

# EXECUTIVE COUNCIL

## PUBLIC

<b>Title:</b>	Travel Credit Scheme Legislation
<b>Paper Number:</b>	165/18
<b>Date:</b>	12 December 2018
<b>Responsible Director:</b>	Financial Secretary
<b>Report Author:</b>	Head of Finance
<b>Portfolio Holder:</b>	MLA Roger Spink
<b>Reason for paper:</b>	This paper is submitted to Executive Council For policy decision
<b>Publication:</b>	Yes
<b>Previous papers:</b>	Travel Credit Scheme 42/18
<b>List of Documents:</b>	Appendix A Travel Credit Scheme Bill 2018 Appendix B Travel Credit Scheme Regulations 2018

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### 1. Recommendations

Honourable Members are recommended to -:

- (a) Approve the draft Travel Credit Scheme Bill 2018 (Appendix A) and Travel Credit Scheme Regulations 2018 (Appendix B) and instruct the Attorney General to publish the Bill in the Gazette thereby commencing the legislative process as first reading.
- (b) Authorise the Attorney General to correct any typographical and minor drafting errors found in Bill prior to publication in the Gazette.

**Executive Council further resolved to delete recommendation (b) and replace as follows:**

- (b) That the elected Members of the Executive Council state that, in their view, the Bill is compatible with the Fundamental Rights and Freedoms contained in the Constitution.*

- (c) That the Attorney General be authorised to make such further changes to the Draft Bill and Regulations, prior to publication, as he thinks fit in order to*
- a. Make clear that adults will only be qualified to register where they are registered in a current electoral register.*
  - b. Further clarify the provisions relating to the accrual of travel credits and “temporary absence” from the Falkland Islands.*
  - c. Alter dates, such as the “cut-off date”, and the date from which a person may claim accumulated travel credits, to such dates as will fit with date on which the Bill will first be considered by the Legislative Assembly.*

## **2. Additional Budgetary Implications**

None

## **3. Executive Summary**

3.1 Honourable Members are asked to approve the draft legislation for the purpose of establishing the Travel Credit Scheme. The legislation comprises the Travel Credit Scheme Bill and the Travel Credit Scheme Regulations.

3.2 This paper is limited to presenting the draft legislation. The draft Ordinance authorises Guidance to be issued and that is scheduled to be presented to Executive Council in late November.

3.3 The draft legislation covers the following key points:

- The draft Bill establishes the Travel Credit Scheme which will be administered by a Scheme Administrator. The Financial Secretary is designated as Scheme Administrator.
- The Travel Credit Scheme is only open to Falkland Island Status Holders.
- To join the Travel Credit Scheme, an application to be registered must be made
- The following categories of person will potentially qualify for registration under the scheme

### *Categories*

- 18 years or older and on the Electoral Register (Category A)
- 16 years or over but below 18 years (Category B)
- Below 16 years (Category C)
- Additionally, registration for category B and C persons is only allowed if they are:

- resident in the Falkland Islands as if the residency requirements to be included on the Electoral Register were being applied to those persons (detailed in the Electoral Ordinance 1988)
- are not adjudged to be of unsound mind, be serving a prison sentence of at least 12 months, or be convicted of an offence relating to elections.(as detailed in section 32 of the 2008 Constitution)

It should be noted that these provisos are automatically adhered to by a Category A person through their qualification for the Electoral Register

- Category A and B persons may apply for registration on their own behalf
- The parent or guardian of a child may apply for registration on behalf of that child. A child is defined as a person below the age of 18 years.
- On successful registration, persons will accrue credits as follows:
  - £1 per day for Category A and B persons. Maximum accrual of unused credits will be £1,826.
  - 50p per day for Category C persons. Maximum accrual of unused travel credits is £913.

The maximum accrual amounts equate to 5 years' worth of credits. Accrual of travel credits stops once a person had accumulated the maximum amount, and accrual resumes once the person has reduced the balance to below the maximum.

