the chance to win an animal as a prize commits an offence if B is under the age of 16 years.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(4) A does not commit an offence under subsection (3) if —

- (a) A enters into the arrangement in the presence of the person with whom the arrangement is made; and
- (b) A has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16 years.

(5) A does not commit an offence under subsection (3) if —

- (a) A enters into the arrangement otherwise than in the presence of the person with whom the arrangement is made; and
- (a) A has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement.

(6) A does not commit an offence under subsection (3) if A enters into the arrangement with A's own child or grandchild (including by adoption), cousin, nephew, niece or sibling.

[UK Animal Welfare Act 2006 s.11 expanded]

10. Regulations to promote welfare

(1) The Governor may by regulations under section 54 make any provision the Governor thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the offspring of such animals.

(2) Without limiting subsection (1), regulations made for the purpose mentioned in that subsection may include provision —

(a) imposing specific requirements for the purpose of securing that the needs of animals are met;

(b) to facilitate or improve co-ordination in relation to the carrying out by different persons of functions relating to the welfare of animals;

(c) either —

(i) conferring on a department of the government functions relating to advice about the welfare of animals; or

(ii) for the establishment of a statutory body with those functions.

[UK Animal Welfare Act 2006 s.12]

11. Licensing of activities involving animals

(1) A person must not carry on an activity to which this section applies except under the authority of a licence issued under regulations made under section 54.

(2) Subsection (1) applies to an activity which —

(a) involves animals for which a person is responsible; and

(b) is specified for the purposes of the subsection by regulations.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

[UK Animal Welfare Act 2006 s.13]

Domestic animals in distress

12. Powers in relation to animals in distress

(1) If —

(a) an inspector or a police officer (within Stanley) reasonably believes that a domestic animal is suffering; or

(b) any person outside of Stanley reasonably believes that a domestic animal is suffering, the inspector, officer or the person may take, or arrange for the taking of, such steps as appear to him or her to be immediately necessary to alleviate the animal's suffering.

(2) Subsection (1)(a) does not authorise destruction of an animal but a person under subsection (1)(b) may destroy an animal where the animal is under severe distress and the person is able to carry out the destruction.

(3) If the Senior Veterinary Officer certifies that the condition of a domestic animal is such that it should in its own interests be destroyed, an inspector or a police officer may —

(a) destroy the animal where it is or take it to another place and destroy it there; or

(b) arrange for the doing of any of the things mentioned in paragraph (a).

(4) An inspector or a police officer may act under subsection (3) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the condition of the animal is such that there is no reasonable alternative to destroying it; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(5) An inspector or a police officer may take a domestic animal into possession if the Senior Veterinary Officer certifies that it is —

(a) suffering; or

(b) likely to suffer if its circumstances do not change.

(6) An inspector or a police officer may act under subsection (5) without the certificate of the Senior Veterinary Officer if it appears to the inspector or officer that —

(a) the animal is suffering or that it is likely to do so if its circumstances do not change; and

(b) the need for action is such that it is not reasonably practicable to wait for the Senior Veterinary Officer.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) If an animal is taken into possession under subsection (5), an inspector or a police officer may —

(a) remove it, or arrange for it to be removed, to a place of safety;

(b) care for it, or arrange for it to be cared for —

(i) on the premises where it was being kept when the decision was made that it should be taken into possession; or

(ii) at any other place the inspector or officer thinks fit;

(c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision, may make use of any equipment on the premises.

(10) The Senior Veterinary Officer may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person ('A') exercises a power under this section otherwise than with the knowledge of a person ('B') who is responsible for the animal concerned, A must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of B.

(12) A person who intentionally obstructs another person in the exercise of a power conferred by this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(13) The Magistrate's Court or the Summary Court may, on application by a person who incurs expenses in acting under this section, order that the person be reimbursed by such other person as the court thinks fit.

(14) A person affected by a decision under subsection (13) may appeal against the decision to the Supreme Court.

[UK Animal Welfare Act 2006 s.18]

13. Power of entry for section 12 purposes

(1) An inspector or a police officer may enter premises for the purpose of searching for a domestic animal and of exercising any power under section 12 in relation to it if the inspector or officer reasonably believes that —

(a) there is a domestic animal on the premises; and

(b) the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer.

(2) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling.

(3) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(4) An inspector or a police officer may (if necessary) use reasonable force in exercising the power conferred by subsection (1), if it appears to the inspector or officer that entry is being refused and is required before a warrant under section 38 can be obtained and executed.

[UK Animal Welfare Act 2006 s.19]

14. Orders in relation to animals taken under section 12(5)

(1) The Magistrate's Court or the Summary Court may order in relation to an animal taken into possession under section 12(5) that —

- (a) specified treatment be administered to the animal;
- (b) possession of the animal be given up to a specified person;
- (c) the animal be sold;
- (d) the animal be disposed of otherwise than by way of sale; or
- (e) the animal be destroyed.

(2) If an animal is taken into possession under section 12(5) when it is pregnant, the power conferred by subsection (1) is also exercisable in relation to any offspring that results from the pregnancy.

(3) The power conferred by subsection (1) is exercisable on application by —

- (a) the owner of the animal; or
- (b) any other person appearing to the court to have a sufficient interest in the animal.

(4) A court must not make an order under subsection (1) unless it —

- (a) has given the owner of the animal an opportunity to be heard; or
- (b) is satisfied that it is not reasonably practicable to communicate with the owner.

(5) If a court makes an order under subsection (1), it may —

- (a) appoint a person to carry out, or arrange for the carrying out, of the order;
- (b) give directions with respect to the carrying out of the order;
- (c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(d) order a person to reimburse the expenses of carrying out the order.

(6) In determining how to exercise its powers under this section, the court must have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person might be ordered to reimburse.

(7) A person who intentionally obstructs a person in the exercise of any power conferred by virtue of this section commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 4 on the standard scale, or both.

(8) If the owner of the animal is subject to a liability by virtue of section 12(13) or subsection (5)(d) above, any amount to which the owner is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

[UK Animal Welfare Act 2006 s.20]

15. Orders under section 14: Appeals

(1) If a court makes an order under section 14(1), the owner of the animal to which the order relates may appeal against the order to the Supreme Court.

(2) Nothing may be done under an order under section 14(1) unless —

(a) the period for giving notice of appeal against the order has expired; and

(b) if the order is the subject of an appeal, the appeal has been determined or withdrawn.

(3) If the effect of an order is suspended under subsection (2) —

(a) no directions given in connection with the order have effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under subsection (3)(b) may, in particular —

(a) appoint a person to carry out, or arrange for the carrying out, of the directions;

(b) require any person who has possession of the animal to deliver it up for the purposes of the directions;

(c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;

(d) provide for the recovery of any expenses which are reasonably incurred in carrying out the directions.

(5) If a court decides on an application under section 14(3) not to exercise the power conferred by subsection (1) of that section, the applicant may appeal against the decision to the Supreme Court.

(6) If a court makes an order under section 14(5)(d), the person against whom the order is made may appeal against the order to the Supreme Court.

[UK Animal Welfare Act 2006 s.21]

PART 3 - PROTECTION OF ANIMALS

Poison, etc.

16. Poisoning, etc. of domestic animals

(1) A person who, without lawful authority or reasonable excuse —

(a) administers any poisonous or injurious drug or substance to a domestic animal, knowing it to be poisonous or injurious; or

(b) causes any poisonous or injurious drug or substance to be taken by a domestic animal, knowing it to be poisonous or injurious,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person ('A') commits an offence if —

(a) A is responsible for an animal;

(b) without lawful authority or reasonable excuse, another person ('B') administers a poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance; and

(c) A permitted that to happen or, knowing the drug or substance to be poisonous or injurious, failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

[UK Animal Welfare Act 2006 s.7]

17. Other offences in connection with poisons

(1) A person who —

(a) sells, or offers or exposes for sale, or gives away;

(b) causes or procures any person to sell or offer or expose for sale or give away; or

(c) knowingly is a party to the sale or offering or exposing for sale or giving away,

of any grain or seed which has been rendered poisonous, except for genuine use in agriculture, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(2) A person who —

(a) knowingly puts or places;

(b) causes or procures any person to put or place; or

(c) knowingly is a party to the putting or placing,

in or upon any land or building, of any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous, commits an offence.

Penalty: A fine at level 4 on the standard scale.

(3) In any proceedings under subsection (2), it is a defence that the poison was placed by the defendant for the purpose of destroying insects and other invertebrates, rats, mice, or other small ground vermin, if that is reasonably necessary —

(a) in the interests of public health, agriculture, or the preservation of other animals, domestic or wild and that the defendant took all reasonable precautions to prevent injury from the poison or other matter to dogs, cats, fowls, or other domestic animals and wild birds; or

(b) for the purpose of conservation or restoration of habitats as provided for under guidance issued by the Environmental and Planning Department.

(4) Subject to section 18, a person is not guilty of an offence under this section by reason only that the person uses poisonous gas in a rabbit hole, or places in a rabbit hole a substance which, by evaporation or in contact with moisture generates poisonous gas.

[UK Protection of Animals Act 1911 s.8; Prevention of Damage by Rabbits Act 1939 ss.1 and 5]

18. Prohibited or restricted use of poisons

(1) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations under section 54, the fact that the poison was used as mentioned in section 17(4) is not a defence in proceedings under that section if the poison was used in contravention of the regulations.

(2) If the use of any poison for the purpose of destroying any animal has been prohibited or restricted by regulations made under section 54, any person convicted in such proceedings of an offence committed by or in connection with the use of the poison in contravention of the regulations commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 1 on the standard scale.

[UK Animals (Cruel Poisons) Act 1962 ss.1 and 2]

Traps

19. Inspection of traps

(1) Any person who sets, or causes or procures to be set, any spring trap for the purpose of catching any animal, or which is so placed as to be likely to catch any animal, must inspect, or cause some competent person to inspect, the trap at reasonable intervals of time and at least once every day between sunrise and sunset.

(2) A person as mentioned in subsection (1) who fails to comply with that subsection commits an offence.

Penalty: A fine at level 1 on the standard scale.

[UK Protection of Animals Act 1911 s.10]

20. Restriction on type of trap

(1) Subject to this section, a person who —

(a) for the purpose of killing or taking animals, uses, or knowingly permits the use of, any trap other than a humane spring cage trap;

(b) sells, or exposes or offers for sale, any trap other than a humane spring cage trap;
or

(c) has any in possession any animal trap other than a humane spring cage trap,

commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 21, a fine at level 5 on the standard scale.

(2) Subsection (1) does not apply to traps of any description adapted solely for the destruction of rats, mice or other small ground vermin.

[UK Pests Act 1954 s.8 adapted]

21. Open trapping of hares and rabbits

Subject to this section, a person who, for the purpose of killing or taking hares or rabbits, uses, or knowingly permits the use of, a spring trap elsewhere than in a hare form or rabbit hole, commits an offence.

Penalty: (i) A fine at level 3 on the standard scale: or

(ii) for a second or subsequent offence under this section or section 20, a fine at level 5 on the standard scale.

[UK Pests Act 1954 s.9]

Performing animals

22. Prohibition of exhibiting and training performing animals

(1) No person may exhibit or train any performing animal in the Falkland Islands.

(2) Any inspector and any police officer may enter at all reasonable times and inspect any premises in which the inspector or police officer reasonably suspects that animals are being trained or exhibited, or kept for training or exhibition, and any such animals found on the premises.

(3) A person who —

(a) exhibits or trains any performing animal;

(b) obstructs or wilfully delays any inspector or police officer in the execution of powers under subsection (2) as to entry or inspection;

(c) conceals any animal with a view to avoiding such inspection,

commits an offence.

Penalty: A fine at level 3 on the standard scale.

(4) This section does not apply to the training of animals for genuine military, police, agricultural or sporting purposes, or the exhibition of any animals so trained.

[UK Performing Animals (Regulation) Act 1925 ss.3 to 5]

Films

23. Prohibition of films involving cruelty to domestic animals

(1) It is an offence for a person ('A') to exhibit to the public, or supply to any other person for public exhibition (whether by A or by another person), any cinematograph film (whether produced in the Falkland Islands or elsewhere) if in connection with the production of the film any scene represented in the film was organised or directed in such a way as to involve—

(a) the cruel infliction of pain or terror on any domestic animal; or

(b) the cruel goading of any such animal to fury.

(2) In any proceedings under this section in respect of any film —

(a) the court may (without prejudice to any other mode of proof) infer from the film as exhibited to the public or supplied for public exhibition, as the case may be, that a scene represented in the film as so exhibited or supplied was organised or directed in such a way as to involve the cruel infliction of pain or terror on an animal or the cruel goading of an animal to fury; but

(b) (whether the court draws such an inference or not) it is a defence for A to prove that A believed, and had reasonable cause to believe, that no scene so represented was so organised or directed.

(3) A person who contravenes this section commits an offence.

Penalty: Imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

24. Section 23: Supplementary

(1) In section 23, “film” means any medium on which moving images are recorded so that they can be replayed.

(2) For the purposes of section 23, a cinematograph film is deemed to be exhibited to the public when, it is exhibited in a place to which for the time being members of the general public as such have access, whether on payment of money or otherwise, and the expression “public exhibition” is to be construed accordingly.

(3) Nothing in section 23 applies to a film of a steer-riding competition in the Falkland Islands.
[UK Cinematograph Films (Animals) Act 1937 s.1]

Mutilation of domestic animals

25. Mutilation

(1) Subject to subsection (3), a person other than a veterinary surgeon who —

(a) carries out a surgical procedure on a domestic animal; or

(b) causes such a procedure to be carried out on a domestic animal,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) Subject to subsection (3), a person (‘A’) commits an offence if —

(a) A is responsible for a domestic animal;

(b) another person (‘B’), not being a veterinary surgeon, carries out a surgical procedure on the animal; and

(c) A permitted that to happen or failed to take such steps (whether by way of supervising B or otherwise) as were reasonable in all the circumstances to prevent that happening.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) If —

(a) the animal is livestock; and

(b) the surgical procedure is carried out in conformity with a relevant code of practice,

the procedure may be carried out by a person other than a veterinary surgeon.

(4) A veterinary surgeon may carry out a surgical procedure on an animal other than in conformity with a relevant code of practice if the procedure is —

- (a) necessary for the purpose of the medical treatment of the animal; and
- (b) carried out under appropriate anaesthesia.

(5) For the purpose of this section —

(a) a “surgical procedure” on an animal is a procedure which involves interference with the sensitive tissues or bone structure of the animal;

(b) a “relevant code of practice” is a code of practice for the welfare of livestock issued under section 55, or under the Livestock and Meat Products Ordinance.

[UK Animal Welfare Act 2006 ss.5 and 6 (part) adapted]

26. Docking of dogs’ tails

(1) A veterinary surgeon may only remove the whole or part of a dog’s tail under appropriate anaesthesia.

(2) Contravention of subsection (1) is an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person commits an offence if the person –

(a) shows a dog at an event to which members of the public are admitted on payment of a fee;

(b) the dog’s tail has been wholly or partly removed (in the Falkland Islands or elsewhere) in contravention of this section; and

(c) removal took place on or after the commencement of this section.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

[UK Animal Welfare Act 2006 s.6 (part) adapted]

Animals fighting

27. Fighting, etc.

(1) It is an offence for a person to —

(a) cause an animal fight to take place, or attempt to do so;

(b) knowingly receive money for admission to an animal fight;

(c) knowingly publicise a proposed animal fight;

(d) provide information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;

(e) make or accept a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;

(f) take part in an animal fight;

(g) have in the possession of the person anything designed or adapted for use in connection with an animal fight with the intention of its being so used;

(h) keep or train an animal for use for or in connection with an animal fight; or

keep any premises for use for an animal fight.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(2) A person who, without lawful authority or reasonable excuse, is present at an animal fight commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(3) A person who, without lawful authority or reasonable excuse —

(a) knowingly supplies a digital recording of an animal fight;

(b) knowingly publishes a digital recording of an animal fight;

(c) knowingly shows a digital recording of an animal fight to another; or

(d) possesses a digital recording of an animal fight, knowing it to be such a recording, with the intention of supplying it,

commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both.

(4) Subsection (3) does not apply if the digital recording is of an animal fight that took place —

(a) outside the Falkland Islands; or

(b) before the commencement of this section.

(5) Subsection (3) does not apply —

(a) in the case of paragraph (a), to the supply of a digital recording for inclusion in a programme service;

(b) in the case of paragraph (b) or (c), to the publication or showing of a video recording by means of its inclusion in a programme service;

(c) in the case of paragraph (d), by virtue of intention to supply for inclusion in a programme service.

(6) In this section —

“animal fight” means an occasion on which a domestic animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting;

“programme service” has the same meaning as in the Criminal Procedure and Evidence Ordinance 2014;

“digital recording” means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image.

(7) In this section —

(a) references to supplying or publishing a digital recording are to supplying or publishing a digital recording in any manner, including, in relation to a digital recording in the form of data stored electronically, by means of transmitting such data;

(b) references to showing a digital recording are to showing a moving image reproduced from any device capable of digital recording.

[UK Animal Welfare Act 2006 s.8]

28. Seizure of animals involved in fighting offences

(1) An inspector or a police officer may seize an animal if it appears to the inspector or officer that it is one in relation to which an offence under section 27(1) or (2) has been committed.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) In this section, references to an animal in relation to which an offence under section 31(1) or (2) has been committed include an animal which took part in an animal fight in relation to which such an offence was committed.

[UK Animal Welfare Act 2006 s.22]

29. Reimbursement of expenses relating to animals involved in fighting offences

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the offender or another person to reimburse any expenses incurred by the Crown in connection with the keeping of an animal in relation to which the offence was committed.

(2) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed.

(3) If an order is made under this section for reimbursement of expenses incurred by the Crown—

(a) the expenses are recoverable summarily as a civil debt;

(b) the person against whom the order is made may appeal against the order to the Supreme Court.

[UK Animal Welfare Act 2006 s.39]

30. Destruction of animals involved in fighting offences

(1) The court by or before which a person is convicted of an offence under section 27(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.

(2) A court may not make an order under subsection (1) unless —

(a) it has given the owner of the animal an opportunity to be heard; or

(b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

(a) appoint a person to carry out, or arrange for the carrying out of, the order;

(b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;

(c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);

(d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may appeal against the order to the Supreme Court.

(5) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

[UK Animal Welfare Act 2006 s.38]

Non-native and unsuitable animals

31. Prohibition of importing or keeping unsuitable animals

(1) It is an offence for a person to import, for the purpose of keeping, selling or transferring any non-native or unsuitable animal without a licence from the Department of Natural Resources.

Penalty: Imprisonment for 6 months or a fine at level 6 on the standard scale.

[UK Dangerous Wild Animals Act 1976 s.1 adapted]

(2) In this section —

(a) “non-native animal” means any animal which is not indigenous or native to the Falkland Islands;

(b) “unsuitable animal” means an animal prescribed by the Director by order as unsuitable for keeping in the Falkland Islands.

