

# EXECUTIVE COUNCIL

## PUBLIC

<b>Title:</b>	Criminal Law – Amendments and Revision
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<b>Report Author:</b>	Crown Counsel
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### 1. Recommendations

Honourable Members are recommended to approve:

The proposed amendments, revisions and additions to the Criminal Procedure and Evidence Ordinance 2014, the Crimes Ordinance 2014, the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016, the Administration of Justice Ordinance 1949, the Coroners Rules 1995, the Licensing Ordinance 1994 and the Misuse of Drugs Ordinance 1987.

### 2. Additional Budgetary Implications

**2.1** The report proposes adding back in two provisions which will lead to expenditure of public funds. The level of funding required is very difficult to estimate, as it will depend, on one hand, on the outcome of prosecution cases, and, on the other hand, to the nature of cases and numbers of witnesses who might be called by the defence. The funding will be authorised to be paid direct from the consolidated fund, without further approval.

### 3. Executive Summary

**3.1** The Criminal Procedure and Evidence Ordinance 2014 and the Crimes Ordinance 2014 have been in force for over one year. The operation of the Ordinances has been monitored and whilst they generally work well further revision work has been identified.

The proposed amendments address a number of issues, correct a number of minor errors and suggest additions to the law based on developments in the Falkland Islands and developments in the criminal law in England and Wales.

#### **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1** The Criminal Procedure and Evidence Ordinance 2014 and the Crimes Ordinance 2014 commenced on 21st April 2017 and comprehensively reformed the entire criminal justice system. The Ordinances have now been in force for over one year and the major aims of the reform have been achieved. The criminal justice system now operates in a way that is reflective of modern society and the issues that existed under the previous system have been successfully addressed.
- 4.2** It was identified that reform of this scale would invariably mean that issues would arise once the Ordinances were being applied on a daily basis, that were impossible to identify during quality control stages prior to commencement. Since commencement the operation of the Ordinances has been monitored and where issues have arisen they have been noted and solutions identified so that amending legislation could be prepared to correct any defects. The monitoring process has not identified any critical issues and it can therefore be concluded that the quality control stages were robust and major difficulties were identified and resolved prior to commencement. The matters that have been identified are more minor in nature and have not prevented the Ordinances from operating successfully. There are now a sufficient number of correction matters identified to make amending legislation worthwhile.
- 4.3** As well as corrections the monitoring process has identified areas where improvements could be made, primarily to assist with the efficient administration of justice. For example the reform of the law has left the sentencing option termed a “partly suspended sentence” anomalous and this paper proposes that this sentencing option is repealed. The opportunity has been taken to suggest amendments of this kind to further reduce complexity and increase the effectiveness of the criminal justice system.
- 4.4** In addition to identifying corrections and amendments the developments in the criminal law of England and Wales have also been monitored to identify matters that it may be appropriate to adopt into the law of the Falkland Islands. For example since the Ordinances were drafted the criminal offence of sexual communication with a child has been introduced in England and Wales and this offence has been identified as having relevance to the Falkland Islands. This paper therefore proposes that the offence is adopted in this jurisdiction.
- 4.5** In summary the paper proposes a number of corrections, amendments and additions to the criminal law.

#### **5. Options and Reasons for Recommending Relevant Option**

- 5.1** The nature of the review means that the proposals cover a wide range of topics such as the addition of new offences, procedural amendments and corrections of minor spelling and cross-referencing errors. This document sets out each proposal and seeks to explain, in succinct terms, the reason for the proposal and why it is recommended that the proposal is adopted.