- Initial registration will be between 1<sup>st</sup> December 2018 and 31<sup>st</sup> January 2019 and persons who register during the initial registration accrue travel credits from 1<sup>st</sup> July 2018.
- The persons registered after 1<sup>st</sup> February 2019, will accrue travel credits as follows:
  - Infants born after 1<sup>st</sup> July 2018: from their date of birth provided they are registered within 6 months of the date of birth
  - All other persons: On the date of registration
- Accumulated travel credits may be redeemed as follows:
  - Category A and B persons: These persons may redeem their own credits

- Category C persons: The parents of guardians of the child redeem travel credits on behalf of the child
- Claims for travel credits must adhere to the following criteria
  - Travel credits accumulated by a registered person are not transferable and may only be used for the benefit of that person
  - The claim must relate to travel originating in the Falkland Islands
  - A claim must be for a minimum of £50 per registered person
  - A claim must be for travel of at least 10 miles
- Claims for the travel credits (up to the amount of credits accrued) can be made through the following methods
  - *Reimbursement for costs for travel already undertaken:* Making a claim to the Scheme Administrator with the necessary documents including proof of travel
  - *Use of vouchers for travel to be undertaken:* A voucher from the Scheme Administrator would be presented to an approved designated travel provider in advance of travel. The Scheme Administrator pays the travel provider an amount equivalent to the value of the vouchers. If a registered person fails to travel for any reason, any cancellation charges incurred by the travel provider will be recovered through the deduction of credits from the registered person's account.
- The Scheme Administrator must cancel a person's registration if the person no longer meets any of the requirements for registration as detailed above. This would include for example ceasing to be resident in the Falkland Islands. A person whose registration is cancelled for any reason must claim for any accumulated credits within 6 months of cancellation. Failure to redeem travel credits within 6 months results in forfeiture of the remaining travel credits. In this instance, any remaining travel credits cannot be claimed as cash.
- The Scheme Administrator may suspend a person's registration if the person is serving a sentence of imprisonment. Suspension is for the period of the sentence of imprisonment. Registration may also be suspended for purposes of investigations. During the period of imprisonment, a registered person does not accrue travel credits and any accumulated travel credits are frozen until the suspension is lifted. If suspension is to facilitate an investigation, the registered person continues to accrue travel credits until the suspension is lifted.

- The Scheme Administrator will issue further guidance covering issues such as procedures for claiming travel credits, the documentation that must be submitted with a claim and the method for claiming travel credits.

#### **4. Background**

- 4.1 The Falkland Islands Government (FIG) is committed to improving the quality of life of Falkland Islanders and has pledged, in the 2018-2022 Islands Plan, a range of key investments to support the social and economic development of the Islands. One element of that investment programme is the introduction of a Travel Credit Scheme.
- 4.2 Funding for the Travel Credit Scheme for the next 5 years was approved as part of the 2018/19 budget.
- 4.3 The policy objectives of the Scheme were outlined in the previous paper presented to Executive Council (Paper 42/18). The paper acknowledged that holidays and access to travel bring about improvements in individuals' and families' physical and mental health and other advantages. Furthermore, it was explained that travel costs, particularly for overseas travel, can be prohibitively high for families and for people at the lower end of the income scale. The aim of the Travel Credit Scheme is to offset some of the costs associated with travel, by allowing eligible individuals to accumulate credits which can be redeemed against specific travel costs. As a result, it will be easier for Falkland Islanders to travel both within the Islands and further afield.

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

- 5.1 The Travel Credit Scheme policy principles underpinning the draft Legislation being presented were approved by a previous ExCo paper (Paper 42/18).
- 5.2 Certain points of clarification were resolved in a briefing with Members on 2<sup>nd</sup> October 2018, and the draft legislation reflects the clarifications given at that briefing.

#### **6. Resource Implications**

##### **6.1 Financial Implications**

There are no further implications at this stage. The 2018/19 Budget included the provision of funds in relation to this scheme for the next 5 years, including an amount of £760,140 for 2018/19.

##### **6.2 Human Resource Implications**

The legislation proposed in this paper does not place any immediate human resource implications on FIG. The provision of funds as referred to above already includes 1 full time employee to administer the scheme

##### **6.3 Other Resource Implications**

None

## **7. Legal Implications**

- 7.1 The Bill and regulations giving effect to the principles and operation of the Travel Credit Scheme are attached. It should be noted that the Scheme Administrator will issue supplementary guidance in due course. The legislation discriminates against people who do not have Falkland Islands status. Section 16(6) of the Constitution allows discrimination if the law has an objective and reasonable justification.

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

None

## **9. Significant Risks**

None

## **10. Consultation**

There is no further consultation planned for the Scheme.

## **11. Communication**

- 11.1 The legislation will be published in the normal way. Information in relation to registration and guidelines for the general public will be made via Press Release and advertisements in due course.