(3) The Director may include in an order under subsection (2)(b) any animal of a species that is invasive and could become predatory in the Falkland Islands, and any animal of any other species that could represent a danger to wildlife or people.

32. Inspection of premises

(1) An inspector or a police officer may inspect any premises where the inspector or officer reasonably suspects that an unsuitable animal is held.

(2) An inspector or a police officer may enter and search premises for the purpose of exercising the power under subsection (1) if the inspector or officer reasonably believes that—

(a) there is an animal on the premises; and

(b) the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) An inspector or a police officer may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

(5) A person who wilfully obstructs or delays any person in the exercise of a power of entry or inspection under this section commits an offence.

Penalty: A fine at level 5 on the standard scale.
[UK Dangerous Wild Animals Act 1976 s.3]

33. Power to seize and to dispose of animals without compensation

(1) If an unsuitable animal is being kept in any place, an inspector or a police officer may seize the animal and deal with it in any manner the Governor directs, including the destruction of the animal, and neither the Crown, the Governor nor any public officer is, subject to the provisions of the Constitution, liable to pay any compensation to any person in respect of the exercise of powers under this subsection.

(2) Any expenditure incurred in the exercise of powers under subsection (1) is recoverable by the Crown as a civil debt from the person who was at the time of the seizure a keeper of the animal concerned.

[UK Dangerous Wild Animals Act 1976 s.4 adapted]

Dogs and cats

34. Identification of dogs and cats

(1) The Governor may by order require any or any specified class or breed of dog or cat to have implanted in it an approved identification device.

(2) A veterinary surgeon may, at the request of the owner or keeper of a dog or cat, whether for compliance with an order under subsection (1) or otherwise, implant in the dog or cat an approved identification device and may for that service charge a fee approved by the Director.

(3) The Director must maintain a register and enter in it particulars —

(a) of every dog and cat in which an approved identification device has been implanted under subsection (1) or (2), whether before or after the commencement of this section;

(b) of the owner and keeper (if any) of the animal; and

(c) of any changes in the owner or keeper of the animal notified to the Director.

(4) The register may, if the Director so determines, be kept in electronic form.

(5) In this section, “approved identification device” means —

(a) a microchip, enabling the animal in which it is implanted to be identified by being electronically scanned by a suitable scanning device; and

(b) any other device, approved by the Director, implanted in an animal, whereby the animal may readily be identified by the use of suitable equipment.

[Animals (Amendment) Ordinance ss.2 (part) and 3]

35. Seizure and destruction of stray dogs and cats

(1) The Director and any inspector or police officer may seize any dog or cat which is a stray, that is to say, and dog or cat —

(a) that is found by any person wandering abroad and not apparently under the control of any other person; and

(b) that the Director or inspector or police officer reasonably believes to have been abandoned or neglected by its owner or keeper or to be feral, i.e. existing in a wild state,

and take it to a place authorised by the Director for its detention.

(2) A stray may be detained in an authorised place until —

(a) it is claimed by a person who shows himself or herself to be the animal's owner or keeper; or

(b) it is —

(i) allocated to a new keeper; or

(ii) humanely destroyed in accordance with subsection (8), (9) or (10).

(3) As soon as possible after it has been seized, a stray must be examined by the person seizing it to ascertain whether its owner or keeper can be identified, whether by means of an approved identification device, collar or tag that it bears or otherwise.

(4) If as a result of the examination of a stray in accordance with subsection (3) the owner or keeper of the stray is identified, the person examining the stray must notify, or ensure that some other public officer notifies, the owner or keeper of the detention of the stray.

(5) Notification under subsection (4) must be done by the quickest means which is both practicable and reasonable at any place in the Falkland Islands where the owner or keeper of the stray is known to be likely to be found and otherwise at that person's last known address in the Falkland Islands.

(6) If the stray is a dog the owner or keeper of which is not identified on examination under subsection (3), the person examining the dog must cause, or ensure that some other public officer causes, notification of the seizure of the dog to be made through any appropriate media.

(7) A notification under subsection (6) must include —

(a) a description of the dog;

(b) a statement of the place where and time at which it was seized; and

(c) a statement as to where and how, and the time within which, the dog may be claimed.

(8) A dog may be —

(a) allocated a new keeper; or

(b) humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon,

if its owner or keeper does not claim it within 72 hours of the notification under subsection (4) or (6), whichever in the circumstances of the case is appropriate.

(9) A cat —

(a) the owner or keeper of which is not identified on examination of the cat in accordance with subsection (3); or

(b) which is not claimed by its owner or keeper or his or her agent within 72 hours of notification under subsection (4),

may be humanely destroyed by a veterinary surgeon or by a person authorised by a veterinary surgeon.

(10) Notwithstanding the previous subsections, a stray may be humanely destroyed at once by or on the authority of a veterinary surgeon if the veterinary surgeon reasonably believes that the stray is, or may be, suffering from —

(a) rabies; or

(b) any other disease that is —

(i) communicable to human beings;

(ii) if so communicated, may be fatal; and

(iii) has been specified for the purposes of this subsection by an order under subsection (11).

(11) The Governor may, by order under this section, extend the application of subsection (10) so that the power to humanely destroy a stray at once in circumstances specified in that subsection in relation to rabies extends also to any disease specified in the order; but an order under this section may only specify a disease which the Governor believes may be fatal to a human being if communicated to him or her.

(12) A person claiming a dog or cat which has been seized as a stray may be required by the Director to pay to the Crown a sum that represents the reasonable cost of seizure of the animal and of detaining it and the sum so required is recoverable by the Crown as a civil debt due to the Crown.

[Animals (Amendment) Ordinance ss.4 and 6]

36. Dogs and cats: Inspection powers

(1) An inspector may at any reasonable time on 48 hours' notice to the occupier of any premises in which the inspector reasonably believes that any dog or cat is in need of treatment or is being caused unnecessary suffering —

- (a) enter and inspect the premises;
- (b) cause any dog or cat kept on the premises to be produced to the inspector;
- (c) on the premises treat any such animal if the inspector considers it to be in need of treatment;
- (d) take away any such animal if the inspector considers that, in the circumstances of the case, it ought sensibly to be treated elsewhere; and
- (e) humanely destroy any such animal on those premises which the inspector reasonably believes has any disease or affliction which —
 - (i) cannot practicably be treated; and
 - (ii) is causing the animal substantial pain or suffering.

(2) An inspector may enter premises with the consent of the owner or occupier or on the authority of a warrant issued under section 38.

[Animals (Amendment) Ordinance s.5 adapted]

PART 4 – ENFORCEMENT POWERS

Inspection

37. Inspection powers generally

(1) An inspector may require the holder of a licence issued under this Ordinance to produce for inspection any records which the holder is required to keep as a condition of the licence.

(2) If records which a person is required to keep are stored in electronic form, the power under subsection (1) includes power to require the records to be made available for inspection in —

- (a) a visible and legible form; or
- (b) a form from which they can readily be produced in a visible and legible form.

(3) An inspector may inspect and take copies of any records produced for inspection pursuant to a requirement under this section.

(4) An inspector may carry out an inspection in order to check compliance with —

- (a) the conditions subject to which a licence is granted;
 - (b) provision made by or under this Ordinance which is relevant to the carrying on of an activity to which a licence relates.
- (5) An inspector may, for the purpose of carrying out an inspection under subsection (4), enter —
- (a) premises specified in a licence as premises on which the carrying on of an activity is authorised;
 - (b) premises on which the inspector reasonably believes an activity to which a licence relates is being carried on.
- (6) Subsection (5) does not authorise entry to any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier.
- (7) An inspector may carry out an inspection in order to —
- (a) check compliance with regulations which relate to animals bred or kept for farming purposes;
 - (b) ascertain whether any offence under or by virtue of this Ordinance has been or is being committed in relation to such animals.
- (8) An inspector may enter premises which he or she reasonably believes to be premises on which animals are bred or kept for farming purposes in order to carry out an inspection under subsection (7).
- (9) Subsection (8) does not authorise entry to any part of premises which is used as a private dwelling.
- (10) An inspector or police officer may enter any premises for the purpose of this section with the consent of the owner or occupier or on the authority of a warrant issued under section 38.
[UK Animal Welfare Act 2006 ss.25, 26 and 28]

38. Entry and search under warrant in connection with offences

- (1) Subject to subsection (2), a justice of the peace may, on the application of an inspector or a police officer, issue a warrant authorising an inspector or a police officer to enter premises, at any reasonable hour, accompanied by any person or persons authorised by the warrant, and if necessary using reasonable force, in order to search for evidence of the commission of an offence under this Ordinance.
- (2) The power to issue a warrant under subsection (1) is exercisable only if the justice of the peace is satisfied that —
- (a) there are reasonable grounds for believing that —

- (i) an offence under this Ordinance has been committed on the premises; or
- (ii) evidence of the commission of an offence under this Ordinance is to be found on the premises; and

(b) section 39 is satisfied in relation to the premises.

(3) Section 22 of the Criminal Procedure and Evidence Ordinance 2014 (power of police officer to enter and search premises for purpose of arresting a person) applies to an offence under this Ordinance as if this Ordinance were expressly added to the list of provisions in that section.

(4) A person who wilfully hinders or obstructs the lawful execution of a warrant issued under subsection (1) by an inspector or police officer or any person authorised by that warrant to accompany the inspector or police officer, commits an offence.

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

[UK Animal Welfare Act 2006 ss.23 and 24 adapted]

39. Conditions for issue of warrant

(1) This section is satisfied in relation to premises if any of the following 4 conditions is met.

(2) The first condition is that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant.

(3) The second condition is that any part of the premises is not used as a private dwelling and that the occupier of the premises has —

(a) been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) failed to allow entry to the premises on being requested to do so by an inspector or a police officer; and

(c) been informed of the decision to apply for a warrant.

(4) The third condition is that —

(a) the premises are unoccupied or the occupier is absent; and

(b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(5) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because —

(a) it would defeat the object of entering the premises; or

(b) entry is required as a matter of urgency.

[UK Animal Welfare Act 2006 s.52]

Disqualification and deprivation

40. Orders with respect to licences

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order —

- (a) cancelling any licence held by the person;
- (b) disqualifying the person, for a period it thinks fit, from holding a licence.

(2) The court by which an order under subsection (1)(b) is made may —

- (a) specify a period during which the offender may not make an application under section 42(1) for termination of the order;
- (b) suspend the operation of the order pending an appeal.

[UK Animal Welfare Act 2006 s.42; Dangerous Wild Animals Act 1976 s.6]

41. Disqualification generally

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order disqualifying the person for a period the court thinks fit.

(2) Disqualification may be imposed on a person from taking part in one or more, or all, of the following (as specified in the order) —

- (a) owning animals;
- (b) keeping animals;
- (c) participating in the keeping of animals;
- (d) being party to an arrangement under which the person is entitled to control or influence the way in which animals are kept;
- (e) dealing in animals;
- (f) transporting animals; or
- (g) arranging for the transport of animals.

(3) Disqualification under subsection (1) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.

(4) The court by which an order under subsection (1) is made may specify a period during which the offender may not make an application under section 42 (1) for termination of the order.

(5) The court by which an order under subsection (1) is made may —

(a) suspend the operation of the order pending an appeal; or

(b) if it appears to the court that the offender owns or keeps an animal to which the order applies - suspend the operation of the order for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.

(6) If a court decides not to make an order under subsection (1) in relation to an offender, it must—

(a) give its reasons for the decision in open court; and

(b) cause them to be entered in the register of its proceedings.

(7) A person who breaches a disqualification imposed by an order under subsection (1) commits an offence.

Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both.

[UK Animal Welfare Act 2006 s.34 adapted]

42. Termination of disqualification under section 40 or 41

(1) A person who is disqualified by virtue of an order under section 40 or 41 may apply to the appropriate court for the termination of the order.

(2) No application under subsection (1) may be made —

(a) within a year of the order being made;

(b) if a previous application under that subsection has been made in relation to the same order - within a year of the previous application being decided.

(c) before the end of any period specified under subsection (5) in relation to the order.

(3) On an application under subsection (1), the court may —

(a) terminate the disqualification;

(b) vary the disqualification so as to make it less onerous; or

(c) refuse the application.

(4) When deciding an application under subsection (1), the court must have regard to the character of the applicant, the applicant's conduct since the imposition of the disqualification and any other circumstances of the case.

(5) If the court refuses an application under subsection (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.

(6) The court may order an applicant under subsection (1) to pay all or part of the costs of the application.

(7) In subsection (1), the reference to the appropriate court is to —

(a) the court which made the order under section 40 or 41; or

(b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.
[UK Animal Welfare Act 2006 s.43 adapted]

43. Seizure of animals in connection with disqualification

(1) If —

(a) a court makes an order under section 41(1); and

(b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,

the court may order that all animals the person owns or keeps contrary to the disqualification be taken into possession.

(2) If a person is convicted of an offence under section 41(7) because of owning or keeping an animal in breach of disqualification under section 41(1), the court by or before which the person is convicted may order that all animals the person owns or keeps in breach of the disqualification be taken into possession.

(3) An order under subsection (1) or (2), so far as relating to any animal owned by the person subject to disqualification, has effect as an order for the disposal of the animal.

(4) Any animal taken into possession pursuant to an order under subsection (1) or (2) that is not owned by the person subject to disqualification must be dealt with in the manner the appropriate court may order.

(5) A court may not make an order for disposal under subsection (4) unless it —

(a) has given the owner of the animal an opportunity to be heard; or

(b) is satisfied that it is not reasonably practicable to communicate with the owner.

(6) If a court makes an order under subsection (4) for the disposal of an animal, the owner may appeal against the order to the Supreme Court.

(7) In subsection (4), the reference to the appropriate court is to —

- (a) the court which made the order under subsection (1) or (2); or
- (b) in the case of an order made by the Magistrate's Court – that court or the Summary Court.

(8) In this section, references to disposing of an animal include destroying it.
[UK Animal Welfare Act 2006 s.35]

44. Deprivation orders

(1) If the person convicted of an offence under this Ordinance is the owner of an animal in relation to which the offence was committed, the court by or before which the person is convicted may, instead of or in addition to dealing with the person in any other way, make an order depriving the person of ownership of the animal and for its disposal.

(2) If the animal in respect of which an order under subsection (1) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

(3) If a court makes an order under subsection (1) or (2), it may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender to reimburse the expenses of carrying out the order.

(4) Directions under subsection (3)(c) may —

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (3)(a).

(5) If a court decides not to make an order under subsection (1) or (2) in relation to an offender, it must —

- (a) give its reasons for the decision in open court; and
- (b) cause them to be entered in the register of its proceedings.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27, an animal which took part in an animal fight in relation to which the offence was committed.

(7) In this section, references to disposing of an animal include destroying it.
[UK Animal Welfare Act 2006 s.33]

45. Destruction in the interests of the animal

(1) The court by or before which a person is convicted of any offence under this Ordinance may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by the Senior Veterinary Officer, that it is appropriate to do so in the interests of the animal.

(2) A court may not make an order under subsection (1) unless it —

- (a) has given the owner of the animal an opportunity to be heard; or
- (b) is satisfied that it is not reasonably practicable to communicate with the owner.

(3) If a court makes an order under subsection (1), it may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
- (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) If a court makes an order under subsection (1), the offender and, if different, the owner of the animal may appeal against the order to the Supreme Court;

(5) Subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 27(1) or (2) (fighting), an animal which took part in an animal fight in relation to which the offence was committed.

[UK Animal Welfare Act 2006 s.37]

46. Sections 43 to 45: Supplementary provisions

(1) The court by which an order under any of sections 43 to 45 is made may —

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

(2) Directions under subsection (1)(c) may —

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).

(3) In deciding how to exercise its powers under sections 43 to 45 and this section, the court must have regard, amongst other things, to —

- (a) the desirability of protecting the value of any animal to which the order applies; and
- (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.

(4) In deciding how to exercise a power delegated under subsection (2)(b), a person must have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).

(5) If the owner of an animal ordered to be disposed of under section 43, 44 or 45 is subject to a liability by virtue of subsection (1)(e), any amount to which the person is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

[UK Animal Welfare Act 2006 s.36]

47. Forfeiture of equipment used in offences

(1) If a person is convicted of an offence under this Ordinance, the court by or before which the person is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be —

- (a) forfeited; and
- (b) destroyed or dealt with in a manner specified in the order.

(2) The reference in subsection (1) to a qualifying item is —

(a) in the case of a conviction for an offence under section 6 - to anything designed or adapted for causing suffering to an animal;

(b) in the case of a conviction for an offence under any of sections 16 to 18 - to anything designed or adapted for administering any poison or drug or substance to an animal;

(c) in the case of a conviction for an offence under section 25 - to anything designed or adapted for carrying out a surgical procedure on an animal;

(d) in the case of a conviction for an offence under section 26 in relation to a dog's tail - to anything designed or adapted for removing the whole or any part of a dog's tail;

(e) in the case of a conviction for an offence under section 27(1) or (2) - to anything designed or adapted for use in connection with an animal fight;

(f) in the case of a conviction for an offence under section 27(3) - to a video recording of an animal fight, including anything on or in which the recording is kept.

(3) The court must not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the person has been given an opportunity to show cause why the order should not be made.

(4) An expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

(5) This section does not limit the power of a court to make a deprivation order under section 44 of this Ordinance or under section 617 of the Criminal Procedure and Evidence Ordinance 2014. *[UK Animal Welfare Act 2006 s.40]*

48. Orders under sections 43 to 47: Pending appeals

(1) Nothing may be done under an order under any of sections 43 to 47 with respect to an animal, unless —

(a) any period for giving notice of appeal against the order has expired;

(b) the period for giving notice of appeal against the conviction on which the order was made has expired; and

(c) if the order or conviction is the subject of an appeal - the appeal has been determined or withdrawn.

(2) If the effect of an order is suspended under subsection (1) —

(a) no requirement imposed or directions given in connection with the order has effect; but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(3) Directions under subsection (3)(b) may, in particular —

- (a) authorise the animal to be taken into possession;
- (b) authorise the removal of the animal to a place of safety;
- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

(5) Any expenses a person is directed to pay under subsection (4)(g) are recoverable summarily as a civil debt.

(6) If the effect of an order under section 44 (Deprivation) is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

(7) A person who fails to comply with subsection (6) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

[UK Animal Welfare Act 2006 s.41]

Enforcement generally

49. Time limits for prosecutions

A prosecution for an offence under this Ordinance must be brought —

- (a) within 3 years after the commission of the offence; and
- (b) within 6 months after the date on which evidence which the prosecution thinks is sufficient to justify the proceedings comes to the knowledge of the prosecution.

[UK Animal Welfare Act 2006 s.31; Game Act 1831 s.41]

50. Power to stop and detain vehicles

(1) A police officer in uniform or, if accompanied by such a police officer, an inspector may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred in relation to premises —

- (a) by section 13(1); or

(b) by a warrant under section 48.

(2) A police officer in uniform may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred by —

(a) section 28(1); or

(b) a warrant under section 38.

(3) If accompanied by a police officer in uniform, an inspector may stop and detain a vehicle for the purpose of entering it and carrying out an inspection in the exercise of a power conferred by—

(a) section 37; or

(b) a warrant under section 38.