**Proposals relating to the Criminal Procedure and Evidence Ordinance 2014 (“CPEO”)**

**Topic: Partly Suspended Sentences**  
**Proposal: Abolish partly suspended sentences**

- 5.2 A partly suspended sentence is a specific sentencing option that allows the court to impose a sentence that is split into two parts. The first part of the sentence is served in prison and the second part of the sentence is suspended and the offender is released to serve the remainder of the term in the community. Partly suspended sentences formed part of the sentencing regime that existed prior to the commencement of the CPEO and were retained under the reformed law.
- 5.3 Since the CPEO was drafted prison law has been reformed. The Prisons Ordinance 2017 came into force on the same date as the CPEO and brought into effect a licensing regime for offenders who are released after serving the standard two thirds of the prison sentence imposed upon them. The licensing regime allows for offenders to be subject to monitoring and conditions when released into the community for the remaining period of their sentence. Such conditions can include residence at a specific address, prohibition from licensed premises, engagement with community services, support in finding employment and engagement with treatment for addiction or mental health issues.
- 5.4 Due to the historic origins of the partly suspended sentence the licensing regime does not apply to this type of sentence and when a person is released to serve the second part of the partly suspended sentence there is no power to impose conditions upon them or to supervise them. This means that partly suspended sentences now sit outside the modern sentencing and licensing regime.
- 5.5 The provisions relating to the operation of partly suspended sentences are also complex. The calculation of the period to be served in prison and the period to be suspended can easily be calculated incorrectly leading to error. If errors are not identified swiftly this can mean that correction has to be made on appeal which is time consuming and costly.
- 5.6 In light of the sentencing options now available to the court, including a whole range of simple and modern community orders and suspended sentence orders, the preservation of partly suspended sentences is no longer required. Given that such sentences stand outside of the standard regime and given that their use can lead to errors in sentence, the recommendation is that the provisions relating to partly suspended sentences are repealed.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Talesman**  
**Proposal: Reinstate the power of talesman**

- 5.7 Talesman is the name given to the power of the court to compel citizens who are in the vicinity of the court to sit on a jury where the summonsed jury pool has been exhausted

without a sufficient number of jurors having been found to hear the case. This power existed prior to the commencement of the reformed law but the power was not retained by the CPEO. The reason for this was that there had not been a jury trial in the Falkland Islands for a substantial period of time and it was envisaged that the new rules relating to juries would allow for a sufficient number of potential jurors to be called without the need for the court to exercise the power of talesman.

**5.8** Since the CPEO was drafted there has been an increase in the number of trials on indictment (offences where trial by jury can be selected). This increase appears to be due to a number of factors including improvements in the police service, a greater willingness to report serious sexual offending and cases arising from the historic case review.

**5.9** Just prior to the commencement of the CPEO in April 2017 a case was tried on indictment (see *R v Henry* [2017] SC/CRIM/05/16) where the jury pool was exhausted and there were an insufficient number of jurors eligible to sit. It was necessary for the court to make use of the power of talesman to find a sufficient number of jurors. If a similar situation occurred again then at present the court could not use the power of talesman. Instead the case would have to be adjourned and further potential jurors would need to be summonsed and given the required notice days before being expected to attend.

**5.10** Trial by jury is only available in the Supreme Court and the Chief Justice normally attends the jurisdiction for a set period of time to hear such cases. It is often the case that counsel from overseas also travel to be involved in the case. An adjournment of the length required to summon a further pool of jurors would invariably mean that the trial could not be heard in the available window and the case would be adjourned for a much longer period of time. Although rare such a scenario, as evidenced by the case of *R v Henry*, can arise from time to time and the wasted costs involved in adjourning the case would be considerable. Reinstating the power of talesman would enable costly adjournments to be avoided and reinstatement is therefore recommended.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic:** Allocation of Cases

**Proposal:** Repeal a number of provisions to regulate the allocation of cases between the criminal courts and remove irregularities that exist between the CPEO and other statutory provisions.

**5.11** Prior to the commencement of the CPEO criminal cases could be commenced before the Summary Court (Justices of the Peace) or the Magistrates Court (Senior Magistrate) and allocation was ad hoc. The CPEO created a clear tiered system whereby all cases begin before the Summary Court which then allocates the matter according to the circumstances of the case. The Summary Court will send cases involving indictable only offences straight to the Supreme Court and will commit other cases, depending on their complexity or seriousness, to the Magistrates Court for sentence or trial.

**5.12** The sentencing power of the Summary Court is set at a maximum of six months imprisonment. Alleged offences that are likely to attract a higher sentence on

conviction are committed to the Magistrates Court which has extensive sentencing powers. This system has created certainty and resulted in cases being allocated to the appropriate court on the basis of the seriousness of the case.