**09-10-2018**

**Travel Credit Scheme Bill 2018**

(No.            of 2018)

**ARRANGEMENT OF PROVISIONS**

Clause

**PART 1: PRELIMINARY**

1. Title and commencement
2. Interpretation
3. Application
4. Object of Ordinance

**PART 2: ESTABLISHMENT OF SCHEME AND REGISTRATION**

5. Establishment of Scheme
6. Termination or suspension of Scheme
7. Qualification for registration
8. Qualification for registration of a child
9. Maintaining registration under the Scheme
10. Application for registration
11. Registration of qualifying person
12. Suspension of registration
13. Cancellation of registration
14. Voluntary removal from database

**PART 3: TRAVEL CREDITS**

15. Accrual of travel credits
16. Use of travel credits
17. Redeeming travel credits
18. Application to redeem travel credits

**PART 4: DETERMINATION OF DISPUTED AWARDS OF TRAVEL CREDITS**

19. Determination of disputes
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21. Adjustment of payments

**PART 5: GENERAL**

22. Notification of change in circumstances
23. False statements
24. Scheme Administrator to issue guidance
25. Subsidiary legislation



“Falkland Islands Government complaints procedure” means the Falkland Islands Government Corporate Complaints Procedure approved by the Executive Council;

“fare” means the money that is paid for travel by a registered person but does not include payments for transfers;

“guidance” means guidance issued by the Scheme Administrator under section 24;

“initial registration” means registration of qualifying persons from the date of commencement of this Ordinance to the cut-off date;

“prescribed” means prescribed in regulations;

“qualifying person” means a person who qualifies to be registered under the Scheme;

“Register” means a Register of Electors referred to in section 9 of the Electoral Ordinance 1988;

“registered person” means a person who is registered in the database;

“registration” means registration in the database;

“regulations” means regulations made under section 25;

“Scheme” means the Travel Credit Scheme established under section 5;

“Scheme Administrator” means the Financial Secretary or the Financial Secretary’s nominated representative;

“status holder” means a person who has Falkland Islands status in terms of section 22 of the Constitution;

“temporary absence” means an absence from the Falkland Islands which does not amount to an interruption of residence as set out in section 8A of the Electoral Ordinance 1988;

“travel” means travel for the purposes of a holiday, recreation or leisure;

“travel credits” means credits that accrue to a registered person under section 15; and

“travel provider” means a person who, in the course of business, provides or arranges travel by air, road or sea, whether as principal or agent.

### **3. Application**

This Ordinance applies to status holders who meet the qualifying requirements for registration in terms of this Ordinance.

#### **4. Object of Ordinance**

The object of this Ordinance is to recognise the commitment of status holders who are resident in the Falkland Islands by establishing a scheme under which status holders may register for and accrue travel credits to pay for fares.

### **PART 2: ESTABLISHMENT OF SCHEME AND REGISTRATION**

#### **5. Establishment of Scheme**

(1) There is established a Travel Credit Scheme for the benefit of registered persons to be managed and administered by the Scheme Administrator in terms of this Ordinance.

(2) The Scheme is funded by money appropriated by an Appropriation Ordinance.

#### **6. Termination or suspension of Scheme**

(1) The Governor may by Order terminate or suspend the Scheme or make changes to the Scheme and the Order may provide for consequential and transitional provisions.

(2) The Order to terminate the Scheme must give prior notice of the intention to terminate the Scheme and specify the termination date.

(3) The Order to suspend the Scheme must state the suspension period and the date when the suspension commences.

(4) Any travel credits accumulated by a registered person on termination or suspension of the Scheme may be claimed and redeemed as prescribed.

#### **7. Qualification for registration**

(1) Subject to subsection (2), the following categories of persons qualify for registration under the Scheme —

(a) a status holder who is 18 years or over and, subject to section 9(2), is registered in a Register;

(b) a status holder who is a child of 16 years or over but below 18 years; or

(c) a status holder who is a child below 16 years;

(2) To qualify for registration, a person referred to in subsection (1)(b) or (c) must meet the requirements set out in section 8.

(3) The Governor may prescribe circumstances of temporary absence for the purposes of this Ordinance additional to those set out in section 8A of the Electoral Ordinance 1988.

## **8. Qualification for registration of a child**

(1) This section aligns qualification for registration of a child under the Scheme as far as reasonably possible with qualification for the registration of an adult as an elector under section 8 of the Electoral Ordinance 1988.