(4) A vehicle may be detained for as long as is reasonably required to permit a search or inspection to be carried out (including the exercise of any related power under this Ordinance either at the place where the vehicle was first detained or nearby.

[UK Animal Welfare Act 2006 s.54]

51. Power to detain vessels and aircraft

(1) If an inspector or a police officer certifies in writing that he or she is satisfied that an offence under this Ordinance is being or has been committed on board a vessel in port or a landed aircraft, the vessel or aircraft may be detained.

(2) A certificate under subsection (1) must —

(a) specify each offence to which it relates; and

(b) set out the inspector's or officer's reasons for being satisfied that each offence to which it relates is being or has been committed.

(3) An officer who detains a vessel or aircraft in reliance on a certificate under subsection (1) must as soon as reasonably practicable give a copy of it to the master or person in charge of the vessel or aircraft.

(4) A vessel or aircraft may be detained under subsection (1) until the Governor otherwise directs.

(5) The Governor may by regulations make such other provision for the detention of vessels or aircraft in relation to offences under or by virtue of this Ordinance as the Governor thinks fit.

[UK Animal Welfare Act 2006 s.55 adapted]

52. Obtaining of documents in connection with carrying out orders, etc.

(1) If —

(a) an order is made or directions are given under this Ordinance for the deprivation, taking into possession, seizure or destruction of an animal is in effect; and

(b) documents which are relevant to the carrying out of the order or directions are in the possession or under the control of the owner of the animal,

the owner must, if so required by a person authorised to carry out the order, deliver the documents to that person as soon as practicable and in any event within 10 days after the owner is notified of the requirement.

(2) A person who fails without reasonable excuse to comply with subsection (1) commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale.

[UK Animal Welfare Act 2006 s.56 adapted]

PART 5 – MISCELLANEOUS PROVISIONS

53. 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 body corporate, 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.

(4) This section does not affect section 9 of the Interpretation and General Clauses Ordinance relating to service by post.

54. Regulations

(1) The Governor may by regulations make further provision about any matter provided for in this Ordinance.

(2) The regulations may include, but are not limited to, provisions regulating —

- (a) the functions and powers of inspectors;
 - (b) the use of poisons to destroy animals;
 - (c) the need for and issuing of licences for prescribed purposes.
- (3) If the regulations include provisions relating to licences, they may include provisions —
- (a) to require persons to hold a licence for specified activities in relation to animals;
 - (b) to prescribe —
 - (i) the form of an application for a licence;
 - (ii) the particulars to be provided in an application for a licence;
 - (iii) the fees payable for the issue of licences; or
 - (iv) the conditions that may be attached to a licence; or
 - (c) that breach of a condition of a licence or of the regulations is an offence.
- (4) Power to make regulations under this section includes power —
- (a) to provide that breach of a regulation is an offence carrying a maximum penalty of 6 months imprisonment or a fine at level 5 on the standard scale, or both;
 - (b) to apply relevant post-conviction powers in relation to convictions for an offence under the regulations;
 - (c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
 - (d) to make different provision for different cases or areas;
 - (e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;
 - (f) to provide for any other matter needed to give effect to this Ordinance;
 - (g) to make incidental, supplementary, consequential or transitional provision or savings.
- (5) Before making regulations under this section, the Governor must publish a draft of the regulations for public consultation.
[UK Animal Welfare Act 2006 ss.6 and 12 (part)]

55. Codes of practice

(1) The Director may issue, and from time to time revise, one or more codes of practice for the purpose of providing practical guidance in respect of any provision made by this Ordinance or by regulations made under it.

(2) The Director must —

- (a) keep the codes of practice under review; and
- (b) issue new or revised codes when necessary.

(3) If the Director proposes to issue (or revise) a code of practice, the Director must publish a draft of the code for public consultation, specifying —

- (a) whether it is a new code or a replacement for an existing one; and
- (b) the date on which the code comes into force.

(4) If after consulting as required by subsection (3) the Director decides to proceed with a draft (either in its original form or with any modifications as the Director thinks fit), the Governor must lay a copy of it before the Legislative Assembly.

(5) A code (or revised code) —

- (a) comes into force on a day the Director by order appoints; and
- (b) may be published in any manner the Director considers appropriate.

(6) A person's failure to comply with a provision of a code of practice issued under this section does not of itself render the person liable to proceedings of any kind, but in any proceedings against a person for an offence under this Ordinance —

- (a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability; and
- (b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability.

[UK Animal Welfare Act 2006 s.14 and reg. 4 of the Livestock & Meat Products (Welfare of Livestock) Regulations]

56. Amendment of Schedule

(1) The Governor may by order amend the Schedule to this Ordinance.

(2) An order under subsection (1) —

- (a) may make such transitional and consequential provision as appears to the Governor to be necessary or expedient; and

(b) requires the approval of the Legislative Assembly.
[UK Dangerous Wild Animals Act 1976 s.8]

57. Repeal of laws

The Animals (Amendment) Ordinance (“the repealed Ordinance”) is repealed.

58. Savings

(1) Subject to subsection (4), all items of subsidiary legislation made under the repealed Ordinance continue in force as if made under the corresponding provision of this Ordinance until amended or replaced under this Ordinance.

(2) If there is no corresponding provision of this Ordinance under which an item of subsidiary legislation referred to in subsection (1) could be made or the item is repealed, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal provided by section 59.

(3) Any legislative instrument made by a person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

(4) Any delegation, direction, exemption, notice or other non-legislative instrument made or issued by any person under the repealed Ordinance which could be made or issued by an equivalent person under this Ordinance continues to have effect as if made or issued by that person under this Ordinance until varied or revoked under this Ordinance.

59. Transitional provisions

(1) A disqualification of a person convicted of cruelty to animals imposed under the Protection of Animals Act 1911 as amended, and as applied to the Falkland Islands before the commencement of this Part, is deemed to be a disqualification imposed under section 41 of this Ordinance and section 42 applies to such a disqualification.

(2) Any criminal or civil proceedings under the repealed Ordinance that were in progress at the date of commencement of this Part must continue as if this Part had not been enacted.

(3) The Governor may by order make such other transitional provision or savings as the Governor considers necessary or expedient in connection with the coming into force of any provision of this Ordinance.

(4) The power under subsection (1) includes power to make different provision for different cases.

[UK Animal Welfare Act 2006 s.58 adapted]

60. Consequential amendments – Schedule

(1) The Ordinance listed in column 1 of the Schedule is amended in the manner set out in column 2 of the Schedule.

(2) A reference in any other enactment to the repealed Ordinance is, to the extent possible, to be read as a reference to the corresponding provision of this Ordinance.

61. Crown application

(1) Subject to the provisions of this section, this Ordinance binds the Crown.

(2) No contravention by the Crown of any provision of or under this Ordinance makes the Crown criminally liable; but the Supreme Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (1), the provisions of this Ordinance apply to persons in the service of the Crown as they apply to other persons.

(4) If the Governor certifies that it appears to him or her appropriate in the interests of national security that powers of entry conferred by or under this Ordinance should not be exercisable in relation to premises held or used by or on behalf of the Crown and specified in the certificate, those powers are not exercisable in relation to those premises.

(5) In this section, “national security” has the meaning given to that term in section 2 of the Criminal Procedure and Evidence Ordinance 2014;
[UK Animal Welfare Act 2006 s.60]

SCHEDULE (section 60)

CONSEQUENTIAL AMENDMENTS

Conservation and Wildlife Ordinance
section 10(4)

Delete “section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances) in its application to the Falkland Islands” and substitute “section 16(1) of this Ordinance (Poisoning, etc. of domestic animals)”.

OBJECTS AND REASONS

Introduction

This Bill makes new provision about the welfare and protection of animals. It replaces some of the UK laws about animals that at present apply to the Falkland Islands by virtue of Schedule 1 to the Crimes Ordinance. That Schedule will cease to apply when the Crimes Ordinance 2014 comes into force, as it repeals the existing Crimes Ordinance (including Schedule 1 which contains a list of UK laws on animals).

The Bill's provisions about the welfare of animals are derived from the UK Animal Welfare Act 2006. Most of the UK animal protection laws have been consolidated in that Act and this Bill is in effect a local version of that Act. The 2006 Act does not apply to the Falkland Islands, but its provisions complement the UK laws about animals that do apply in the Falkland Islands. It repeals or amends some of those laws and creates a new concept of a duty to avoid unnecessary suffering to animals and to promote their welfare.

Part 2 of the Bill is derived from the Animal Welfare Act 2006, while Part 3 localises the UK laws on animals that apply to the Falkland Islands. It seeks to protect animals from exploitation and various types of cruel treatment. Part 4 on enforcement is derived from the Animal Welfare Act 2006, and Part 5 contains miscellaneous provisions to complete the legislative scheme.

Some UK enactments that were applied to the Falkland Islands have since been repealed in the UK and are no longer applicable. The present Bill therefore modernises provisions about animal welfare generally, and introduces new provisions about fighting by animals (especially dogs), mutilation of animals, and distressed animals generally. It provides extensive powers of search and seizure.

The Bill also includes the provisions of the Animals (Amendment) Ordinance which is about identification of cats and dogs and seizure of strays – see clauses 34 to 36.

To avoid a lacuna in the laws about animals, it will be necessary to ensure that the Crimes Ordinance 2014 will not come into operation until this Bill has been enacted. It would be appropriate for the commencement dates of the two Ordinances to be synchronised.

Other FI animals laws

This Bill must be read in conjunction with other FI legislation dealing with animals, including the Animal Health Ordinance (which applies to FI the UK Animal Health Act of 1981), and the Livestock and Meat Products Ordinance, which implements various EU directives governing the slaughtering of animals for export.

The Livestock and Meat Products (Welfare of Livestock) Regulations have been made under the Livestock and Meat Products Ordinance, and Codes of Practice have been issued under them. However, these regulations and codes apply only to livestock, whereas this Bill applies principles of welfare to all animals.

Other Falkland Islands laws on animals include –

- Conservation of Wildlife and Nature Ordinance which protects wild animals from being killed or stolen;
- Dogs Ordinance which is about licensing of dogs and liability for damage by dogs;
- Livestock Ordinance which is about the marking of sheep of cattle and infected livestock;
- Animals and Food (Miscellaneous Provisions) Ordinance which govern the transport and export of fresh meat;
- the Slaughtering and Inspection Ordinance which is about the inspection of slaughterhouses etc. which has been repealed as this is covered under the Livestock and Meat Products Ordinance.

UK statutes

The UK laws on unlawful taking of wild animals, birds and fish (in England referred to as ‘game’) and trespassing for the purpose of killing wild animals, etc. (commonly called ‘poaching’) are not included in the Bill, as there are adequate provisions about unlawful killing of wildlife in the Conservation of Wildlife and Nature Ordinance. The UK laws concerned are –

- Night Poaching Acts 1828 and 1844
- Poaching Prevention Act 1862
- Game Act 1831
- Ground Game Act 1880
- Game Law (Amendment) Act 1960.

The UK laws that have been included in the Bill in whole or part are –

- Protection of Animals Act 1911
- Performing Animals (Regulation) Act 1925
- Cinematograph Films (Animals) Act 1937
- Docking and Nicking of Horses Act 1949
- Animals (Cruel Poisons) Act 1962
- Prevention of Damage by Rabbits Act 1939
- Pests Act 1954
- Dangerous Wild Animals Act 1976

There are other laws about animals in the UK – kennels, riding establishments, breeding, etc. but they have not been applied to the Falkland Islands and are not specifically required at this time in the Falklands.

The Bill shows at the foot of each clause the UK derivation.

Notes on clauses

Clause 1 confers a short title and empowers the Governor to specify a commencement date. The commencement will need to be synchronised with that of the Crimes Ordinance 2014 to avoid a lacuna in the animals laws.

Clause 2 defines various terms used in the Bill that are not defined in the Interpretation and General Clauses Ordinance. It provides that Inspectors for the purposes of the Ordinance will be appointed by the Governor, as is the case under other animals laws. They will normally be veterinary officers.

Clause 3 states who is responsible for the welfare of animals, who might be the owner, the person in possession, the keeper etc.

Clause 4 explains the meaning of “animal” for the purposes of the Bill as being any vertebrate other than a human (not ‘man’ to avoid any gender-specific connotations.) The Governor can extend the definition to non-vertebrates if satisfied that they can experience pain and suffering.

Clause 5 explains the scope of the Bill, as applying to all animals, including livestock. Some provisions apply only to domestic animals, as defined in sub-clause (3). Sub-clause (2) makes it clear that other animals laws are not affected – see the notes above. The term ‘enactment’ includes UK laws that apply to the Falkland Islands. The UK Act specifically excludes scientific research activities from these regulations as the Animals (Scientific Procedures) Act 1986 exists. This Bill does not exempt scientific research procedures as there is not specific legislation to cover in detail such activities. The term ‘protected’ is used for all animals protected by the UK 2006 act but this was not upheld in the FI Bill as it may have caused confusion with animals that are protected under Conservation laws. Instead all animals are covered in the FI Bill and types of animals (eg domestic versus wild) are specified where relevant.

Clauses 6 to 15 are derived from the UK Animal Welfare Act 2006 and are new to Falkland Islands law but are clauses that are up to date and deliver what is now expected from people and society in the area of animal welfare and preventing cruelty.

Clause 6 prohibits people responsible for domestic animals from causing them unnecessary pain or suffering and defines those terms. This clause is a modernised version of what would have existed in the 1911 Protection of Animals Act that was applied to the Falkland Islands.

Clauses 7 to 11 create positive obligation to promote the welfare of all animals.

Clause 7 makes it an offence for a person responsible for any animal to fail to take steps reasonable in the circumstances to ensure that the needs of the animal are met to the extent required by good practice. In clause 7(2)(c) the word ‘exhibit’ in the UK Act is replaced by ‘show’.

Clause 8 empowers an inspector to issue an improvement notice on any person who appears to be in breach of the obligation in clause 7. The notice must specify how the person is failing to comply, what steps should be taken to comply, and a period within which that must be done. There is a similar power in the Livestock and Meat Products (Welfare of Livestock) Regulations, but limited to livestock.

Clause 9 prohibits the transfer of animals by way of sale or prize to a person under 16. There are exceptions, including giving an animal as a prize or gift to a close relative. In the UK Act the term ‘family context’ is used, but sub-clause (6) spells out the relationship, similar to that in section 228 of the Crimes Ordinance 2014. This is a new legislative clause for the Falkland Islands but as it is part of the UK 2006 Act it was included in the FI Bill as it prevents selling or gifting animals to minors that are not under the direct care or supervision of the adult doing the selling or giving. This clause will ensure that an adult family member that does give or sell an animal to a minor is still responsible for that animal’s welfare.

Clause 10 enables the Governor to make regulations to promote welfare. The power to make regulations is in clause 54, but this clause relates the power to this Part of the Bill.

Clause 11 contemplates that regulations under clause 54 will include the power to issue licences for specified activities under this Part. They would include, for example, scientific research or applying anaesthesia etc. The Governor can rule (presumably under advice from the Veterinary Service) that some activities involving animals may require that the persons carrying out the activities are licensed to do so. The clause does not specify what sort of activities may require a

licence. The UK 2006 act also specifies registration but it was felt that such activities requiring licensing or registration are few in the Falklands and that simplifying the requirements to just licensing would be sufficient.

Clauses 12 to 15 relate to domestic animals in distress.

Under clause 12, an inspector or a police officer who reasonably believes that a domestic animal is suffering may take steps to alleviate the suffering, including taking the animal into possession, or having it destroyed. The power to take into possession extends to offspring of the animal. The person responsible for the animal must be notified, and might be ordered to repay the costs of action taken under the clause. This clause is included as if a person does not obey an improvement notice, or the animal(s) is/are suffering to the extent that the time taken to issue and await response to an improvement notice would further detrimentally affect the animal(s), someone must have the power to relieve this suffering as soon as possible. Clause 12 also allows any person outside of Stanley to destroy an animal in severe distress or take steps to alleviate the animal's suffering.

Clauses 13 to 15 make ancillary provisions about action taken under clause 12, including powers of entry and rights of appeal.

Clauses 16 to 26 replace the UK laws that apply to the Falkland Islands as noted above and that are still extant in the UK.

Clauses 16 to 18 regulate the use of poisons for controlling animals. Clause 16 is derived from the UK Animal Welfare Act 2006, while clause 17 and 18 replace existing laws. As these clauses replace section 8(b) of the Protection of Animals Act 1911, the reference to that Act in section 10(4) of the Conservation of Wildlife and Nature Ordinance can be deleted, and that is done by Schedule 2.

Clauses 19 to 21 regulate the use of traps for catching animals. Clause 20 specifies the type of trap that is approved as being a humane spring trap. This section has been simplified and generalised as old legislation gave quite some detail regarding trapping hares and rabbits which is not a frequent habit in the Falklands. It is more likely that cats will be trapped to then be humanely destroyed. These clauses thus refer to the trapping of any animal and ensure that only the spring cage traps are used which can then lead to humane destruction. Snares and other traps that may cause an animal to be trapped by an extremity are prohibited (apart from trapping rodents and other small vermin but these traps must still be inspected and any catch dealt with daily). These clauses are not part of the UK 2006 Act but rather the older Pests Acts and amendments but fit rather well with the FI Welfare Bill so are included.

Clause 22 prohibits the exhibiting and training performing animals. There are exceptions for agricultural or sporting purposes, which would include e.g. sheep dog trials and cattle shows, racing horses and for military or police purposes. This clause is much simplified for the FI Bill as there is not a culture of circuses or animal acts.

Clauses 23 and 24 prohibit the showing or supplying of films involving cruelty to domestic animals.

Clauses 25 and 26 regulate the mutilation of animals except by a veterinary surgeon, or in accordance with a code of practice in respect of livestock (which could be issued under clause 55 if not already issued under the Livestock and Meat Products Ordinance.) The surgical procedures/mutilations that can be carried out by people other than vets on animals of specific ages have not been changed. Any tail docking of dogs is prohibited unless by a vet under suitable anaesthesia.

In the UK there are exemptions for working dogs but this was felt unnecessary for the Falklands as there are no brambles or undergrowth that dogs work in that would cause the issues that led to the exemption in UK. Tail docking of collie pups (as opposed to working spaniels in UK) is not a recognised practice and does not occur in the Falklands. The section regarding prohibition of docking horses tails and banning the import of docked horses was deleted as docking of horses tails does not occur in the Falklands and if it did it would fall under the ‘mutilations’ and ‘unnecessary suffering’ clauses to allow prosecution. If we wished to prohibit docked horses being imported (to reduce the incidence of this occurring elsewhere) this could be incorporated into import protocols.

Clauses 27 to 30 prohibit the promotion of animal fighting. They are derived from the UK Animal Welfare Act 2006. There is power to destroy animals that have been involved in fighting, and a power to order reimbursement of the costs by the offender.