**5.13**A number of other Ordinances make specific provision for how offences under that Ordinance will be heard. For example the Oil in Territorial Waters Ordinance 1960 provides that proceedings for an offence contrary to that Ordinance can be taken in either the Summary Court or the Magistrates Court and both courts have equal sentencing powers. Similar provisions are contained in the Fisheries Conservation and Management Ordinance 2005 and the Road Traffic Ordinance 1948. Old provisions such as these are not consistent with the clearly defined tiered system created by the CPEO and are now anomalous. The proposal is to repeal these provisions to remove the irregularities and allow the CPEO to solely govern the allocation of cases.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Eligibility for Jury Service**  
**Proposal: Reduce the qualifying residence period from 36 months to 12 months to increase the number of citizens eligible to sit on juries.**

**5.14**The increase in trial by jury has led to large numbers of citizens being summonsed to attend as potential jurors. Notwithstanding that it is an important civic duty being summonsed to attend court for jury service is nonetheless disruptive to personal and professional commitments. Increasing the number of citizens who are able to sit on juries would ease the pressure on citizens who are currently liable to be summonsed.

**5.15**In a small jurisdiction selecting jurors who can sit from the summonsed jury pool can present difficulties because potential jurors have knowledge of the case to be tried or know people involved in the proceedings meaning that they are unable to sit. Increasing eligibility to sit will make selecting jurors an easier and more efficient process and this will reduce the amount of time those summonsed to court have to wait before they can be released.

**5.16**Eligibility to sit on a jury is governed by section 316 CPEO. At present, in addition to a person registered to vote and a person with permanent residency, a person holding a work permit or residence permit is eligible to sit on a jury if they have been ordinarily resident in the Falkland Islands for the preceding 36 months. Relaxing this time limit would increase the number of citizens eligible to sit. Reducing the time limit to 12 months would ensure that citizens eligible to sit had been in the jurisdiction for a sufficient period of time to be invested in the community whilst ensuring that those who are present for only short periods of time are not required to sit. Increasing the number of citizens eligible to sit on juries is recommended and relaxing the time limit set out in section 316 is the most simple and effective method of achieving this.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Defence Costs Orders**

**Proposal: Re-instate the discretionary power of the court to make a defendant's cost order**

**5.17** Prior to the commencement of the CPEO a defendant who was acquitted, or had an information laid against him or her dismissed, discontinued or withdrawn, was entitled to a costs order in their favour. The award of costs was a matter for the discretion of the court and was dependant on the circumstances of the case. This power has been omitted from the CPEO.

**5.18** The power to award a defendant their costs still exists where the prosecution is at fault but the power to award costs on acquittal is not available. The absence of this power would appear to be an error because the result is that a defendant who is acquitted of the offences alleged by the Crown cannot recover their costs from the Crown. Conversely the Crown is entitled to recover its costs from a defendant where the defendant is convicted and as such there is no longer equal treatment between the parties. The proposal addresses this issue and it is therefore recommended that the addition is made to reinstate the discretion of the court to make a costs order in favour of an acquitted defendant.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Child Abduction Warning**

**Proposal: To introduce child abduction warnings on a statutory basis**

**5.19** At present the police can issue a Child Abduction Warning Notice (CAWN) without the need for legislation. The absence of a legislative framework creates particular difficulties because it means that there is no set procedure for issuing CAWNs and no statutory safeguards are in place to make sure that they are used appropriately. Breaching a CAWN is not a criminal offence and the effectiveness of CAWNs is therefore limited.

**5.20** The purpose of CAWNs is to document and record potential evidence for the future. They are used by the police as a deterrent when there are reasonable grounds to suspect a person is grooming children by stating that the person suspected has no permission to associate with the child and, if they continue to do so, they may be arrested for the offence of child abduction. CAWNs are a valuable safeguarding measure, particularly in cases where children do not recognise themselves as victims but where families have identified a risk. This is because issuing a notice involves taking a statement from the person with parental responsibility ("lawful control"), rather than the young person themselves. It is part of the nature of the grooming process that the victim will not appreciate the crime being committed against them and will often take active steps to protect their abuser.

**5.21** At present arrest and prosecution can only occur if the threshold of the child abduction offence is met. The child abduction offence requires a person to 'take' or 'detain' the child. The nature of the grooming process means that the control that a person has over a child is likely to involve mental or emotional manipulation, not necessarily physical force, which leads the child to willingly go with their abuser. This means that the child abduction offence cannot be established and action is prevented until the grooming has

advanced to more serious offending. Placing CAWNs on a statutory footing would enable the police to intervene in the grooming process earlier and with greater effectiveness, enabling them to better protect vulnerable children before a more serious offence has been committed.