(2) To qualify to register under the Scheme, a child referred to in section 7(1)(b) or (c) must satisfy each of the conditions in subsections (3) and (4).

(3) The first condition is that the child must —

(a) meet the requirements under section 32(1)(a) of the Constitution as if that section applied to the child; and

(b) not fall within the disqualifications under section 32(2)(a) to (c) of the Constitution.

(4) The second condition is that the child must either —

(a) be resident in the Falkland Islands; or

(b) be treated as being resident in the Falkland Islands under section 8A, 8B or 8C of the Electoral Ordinance 1988 as if those sections applied to the child.

## **9. Maintaining registration under the Scheme**

(1) To maintain registration under the Scheme, a person referred to in —

(a) section 7(1)(a), must continue to be registered in a Register; or

(b) section (7)(1)(b) or (c) must continue to meet the requirements of section 8.

(2) A qualifying person who turns 18 years after registration under the Scheme must be registered in a Register within one year of his or her 18<sup>th</sup> birthday in order to maintain registration under the Scheme.

## **10. Application for registration**

(1) A qualifying person who is 18 years or over may apply to the Scheme Administrator to be registered under the Scheme.

(2) Subject to subsection (3), the parent or guardian of a child who is a qualifying person may apply to the Scheme Administrator for the registration of that child.

(3) A qualifying person who is 16 years or over but below 18 years may apply to the Scheme Administrator for registration on his or her own behalf.

(4) An application must be in the prescribed form and must give information on such matters as may be prescribed.

(5) A cut-off date for the completion of initial registration is to be prescribed and a qualifying person who registers on or before that date accrues travel credits from a date prescribed under section 15.

### **11. Registration of qualifying person**

(1) The Scheme Administrator must establish and maintain an up-to-date database of all registered persons.

(2) The Scheme Administrator must register a qualifying person in the database if the Scheme Administrator is satisfied that all the requirements for registration under this Ordinance are met.

(3) On registering a qualifying person, the Scheme Administrator must assign a registration number and enter the number against the person's name in the database.

(4) For the purposes of subsection (3), the Scheme Administrator may use a number that is already being used by the applicant in respect of other matters.

(5) The Scheme Administrator must open an account for each registered person in his or her individual name regardless of age.

### **12. Suspension of registration**

(1) The Governor may make regulations providing for the suspension of a person's registration.

(2) Regulations under subsection (1) may include —

(a) grounds for suspension;

(b) period of suspension; and

(c) consequences of suspension including whether travel credits accrue during the period of suspension.

(3) A registered person may appeal against a suspension to the Governor within a prescribed period and in the prescribed manner.

### **13. Cancellation of registration**

(1) The Governor may make regulations providing for the cancellation of a person's registration.

(2) Regulations under subsection (1) may include —

(a) grounds for cancellation;

(b) the procedure for cancellation; and

(c) the effect of cancellation of registration on accrued travel credits.

(3) A person may appeal against a cancellation of registration to the Governor within a prescribed period and in the prescribed manner.

(4) A person whose registration is cancelled may apply to re-join the Scheme if the grounds for cancellation no longer apply.

#### **14. Voluntary removal from database**

(1) A registered person may request the Scheme Administrator to cancel his or her registration and to remove the registered person's name from the database.

(2) The Scheme Administrator must, as soon as practicable after receipt of a request under subsection (1) and in accordance with subsection (3), cancel the person's registration and remove the person's name from the database.

(3) A person referred to in this section may redeem any travel credits accumulated in his or her account as prescribed.

(4) A person referred to in this section may apply to re-join the Scheme and he or she will accrue credits from the date of re-registration.

### **PART 3: TRAVEL CREDITS**

#### **15. Accrual of travel credits**

(1) A registered person will accrue travel credits in accordance with this Ordinance.

(2) The Governor must make regulations regarding —

(a) the date on which a registered person starts to accrue travel credits; and

(b) the maximum number of travel credits that may be accumulated by a registered person.

(3) A registered person who is temporarily absent from the Falkland Islands continues to accrue travel credits to his or her account.

#### **16. Use of travel credits**

(1) Subject to this section, the travel credits that are accumulated by a registered person may only be used to pay for the fare for travel within the Falkland Islands or abroad.

(2) In respect of travel abroad, the travel must originate from the Falkland Islands and, in the case of multi-leg travel, it must be included as part of the same holiday itinerary booked on the same ticket.