Clauses 31 to 33 are derived from the UK Dangerous Wild Animals Act 1976. They use the term ‘unsuitable’ rather than ‘dangerous’ as not all the animals to be imported will be dangerous per se but some might be unsuitable for importing into or keeping in the Falkland Islands because they have specific and specialised husbandry and veterinary needs which may not be able to be met. Therefore it is better to not allow them to be imported and kept here than deal with illness or welfare issues because specialised food or equipment is not available. The clauses are not limited to wild animals, as in the UK Act. The Director is given the power to make a list of unsuitable animals by Order under clause 31.

Clause 32 confers a power to inspect premises, and clause 33 confers a power to seize and dispose of animals without compensation.

Clauses 34 to 36 replace the provisions of the Animals (Amendment) Ordinance which is repealed. These are regulations regarding seizure, re-homing and destruction of stray animals and are not part of the UK Welfare 2006 act but were existing rules in the Falklands and were thought to be relevant enough to be included in this legislation.

Clause 34 relates to the identification of dogs and cats and empowers the Governor to require an identification device to be attached to any specified class or breed of dog or cat. The power is not limited to the purposes of hydatid control as in the Hydatid Control (Dogs) Order. The fees that can be charged are as approved by the Director of Natural Resources. Currently any microchipping is voluntary done by the owner or keeper of animals but this clause will allow an order to be made for compulsory chipping if it is ever felt necessary for welfare or disease control reasons.

Clause 35 empowers an inspector or police officer to seize and destroy stray dogs and cats. The section also allows for a stray to be allocated a new keeper where this is appropriate.

Clause 36 confers on inspectors powers of entry and inspection of premises if they suspect any dog or cat on the premises is in need of treatment or is being caused unnecessary suffering.

Clauses 37 to 52 provide enforcement powers for inspectors and police officers derived from the UK Animal Welfare Act 2006. There are powers of entry, search, seizure and arrest in the Criminal Procedure and Evidence Ordinance 2014, based on the UK Police and Criminal Evidence Act 1984 ('PACE Act'). However, some of those are limited to imprisonable offences, and not all offences under this Bill are imprisonable, which is why the UK Act 2006 includes these powers. These clauses also replace various enforcement powers contained in individual UK Acts that at present apply in the Falkland Islands, as explained above.

Clauses 37 to 39 confer powers of inspection, including powers of entry under a warrant issued by a justice of the peace if there is a suspected offence. The UK Act specifies inspection and entry onto farms separately but farms can be counted as 'premises' in the FI Welfare Bill and various regulations made under the LMPO allow inspection and entry onto farms.

Clauses 40 to 48 confer powers of disqualification and deprivation on a court which convicts a person of an offence under this Bill. The disqualification may be in respect of a licence, or more generally in respect of the right to keep an animal etc. Animals may be seized if kept in breach of a disqualification, and convicted people can be deprived of property used in connection with an offence.

Clauses 49 to 52 are additional provisions about enforcement generally.

Clause 49 sets an overall time limit of 3 years after the offence for bringing a prosecution; but a limit of only 6 months after evidence of an offence comes to light.

Clause 50 confers power to stop and detain vehicles as if they are premises if there would be a right to enter premises under clause 13 or 48.

Clause 51 confers power to detain vessels and aircraft (but not hovercraft) if an inspector or police officer is satisfied that an offence under the Ordinance is being or has been committed on board a vessel in port or a landed aircraft. This provision would allow for application of UK merchant shipping and civil aviation law.

Clause 52 requires a person who has documents relevant to an offence under the Ordinance to deliver them up.

Clauses 53 to 61 are miscellaneous and final provisions common to many Bills.

Clause 53 specifies how documents are to be served, in addition to the provisions in the Interpretation and General Clauses Ordinance.

Clause 54 enables the Governor to make regulations to implement the Ordinance. They would be made after consulting the Executive Council (as required by the Interpretation and General Clauses Ordinance) and would then be laid on the table of the Legislative Assembly but be subject only to a negative resolution.

Clause 55 enables the Director of Natural Resources to issue Codes of Practice as guidelines to owners etc. of animals. There are existing Codes of Practice issued under the Livestock and Meat Products (Welfare of Livestock) Regulations. These will run in parallel with any codes issued under this Bill in relation to other animals.

Clause 56 enables the Governor to amend the Schedule by order. Unlike regulations under clause 54, an order amending the Schedule requires the positive approval of the Legislative Assembly.

Clause 57 repeals the Animals (Amendment) Ordinance.

Clauses 58 and 59 make savings and transitional provisions about things done under the repealed laws or that need to be done under the new law. They are standard provisions in a Bill that replaces existing laws.

Clause 60 provides that items in the Schedule are amended as a consequence of the enacting of the Bill.

Clause 61 makes it clear that the Crown is bound by the provisions of the Ordinance. This avoids any suggestion that the public service is not covered by the legislation in view of section 66 of the Interpretation and General Clauses Ordinance.

The Schedule 1 lists consequential amendments as provided by clause 60. There is only one item. If other consequential changes come to light, they can be added by the Governor using the power in clause 56.

LEGISLATIVE ASSEMBLY

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

Procedure for taking the Communications Bill

CLERK	Communications Bill 2016
HON ROGER EDWARDS	“Mr Speaker, this Bill etc. (explanation)..... I beg to move the second reading of the Bill
HON MIKE SUMMERS	“Mr Speaker, I second the Motion”
MR SPEAKER	Does any Member wish to speak on the principles of the Bill? Debate The motion is that the Bill be read a second time – is there any objection to that motion? No Objection – the Bill will be read a second time.
CLERK	Communications Bill 2016
HON ROGER EDWARDS	Mr Speaker, I propose that the Bill be referred to a Select Committee, such committee to be Chaired by me, and will comprise all Members of the Legislative Assembly.
HON MIKE SUMMERS	Mr Speaker, I second that motion.
MR SPEAKER	Is there any objection to the Motion? There is no objection – the Bill is now referred to a Select Committee on the Bill.

Communications Bill 2016

(No: of 2016)

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3. Overview
4. Interpretation

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SCHEDULE - EXCLUSIVE LICENCE FEE

(f) Part 7 makes provision about the grant of an exclusive licence for the provision of telecommunications services;

(g) Part 8 makes general provision about fees;

(h) Part 9 makes provision about consumer standards and protection in relation to services provided in accordance with this Ordinance;

(i) Part 10 makes provision about the public control of electronic communications services;

(j) Part 11 creates offences in connection with provisions of this Ordinance, and makes general provision about offences created by other Parts;

(k) Part 12 makes provision about the use of land in connection with electronic communications services;

(l) Part 13 makes provision about public interest retention and interception of data and surveillance;

(m) Part 14 establishes, and makes provision about the functions of, the Telecommunications Appeals Panel.

4. Interpretation

In this Ordinance —

“apparatus” includes any equipment, machinery or device (including, in particular, wire and cable and the casing or coating of wire or cable);

“audio-visual media service” means a service for the communication of material to be displayed as a combination of sounds and pictures;

“broadcasting station” means an installation for making broadcasts;

“carriage service” means a service consisting wholly or partly of transmitting signals by means of a network and the expression —

(a) does not include a content service, and

(b) does include the provision of services ancillary to the conveyance of signals and conditional access or other services to enable customers to access a content service;

“class licence” means the licence referred to in section 39;

“content service” means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audio-visual media service;

“domain name” has the meaning given by section 88(3);

“electronic communications objectives” means the objectives set out in section 5;

“electronic communications” means the conveyance of signals by the use of electrical, magnetic or electromagnetic energy;

“electronic communications data” means data relating to electronic communications;

“electronic communications equipment” means equipment designed or intended to be used in connection with electronic communications;

“electronic communications network” means a network of electronic communications services;

“electronic communications services” includes the provision of a carriage service or a content service, including both public and private, mobile and fixed (unless otherwise stated) voice telephony, data and internet services;

“individual licence” has the meaning given by section 35;

“interfere”, in relation to a communication, includes fail to deliver, delay delivery, intercept, divert, monitor, and make personal use of the communication;

“the licence requirement” has the meaning given by section 21(2);

“licensee” includes any subsidiary undertaking included within the scope of a licence in accordance with section 38(1);

“message” means any communication, whether oral, written, printed or displayed or conveyed by any means;

“network” means a system used or designed to be used to send signals of any kind, including anything (including data) required to make the system operate;

“numbering plan” means the plan made by the Regulator under section 87;

“programme” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an audio-visual media service provider and whose form and content is comparable to the form and content of television broadcasting;

“radio” means the transmission or reception over any distance without connecting wires of images and other visual matter and of sounds, signs or signals by electrical means;

“the Regulator” means the Communications Regulator appointed under section 7;

“the regulatory principles” means the principles specified in section 6;

“signal” includes —

(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the communication of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus;

“radio spectrum licence” means a licence issued under the terms of section 56;

“spectrum plan” means the spectrum plan published pursuant to section 55;

“state assets” means any radio spectrum, national telephone numbers and domain names;

“television broadcast” means an audio-visual media service provided by an audio-visual media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“universal service” means those services specified pursuant to section 65; and

“wireless telegraphy” means the emission or receipt of signals over a path of electromagnetic energy of a frequency not exceeding 3000 gigahertz where that path —

(a) serves for the conveyance of messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or

(b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of object; and

“with lawful authority” means in accordance with a provision of this Ordinance or any other enactment, in accordance with a provision of a licence issued under this Ordinance, in connection with or in the course of activities licensed under this Ordinance, in accordance with a warrant, notice or requirement issued under this Ordinance, or in accordance with an order of a court.

PART 2 OBJECTIVES AND PRINCIPLES

5. Electronic communications objectives

The electronic communications objectives for the purposes of this Ordinance are —

(a) to promote the public interest generally in relation to electronic communications;

(b) to facilitate effective communication between the people of the Falkland Islands and the rest of the world;

(c) to ensure effective regulation of the supply and operation of electronic communications services;

- (d) to enhance the efficiency of the Falkland Islands' commercial electronic communications sector;
- (e) to support the growth and development of the Falkland Islands' economy;
- (f) to promote investment and innovation in electronic communications networks and services;
- (g) to promote optimal use of radio spectrum;
- (h) to provide affordable access to high quality networks and carriage services in all regions of the Falkland Islands so far as reasonably practicable;
- (i) to maintain public safety and security;
- (j) to contribute to the protection of personal privacy;
- (k) to avoid public nuisance through electronic communications so far as reasonably practicable;
- (l) to limit adverse impact of networks and carriage services on the environment so far as reasonably practicable;
- (m) to ensure access to all key electronic communications services;
- (n) to encourage infrastructure investment into the Falkland Islands;
- (o) to provide continued growth in international capacity to support increasing usage levels, so far as economically feasible;
- (p) to support the delivery of public sector services (including education and healthcare);
- (q) to strengthen the regulatory environment that supports development of the Falkland Islands' electronic communications sector; and
- (r) to promote innovative services to support the needs of the people of the Falkland Islands.

6. Regulatory principles

The regulatory principles for the purposes of this Ordinance are —

- (a) that public policy in relation to electronic communications should aim to pursue the electronic communications objectives;
- (b) that the needs of the people of the Falkland Islands are the paramount consideration in operating the licensing regimes under this Ordinance;
- (c) that additional regulatory or administrative measures should be introduced only —

- (i) where the Regulator is satisfied that the existing licensing regimes are insufficient for the efficient and effective pursuit of the electronic communications objectives;
- (ii) having regard to the costs and impact of those measures on affected parties (including consumers, licensees and other undertakings);
- (iii) if the Regulator is satisfied that the measures are proportionate, transparent, accountable, fair and non-discriminatory.

PART 3

THE COMMUNICATIONS REGULATOR

Nature and status

7. Appointment

- (1) The Governor must appoint a person as the Communications Regulator (“the Regulator”) to perform functions conferred by this Ordinance and any other enactment.
- (2) The Regulator may be an individual or a body corporate.

8. Independence

- (1) No public authority may give general or specific directions to the Regulator.
- (2) Subsection (1) is subject to section 54(2).

9. Supplemental

The Governor may by regulations make provision for —

- (a) the appointment of staff of the Regulator;
- (b) remuneration and allowances; and
- (c) the conduct of the Regulator’s proceedings (which may include provision for delegation).

Functions

10. General duties

- (1) In carrying out its functions the Regulator must —
 - (a) aim to pursue the electronic communications objectives,
 - (b) have regard to the regulatory principles; and
 - (c) have regard to any other principles which appear to the Regulator to represent best practice (having regard to all the circumstances of the Falkland Islands).

(2) Where two or more electronic communications objectives or other principles conflict in relation to a matter or class of matters, the Regulator must aim to strike an appropriate balance.

(3) In introducing or developing a regulatory or administrative measure the Regulator must publish a document —

(a) specifying the electronic communications objectives that are advanced by the measure; and

(b) demonstrating how the regulatory principles have been complied with.

11. Specific duties

The Regulator has the following functions —

(a) to regulate the electronic communications sector by exercising powers under this Ordinance (in particular, to issue licences and exemption determinations);

(b) to manage state assets in accordance with this Ordinance;

(c) to administer the licence fee system under this Ordinance;

(d) if requested by the Governor or the Government, to represent the Falkland Islands in relation to international organisations or obligations connected with electronic communications;

(e) to exercise functions conferred on it by this Ordinance or any other enactment; and

(f) to undertake other functions connected with electronic communications at the request of the Government (but this paragraph is subject to section 8(1)).

12. General powers

(1) The Regulator may do anything it considers necessary or desirable for the purpose of pursuing the electronic communications objectives in accordance with the regulatory principles.

(2) In particular, the Regulator may —

(a) exercise the powers given to it under this Ordinance;

(b) issue or approve codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards;

(c) publish and maintain registers or lists;

(d) institute civil or criminal proceedings;

(e) conduct inquiries, investigations under section 13 and hearings;

- (f) conduct market investigations and reviews;
- (g) require the provision of documents and information;
- (h) publish the results of action taken under paragraph (e) or documents or information provided under paragraph (f); and
- (i) make awards of compensation (in accordance with any relevant law) in respect of loss or damage suffered by consumers, and make provision for the enforcement of awards.

(3) Failure to have regard to or comply with codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards issued or approved by the Regulator does not of itself give rise to civil or criminal liability; but —

(a) a court or tribunal (including an arbitral tribunal) may have regard to any of those instruments issued or approved by the Regulator that appears to the court or tribunal to be relevant to a matter before it; and

(b) licences and other instruments under this Ordinance may require parties to have regard to, or comply with, a specified instrument or class of instrument issued or approved by the Regulator (which may include instruments issued or approved after the grant of the licence).

(4) Failure to comply with a requirement of the Regulator under subsection (2) does not give of itself give rise to civil or criminal liability; but —

(a) a court or tribunal (including an arbitral tribunal) may have regard to a failure that appears relevant to a matter before it; and

(b) licences and other instruments under this Ordinance may require parties to comply with requirements of the Regulator.

(5) The Regulator may delegate a function under this Ordinance to a public body.

(6) Subsection (5) does not apply to a power to issue licences.

Enforcement powers

13. Compliance investigations

(1) The Regulator may investigate an actual, alleged or suspected contravention of —

(a) a provision made by or by virtue of this Ordinance, or

(b) a licence issued under this Ordinance.

(2) For the purposes of an investigation the Regulator may —

(a) require the provision of information or documents; or

(b) enter premises and inspect, copy and retain documents, in accordance with a warrant issued under section 100.

(3) The Regulator may, with the approval of the Governor, appoint an agent —

(a) to conduct an investigation, and

(b) to exercise the Regulator's powers under this section in respect of that investigation.

(4) The Governor may not approve the appointment of an agent under subsection (3) unless satisfied that —

(a) the agent has appropriate qualifications, experience and competence, and

(b) all necessary safeguards and mechanisms for transparency and accountability are in place.

14. Enforcement orders

(1) This section applies where the Regulator thinks that a person (whether a licensee or not) has failed to comply with a provision of —

(a) this Ordinance, or

(b) a licence or other instrument issued under this Ordinance.

(2) The Regulator may by order in writing require the person to —

(a) take action specified in the order, or

(b) refrain from taking any action specified in the order.

(3) The Regulator may by order in writing require the person to pay a penalty.

(4) The Governor must make regulations for penalties under this section; and the regulations must, in particular, make provision —

(a) for notice to be given of intent to impose a penalty;

(b) for an opportunity to make representations to be given before the imposition of a penalty;

(c) for the form and content of orders;

(d) setting a maximum penalty (or different maximums for different classes of cases);

(e) for the calculation of the amount of penalty to be paid (which may include provision for the exercise of a discretion by reference to criteria specified in regulations, and may include

provision for calculation by reference to a percentage of a business' turnover or in any other manner specified in the regulations);

(f) requiring notice of orders to be given to persons specified in the order;

(g) for the publication of orders.

(5) An order is enforceable as if it were an order of the Supreme Court.

(6) If an order is made under this section otherwise than as a result of an investigation under section 13 —

(a) it must be made only if the Regulator considers it necessary by reason of urgency;

(b) it must be expressed to last only until an investigation has been concluded; and

(c) as soon as reasonably practicable the Regulator must commence an investigation.

(7) Failure to comply with an order under this section —

(a) is an offence; and

(b) may result in revocation of a licence in accordance with section 45.

15. Determinations of licence and other obligations

(1) The Regulator may make a determination about —

(a) the nature and extent of an obligation imposed on a person by or by virtue of a provision of this Ordinance or of a licence or other instrument under this Ordinance;

(b) the effect of any other provision of or by virtue of this Ordinance or of a licence or other instrument under this Ordinance.

(2) A determination may be made —

(a) on an application by a person who appears to the Regulator to have a sufficient interest in the matter to be determined, or

(b) on the Regulator's own motion.

(3) Before making a determination in respect of an obligation imposed on a person, the Regulator must consult that person and any other person who appears to the Regulator to have a legitimate interest.

(4) Before making any other determination the Regulator must consult such persons as appear to the Regulator to have a legitimate interest.

- (5) The Regulator must issue a determination in writing giving its reasons.
- (6) The Regulator must publish a determination on its website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).
- (7) Where the matter is urgent, the Regulator may issue an interim determination on such terms as it considers appropriate.
- (8) The Governor may make regulations about the procedure to be followed in relation to the making of determinations.
- (9) A determination shall be conclusive for all purposes as to the matters stated in it (subject to appeal under Part 14).

General procedure

16. Consultation

- (1) Before taking regulatory or administrative action under this Ordinance the Regulator must consult any person directly affected by the action and any other person who appears to the Regulator to have a legitimate interest.
- (2) This section is without prejudice to any specific procedures provided by or under a provision of this Ordinance.
- (3) This section —
 - (a) does not apply in relation to determinations under section 15; and
 - (b) is subject to section 18.

17. Publication

- (1) The Regulator must make arrangements for the publication of regulatory or other action taken under this Ordinance if the Regulator believes that —
 - (a) the action is of public significance, and
 - (b) publication is in accordance with the regulatory principles.
- (2) In particular, the Regulator must —
 - (a) publish regulatory and other action on its website as soon as reasonably practicable;
 - (b) provide arrangements for persons to register through the website to receive notice of new action;
 - (c) maintain its website; and

(d) ensure that copies of documents are made available at its principal office for inspection by the public on request during normal business hours without charge.