**5.22**The proposed statutory framework allows police officers to issue CAWNs and arrest a person if the CAWN is breached. Once issued by a police officer a CAWN must go before the court within 48 hours. The Attorney General is then responsible for applying for a Child Abduction Warning Order (“CAWO”) and the court decides whether to make such an order. If a CAWO is made then breaching the terms of the order is a criminal offence. This statutory framework builds in sufficient safeguards by giving conduct of proceedings to the Attorney General and the responsibility and oversight for making orders to the court. A criminal offence is only committed where an order of the court is breached. Where a person breaches a notice issued by a police officer that only provides grounds for the person to be arrested and brought before the court. The introduction of Child Abduction Warnings is therefore recommended and is consistent with child safeguarding policies.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Special Measures**  
**Proposal: Make provision for witnesses who have given evidence via live link to continue to observe proceedings by live link once their evidence has concluded**

**5.23**The CPEO makes provision for witnesses to give evidence with the assistance of special measures (such as being screened from a defendant or via a live link). Special measures are now a common feature of criminal trials and are designed to put witnesses at ease so that they can give their best evidence. Special measures are particularly common in cases involving serious sexual offending. It is the norm for a complainant in a serious sexual offence to give evidence in chief by way of a video recorded account (an achieving best evidence interview). The complainant is then asked additional questions in cross-examination and re-examination over a live link from a room elsewhere in the court building so that they are removed from the pressurised environment of the courtroom.

**5.24**In any criminal trial, once a witness has given evidence, they are entitled to view the rest of the proceedings which are held in public. In most situations the witness can simply take a seat in the public gallery if they choose to do so. In cases involving serious sexual offending, a witness is often very reluctant, even if they do wish to observe the remainder of the proceedings, to be in the same room as the alleged offender. If a defendant is convicted witnesses often wish to observe the sentencing hearing. This can provide an element of closure and catharsis, particularly in sexual offence cases.

**5.25**Special measures cease to be available at the conclusion of a witness’s evidence. The Supreme Court has recently confirmed this to be the position (see *R v Butler* [2018] SC/CRIM/04/17) and this means that the only option available to a witness who wishes to observe the remainder of proceedings is to sit in the public gallery near to the defendant and amongst the defendant’s family members and supporters. It is rare that a

witness will choose to undergo such an experience and as such they are effectively frozen out of the remainder of the court proceedings. This can have a detrimental impact on the victims of crime who may feel that their voice is not being heard or that proceedings are being kept secret from them.

**5.26**The suggested addition would allow for witnesses who have already been granted permission to give evidence over a live link to observe the remainder of proceedings in the same manner should they wish to do so. This would be consistent with improving the manner in which the criminal justice system treats victims and witnesses. The recommendation is therefore to make this addition to the CPEO.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Minor Procedural Amendments and Corrections**

**Proposal: Correct a number of spelling and cross referencing errors and make a number of minor amendments to assist efficient administration of justice**

**5.27**Cross referencing errors need to be corrected in sections 33(4)(a), 583(3)(b), 299(1)(g) and section 633(8) CPEO.

**5.28**It is proposed that section 585 be amended to allow the Registrar or Clerk of the Court to sign warrants of imprisonment (an administrative document that accompanies a prisoner when a judge has imposed a custodial sentence). At present only the presiding judge can sign a warrant and the proposed amendment will assist with efficient court administration.

**5.29**It is proposed to amend section 605 so that compensation payments to victims of crime are prioritised over payments of fines and costs. Victims should receive compensation payments first and the amendment corrects a simple error in the order in which payments are to be made.

**5.30**It is proposed to repeal sub-section 647(4). The section has the effect of meaning that a person eligible for legal aid (because of the seriousness of the offence) but with financial means would nonetheless have a costs order made against them paid from the legal aid fund. Conversely a person not granted legal aid, because they are charged with a less serious offence, but with no means to pay a costs order would still be expected to make payment. This creates an irregularity that may lead to unfairness and repeal would remove this potential issue from arising.

**5.31**It is proposed to amend section 633(8) to remove “628(4)” and replace with “628” to correct a cross referencing issue. Section 633(8) should apply to the entirety of section 628 and not only section 628(4).

**5.32**It is proposed to amend schedule 11 to add taxi driver permits to the list of exceptions. Taxi driver permits have come into force since the CPEO was drafted and should be treated the same as public service vehicle licences which appear on the list.