(3) Travel credits accumulated by a registered person are not transferable and may only be used by or for the benefit of that registered person.

(4) Except as prescribed under subsection (5), travel credits may not be used to pay for embarkation tax, shipping or cargo costs, transfers, excess baggage charges, travel insurance or any other charges which are not the fare.

(5) Regulations may provide for travel costs for which travel credits may be claimed under the Scheme.

### **17. Redeeming travel credits**

(1) Accumulated travel credits may be redeemed with effect from a prescribed date which may be a date that has passed.

(2) Regulations or guidance must provide for —

(a) procedures for redeeming travel credits and the documentation that must be submitted with a claim;

(b) the method of redeeming travel credits;

(c) minimum number of travel credits per claim; and

(d) any other related matter.

### **18. Application to redeem travel credits**

(1) Subject to section 17 and subsection (2) —

(a) a registered person may apply in a form approved by the Scheme Administrator to redeem travel credits as reimbursement for the fare for travel undertaken; or

(b) a travel provider may redeem vouchers in advance of travel or after travel in order to pay the fare in respect of a registered person.

(2) The following persons may submit a claim to redeem travel credits —

(a) subject to paragraph (b), a registered person who is 16 years or over in respect of his or her travel credits; and

(b) a parent or guardian on behalf of a registered child.

## **PART 4: DETERMINATION OF DISPUTED AWARDS OF TRAVEL CREDITS**

### **19. Determination of disputes**

(1) Subject to this Ordinance, claims to redeem travel credits must be made to the Scheme Administrator.

(2) Any question as to the right to travel credits in respect of any person must be decided by the Scheme Administrator.

(3) If a person referred to in subsection (2) is dissatisfied with the decision of the Scheme Administrator, the question must be determined in accordance with the Falkland Islands Government complaints procedures.

## **20. Revision of travel credit awards**

(1) Subject to subsection (2), the Scheme Administrator may revise an award or decision not to award any travel credits or any other decision made by him or her under this Ordinance, if satisfied that the award or decision was erroneous.

(2) A revision under subsection (1) may only be done if —

(a) further information has been brought to the notice of the Scheme Administrator since the date on which the award or decision was made;

(b) the circumstances existing at the time which formed the basis of the award or decision have changed; or

(c) a mistake was made in respect of the circumstances existing at the time the award or decision was made.

(3) Section 19 applies to a dispute arising from any revision or decision not to revise, by the Scheme Administrator under this section.

## **21. Adjustment of payments**

(1) Subject to subsection (2), if an amount is paid in respect of a travel credit and it is found that the amount was not properly paid, the Scheme Administrator may require the amount to be paid back —

(a) if it was paid to a registered person in his or her own right who was not entitled to receive the amount, by that registered person;

(b) if it was paid to a person on behalf of a registered person who was not entitled to receive the amount, by that person; or

(c) if it was paid to a travel provider who was not entitled to receive the amount, by that travel provider.

(2) Any sum that is required to be repaid under this section may be recovered by the Scheme Administrator summarily as a civil debt.

## **PART 5: GENERAL**

### **22. Notification of change in circumstances**

(1) Subject to subsection (2), a registered person must notify the Scheme Administrator if —

(a) there is a change of circumstances that might affect the registered person's Falkland Islands status or residence; and

(b) the change affects the person's entitlement to travel credits.

(2) A parent or guardian of a registered person who is a child under 16 years must notify the Scheme Administrator if —

(a) there is a change of circumstances that might affect the entitlement by that registered child to travel credits; and

(b) the parent or guardian knows that the change affects the entitlement of the child to travel credits.

(3) Notification under this section must be made as soon as reasonably practicable after the change in circumstances occurs and in any case not more than 10 working days after becoming aware of the change.

(4) A person who fails to notify the Scheme Administrator as required under this section commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale.

### **23. False statements**

A person who, in an application for registration or for the purpose of claiming travel credits knowingly or recklessly —

(a) makes a statement or representation which is false in a material particular;

(b) provides or causes or allows to be provided, a document or information which is false in a material particular; or

(c) withholds any information which is material,

commits an offence and is liable on conviction to a fine not exceeding level 2 on the standard scale.

### **24. Scheme Administrator to issue guidance**

(1) The Scheme Administrator may issue guidance for the general administration of the Scheme including for —

(a) arrangements with travel providers;

(b) guidelines for designation of travel providers;

(c) payments of travel credits; or

(d) any matter which is to be prescribed under a provision of this Ordinance but which has not been prescribed.