(3) The Regulator must also consider whether to publish notice of action taken or to be taken in a newspaper.

(4) This section is subject to section 18.

(5) Action is of public significance for the purposes of this section if it is likely —

(a) to have a significant impact on the public;

(b) to have a significant impact on persons or activities in respect of which the Regulator exercises functions; or

(c) to result in a significant change in the Regulator's activities.

18. Confidentiality

(1) The Regulator must not publish or disclose information acquired in the course of the exercise of the Regulator's functions which it considers —

(a) is commercially confidential, or

(b) is or includes personal data.

(2) Subsection (1) does not apply to publication or disclosure to, or in accordance with an order of, a court.

(3) Information which is provided to the Regulator on the express understanding that it is to be treated as commercially confidential or as being or including personal data, must be treated by the Regulator accordingly for the purposes of subsection (1).

(4) Subsection (1) is subject to the preceding provisions of this Part; but the Regulator may not make a disclosure to which subsection (1) applies in accordance with a provision of this Part unless the Regulator is satisfied that the provision cannot be properly complied with unless the disclosure is made.

19. Alternative Dispute Resolution

(1) The Regulator may —

(a) establish one or more alternative dispute resolution schemes ("ADR schemes") for resolving disputes between licensees, and between licensees and consumers, or

(b) approve one or more ADR schemes proposed by licensees.

(2) Before establishing an ADR scheme the Regulator must consult licensees.

- (3) An ADR scheme may involve —
- (a) mediation (which may be conducted by the Regulator, a person appointed by the Regulator or a person appointed by the parties to a dispute or by a third party);
 - (b) arbitration of specified matters by an expert appointed by the Regulator, the parties or a third party;
 - (c) any other method of alternative dispute resolution which the Regulator is satisfied conforms to best practice in dispute resolution.
- (4) The Regulator may approve an ADR scheme proposed by licensees only if satisfied that it is —
- (a) fair (including non-discriminatory) and transparent;
 - (b) to be administered by persons who are independent of any licensee to which it will apply;
 - (c) to be administered in accordance with the electronic communications objectives; and
 - (d) designed to ensure that individuals exercising functions under the scheme have appropriate qualifications and experience.
- (5) Where the Regulator approves an ADR scheme —
- (a) the Regulator must require persons responsible for the management of the scheme to report to the Regulator at specified intervals (of not more than a year) about its operation; and
 - (b) if the Regulator is not satisfied that the scheme satisfies the conditions in subsection (4) it must withdraw its approval; and a withdrawal may include incidental and transitional provision.
- (6) An ADR scheme established or approved under this section —
- (a) may provide for decisions (including interim and ancillary decisions) to be binding on the parties; and
 - (b) must specify whether participation in the scheme prejudices rights under any other provision of this Ordinance or any other enactment or law.

20. Procedural regulations

- (1) The Governor may make regulations on the procedure to be followed by the Regulator in connection with the performance of its functions.
- (2) The regulations may, in particular, make provision for —
- (a) the preparation and promulgation of instruments under section 12(2)(b);

- (b) the preparation of lists under section 12(2)(c);
 - (c) the conduct of inquiries, investigations, hearings and reviews under section 12(2)(e) and (f);
 - (d) the calculation and payment of compensation under section 12(2)(i).
- (3) Before making regulations under this section the Governor must consult —
- (a) any licensee affected, and
 - (b) such other persons as the Governor thinks appropriate.

PART 4 ELECTRONIC COMMUNICATIONS LICENCES

Requirement for licence

21. Activities requiring licence

- (1) The following activities require a licence under this Part —
- (a) owning an electronic communications network;
 - (b) operating an electronic communications network;
 - (c) providing electronic communications services;
 - (d) importing electronic communications apparatus.
- (2) In this Ordinance “the licence requirement” means the requirement under subsection (1).

Exemptions

22. Exclusive licence

The licence requirement does not apply to anything —

- (a) done in reliance on and in accordance with an exclusive telecommunications licence granted under Part 7, or
- (b) exempted from a requirement for a licence under that Part.

23. Broadcasting

The licence requirement does not apply to anything —

- (a) done in reliance on and in accordance with a broadcasting station licence granted under Part 5, or

(b) exempted from a requirement for a licence under that Part.

24. Crown and Government

(1) The licence requirement does not apply to anything done by or on behalf of —

(a) the Government, or

(b) any other public body.

(2) The licence requirement does not apply to anything done by or on behalf of —

(a) Her Majesty's Government;

(b) Her Majesty's armed forces for operational purposes;

(c) the providers of the British Forces Broadcasting Services;

(d) the British Antarctic Survey.

(3) An exemption under this section does not apply to the provision of electronic communications services to the public at a time when services of that kind are provided by a licensee.

25. Private facilities

(1) Private electronic communications facilities are excluded from the licence requirement (but not from a radio spectrum requirement by virtue of section 56(1)(a)).

(2) For the purposes of this section “private electronic communications facilities” means electronic communications services which —

(a) are provided by a person by means of local land-based network facilities or local transport-based network facilities;

(b) are accessible only on that person's property;

(c) are operated independently (in every sense) of electronic communications networks operated by any other person; and

(d) are not operated in the course of an electronic communications service business or otherwise for commercial gain (except as an indirect and incidental part of a person's business that does not involve the provision of electronic communications services).

(3) In subsection (2)(a) —

(a) “local land-based network facilities” means network facilities which are situated on, and operated in, a single area of land in the Falkland Islands occupied by the person who is providing the electronic communications services; and

(b) “local transport-based network facilities” means network facilities which are situated on and operated in one or more vehicles, vessels, aircraft or hovercraft.

26. Transmission stations

Networks are exempt from the licence requirement if they are used to receive sounds or visual images transmitted by wireless telegraphy —

(a) from a transmitting station for general reception direct from that station, or

(b) through the medium of a relay service licensed under this Ordinance.

27. Foreign transport

(1) Networks and carriage services are exempt from the licence requirement if they are operated on a foreign vessel or aircraft —

(a) passing through Falkland Islands territorial waters or skies, or

(b) berthing or landing in a Falkland Islands port or airport.

(2) Subsection (1) does not permit the making of a broadcast while in Falkland Islands territorial waters or skies or while at a Falkland Islands port or airport.

(3) In subsection (1) “foreign” means not registered in the Falkland Islands.

28. Emergency services

(1) The licence requirement does not apply to network facilities which are designed and used only for the provision of any of the following services in accordance with an enactment —

(a) police services;

(b) ambulance services;

(c) fire and rescue services;

(d) other emergency services; and

(e) helplines designated by the Governor by Order.

(2) Before making an Order under subsection (1)(e) the Governor must consult —

(a) any licensee affected, and

(b) such other persons as the Governor thinks appropriate.

29. Radio spectrum use

- (1) The licence requirement does not apply to anything —
 - (a) done in reliance on and in accordance with Part 6, or
 - (b) exempted from a requirement for a licence under that Part.
- (2) The use of radio spectrum is also exempt from the licence requirement if the Regulator notifies the user in writing that the Regulator is satisfied that —
 - (a) the equipment used does not, and is not likely to, cause significant interference to networks or carriage services operated or provided by a licensee;
 - (b) the risk of harm or inconvenience to other users is outweighed by the benefits to the public from permitting usage on an unlicensed basis; and
 - (c) the exemption is compatible with any relevant international recommendations and standards.
- (3) A notice —
 - (a) must be published by the Regulator;
 - (b) must specify the period for which it applies;
 - (c) may be varied or revoked by the Regulator.

30. Maritime and aviation satellite systems

- (1) The licence requirement does not apply to anything done in the territorial sea in accordance with the provisions of any international convention or agreement relating to maritime satellite communications.
- (2) The licence requirement does not apply to anything done on an aircraft in accordance with an enactment of the State in which it is registered relating to aviation satellite communications.

31. Broadcasting licensees

The licence requirement does not apply to anything done —

- (a) by a person licensed to provide services under the Wireless Telegraphy Ordinance 1994 or the Broadcasting Ordinance 2004, and
- (b) in accordance with that licence.

32. Power to confer additional exemptions

- (1) The Governor may by regulations confer exemptions from the licence requirement.

- (2) Regulations may confer exemption —
- (a) on a specified person or class of persons;
 - (b) in relation to specified activities or classes of activity;
 - (c) in relation to specified equipment or classes of equipment.
- (3) Before conferring an exemption in accordance with this section the Governor must give the Regulator an opportunity to make representations.
- (4) Before making representations the Regulator must consult as the Regulator thinks appropriate.

Grant of licences

33. Power to grant licences

- (1) The Regulator may grant licences permitting persons to —
- (a) own an electronic communications network;
 - (b) operate an electronic communications network;
 - (c) provide electronic communications services;
 - (d) import electronic communications apparatus.
- (2) A licence may —
- (a) apply in relation to all or any specified part of Falkland Islands territory;
 - (b) be exclusive or non-exclusive; and
 - (c) be granted on terms and conditions.
- (3) The Regulator may vary the conditions attached to a licence.
- (4) In attaching or varying conditions the Regulator must have regard to the electronic communications objectives.
- (5) A licence may be granted under this section only in so far as it is compatible with an exclusive licence granted under Part 7.

34. Individual and class licences

A licence issued under section 33 must state that it is either —

- (a) an individual licence, or

- (b) a class licence.

Individual licences

35. Nature of individual licence

- (1) An individual licence is issued to a specified licensee.
- (2) An individual licence comes into force in accordance with its terms.

36. Conditions

- (1) The Regulator may attach conditions to an individual licence.
- (2) The Regulator may add to, remove or vary conditions attached to an individual licence.
- (3) When attaching, adding, removing or varying a condition the Regulator must—
 - (a) have regard to the electronic communications objectives,
 - (b) have regard to the regulatory principles, and
 - (c) in particular, ensure that conditions do not unfairly discriminate between licensees in respect of the same or similar networks or services.
- (4) Before attaching, adding, removing or varying a condition the Regulator must —
 - (a) consult the licensee, and
 - (b) allow a period of at least 28 days for the licensee to respond to the consultation.

37. Licensee's installations

- (1) Each individual licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each individual licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

38. Subsidiary undertakings

- (1) The licensee under an individual licence is —

- (a) the person who applies for the licence (“the principal licensee”), and
 - (b) any subsidiary undertaking of the applicant listed in the application.
- (2) The principal licensee may apply in writing to the Regulator —
- (a) to add a subsidiary undertaking to the licence, or
 - (b) to remove a subsidiary undertaking from the licence.
- (3) The Regulator must as soon as is reasonably practicable —
- (a) determine an application under subsection (2);
 - (b) notify the principal licensee of the Regulator’s determination; and
 - (c) take any action necessary as a result.
- (4) The Regulator may remove a subsidiary undertaking from an individual licence without an application under subsection (2) if the subsidiary undertaking applies for an individual licence.

Class licences

39. Nature of class licence

- (1) A class licence is issued by means of a determination of the Regulator.
- (2) The determination must specify —
- (a) the terms and conditions of the licence, and
 - (b) any qualification criteria required to be satisfied by a person relying on the licence.
- (3) A class licence may be relied upon by any person who —
- (a) satisfies the qualification criteria (if any), and
 - (b) complies with the specified terms and conditions.
- (4) A class licence comes into force with respect to a person at whichever is the later of —
- (a) the time when the person registers in accordance with section 40 (if registration is required),
 - (b) the time when the person satisfies any terms or conditions specified as requiring to be satisfied before reliance on the licence, and

(c) any commencement time specified in the licence.

40. Registration

(1) When issuing a class licence the Regulator must specify whether —

(a) it requires persons to register for it (a “registration licence”), or

(b) it does not require persons to register for it (a “non-registration licence”).

(2) A person who satisfies the specified qualification criteria for a non-registration licence may rely on the licence to provide the services specified in it, in accordance with its specified terms and conditions.

(3) The Regulator must publish —

(a) a standard registration form for registration licences, and

(b) guidance on registration and deregistration for registration licences.

(4) A person (“the registration applicant”) who satisfies the specified qualification criteria for a registration licence may send to the Regulator —

(a) a completed registration form, and

(b) any prescribed registration fee.

(5) A registration applicant becomes a registered person in respect of the registration licence at the end of the period of 45 days beginning with the date on which the Regulator receives the registration form (subject to subsection (6)).

(6) But a registration applicant does not become a registered person if during the period specified in subsection (5) the Regulator notifies the registration applicant in writing that —

(a) the person does not satisfy relevant qualification criteria,

(b) the registration form is incomplete, incorrect or unsigned, or

(c) the prescribed fee has not been paid.

(7) The Regulator may not restrict the number of persons that may register for a class licence.

(8) A registered person remains registered for a registration licence unless and until the Regulator notifies the person in writing that —

(a) the person has ceased to satisfy the specified qualification criteria, or

- (b) any prescribed requirements for annual or other fees have not been complied with.

Implied condition

41. Licensee's installations

- (1) A class licence is subject to an implied provision requiring each person relying on it ("the licensee") to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) A class licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Duration

42. Duration of licence

An individual or class licence may be expressed —

- (a) to continue in force unless and until the Regulator gives at least 2 years' written notice of its termination;
- (b) to continue in force for a specified period of not more than 10 years; or
- (c) to continue in force for a specified period of not more than 20 years and to continue after that unless and until the Regulator gives at last 2 years' written notice of its termination (and the notice cannot be given during the initial fixed term).

Procedure

43. Licensing procedure

The Regulator may by regulations —

- (a) prescribe procedures to be followed in relation to applications for individual licences;
- (b) prescribe information to be provided in connection with applications for individual licences;
- (c) prescribe procedures to be followed in relation to registration for class licences;
- (d) prescribe information to be provided in connection with registration for class licences;

- (e) specify factors to be considered in determining whether a person satisfies specified qualification criteria;
- (f) in particular, specify factors to be considered in determining whether a person is fit and proper where that is a specified qualification criterion; and
- (g) prescribe periods within which the Regulator must aim to determine applications in connection with individual or class licences.

Remedies for non-compliance

44. Administrative penalty

- (1) This section applies where a licensee fails to comply with the terms and conditions of the licence.
- (2) The Regulator may require the licensee to pay a penalty.
- (3) In the case of an individual the amount of the penalty may not exceed an amount equivalent to level 10 on the standard scale.
- (4) In any other case the amount of the penalty may not exceed 10% of the licensee's annual turnover and annual turnover is calculated as the licensee's annual turnover —
 - (a) for the year preceding that in which the penalty is imposed, and
 - (b) in respect of the licensee's business carried on in reliance on the licence.
- (5) The Regulator must publish criteria to be applied in determining the amount of a penalty.
- (6) Before imposing a requirement under this section the Regulator must —
 - (a) give the licensee written notice that the Regulator is considering imposing a requirement (including reasons), and
 - (b) give the licensee an opportunity to make representations.
- (7) Before imposing a requirement under this section the Regulator must give the licensee an opportunity to avoid the imposition of a requirement by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (8)).
- (8) The Regulator may impose a requirement without complying with subsection (7) if —
 - (a) the Regulator gave notice to the licensee of intention to impose a requirement under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and

(b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid the imposition of a requirement, having regard to the previous failure or failures.

(9) A requirement under this section must —

(a) be imposed in writing;

(b) specify the failure of compliance in respect of which it is imposed;

(c) give the Regulator's reasons for imposing the requirement;

(d) give details of the application of the criteria for determination of the level of penalty;

(e) be published on the Regulator's website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).

(10) A penalty imposed under this section —

(a) is enforceable as a debt due to the Regulator, and

(b) carries interest at such rate as the Governor may specify by notice in the Gazette.

45. Variation or revocation of licence

(1) This section applies where a licensee fails to comply with the terms and conditions of the licence.

(2) The Regulator may —

(a) vary the terms or conditions of the licence (which may include adding or removing a term or condition);

(b) suspend the licence for a specified period; or

(c) revoke the licence.

(3) Before taking action under this section the Regulator must —

(a) give the licensee written notice that the Regulator is considering taking action, and

(b) give the licensee an opportunity to make representations (including a period of at least 28 days for the making of written representations).

(4) Before taking action under this section the Regulator must give the licensee an opportunity to avoid action under this section by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (5)).

(5) The Regulator may take action under this section without complying with subsection (4) if —

(a) the Regulator gave notice to the licensee of intention to take action under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and

(b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid action under this section, having regard to the previous failure or failures.

(6) Action under this section must —

(a) be taken by giving notice in writing to the licensee (at the address specified in the licence, if any);

(b) specify the failure of compliance in respect of which it is imposed;

(c) specify the date on which the action takes effect (which the regulator shall set having regard to all the circumstances, including the seriousness and urgency of the results of the failure to comply with the terms and conditions of the licence);

(d) give the Regulator's reasons for imposing the requirement; and

(e) be published on the Regulator's website (unless the Regulator is satisfied that public interest in publication is outweighed by commercial or other reasons for confidentiality).

(7) The application of this section to an exclusive licence under Part 7 is subject to the provisions of section 74.

PART 5 BROADCASTING STATION LICENCES

Licences

46. Requirement for licence

It is unlawful to operate a broadcasting station except in accordance with a licence granted under—

(a) this Part;

(b) the Wireless Telegraphy Ordinance 1994; or

(c) the Broadcasting Ordinance 2004.

47. Grant of licence

(1) The Governor may grant a broadcasting station licence to a person.

- (2) A licence may be granted on conditions.
- (3) The provisions of Part 4 apply to broadcasting station licences as they apply to licences under that Part —
 - (a) subject to any provision of this Part, and
 - (b) with any necessary modifications.

Exemptions

48. Crown and Government

Section 24 applies in relation to section 46 as in relation to section 21.

49. Amateurs

- (1) Section 46 does not apply to anything done by an amateur.
- (2) In this section “amateur” means a person who has no commercial or financial interest or motive.

Implied condition

50. Licensee’s installations

- (1) Each broadcasting station licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each broadcasting station licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Enforcement

51. Offence

- (1) It is an offence to carry on an activity which requires a licence in accordance with section 44 otherwise than in accordance with a licence.
- (2) A person who is guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 8 on the standard scale.

52. Forfeiture

- (1) Where a person is convicted of an offence under section 51 the court may order the forfeiture of any equipment which appears to the court likely to have been used in connection with the commission of the offence.
- (2) A forfeiture order may include provision about the treatment and disposal of the equipment forfeited.

53. Penalties for non-compliance with licence

Sections 44 and 45 apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

PART 6 RADIO SPECTRUM MANAGEMENT

54. Management of the radio spectrum

- (1) The Regulator must —
 - (a) have general responsibility for the management of the radio spectrum in the Falkland Islands, and
 - (b) in particular, be responsible for allocation of frequencies in the radio spectrum in the Falkland Islands by way of licence under this Part.
- (2) The Regulator must carry out functions under this section in accordance with any general or specific directions given to it by the Governor.