**5.33**It is proposed to amend sub-section 259(4) to resolve an ambiguity over whether the Senior Magistrate can re-hear a case where the previous proceedings were declared void.

The Senior Magistrate is the only justice who sits in the Magistrates Court and it follows that the Senior Magistrate should be permitted to re-hear proceedings.

- Options: (1) Accept the proposals  
(2) Reject the proposals

### **Proposals relating to the Licensing Ordinance 1994 (“LO”)**

**5.34** It is proposed to repeal sub-section 76(13) of the LO. This sub-section refers to sections of the Criminal Justice Ordinance (“CJO”) (repealed by the CPEO) and provides that there should be no restrictions on imposing custodial sentences in respect of offences under the LO. The provision exists in a state of limbo given the repeal of the CJO and does not reflect the modern sentencing principles set out in the CPEO. Repeal removes this anomaly.

**5.35** It is proposed to amend schedule 2 paragraph 3(a) of the LO to remove the reference to the “Government Secretary” and replace with the words “Chief Executive” to update the identity of the relevant Government Officer for the purpose of this schedule.

- Options: (1) Accept the proposals  
(2) Reject the proposals

### **Proposals relating to the Misuse of Drugs Ordinance 1987 (“MODO”)**

**5.36** It is proposed to repeal section 23 of the MODO. This section sets out the manner in which offences under the Ordinance can be heard by the courts. Allocation between the criminal courts is now comprehensively dealt with by the CPEO and this section is no longer necessary.

- Options: (1) Accept the proposals  
(2) Reject the proposals

### **Proposals relating to the Crimes Ordinance 2014 (“CO”)**

**Topic: Sexual Communication with a child**

**Proposal: Add the offence of sexual communication with a child**

**5.37** The CO adopted the range of criminal offences set out in the England and Wales Sexual Offences Act 2003. Since the CO was drafted England and Wales have amended the Sexual Offences Act 2003 to add the offence of sexual communication with a child (section 15A). The addition was made to cover a specific set of circumstances. The circumstances are that the offender communicates with a child and the communication is sexual in nature. The offender, however, does not suggest any form of sexual activity. This type of behaviour cannot currently be prosecuted in the Falkland Islands as the nearest criminal offence is the offence of attempting to engage a child in sexual activity and the offender’s behaviour in these circumstances does not include a suggestion of sexual activity. In the absence of the new offence the offender, notwithstanding that they had engaged in sexual communication with a child, could not be prosecuted. It is therefore recommended that the offence is added to the CO.

- Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Controlling or Coercive Behaviour**

**Proposal: Add the offence of controlling or coercive behaviour**

**5.38** Since the CO was drafted England and Wales has introduced the offence of controlling or coercive behaviour (s.76 Serious Crime Act 2015). The offence is designed to target criminal behaviour within intimate personal relationships and is a further method of combating domestic abuse. Domestic abuse has been defined as follows:

*"Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality."*  
(see "AGG40 - The Attorney General's Policy on Prosecuting Cases of Domestic Violence)

**5.39** This can encompass, but is not limited to, psychological, physical, sexual, financial and emotional abuse. The offence criminalises a course of behaviour where individual incidents that alone are not sufficient to amount to a criminal offence combine to become criminal. Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim. Controlling behaviour covers a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. The addition of the offence would be consistent with the policy to reduce domestic abuse and the addition is therefore recommended.

- Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Causing Grievous Bodily Harm by Gross Negligence and Corporate Endangerment of Life**

**Proposal: Add the offences of causing grievous bodily harm by gross negligence and corporate endangerment of life**

**5.40** Causing grievous bodily harm by gross negligence and Corporate Endangerment of Life are suggested as two new criminal offences that deal with a situation specific to the Falkland Islands. The absence of legislation relating to health and safety means that individuals and companies who act in a grossly negligent manner resulting in serious injury that does not cause or lead to death cannot be prosecuted. The suggested new offences remedy this situation and allows for prosecution where grievous bodily harm has been sustained as a result of gross negligence. The offence of causing grievous bodily harm by gross negligence applies to individuals and the offence of corporate endangerment of life applies to companies and organisations. The suggested offences strike a balance by allowing for prosecutions in the most serious of cases whilst preventing companies and individuals being criminally liable in less serious cases.