(2) The Scheme Administrator must arrange for any guidance made under subsection (1) to be approved by the Executive Council and published in the Gazette.

## **25. Subsidiary legislation**

(1) The Governor may make regulations or orders generally for giving effect to the provisions of this Ordinance, and for any matters that may be prescribed under this Ordinance.

(2) Regulations under subsection (1) may provide for the following matters —

(a) procedures for applications for registration and registration;

(b) redemption of travel credits on termination or suspension of the Scheme;

(c) accrual, redemption and forfeiture of travel credits; and

(d) appeals.

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## OBJECTS AND REASONS

This Bill establishes a travel credit scheme for the benefit of Falkland Islands status holders who satisfy registration requirements. Persons can apply to join the Scheme and if they meet the registration criteria, their names are entered into a database. Registered persons accrue travel credits under the Scheme and the credits may be used to pay for travel within the Falkland Islands or abroad. Travel credits may only be used to pay for the fare for travel. Travel credits are earned individually and must be used by or for the benefit of the registered person.

The Scheme is administered by a Scheme Administrator who is responsible for registering qualifying persons who apply for registration. An account must be opened for each registered person regardless of age which is credited with the travel credits accrued by that person and debited with those travel credits redeemed.

*Part 1* of the Bill contains preliminary provisions. *Clause 2* defines words that are used in the Bill. *Clause 4* is included as a justification for the discriminatory nature of the Scheme in compliance with article 16(6) of the Constitution.

*Part 2* establishes the Scheme and provides for the registration of qualifying persons. The Scheme is funded by money appropriated by an Appropriation Ordinance. *Clause 6* allows the Governor to terminate or suspend the Scheme by Order

Qualification requirements for registration are set out in *clauses 7 and 8*. The first group of qualifying persons are people who are registered on a Register of Electors. The second group is made up of status holders who are 16 years or over but below 18 years. They accrue travel

credits at the same rate as adults under the Scheme. The third group is status holders who are below 16 years and they must be registered by their parents. Sub-clause (3) gives power to the Governor to prescribe additional circumstances which amount to temporary absence.

*Clause 8* provides for the qualifications required to register a child referred to in clause 7(1)(b) or (c). To the extent reasonably possible, the same criteria for the registration of adults are applied to a child as if the relevant provisions of the Constitution and the Electoral Ordinance apply to the child. The test for residence for a child is as provided for an adult in sections 8A, 8B and 8C of the Electoral Ordinance 1998.

*Clause 9* requires a qualifying person to continue to meet the criteria for registration in order to maintain his or her registration under the Scheme.

*Clause 10* provides for applications for registration by qualifying persons. A cut-off date for initial registration is to be prescribed and qualifying persons who register by that date accrue credits from a prescribed date.

*Clause 11* requires the Scheme Administrator to maintain an up to date database. On registration a person is allocated a number which could be a number already being used by the person for other matters.

Registration can be suspended or cancelled under *clause 12 or 13*. A registered person may also de-register themselves voluntarily under *clause 14*.

*Part 3* deals with travel credits. The details of how much a person accrues per day and how the travel credits may be redeemed will be prescribed in regulations. Travel credits must be used to pay for fares only. *Clause 16(4)* sets out certain expenses that may not be paid for by travel credits. Regulations may make further provision regarding the costs that may be covered by travel credits. Travel credits may only be used for the benefit of the registered person and they are not transferable. *Clause 18* sets out the persons who may apply to redeem travel credits.

*Part 4* provides for the determination of disputes related to the award of travel credits or other decisions made by the Scheme Administrator. A person who is dissatisfied with the decision of the Scheme Administrator may use the Falkland Islands Government complaints procedure for resolution of the matter. *Clause 21* allows for an adjustment of travel credits where there has been an erroneous payment or overpayment.

*Part 5* is a general part. *Clause 22* requires a registered person to inform the Scheme Administrator of changed circumstances which affect his or her entitlement to accrue travel credits. *Clause 23* makes it an offence for a person to make a false statement in respect of an application for registration or a claim for travel credits. The Scheme Administrator is allowed under *clause 24* to issue guidance for administrative matters under the Scheme. Guidance must be approved by the Executive Council and then published in the Gazette. The Governor may make subsidiary legislation under *clause 25*.