55. Spectrum plan

- (1) The Regulator must publish a plan for the use of the radio spectrum within the Falkland Islands (“the spectrum plan”).
- (2) The first spectrum plan must be published during the period of 2 years beginning with the date of the commencement of this section.
- (3) In preparing and maintaining the spectrum plan the Regulator must aim —
 - (a) to ensure consistency with any applicable international obligations or standards (including those of the International Telecommunications Union), and
 - (b) to take into account any relevant international recommendations.
- (4) The spectrum plan must —
 - (a) specify frequency bands that are premium spectrum bands; and
 - (b) specify the consequences, for licensees and others, of specification as a premium band.

- (5) The Regulator must revise and re-publish the spectrum plan —
- (a) before the end of the period of 3 years beginning with the date of publication of the initial plan; and
 - (b) before the end of the period of 3 years beginning with the date of each re-publication.

56. Radio spectrum licence

- (1) The Regulator may —
- (a) impose a requirement for a licence for the use of frequencies on the spectrum;
 - (b) assign a specified frequency to a person by granting a licence to that person to use that frequency.
- (2) A licence may be granted on conditions.
- (3) Conditions may relate, in particular, to authorisation of and standards or specifications for radio equipment.
- (4) A licence must require a licensee to comply with directions given by the Regulator in relation to use of the frequency.
- (5) A direction under subsection (4) may, in particular, be designed to avoid or reduce interference.
- (6) The Regulator must have regard to the spectrum plan before determining an application for a licence under this section.
- (7) The Governor may by regulations provide for the procedures to be followed in connection with licences and applications for licences.

57. Licensee's installations

- (1) Each radio spectrum licence contains an implied provision requiring the licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the carrying on of activities in reliance on the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the carrying on of activities in reliance on the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) Each radio spectrum licence includes implied provision requiring the licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

58. Exemptions

The Governor may by regulations provide for exemptions from the requirement for a licence under this Part.

59. Vacation of radio spectrum

(1) If the Regulator is satisfied that a radio spectrum that has been assigned by licence to a person under section 56 should be un-assigned, the Regulator may —

- (a) declare the spectrum vacant;
- (b) pay such compensation (if any) as it thinks should be paid to the previous licensee, or any other person who is affected by the declaration;
- (c) make any other arrangements it thinks necessary or desirable.

(2) In taking action under subsection (1), or determining whether to take action, the Regulator must have regard to the electronic communications objectives.

(3) A declaration under subsection (1)(a) must specify that the Regulator believes the radio spectrum should no longer be assigned to the previous licensee either —

- (a) because the previous licensee has made insufficient use of the radio spectrum, or
- (b) for another specified reason.

60. Spectrum trading

(1) The Governor may make regulations for the transfer of radio spectrum rights by a licensee to another person.

(2) The regulations may make provision for permanent or temporary transfers (or both).

(3) Subject to regulations under this section, a licensee may not assign the use of the licensed radio spectrum to another person (and any purported assignment is of no effect).

61. Saving for existing licences

(1) In this section “pre-commencement licence” means a licence for the operation of radio spectrum issued before the commencement of this section by —

- (a) the Falkland Islands Maritime Authority, or
- (b) the Civil Aviation Department.

(2) A pre-commencement licence continues to have effect until it —

- (a) is cancelled by the authority that issued it, or
- (b) lapses or expires in accordance with its terms.

(3) Nothing in this Ordinance renders unlawful activity that was carried on in reliance on and in accordance with a pre-commencement licence.

Enforcement

62. Penalties for non-compliance with licence

Sections 44 and 45 (penalty, variation and revocation) apply in relation to a licence under this Part as they apply in relation to a licence under Part 4.

**PART 7
EXCLUSIVE TELECOMMUNICATIONS LICENCE**

Nature of licence

63. Grant of exclusive licence

(1) The Governor may grant an exclusive licence to a telecommunications operator (“the exclusive licensee”) to —

- (a) operate an electronic communications network in the Falkland Islands,
- (b) provide electronic communications services in the Falkland Islands, and
- (c) do anything else for which a licence is required under section 21(1).

(2) The Governor may enter into an agreement in writing with the exclusive licensee providing obligations to be observed by it in connection with the provision of telecommunications services and the provisions of an agreement under this subsection (whenever concluded) shall be treated as terms of the exclusive licence.

(3) No more than one licence under this section may have effect at any time and a reference in this Part to the exclusive licence is to a licence granted under this section.

(4) Section 74 makes provision for revocation of the exclusive license, and other remedies, for non-compliance.

(5) Before taking action under this section the Governor must have regard to the electronic communications objectives and the regulatory principles.

(6) A licence under this section —

- (a) may provide for specified activities to be capable of being licensed under other provisions of this Ordinance, subject to any conditions or modifications specified in the licence;
- (b) may be combined with one or more licences under this Ordinance (and provisions of this Ordinance referring to the exclusive licence do not refer to the non-exclusive components of the licence).

64. Terms and conditions

- (1) The exclusive licence must include terms and conditions —
 - (a) requiring the submission of accounts in accordance with subsection (2);
 - (b) for the duration of the licence;
 - (c) providing for cost recovery by the exclusive licensee;
 - (d) imposing, or providing for the imposition of, price controls;
 - (e) imposing universal service obligations in accordance with section 65;
 - (f) for the transfer of data on termination of the licence.
- (2) The accounts specified in subsection (1)(a) are the following in respect of the licensed activities —
 - (a) a profit and loss statement;
 - (b) a revenue breakdown for principal lines of business (including, for domestic services, line access, fixed international, mobile, broadband, enterprise data and other matters);
 - (c) a balance sheet showing the book value of capital assets used in the delivery of the licensed activities and the level of depreciation applied.
- (3) The exclusive licence may include terms and conditions —
 - (a) requiring or allowing the licensee to share infrastructure, facilities and networks for the provision of electronic communications services on specified terms or conditions;
 - (b) specifying criteria for technical compatibility of and access to conditional access networks used in the provision of content;
 - (c) dealing with any other matters that the Governor thinks necessary or desirable.
- (4) Before setting the terms and conditions of the exclusive licence the Governor must —
 - (a) review the market in which the licensee operates or proposes to operate;
 - (b) consider the electronic communications objectives; and
 - (c) consider the regulatory principles.
- (5) In particular, the Governor —

(a) must ensure that any cost recovery mechanism or pricing methodology imposed by way of terms or conditions is designed to promote efficiency and to maximise consumer benefits;

(b) must take account of the investment made by the licensee and aim to allow the licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved and to the desirability of sharing the benefits of efficiency;

(c) must ensure that, where implementation of a cost accounting system is required by terms or conditions in order to support price controls, a determination of the cost accounting system is published, showing at least the main categories under which costs are grouped and, where appropriate having regard to the scale of services provided, the rules used for the allocation of costs; and

(d) may take account of prices available in comparable markets where the Governor is satisfied, having consulted the prospective exclusive licensee, that comparison is relevant.

(6) The exclusive licence must include provision requiring the exclusive licensee —

(a) not to discriminate against any person or classes of person in the provision of or in connection with electronic communications services offered by the licensee;

(b) to provide technical specifications or other technical information on request by a person who reasonably requires the information for the purpose of the lawful provision of electronic communications and who cannot reasonably easily obtain the information from other sources; and

(c) to ensure that the technical specifications of any network operated by the licensee is not incompatible with networks operated by other persons licensed under, or operating in accordance with the provisions of, this Ordinance.

(7) The provisions of the exclusive licence relating to price control (whether by price cap or otherwise) —

(a) may include provision allowing the Regulator to direct the exclusive licensee to employ specific cost accounting methods, or to apply the Regulator's preferred cost accounting methods;

(b) must include provision allowing the Regulator to require the exclusive licensee to provide justification for its prices in accordance with criteria specified by the Regulator (but where the price control provisions take the form of a price cap, the justification for prices required in accordance with this paragraph is limited to demonstrating compliance with the cap);

(c) may include provision allowing the Regulator to direct a price adjustment for the purpose of compliance with the price control provisions of the licence, at such times and intervals as may be specified in the exclusive licence;

(d) may operate by imposing a ceiling on the average change in prices for regulated services over a specified period of time;

(e) may include provision for a review of the operation of any price cap from time to time, with the results of the review determining the continuing operation of the price control by reference to specified criteria; and

(f) may include provision limiting a weighted average of the changes in retail prices for services to which any price cap applies by reference to a specified controlling percentage.

(8) In determining the provisions of the exclusive licence about price control the Governor must aim (without prejudice to the generality of subsection (4)) —

(a) to protect consumers from monopoly excess;

(b) to encourage the exclusive licensee to invest in services that benefit consumers;

(c) to allow the exclusive licensee a reasonable rate of return on capital efficiently employed, having regard to the risks involved; and

(d) to share the benefits of innovation and efficiency.

Performance

65. Universal service obligation

(1) The exclusive licence must include provision requiring the exclusive licensee to comply with any obligations under regulations made by the Governor under this section (“Universal Service Regulations”).

(2) Universal Service Regulations must —

(a) specify services which are to be provided;

(b) specify the classes of user by whom the services must be accessible (and classes may be specified by reference to geographical area, possession of equipment, or otherwise).

(3) The Regulator must —

(a) publish on its website a description of services to be provided under Universal Service Regulations;

(b) monitor the provision of services in accordance with the Universal Service Regulations; and

(c) publish information on its website about the results of monitoring under paragraph (b).

(4) In making and amending Universal Service Regulations the Governor must have regard to —

- (a) the electronic communications objectives;
- (b) the regulatory principles;
- (c) any representations made by a person who is, or may become, an exclusive licensee.

66. Obligations to subscribers

(1) The exclusive licence must include provision setting out the obligations of the licensee to persons who use or wish to use the services provided in accordance with the licence.

(2) In particular, the licence must —

- (a) provide for applications for the provision of a service under the licence;
- (b) permit the licensee to require the provision of information and undertakings in connection with the provision of a service under the licence;
- (c) prohibit the licensee from refusing to provide a service except in specified circumstances or on specified grounds;
- (d) provide for the payment of specified costs by persons applying for the provision of a service;
- (e) impose obligations on the licensee in respect of service provision;
- (f) impose obligations on the licensee in respect of the maintenance of equipment;
- (g) provide for liability of the licensee to persons in respect of loss or damage incurred in connection with the provision of services under the licence or otherwise (which may include provision dealing with failures in service, and provision limiting liability or permitting the licensee to limit its liability);
- (h) require the licensee to offer equipment for sale, hire or use;
- (i) require the licensee to permit service-users to use specified classes of equipment provided by the service-users in specified circumstances or subject to specified conditions;
- (j) allow the licensee to require service-users to provide power and other installations and facilities;
- (k) allow the licensee to impose obligations on service users in respect of the protection or use of equipment or otherwise;

- (l) allow the licensee to discontinue, or impose conditions on, the provision of services in specified circumstances;
- (m) provide for notice periods for discontinuance of service at the option of the service-user;
- (n) provide for assignment or transfer of service contracts;
- (o) allow the licensee to require service-users to accept liability for use made irrespective of the identity of the user, or in other specified circumstances;
- (p) allow the licensee to require or permit service-users to pay deposits, to pay charges in instalments, to make payments in advance or on account, and to accept the installation of metering or charging apparatus;
- (q) provide for access to service-users' premises;
- (r) provide for user directories; and
- (s) exclude liability in cases of force majeure (as defined by the licence).

67. Key performance indicators

(1) The exclusive licence must require the exclusive licensee to monitor its performance in the provision of services in accordance with the licence against —

- (a) any key performance indicators specified in the licence, and
- (b) any key performance indicators specified by the Regulator.

(2) The exclusive licence must include provision requiring the exclusive licensee to comply with any request by the Regulator to —

- (a) publish its performance against any of the key performance indicators referred to in subsection (1) in the manner required by the Regulator;
- (b) provide details of its performance against those key performance indicators in the manner required by the Regulator.

68. Complaint handling and dispute resolution

(1) The exclusive licence must include provision requiring the licensee to —

- (a) establish and maintain a Code of Practice about complaint handling and dispute resolution;
- (b) obtain the Regulator's approval of the form and content of the Code (and if necessary vary the Code until the Regulator approves); and

(c) include in all contracts for the provision of services in accordance with the licence a provision requiring customers to follow any applicable procedures set out in the Code before taking legal proceedings.

(2) A court must enforce subsection (1)(c) by staying or dismissing proceedings, except if and in so far as the court thinks that the proceedings should not be stayed or dismissed having regard to special circumstances of the case.

69. Interception and data retention capability

(1) The exclusive licensee must maintain capability to retain subscriber details and call and data records (including records for mobile services and fixed line services, broadband user authentication records and mobile short message content).

(2) The Governor may by Order amend subsection (1) to require the exclusive licensee to maintain specified capability to intercept, retain or otherwise interfere with electronic communications data.

(3) Before making an Order under subsection (2) the Governor must consult the exclusive licensee.

(4) Anything done in reliance on capability maintained in accordance with subsection (1) is done with lawful authority for the purposes of this Ordinance.

(5) A requirement imposed under this Ordinance (by warrant, notice or otherwise) to do anything in reliance on the capability mentioned in subsection (1) is subject to agreement between the exclusive licensee and the Governor as to —

(a) costs, and

(b) timing.

(6) Any question arising in relation to the effect of subsections (1), (4) or (5) may be referred by the Governor or the exclusive licensee to the Magistrates' Court, whose decision shall be final; and the Regulator has no jurisdiction to determine a question to which this subsection applies.

(7) The exclusive licence must include provision requiring the licensee to take all reasonable steps to ensure that its staff are aware of the rules of secrecy relating to telecommunications set out in the International Convention of Nairobi 1982 and any later Convention amending or replacing the same to which the United Kingdom or the Falkland Islands is a party (including any General and Administrative Regulations from time to time in force under the Convention that extend to the Falkland Islands).

(8) Nothing done under Part 13 may (explicitly or impliedly) require the exclusive licensee to maintain a capability not required by this section.

Information and inspections

70. Regulator's requests for information

(1) The exclusive licence must include provision requiring the exclusive licensee to comply with any request of the Regulator for the provision of information or documents reasonably required by the Regulator in connection with the performance of its functions, subject to any exemptions or qualifications specified in the licence.

(2) A request under this section must specify —

- (a) the information or documents required;
- (b) that the request is made in accordance with this section;
- (c) the purpose for which the information or documents are required;
- (d) the time by which the information or documents are to be provided;
- (e) the consequences of failure to comply with the request.

(3) If the exclusive licensee considers that the burden of complying with a request in accordance with this section would be disproportionate to the public benefit of compliance —

- (a) the licensee may, within 20 working days from the date of receipt of the request, send a notice to the Regulator explaining the reasons for, and extent of, the licensee's wish not to comply with the request;
- (b) the Regulator must respond to the notice within 20 working days from the date of receipt of the licensee's request;
- (c) the request is suspended until the Regulator responds;
- (d) the Regulator must modify the request if and to the extent that the Regulator accepts the licensee's representations, in which case the Regulator must issue a new request under this section (and subsections (1) and (2) apply).

71. Failure to provide information

(1) This section applies if an exclusive licensee fails without reasonable excuse to comply with the condition required by section 70.

(2) The Regulator may —

- (a) require the licensee to pay a penalty not exceeding an amount equivalent to level 10 on the standard scale;
- (b) revoke the exclusive licence in accordance with section 74; or

- (c) take action under both paragraph (a) and paragraph (b).
- (3) Before taking action under subsection (2) the Regulator must —
 - (a) serve a warning notice on the licensee; and
 - (b) give the licensee a reasonable opportunity to make representations.
- (4) A penalty under this section may be enforced as a debt due to the Regulator.
- (5) The licensee may appeal to the Supreme Court against a requirement imposed by the Regulator to pay a penalty under this section and the Supreme Court may make any order it thinks appropriate (including increasing the amount of a penalty and making ancillary provision as to costs or otherwise).

72. Licensee's installations

- (1) The exclusive licence must include provision requiring the exclusive licensee to permit any person authorised by the Regulator to enter any premises occupied or controlled by the licensee to inspect any apparatus used by the licensee in the provision of services in accordance with the licence.
- (2) A person acquiring information in the course of an inspection under this section may not disclose the information without the consent of the licensee.
- (3) If the Regulator thinks that apparatus used by the licensee in the provision of services in accordance with the licence is causing interference with any other apparatus, the Regulator may by notice require the licensee to take steps to prevent the interference.
- (4) The exclusive licence must include provision requiring the exclusive licensee to comply with a requirement under subsection (3) as soon as is reasonably practicable.

Change of control of licensee

73. Approval for change of control

- (1) The exclusive licence must include provision requiring the exclusive licensee to comply with the provisions of this section.
- (2) A change of control may not be implemented without prior written approval of the Governor.
- (3) The Governor may by regulations make provision about procedure in connection with applications for approval for change of control; and the regulations may include, in particular —
 - (a) information to be provided;
 - (b) timing;

- (c) the conduct of an investigation into a proposed change of control.
- (4) The Governor must be notified in writing before the end of the period of 7 days beginning with —
 - (a) the licensee’s entering into an agreement that would result in a change of control, or
 - (b) the announcement of a public bid for control of the licensee.
- (5) Any request made by the Governor for information about an event specified in subsection (3) or any other event likely to result in a change of control must be complied with —
 - (a) in the manner specified by the Governor, and
 - (b) in accordance with any requirements as to timing specified by the Governor.
- (6) For the purposes of this section a reference to change in control includes a reference to any person —
 - (a) acquiring control over the affairs of the licensee;
 - (b) acquiring control of more than 30% of the voting shares in the licensee; or
 - (c) taking other action of a kind specified by the Governor by regulations.

Enforcement

74. Penalties for non-compliance with licence

- (1) Sections 44 and 45 apply in relation to an exclusive licence under this Part as they apply in relation to a licence under Part 4 subject to subsection (2).
- (2) An exclusive licence under this Part may not be revoked unless the Regulator has obtained the leave of the Supreme Court to revoke the licence.
- (3) Before applying to the Supreme Court for permission the Regulator must give at least 6 weeks’ notice of the intention to apply for permission.
- (4) The decision of the Supreme Court on an application for permission is final.

**PART 8
FEES**

General fees

75. Fees Regulations

- (1) The Governor may by regulations (“Fees Regulations”) —

(a) require the payment of fees in respect of the application for, or the issue, renewal or maintenance of, or otherwise in connection with, a licence under this Ordinance;

(b) specify the amount of a fee;

(c) make provision about timing, manner of payment and other ancillary matters in connection with fees.

(2) Fees Regulations must, in particular, make provision —

(a) for fees to be charged for or in connection with licences under Parts 4 to 6;

(b) for fees to be charged in respect of the performance of the Governor's functions in relation to change of control of an exclusive licensee under Part 7.

(3) Fees Regulations may —

(a) make provision for exemptions, waivers and reductions;

(b) confer a discretion on the Governor, the Regulator or another specified person;

(c) make provision that applies generally or only for specified purposes;

(d) make different provision for different purposes.

(4) This section does not apply to anything in respect of which a fee is chargeable under a later provision of this Part.