**5.41**The need for specific criminal offences is justified by considering the current situation. The current situation can best be understood by reference to a hypothetical scenario:

*Mega Trucks Limited is a haulage company. A is employed by Mega Trucks Limited as a haulage supervisor. B is employed by Mega Trucks Limited as haulage loader. Mega Trucks Limited prides itself on the fast turnaround of deliveries. In order to achieve a fast turnaround the management of Mega Trucks Limited has created a working environment in which risks with employee's health and safety are taken to ensure that deadlines are met. Industry practice is routinely ignored and employees have been sidelined or forced to resign when they have raised issues regarding health and safety. A is instructed to ensure that a delivery is made by the deadline date. In order to comply with the instructions that he has been given, A directs that a crane begins to lift shipping containers when B is working underneath them. When being lifted a container comes loose and crushes B. B survives but suffers very serious life changing injuries.*

**5.42**If this scenario were to occur in England and Wales Mega Trucks Limited and A could be prosecuted pursuant to the Health and Safety at Work Act 1974 for being grossly negligent and failing in the duty of care they owe to B. There is no equivalent set of provisions in the Falkland Islands so notwithstanding their obvious misconduct, Mega Trucks Limited and A could not be prosecuted. If the proposed criminal offences are adopted then A could be prosecuted for causing grievous bodily harm by gross negligence and Mega Trucks Limited could be prosecuted for corporate endangerment of life.

**5.43**The CO does contain the offences of manslaughter by gross negligence and corporate manslaughter. This means that if B had died Mega Trucks Limited and A could be prosecuted. It follows that the current situation in the Falkland Islands is that no matter how grossly negligent the actions of a company or person, they cannot be prosecuted unless a person is killed as a result.

**5.44**The proposed new criminal offences extend the legal framework used for manslaughter by gross negligence and corporate manslaughter to cover situations where a person is not killed but suffers grievous bodily harm. Grievous bodily harm is a well-established legal term that means really serious harm. By extending the framework of existing legal principles the proposed new offences are given certainty. For example the same rules that apply to corporate manslaughter, such as the duty of care and the requirement for the court to consider health and safety practice and guidance when determining the issue of gross negligence, will apply in the same way to the proposed new offences. The new offences therefore fit easily into an established framework and the addition of the proposed new offences is therefore recommended as a solution to the situation caused by the absence of specific health and safety legislation.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Topic: Terrorism**

**Proposal: If it is desirable to have specific terrorism offences then the following offences are proposed for addition to the CO.**

**5.45** No case involving an act of alleged terrorism has been referred to the Attorney General's Chambers and it is understood that there has been no investigations undertaken by the Royal Falkland Islands Police in respect of an act of alleged terrorism. The majority of terrorist acts can be reflected by existing criminal offences, explosive substances, conspiracy to murder etc.

**5.46** England and Wales has a number of criminal offences designed to specifically target behaviours associated with terrorist activity. These offences are contained in the Terrorism Act 2000 and the Terrorism Act 2006. If it is considered desirable to add specific terrorism offences to the CO then the following offences are identified as being appropriate subject to modification:

- (a) Funding terrorism (section 15 TA 2000) – The s.15 offences criminalise the provision and acceptance of assets for the purposes of funding terrorism.
- (b) Use and possession (section 16 TA 2000) – The s.16 offences criminalise the use of and possession of property for the purposes of terrorism.
- (c) Funding arrangements (section 17 TA 2000) – The s.17 offence criminalises involvement in a funding arrangement that makes property available for the purposes of terrorism.
- (d) Money laundering (section 18 TA 2000) – The s.18 offence criminalises property that is laundered for the purposes of terrorism.
- (e) Providing information (section 38B TA 2000) – The s.38B offence criminalises a person who has information that he or she knows of believes might be of material assistance in preventing terrorism.
- (f) Possession of articles connected to terrorism (section 57 TA 2000) – The section 57 offence criminalises a person who possess an article in connection with the commission, preparation or instigation of terrorism.
- (g) Collecting information connected to terrorism (section 58 TA 2000) – The section 58 offence criminalises a person who collects information likely to be useful for a preparing an act of terrorism.
- (h) Encouraging terrorism (section 1 TA 2006) – The s.1 offence criminalises the encouragement of terrorism.
- (i) Disseminating terrorist publications (section 2 TA 2006) – The s.2 offence criminalises the dissemination of publications connected to terrorism.