**09-10-18**

**Travel Credit Scheme Regulations 2018**

S. R. & O. No.            of 2018

Arrangement of Provisions

Regulation

1. Title and commencement
2. Interpretation
3. Application to register
4. Accounts
5. Dates when travel credits accrue
6. Accrual of travel credits
7. Forfeiture of travel credits
8. Claims for travel credits
9. Designation of travel providers
10. Payment for travel and proof of travel
11. Failure to travel
12. Travel credits on suspension or termination of Scheme
13. Suspension of registration
14. Cancellation of registration
15. Notice of cancellation or suspension of registration
16. Lifting of suspension
17. Appeals
18. Delivery of notices
19. Additional circumstances of temporary absence

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## SUBSIDIARY LEGISLATION

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### **Travel Credit Scheme Regulations 2018**

S. R. & O. No:            of 2018

*Made: ..... 2018*

*Published: ..... 2018*

*Coming into force: in accordance with regulation 1*

I make the following regulations under section 25 of the Travel Credit Scheme Ordinance 2018 on the advice of the Executive Council.

#### **1. Title and commencement**

(1) These regulations are the Travel Credit Scheme Regulations 2018.

(2) These regulations come into force on a day appointed by the Governor by notice in the *Gazette*.

#### **2. Interpretation**

In these regulations —

“designated travel provider” means a travel provider who is designated by the Scheme Administrator under regulation 9(1);

“Principal Immigration Officer” means the Principal Immigration Officer appointed under the Immigration Ordinance 1999; and

“the Statistician” means the Statistician referred to in the Statistics Ordinance 2010.

#### **3. Application to register**

(1) An application for registration under the Scheme —

(a) must be in writing and in a form approved by the Scheme Administrator;

(b) must be sent or delivered to the Scheme Administrator;

(c) if applicable, must include the applicant’s electoral number under the Electoral Ordinance; and

(d) must, if required, include the documentation referred to in sub-regulation (6).

(2) An application form under sub-regulation (1) must include the following particulars —

(a) name and address of the applicant;

(b) email address and telephone number of the applicant, if available;

(c) in the case of an application on behalf of a child, the name, address and date of birth of the child;

(d) date of application;

(e) a statement that the applicant will comply with all the requirements and conditions of registration under the Ordinance; and

(f) a statement that the applicant is a status holder and is resident in the Falkland Islands.

(3) A qualifying person whose name appears in a Register does not need to include any documents in support of his or her application.

(4) Subject to any law relating to privacy or confidentiality of information, the Scheme Administrator may use information in a Register and from records kept by the Principal Immigration Officer, the Statistician and other Government departments to verify information in an application.

(5) A question regarding whether or not a person is a status holder must be resolved by the Principal Immigration Officer.

(6) An application by or on behalf of a child must be supported by the following documents as evidence of being a status holder or as evidence of residence for the purposes of the Ordinance

—  
(a) copy of his or her Falkland Islands Status Certificate issued under the Immigration Ordinance 1999;

(b) copy of his or her Passport displaying Falkland Islands Status number;

(c) copy of his or her birth certificate;

(d) a statement by the parent or guardian that the child is resident in the Falkland Islands; and.

(e) any other documents as may be requested by the Scheme Administrator.

#### **4. Accounts**

(1) The Scheme Administrator must maintain in the account a record of travel credits that have been accrued, accumulated, redeemed or forfeited by a registered person.

(2) A registered person may request a record of travel credits in his or her account and the Scheme Administrator must provide the information as soon as is reasonably practicable but not more than 10 working days after receiving the request.

## **5. Dates when travel credits accrue**

(1) Subject to this regulation and regulation 6 —

(a) a registered person accrues travel credits from the date of registration; or

(b) a person who is born after 1 July 2018 accrues travel credits from the date of birth provided that the person is registered within 6 months of his or her birth, failing which accrual of travel credits is from date of registration.

(2) A qualifying person who registers on or before the cut-off date accrues travel credits from 1 July 2018.

(3) The cut-off date for the initial registration referred to in section 10(5) of the Ordinance is 31 January 2019.

## **6. Accrual of travel credits**

(1) A registered person who is 16 years or over —

(a) accrues travel credits at the rate of £1.00 per day; and

(b) may accumulate a maximum of £1,826.00 in his or her account and no further credits may be accrued until the accumulated travel credits have been reduced below the maximum.