Specific fees

76. Exclusive licence fee

The Schedule makes provision about fees to be paid for and in connection with an exclusive licence under Part 7.

77. Services by Regulator

(1) The Regulator may charge fees for or in connection with —

(a) the performance of a function under this Ordinance or under a licence issued under this Ordinance;

(b) the performance of any service offered by the Regulator (including the supply of information or documents).

(2) This section is subject to any express provision of a licence under this Ordinance.

(3) A fee charged under this section may be expressed to be calculated —

- (a) as an annual amount,
 - (b) as a proportion of a business' turnover in respect of activities provided in accordance with a licence, or
 - (c) in any other specified way (which may involve conferring a function on a specified person).
- (4) In determining and charging fees under this section the Regulator —
- (a) must have regard to the regulatory principles; and
 - (b) in particular, must ensure transparency, objectivity, proportionality and non-discrimination.
- (5) In setting the amounts of fees under this section the Regulator must apply an estimated cost-recovery approach so that —
- (a) they are designed to cover the annual costs of performance by the Regulator of its functions in relation to the regulation of the electronic communications sector;
 - (b) deficits from one year are recovered over one or more years as appears to the Regulator to be appropriate having regard to the impact on the electronic communications sector;
 - (c) surpluses from one year are returned over one or more years as appears to Regulator to be appropriate; and
 - (d) each licensee or other fee-payer is contributing a proportionate share of the Regulator's costs having regard to all the circumstances (including the nature of the relevant function, the benefits to the fee-payer and the resources and other circumstances of the fee-payer).
- (6) Fees to be charged by the Regulator, together with any criteria for determining their amounts and any rules as to timing of payment, must be published —
- (a) on the Regulator's website, and
 - (b) in other ways that the Regulator considers appropriate.

Enforcement and administration

78. Collection and destination

Fees under this Part must —

- (a) be collected and administered by the Regulator, and
- (b) be paid into the Consolidated Fund.

79. Recovery

A fee under this Part which is due and unpaid is recoverable as a debt due to the Regulator.

80. Interest

- (1) Interest accrues on overdue fees and is to be calculated by the Regulator on a daily basis.
- (2) Interest is recoverable in the same manner as the principal.
- (3) The rate of interest is the Bank of England base rate from time to time plus 2%.

81. Offences

- (1) It is an offence to do anything in respect of which a fee is payable under this Ordinance without paying the fee.
- (2) The offence in subsection (1) may be charged in addition to any other offence committed by the same activity.
- (3) A person who takes any action for the purpose of evading all or part of a fee under this Part, or who assists another for that purpose, commits an offence.
- (4) A person who is guilty of an offence under this section is liable on conviction —
 - (a) to imprisonment for a term not exceeding 6 months,
 - (b) to a fine not exceeding level 10 on the standard scale, or
 - (c) to both.

PART 9 CONSUMER STANDARDS AND PROTECTION

Consumer protection

82. Regulator to enforce consumer protection provisions

The Regulator must monitor compliance with any provision of a licence under this Ordinance —

- (a) which is described in the licence as a consumer protection provision, or
- (b) which in the Regulator's opinion is designed (wholly or partly) to protect interests of the users or potential users of electronic communications services.

83. Consumer Protection Regulations

- (1) The Governor may make regulations for the purposes of protecting users and potential users of electronic communications services ("Consumer Protection Regulations").
- (2) Consumer Protection Regulations may include provision about, in particular —

- (a) standards of service;
- (b) quality of service;
- (c) safety;
- (d) handling of complaints;
- (e) the use of a network or service to make unsolicited communications;
- (f) confidentiality of user information;
- (g) telephone directories and similar publications (which may include provision requiring the publication of directories, and provision about the disclosure or use of information for the purpose of directories).

(3) A licence under this Ordinance may make provision by reference to Consumer Protection Regulations, including references to those Regulations as they may have effect from time to time.

(4) Consumer Protection Regulations may not, except in accordance with subsection (3) —

- (a) impose obligations on licensees, or
- (b) change the effect of a provision of a licence.

(5) Before making Consumer Protection Regulations the Governor must consult —

- (a) all relevant licensees, and
- (b) such other persons as the Governor thinks appropriate.

84. Programme content

(1) The Regulator may issue codes of practice about the content of media services under the control of licensees under this Ordinance.

(2) A code may, in particular, include provision designed —

- (a) to protect young persons from exposure to harmful material;
- (b) to protect users from offensive material;
- (c) to promote accuracy and impartiality in news and current affairs material;
- (d) to avoid misleading or alarming service users.

(3) Provision made in pursuance of subsection (2)(a) or (b) may, in particular, include provision about material which includes —

- (a) physical or psychological violence;
- (b) sexual activity or nudity;
- (c) the use of alcohol, tobacco and drugs;
- (d) anything likely to incite hatred or discrimination on grounds of race, religion, disability, age, gender or sexual orientation;
- (e) offensive language;
- (f) anything of an indecent, obscene, offensive or defamatory nature.

(4) A code may include provision about procedure to be followed in making, handling and determining complaints about matters in subsection (2) and (3).

(5) A code relating to broadcasting services may, in particular, include provision about —

- (a) the amount of time devoted to advertising;
- (b) the presentation of advertising material;
- (c) sponsorship announcements;
- (d) the use of captions and sub-titles;
- (e) teletext and other ancillary services;
- (f) party political broadcasts;
- (g) broadcasting of sporting and national events;
- (h) broadcasting in relation to national emergencies; and
- (i) public service announcements.

(6) A licence under this Ordinance may make provision by reference to codes under this section, including references to those codes as they may have effect from time to time.

(7) A code of practice may not, except in accordance with subsection (6) —

- (a) impose obligations on licensees, or
- (b) change the effect of a provision of a licence.

(8) Nothing in this Ordinance or in a licence under this Ordinance obliges a licensee to accept for transmission material of a kind described in subsection (3)(d) to (f).

Equipment on service users' premises

85. Service users' premises

(1) A licence under this Ordinance must include provision that applies where the licensee has sited equipment on property belonging to a user or prospective user of the licensee's services.

(2) The licence must include provision requiring the licensee to maintain the equipment (subject to subsection (4)).

(3) The licence must (subject to subsection (4)) include provision allowing the licensee to authorise persons to enter the property for the purpose of monitoring or maintaining the equipment —

- (a) at reasonable times,
- (b) after giving reasonable notice, and
- (c) on presentation of appropriate identification.

(4) Subsections (2) and (3) may be varied by any specific provision of —

- (a) the licence;
- (b) any agreement between the licensee and the owner of the property.

(5) A licensee who is refused access under a provision specified in subsection (3) or (4)(a) or (b) may apply to a court for a warrant authorising access and the court may grant a warrant on such terms and conditions as it thinks appropriate.

(6) A licence under this Ordinance must include provision enabling the licensee, so far as reasonable, to make the provision of any service under the licence conditional on the provision of power, in such form and to such specifications as the licence may specify, by an actual or prospective user of the service.

86. Equipment standards

(1) The Regulator may publish —

- (a) standards for equipment to be used for the purposes of electronic communications;
- (b) conditions to be satisfied in using equipment for the purposes of electronic communications;
- (c) conditions or standards for the manufacture or import of equipment designed to be used for the purposes of electronic communications.

- (2) The Regulator may require its approval to be obtained for equipment before it is used for the purposes of electronic communications; and —
- (a) a requirement must be published in a manner designed to ensure that it comes to the attention of persons using equipment for those purposes, and
 - (b) a licence under this Ordinance may identify a class of equipment in respect of which a requirement under this subsection may or may not be imposed on or in respect of the licensee.
- (3) The Regulator may set standards and conditions, and impose requirements, under this section only if satisfied that they are necessary or desirable for the purposes of —
- (a) preventing or limiting damage to networks or services provided in accordance with this Ordinance;
 - (b) protecting public health and safety;
 - (c) protecting the environment.
- (4) Conditions under this section may include provision as to testing of equipment.
- (5) In setting standards or conditions under this section the Regulator may make provision by reference to standards or conditions having effect outside the Falkland Islands (including such standards and conditions as they may have effect from time to time).
- (6) A licence under this Ordinance must include provision requiring the licensee to comply with any standards, conditions and requirements under this section.
- (7) It is an offence to —
- (a) use equipment which does not comply with any relevant standards under this section;
 - (b) use equipment without complying with any relevant conditions under this section;
 - (c) manufacture equipment which does not comply with any relevant standards or conditions under this section;
 - (d) import equipment which does not comply with any relevant standards or conditions under this section;
 - (e) use equipment without obtaining approval required under this section.
- (8) A person who is guilty of an offence under subsection (7) is liable on conviction to a fine not exceeding level 7 on the standard scale.
- (9) Before issuing standards or conditions under this section the Regulator must consult —

- (a) any relevant licensee, and
- (b) such other persons as the Regulator thinks appropriate.

Telephone numbers and domain names

87. Numbering plan

- (1) The Regulator must publish a numbering plan for telephone numbers or other similar designations.
- (2) The numbering plan must set out rules for the —
 - (a) allocation of numbers or series of numbers to licensee;
 - (b) assignment of numbers to service users.
- (3) A licence under this Ordinance must include a requirement to comply with any relevant requirements of the numbering plan.
- (4) In preparing the numbering plan the Regulator shall aim —
 - (a) to comply with any relevant international standards;
 - (b) to ensure a sufficient supply of numbers for expected usage; and
 - (c) to promote the efficient use of numbering.
- (5) The numbering plan may require licensees to provide specified kinds of number for emergency purposes.

88. Domain names

- (1) It is the responsibility of the Regulator to manage, allocate and assign domain names.
- (2) A licence under this Ordinance must include provision requiring the licensee to comply with any rules or direction made or given by the Regulator in respect of the use of domain names.
- (3) In this Ordinance “domain name” —
 - (a) means a name allocated under the global name system assigned to the Falkland Islands according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision), and
 - (b) includes any second or subsequent level domain name.

89. Access by public bodies

Nothing in this Ordinance, Consumer Protection Regulations or a licence under this Ordinance affects any right of a public body to access information.

**PART 10
PUBLIC CONTROL OF SERVICES**

90. Interception

(1) A licence under this Ordinance must include provision requiring the licensee to maintain the capability required by section 69 (to be used in accordance with an authorisation issued by the Governor under Part 13).

(2) The Governor may issue a written exemption from the requirements of subsection (1) to a specified licensee in respect of a specified network, subject to any specified terms and conditions.

(3) Before issuing an exemption the Governor must consult —

(a) the Attorney General, and

(b) the Chief Police Officer.

91. War and emergencies

(1) If the Governor considers it necessary in the interests of defence, public safety or public order, the Governor may —

(a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);

(b) issue directions to a licensee or any other person who controls a network or services for the provision of electronic communications for the purposes of steps under paragraph (a);

(c) appoint staff to act for the purposes of paragraph (a).

(2) The Governor may pay compensation in respect of action taken under subsection (1).

92. Other public service acquisition of control

(1) This section applies where —

(a) an exclusive licence under Part 7 has been revoked and another exclusive licence for the same services has not yet been granted;

(b) an exclusive licensee ceases to operate or in the opinion of the Governor is about to cease to operate; or

(c) for any other reason the Governor considers that it is necessary in the public interest to acquire control of the provision of telecommunications services.

(2) The Governor may —

(a) take any steps the Governor considers appropriate to assume control over any network or services provided under or in accordance with this Ordinance (by licence or otherwise);

(b) by order provide for specified assets to vest in the Governor for the purposes of use in pursuance of paragraph (a);

(c) appoint staff to act for the purposes of paragraph (a).

(3) Compensation is payable in respect of assets to which an order under subsection (2)(b) applies and the Governor must make regulations about the determination of compensation under this subsection.

(4) Regulations under subsection (3) must be made in accordance with the advice of the Regulator.

(5) Compensation due and payable under this section must be charged on the Consolidated Fund.

PART 11 OFFENCES

Specific offences

93. False statements

(1) A person who makes a statement or provides information or documents to the Regulator or any other public body in pursuance of a provision of this Ordinance commits an offence if —

(a) the person knows that the statement, information or documents are false in a material respect;

(b) is reckless as to whether the statement, information or documents are false in a material respect.

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 12 on the standard scale.

94. Obstructing Regulator

(1) It is an offence to obstruct the Regulator or a person authorised by the Regulator in the exercise of a function under this Ordinance or under a licence issued under this Ordinance.

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 7 on the standard scale.

95. Misleading messages

- (1) It is an offence to use electronic communications to send or attempt to send a message which is false or misleading and is likely to threaten the efficiency or safety of any person, vehicle, vessel or aircraft (whether by issuing a false distress call or otherwise).
- (2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding level 10 on the standard scale.

96. Other improper communications

- (1) It is an offence to use electronic communications to send or attempt to send material that is —
 - (a) grossly offensive,
 - (b) indecent or obscene,
 - (c) threatening, or
 - (d) designed to cause distress or inconvenience without reasonable excuse.
- (2) A person providing electronic communications in accordance with a licence under this Ordinance may —
 - (a) refuse to transmit a message containing material of a kind described in subsection (1);
 - (b) terminate provision of services to a person on the grounds of habitual use to send or attempt to send messages containing material of a kind described in subsection (1).
- (3) A person who is guilty of an offence under this section is liable on conviction to —
 - (a) imprisonment for a term not exceeding 6 months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

97. Interfering with communications

- (1) It is an offence to —
 - (a) do anything designed to obtain from the operator of a network information about the content, sender or addressee of an electronic communication, or
 - (b) disclose that information.
- (2) It is an offence for the operator of a network, or a person employed by or otherwise working for the operator of a network, to —

(a) interfere with an electronic communication; or

(b) disclose the existence, nature or content (including sender or addressee) of an electronic communication.

(3) Subsections (1) and (2) do not apply to anything done —

(a) with the consent of the persons sending and receiving the communication; or

(b) with lawful authority.

(4) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

(5) Where the Falkland Islands is party to an international agreement relating to the provision of mutual assistance in relation to interference with electronic communications, a request for assistance may not be made by any person in or on behalf of the Falkland Islands except with the authority of the Attorney General.

98. Deliberate interference

(1) A person who uses any apparatus for the purpose of interfering with electronic communications commits an offence.

(2) Subsection (1) does not apply to anything done —

(a) with the consent of the persons sending and receiving the communication; or

(b) with lawful authority.

(3) A person who is guilty of an offence under subsection (1) is liable on conviction to —

(a) imprisonment for a term not exceeding 3 months,

(b) a fine not exceeding level 3 on the standard scale, or

(c) both.

99. Damage to infrastructure

(1) A person who damages any part of the infrastructure of an electronic communications network must report the damage to a police officer as soon as is reasonably practicable.

(2) Failure to comply with subsection (1) is an offence.

(3) A person who is guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding level 3 on the standard scale.

Enforcement powers

100. Power of entry

(1) If a court is satisfied that there are reasonable grounds to suspect that evidence of the commission of an offence under this Ordinance is to be found on premises, the court may issue a warrant authorising a person authorised by the Regulator —

(a) to enter the premises;

(b) to require the provision of a copy of any information or documents stored on the premises (including information stored electronically);

(c) to test equipment;

(d) to remove any article that may be or provide evidence of the commission of the offence.

(2) Subsection (1) applies to a vehicle, vessel or aircraft as it applies to premises.

(3) It is an offence —

(a) to obstruct a person exercising powers under a warrant under this section, or

(b) to fail to provide reasonable assistance on request to a person exercising powers under a warrant under this section.

(4) A person who is guilty of an offence under subsection (3) is liable on conviction to —

(a) imprisonment for a term not exceeding 3 months,

(b) a fine not exceeding level 3 on the standard scale, or

(c) both.

Supplementary

101. Jurisdiction

The Magistrates' Court has jurisdiction for the purposes of this Ordinance (subject to any provision to the contrary).

102. Maritime and Aviation

(1) This section applies where an offence under this Ordinance is committed —

(a) by, using or in relation to equipment on board a ship or aircraft, or

(b) by anything done on a ship or aircraft.

(2) The captain or other person for the time being in charge of the ship or aircraft is guilty of the offence (whether or not anyone else is also guilty of the offence).

(3) Subsection (2) does not apply where the captain or other person in charge can show that the offence was committed only by reason of action —

(a) which was taken by a passenger, and

(b) which the captain or other person in charge could not reasonably have been expected to take action to prevent.

PART 12 LAND

103. Compulsory purchase

For the purposes of any law relating to compulsory acquisition of land for public purposes —

(a) the functions of an exclusive licensee under the licence are public purposes; and

(b) the licensee or the Governor may exercise powers under that law for a purpose in connection with the performance of those functions.

104. Entering land for construction and operational purposes

(1) A person authorised by an exclusive licensee may enter land for the purposes of constructing, installing, operating, monitoring or removing apparatus required in connection with functions under the licence.

(2) The Governor must by regulations make provision —

(a) prescribing procedure to be followed in the exercise of the power under subsection (1);

(b) specifying conditions to be satisfied in relation to the exercise of the power under subsection (1);

(c) imposing limitations on the exercise of the power under subsection (1).

(3) The regulations may, in particular —

(a) make different provision in respect of land owned and occupied by a public body and land owned or occupied by a private person;

(b) require the service of notices;

(c) require consultation;

- (d) make provision for the payment of compensation;
 - (e) require the approval of a specified public body in specified circumstances;
 - (f) confer a discretion on a specified person;
 - (g) make exercise of a power under subsection (1) dependent on obtaining a court order in specified circumstances;
 - (h) make provision for ancillary activities that may be carried out in the exercise of the power under subsection (1) (including, in particular, cutting down trees and similar activity);
 - (i) make provision for the laying of equipment underneath streets or other places;
 - (j) make provision for obtaining or creating a licence or easement in specified circumstances and for specified purposes in relation to maintenance of equipment or otherwise;
 - (k) make provision for varying or overriding a licence or easement in specified circumstances and for specified purposes;
 - (l) impose duties designed to protect the property or safety of persons, or to protect the environment;
 - (m) provide for a right of challenge or appeal to a court in specified circumstances.
- (4) The regulations must make separate provision in respect of works carried out on the shore or seabed.

PART 13 DATA

Interpretation

105. Public interest grounds

For the purposes of this Part the “public interest grounds” are —

- (a) the interests of national security;
- (b) prevention or detection of crime;
- (c) prevention of disorder;
- (d) national security in relation to economic well-being;
- (e) public safety;
- (f) public health;

- (g) collection or administration of taxes and other money payable to the Government;
- (h) preventing or reducing deaths or injuries as a result of a public emergency;
- (i) any other matter specified for the purposes of this section by the Governor by regulations.