- (j) Preparing a terrorist act (section 5 TA 2006) – The s.5 offence criminalises a person preparing an act of terrorism.

**Topic:** Minor Procedural Amendments and Corrections  
**Proposal:** Correct a minor error

5.47A spelling mistake requires correction in section 302(1)(a) so that “cutody” reads “custody”

5.48A cross reference error requires correction in section 77.

5.49A cross reference error requires correction in section 72 so that the section refers to the correct penalties. Assaulting a police officer should attract the higher penalty and obstructing a police should attract the lower penalty. At present the penalty provisions are the wrong way around.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Proposals relating to the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 (“AJ(PJW)R”)**

**Topic:** Payments to Witnesses  
**Proposal:** Amend the Rules to allow for equal treatment of witnesses regardless of whether they are called to give evidence by the prosecution or the defence

5.50The manner in which the legislation operates means that there is a potential gap in the law that may result in defence witnesses not being able to claim for expenses incurred in attending court. Pursuant to the AJ(PJW)R, prosecution witnesses are clearly able to claim for expenses but this is not the case for defence witnesses. Whether being called by the prosecution or the defence, all witnesses are required to attend court and can be summonsed to attend and ultimately arrested and compelled to attend. All witnesses should be treated equally and any doubt in the law needs to be removed so that all witnesses, regardless of whether they are called by the prosecution or defence, are entitled to claim for their expenses in attending. The most effective way to correct the position is to amend the AJ(PJW)R so that the rules apply to all witnesses equally.

Options: (1) Accept the proposal  
(2) Reject the proposal

**Proposals relating to the Administration of Justice Ordinance 1949**

**Topic:** Eligibility for Jury Inquests  
**Proposal:** Amend the Ordinance to apply the eligibility criteria set out in the CPEO to jury inquests

5.51The CPEO repealed the Jury Ordinance, the provisions of which also applied to selecting jurors for inquests. The CPEO did not, having repealed the Jury Ordinance, redirect the relevant provisions of the Coroners Act 1988 to refer to the criteria set out in the CPEO instead. This means that at present there are no eligibility criteria in force in respect of

jury selection for inquests. It is understood that the court has used the eligibility criteria in the CPEO as a framework for summoning jurors for an inquest. It is therefore proposed to amend the relevant legislation so that the eligibility criterion in the CPEO applies to selecting juries for inquests.

- Options: (1) Accept the proposal  
(2) Reject the proposal

## **Proposals relating to the Coroners Rules 1995**

**5.52** The Jury Ordinance has been repealed and as such the reference to the Jury Ordinance in the Coroners Rules 1995 should be amended to refer to the relevant provisions in the CPEO.

- Options: (1) Accept the proposal  
(2) Reject the proposal

## **6. Resource Implications**

### **6.1 Financial Implications**

The financial implications are largely considered in paragraph 2.1. The only other proposals where there is an indirect financial component are the proposals in relation to “Talesman”, and “Eligibility for Jury Service”. There is no impact of agreeing the proposals. If the proposals are not agreed, the law will remain unchanged. Since the law was put into its current form in 2017, it is considered that there is a real risk that significant wasted costs could be incurred if cases are required to be adjourned. This is considered at paragraph 5.10.

### **6.2 Human Resource Implications**

None

### **6.3 Other Resource Implications**

None

## **7. Legal Implications**

**7.1** As above

## **8. Environmental & Sustainability Implications**

**8.1** None

## **9. Significant Risks**

**9.1** The paper has identified a number of amendments that are required because there is the possibility of injustice as the law currently stands if the law was to be interpreted in a certain way. Although the risk of injustice can be categorised as being relatively low it

nonetheless exists and if a specific scenario was to arise and the opportunity to make amendment had been allowed to pass there could be negative commentary as a result.

**9.2** The paper proposes a number of new criminal offences. Criminal offences cannot be imposed retrospectively and if the opportunity to introduce the proposed offences is allowed to pass then a situation could arise where behaviour that would have been criminal cannot be prosecuted.

## **10. Consultation**

**10.1** Areas for amendment and revision were identified with the assistance of the courts and tribunals and practitioners through informal consultation.

## **11. Communication**

**11.1**The Attorney General's Chambers would lead on offering training on the proposed amendments to the Royal Falkland Islands Police, practitioners and business through the Chamber of Commerce (in relation to corporate offending) in the same manner that was undertaken when the CPEO and CO came into force.