Retention of data

106. Retention notices

- (1) The Governor in discretion may by notice (a “retention notice”) require the exclusive licensee under an exclusive licence issued under Part 7 to retain electronic communications data.
- (2) The Governor in discretion may give a retention notice if satisfied that —
 - (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (3) A retention notice —
 - (a) must specify the classes of data to be retained;
 - (b) must specify the period for which data is to be retained;
 - (c) may specify the form in which it is to be retained;
 - (d) may include other provision as to the retention of the data;
 - (e) may make provision for data whether or not in existence at the time when the notice is given;
 - (f) may make provision which applies generally or only for specified purposes;
 - (g) may make different provision for different purposes.
- (4) The Governor may by regulations make further provision for the retention of electronic communications data and the regulations may, in particular, make provision for—
 - (a) the process to be followed before giving a retention notice;
 - (b) the maximum period for which data is to be retained under a retention notice;
 - (c) the content, giving, commencement, review, variation and revocation of a retention notice;
 - (d) the storage of data in accordance with a retention notice;

- (e) access to and disclosure of data retained in accordance with a retention notice;
 - (f) destruction of data retained in accordance with a retention notice;
 - (g) monitoring and enforcement of compliance with a retention notice;
 - (h) payments by the Governor in discretion in respect of expenses of complying with a retention notice.
- (5) A retention notice may not require data to be retained for more than 24 months.
- (6) The exclusive licensee may disclose data retained in accordance with a retention notice only —
- (a) in accordance with regulations under this section,
 - (b) in accordance with a provision of this Ordinance, or
 - (c) pursuant to, or in accordance with an order of, a court.
- (7) When an exclusive licence comes to an end (for whatever reason) —
- (a) a retention notice issued to the licensee continues to have effect in accordance with its terms; but
 - (b) if provision is made for the transfer of data to a new exclusive licensee, the Governor in discretion may vary or revoke the retention notice.

Disclosure

107. Disclosure requirements

- (1) The Governor in discretion or a court may grant an authorisation allowing a specified person or class of person to require the exclusive licensee to disclose electronic communications data.
- (2) The Governor in discretion or a court may require the exclusive licensee —
- (a) to obtain electronic communications data;
 - (b) to disclose electronic communications data.
- (3) The Governor or a court may grant an authorisation under subsection (1) or impose a requirement under subsection (2) only if satisfied that —
- (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.

(4) The exclusive licensee must comply with a requirement imposed under or by virtue of this section.

(5) A requirement imposed under or by virtue of this section is enforceable as if it were an order of the Supreme Court.

(6) The Governor may make regulations for authorisations and requirements under this section and the regulations may, in particular, make provision for —

- (a) form;
- (b) content;
- (c) procedure;
- (d) conditions and limitations;
- (e) timing;
- (f) variation and revocation;
- (g) appeal; and
- (h) other ancillary matters.

Interception and surveillance

108. Interception warrants

(1) The Governor in discretion or a court may issue a warrant authorising or requiring a person to take specified steps to —

- (a) intercept an electronic communication or class of communications;
- (b) disclose the intercepted material.

(2) The Governor in discretion or a court may grant a warrant only if satisfied that —

- (a) it is necessary on public interest grounds, and
- (b) it is proportionate to the purpose for which it is required.

(3) The Governor may make regulations for —

- (a) the form and content of warrants;
- (b) procedure for application for and issue of warrants;

- (c) procedure to be followed in implementing a warrant;
 - (d) terms and conditions;
 - (e) duration, renewal, variation and revocation;
 - (f) any other ancillary matters.
- (4) A warrant under this section is enforceable as if it were an order of the Supreme Court.
- (5) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.
- (6) A person who is guilty of an offence under this section is liable on conviction to —
- (a) imprisonment for a term not exceeding 2 years,
 - (b) a fine not exceeding level 12 on the standard scale, or
 - (c) both.

109. Directed surveillance

- (1) In this section “directed surveillance” means electronic surveillance which —
- (a) is covert and non-intrusive, and
 - (b) is intended to support an investigation by obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).
- (2) The Governor in discretion or a court may grant a warrant for directed surveillance.
- (3) The Governor in discretion or a court may grant a warrant only if satisfied that —
- (a) it is necessary on public interest grounds, and
 - (b) it is proportionate to the purpose for which it is required.
- (4) The Governor may make regulations for —
- (a) the form and content of warrants;
 - (b) procedure for application for and issue of warrants;
 - (c) procedure to be followed in implementing a warrant;
 - (d) terms and conditions;

(e) duration, renewal, variation and revocation; and

(f) any other ancillary matters.

(5) A warrant under this section is enforceable as if it were an order of the Supreme Court.

(6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.

(7) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

110. Intrusive surveillance

(1) For the purposes of this section “intrusive surveillance” means covert electronic surveillance of activity on residential premises or in a private vehicle (and does not include the use of devices to provide information only about the location of a vehicle).

(2) The Governor in discretion or a court may grant a warrant for intrusive surveillance.

(3) The Governor in discretion or a court may grant a warrant only if satisfied that —

(a) it is necessary on public interest grounds, and

(b) it is proportionate to the purpose for which it is required.

(4) The Governor may make regulations for —

(a) the form and content of warrants;

(b) procedure for application for and issue of warrants;

(c) procedure to be followed in implementing a warrant;

(d) terms and conditions;

(e) duration, renewal, variation and revocation; and

(f) any other ancillary matters.

(5) A warrant under this section is enforceable as if it were an order of the Supreme Court.

(6) It is an offence for a person to fail without reasonable excuse to comply with a provision of a warrant under this section.

(7) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

(8) In this section a reference to a vehicle includes a reference to a vessel, hovercraft or aircraft.

Encrypted data

111. Requirement to disclose

(1) This section applies where encrypted electronic data has come into the possession of a public body —

(a) in the exercise of a function under this Ordinance, or

(b) in the exercise of a function under another enactment.

(2) A public body who believes that a person is likely to possess the key to the encryption may require that person to disclose the key to the public body.

(3) A requirement may be imposed only if the public body is satisfied that —

(a) it is necessary on public interest grounds, and

(b) it is proportionate to the purpose for which it is imposed.

(4) The Governor may make regulations for —

(a) the form and content of requirements;

(b) procedure for application for and issue of requirements;

(c) terms and conditions; and

(d) any other ancillary matters.

(5) A requirement under this section is enforceable as if it were an order of the Supreme Court.

(6) A requirement under this section may not require the disclosure of a key which is designed to be used, and has been used, only for generating electronic signatures.

(7) A requirement under this section may include a provision prohibiting any person from communicating the fact or nature of the requirement to any other person (except for the purposes of complying with the requirement).

(8) It is an offence for a person to fail without reasonable excuse to comply with a requirement under this section.

(9) A person who is guilty of an offence under this section is liable on conviction to —

(a) imprisonment for a term not exceeding 2 years,

(b) a fine not exceeding level 12 on the standard scale, or

(c) both.

112. General

(1) Nothing in this Part, or done under this Part, requires the exclusive licensee under Part 7 or any other person to do anything that is not practicable for the licensee or other person, having regard to all the circumstances.

(2) Where a person on whom a warrant, notice or requirement under this Part is served or proposed to be served is of the opinion that the warrant, notice or requirement requires the person to do something that is not practicable —

(a) the person may refer the question to the Magistrates' Court,

(b) the decision of the Magistrates' Court shall be final to determine the question, and

(c) the Magistrates' Court may make any ancillary order it thinks fit (including modifying or imposing a condition to or limitation on the warrant, notice or requirement).

(3) In the case of a warrant, notice or requirement served on a person by the Governor —

(a) the person may not refer the question to the Magistrates' Court without giving the Governor such notice as is reasonably practicable, and

(b) the warrant, notice or requirement has no effect until the question has been determined by (or withdrawn from) the Magistrates' Court (and then has effect subject to the determination).

(4) Nothing in this Ordinance prohibits the doing of anything in accordance with lawful authority.

(5) Where a warrant, notice or requirement under this Part is served on a person —

- (a) the person may comply with the warrant, notice or requirement wholly or partly by arranging for another person to take the required action; and
- (b) the person may disclose the warrant, notice or requirement for that purpose.

PART 14
TELECOMMUNICATIONS APPEALS PANEL

113. The panel

- (1) There must be a Telecommunications Appeals Panel (“the Panel”).
- (2) The Panel must consist of 3 members, appointed by the Governor.
- (3) The Governor must appoint one member of the Panel as its Chair.
- (4) In making appointments under this section the Governor must —
 - (a) have regard to the importance of members of the Panel having relevant experience and knowledge;
 - (b) have regard to the importance of members of the Panel being, and appearing to be, independent of the Government and of licensees;
 - (c) consult, in respect of the appointment criteria, persons appearing to the Governor to represent the interests of users of electronic communications services, persons appearing to represent the interests of licensees, and such other persons as the Governor thinks appropriate.
- (5) Decisions of the Panel must be taken by a majority (subject to provision of regulations under section 114 allowing specified matters to be determined by one or two Panel-members).

114. Regulations

- (1) The Governor must make regulations for the constitution and proceedings of the Panel.
- (2) The Regulations may, in particular, include provision for —
 - (a) the qualification and disqualification of members of the Panel;
 - (b) the tenure of members, and other terms and conditions of appointment;
 - (c) the removal or retirement of members of the Panel;
 - (d) conflicts of interest;
 - (e) the functions of the Chair;

- (f) the provision of staff of the Panel;
 - (g) the payment of remuneration and allowances to members of the Panel or staff;
 - (h) the sittings of the Panel;
 - (i) the service of notice;
 - (j) setting time limits within which specified action (including commencement of appeals) must be taken;
 - (k) evidence;
 - (l) specific classes of proceedings to be dealt with wholly or partly without a hearing;
 - (m) allowing specific classes of proceedings to be dealt with wholly or partly by a single Panel-member sitting alone, or by two Panel-members;
 - (n) saving the validity of proceedings of the Panel in specified circumstances;
 - (o) conferring a discretion on a specified person.
- (3) Before making regulations under this section the Governor must consult —
- (a) persons appearing to represent the interests of users of electronic communications services,
 - (b) persons appearing to represent the interests of the electronic communications industry, and
 - (c) such other persons as the Governor thinks appropriate.

115. Functions

- (1) The Panel must determine appeals against decisions of the Regulator under this Ordinance.
- (2) The Panel may not determine an appeal against a decision of the Regulator to initiate civil or criminal proceedings.

116. Annual report

- (1) The Chair of the Panel must make a written report to the Governor about the exercise of the Panel's functions during each calendar year.
- (2) A report must be made as soon as reasonably practicable after the end of the year to which it relates.
- (3) The Governor must —

- (a) lay a copy of each report before the Legislative Assembly; and
- (b) publish each report.

SCHEDULE

EXCLUSIVE LICENCE FEE

Fee to be paid for exclusive licence under Part 7 – £10,000.

OBJECTS AND REASONS

This Bill makes provision about the development, operation and regulation of telecommunications and electronic communication services in the Falkland Islands.

Clause 1 specifies the short title.

Clause 2 provides for the Ordinance to come into force in accordance with provision to be made by the Governor.

Clause 3 provides an overview of the content of the Ordinance.

Clause 4 defines expressions.

Clause 5 identifies key objectives to be known as the electronic communications objectives.

Clause 6 identifies regulatory principles for the purposes of the Ordinance.

Clause 7 provides for the appointment of a Communications Regulator.

Clause 8 protects the Communications Regulator's independence by prohibiting a public authority from giving the Regulator directions.

Clause 9 allows the Governor to make regulations about supplementary matters relating to the Communications Regulator.

Clause 10 sets the Communications Regulator's general duties.

Clause 11 sets the Communications Regulator's specific duties.

Clause 12 gives the Communications Regulator general powers.

Clause 13 allows the Communications Regulator to investigate compliance failures under the Ordinance.

Clause 14 allows the Communications Regulator to make orders to remedy compliance failures.

Clause 15 allows the Communications Regulator to make determinations about obligations under the Ordinance or licences and other instruments under it.

Clause 16 requires the Communications Regulator to consult before taking regulatory or administrative action.

Clause 17 requires the Communications Regulator to publish details of certain regulatory and other action under the Ordinance.

Clause 18 imposes duties of confidentiality on the Communications Regulator.

Clause 19 allows the Communications regulator to set up alternative dispute resolution schemes to resolve disputes in relation to the Ordinance.

Clause 20 allows the Governor to make procedural regulations about the functions of the Communications Regulator.

Clause 21 sets out activities requiring an electronic communications licence.

Clause 22 exempts anything done under a Part 7 exclusive licence from the need for an electronic communications licence.

Clause 23 exempts anything done under a Part 5 broadcasting licence from the need for an electronic communications licence.

Clause 24 exempts Crown and Government activities from the need for an electronic communications licence.

Clause 25 gives limited exemption from the need for an electronic communications licence to the use of certain private facilities.

Clause 26 gives limited exemption from the need for an electronic communications licence to the use of certain transmission stations.

Clause 27 gives exemption from the need for an electronic communications licence to certain foreign transport services.

Clause 28 exempts emergency services from the need for an electronic communications licence.

Clause 29 exempts radio spectrum use from the need for an electronic communications licence.

Clause 30 exempts certain maritime and aviation satellite systems from the need for an electronic communications licence.

Clause 31 exempts certain broadcasting activities from the need for an electronic communications licence.

Clause 32 allows the Governor to confer additional exemptions from the need for an electronic communications licence.

Clause 33 allows the Communications Regulator to grant electronic communications licences.

Clause 34 distinguishes between individual licences and class licences.

Clause 35 explains the nature of an individual licence.

Clause 36 allows conditions to be attached to an individual licence.

Clause 37 sets an implied condition of individual licences giving the Communications Regulator certain rights of entry.

Clause 38 deals with the position of subsidiary undertakings in relation to individual licences.

Clause 39 explains the nature of a class licence.

Clause 40 distinguishes between licences that require registration and those that can be relied on automatically.

Clause 41 sets an implied condition of class licences giving the Communications Regulator certain rights of entry.

Clause 42 makes provision for the duration of individual and class licences.

Clause 43 allows the Communications Regulator to make provision about licensing procedure.

Clause 44 allows the Communications Regulator to impose non-compliance penalties on licensees.

Clause 45 allows the Communications Regulator to vary or revoke licences for non-compliance.

Clause 46 sets the requirements for broadcasting station licences.

Clause 47 allows the Governor to grant broadcasting station licences.

Clause 48 exempts Crown and Government activities from the need for a broadcasting station licence.

Clause 49 exempts amateurs from the need for a broadcasting station licence.

Clause 50 imposes an implied condition in broadcasting station licences giving the Communications Regulator certain powers of entry.

Clause 51 creates an offence of breaching the requirement for a broadcasting station licence.

Clause 52 allows a court to order forfeiture of illegally used broadcasting equipment.

Clause 53 applies to broadcasting station licences enforcement provisions relating to electronic communications licences.

Clause 54 requires the Communications Regulator to manage the radio spectrum.

Clause 55 requires the Communications Regulator to publish a plan for the use of the radio spectrum.

Clause 56 allows the Communications Regulator to require licences for the use of radio frequencies.

Clause 57 imposes an implied condition in radio spectrum licences giving the Communications Regulator certain powers of entry.

Clause 58 allows the Governor to create exemptions from the need for a radio spectrum licence.

Clause 59 allows the Communications Regulator to declare vacant frequencies.

Clause 60 makes the provision about trading radio spectrum rights.

Clause 61 saves the effect of licences already granted before the Ordinance comes into force.

Clause 62 applies to radio spectrum licences enforcement provisions relating to electronic communications licences.

Clause 63 allows the Governor to grant an exclusive telecommunications licence.

Clause 64 requires the exclusive telecommunications licence to include certain provision.

Clause 65 requires the exclusive licence to include a provision requiring compliance with Universal Service Regulations.

Clause 66 requires the exclusive licence to set out the licensee's obligations to actual and prospective service users.

Clause 67 requires the exclusive licence to set key performance indicators for the licensed services.

Clause 68 requires the exclusive licence to include provision for handling complaints and resolving disputes.

Clause 69 requires the exclusive licensee to maintain certain capability for the retention of records.

Clause 70 allows the Regulator to request information from the exclusive licensee.

Clause 71 provides for penalties and sanctions for non-compliance by the exclusive licensee with requirements under clause 70.

Clause 72 requires the exclusive licence to include provision allowing the Communications Regulator certain rights of entry.

Clause 73 imposes restrictions on change of control of the exclusive licensee.

Clause 74 applies to the exclusive licence certain enforcement provisions of other licences.

Clause 75 allows the Governor to make regulations for charging fees in connection with the Ordinance.

Clause 76 provides for exclusive licence fees to be set out in the Schedule.

Clause 77 allows the Regulator to charge fees for the performance of functions under the Ordinance.

Clause 78 makes provision for the collection and destination of fees.

Clause 79 makes provision for the recovery of unpaid fees.

Clause 80 makes provision for interest on unpaid fees.

Clause 81 creates an offence of failing to pay fees.

Clause 82 requires the Communications Regulator to monitor compliance with licence provisions.

Clause 83 allows the Governor to make Consumer Protection Regulations in relation to electronic communications.

Clause 84 allows the Communications Regulator to issue codes of practice about media content.

Clause 85 requires licences to include provision about the maintenance of and access to equipment on service users' premises.

Clause 86 allows the Communications Regulator to publish standards for electronic communications equipment.

Clause 87 requires the Communications Regulator to publish a plan for telephone numbers.

Clause 88 requires the Communications Regulator to control internet domain names.

Clause 89 preserves the rights of public bodies to access information.

Clause 90 requires licences to include provision for the maintenance of recording capabilities.

Clause 91 allows the Government to control networks in time of war or other emergencies.

Clause 92 gives other rights to the Governor to take control of networks in certain circumstances.

Clause 93 creates an offence of making false statements and so on in relation to provisions of the Ordinance.

Clause 94 creates an offence of obstructing the Communications Regulator.

Clause 95 creates an offence of sending certain misleading messages by electronic communication.

Clause 96 creates an offence of sending offensive and other improper messages by electronic communication.

Clause 97 creates an offence of certain kinds of interference with electronic communications.

Clause 98 creates an offence of using apparatus to interfere with electronic communications.

Clause 99 creates an offence of failing to report damage to electronic communications infrastructure.

Clause 100 allows courts to grant warrants with powers of entry for certain purposes.

Clause 101 gives the Magistrates' Court general jurisdiction under the Ordinance.

Clause 102 makes provision for cases where offences under the Ordinance are committed on vessels or in aircraft.

Clause 103 extends compulsory purchase provisions to the exclusive licensee for certain purposes.

Clause 104 gives the exclusive licensee certain powers of entry.

Clause 105 identifies "public interest grounds" for the purposes of data.

Clause 106 allows the Governor to require electronic communications data to be retained on public interest grounds.

Clause 107 makes provision for compulsory disclosure of electronic communications data in certain cases.

Clause 108 allows the issue of warrants for interception.

Clause 109 allows the issue of warrants for surveillance.

Clause 110 allows the issue of warrants for intrusive surveillance, as defined.

Clause 111 makes provision for requiring the disclosure of encryption keys in certain cases.

Clause 112 contains savings.

Clause 113 establishes a Telecommunications Appeals Panel.

Clause 114 requires the Governor to make regulations about the Panel.

Clause 115 sets the Panel's functions.

Clause 116 requires the Panel to make an annual report.

The Schedule sets out the fee for the Exclusive Licence.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 24 NOVEMBER 2016

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