(2) A registered person who is below 16 years —

(a) accrues travel credits at the rate of £0.50 per day; and

(b) may accumulate a maximum of £913.00 in his or her account and no further credits may be accrued until the accumulated travel credits have been reduced below the maximum.

## **7. Forfeiture of travel credits**

(1) Travel credits which are accumulated in the account of a registered person will be forfeited if—

(a) the registered person dies; or

(b) subject to subsection (2), the person's registration is cancelled.

(2) A person whose registration is cancelled for any reason may redeem his or her accumulated travel credits within six months of cancellation of registration to avoid forfeiture.

## **8. Claims for travel credits**

- (1) Subject to sub-regulation (2), a registered person may claim accumulated travel credits from 1 February 2019.
- (2) At the time of claiming travel credits —
  - (a) a registered person must still be a status holder and resident in the Falkland Islands; and
  - (b) the person's registration must not have been suspended or cancelled.
- (3) Travel credits may not be redeemed in advance of their accrual.
- (4) The minimum amount of travel credits per claim by a registered person is £50.00.
- (5) To qualify for a claim for travel credits, travel by a registered person must involve a journey of a minimum of 10 miles.
- (6) There is no limit on the number of times that claims for travel credits may be made subject to the total value of travel credits in the registered person's account.

## **9. Designation of travel providers**

- (1) The Scheme Administrator must designate travel providers for the purposes of this Ordinance and must publish a list of the designated travel providers in a way that makes it accessible to members of the public.
- (2) The Scheme Administrator must comply with guidelines in guidance when designating travel providers.

## **10. Payment for travel and proof of travel**

- (1) Payment for fares must be made to a travel provider or a registered person by way of reimbursement in accordance with guidance or this regulation.
- (2) A registered person who is 16 years or over or the parent or guardian of a child may be reimbursed for a fare paid by the registered person or by the parent or guardian provided that the amount of the reimbursement must not exceed the travel credits accumulated in the registered person's or child's account on the date he or she paid the fare.
- (3) As an alternative to subsection (2), a registered person may be issued with vouchers of a value of some or all of his or her travel credits and he or she may use the vouchers to pay a designated travel provider for a fare in advance of travel, and the travel provider may be reimbursed by the Scheme for the value of the vouchers.
- (4) The Scheme Administrator may request a registered person to produce a boarding pass or other satisfactory proof that he or she undertook the travel in respect of which the registered person is making a claim for travel credits.

### **11. Failure to travel**

(1) If a registered person fails to travel on account of the travel being cancelled or for any other reason, after redeeming his or her travel credits for the fare, the registered person must reimburse the Scheme the total amount of travel credits that was redeemed for the aborted travel or the amount that was refunded to the registered person by a travel provider.

(2) The Scheme Administrator must credit the registered person's account with the amount reimbursed under sub-regulation (1).

### **12. Travel credits on suspension or termination of Scheme**

Any travel credits in the account of a registered person on termination or suspension of the Scheme may be claimed and redeemed within a period stated in the termination or suspension Order by the Governor.

### **13. Suspension of registration**

(1) The Scheme Administrator may suspend a person's registration on the following grounds —

(a) if the registered person has been sentenced to a term of imprisonment by a court in any country; or

(b) in order to allow the Scheme Administrator time to investigate if the person still qualifies for registration and to investigate any grounds for cancellation

(2) Suspension from the Scheme under —

(a) sub-regulation (1)(a) must be for the period of the sentence of imprisonment; and

(b) sub-regulation (1)(b) must be for such period as determined by the Scheme Administrator.

(3) A registered person referred to —

(a) in sub-regulation (1)(a) does not accrue travel credits for the period of suspension and any accumulated travel credits are frozen until the suspension is lifted; or

(b) in sub-regulation (1)(b) continues to accrue travel credits during the period of suspension but may not claim or redeem any travel credits during the period of suspension.

(4) After an investigation under sub-regulation (1)(b), if the Scheme Administrator decides —

(a) to cancel registration, the Scheme Administrator must allow the registered person to redeem any accumulated travel credits in accordance with regulation 7(2); or

(b) not to cancel registration, the Scheme Administrator must confirm and credit the person's account, with the travel credits accrued during the period of suspension.

#### **14. Cancellation of registration**

(1) The Scheme Administrator must cancel a person's registration if satisfied that the registered person no longer meets the requirements under section 7 or, if the person is a child, section 8 of the Ordinance.

(2) A cancellation of registration must be in writing.

(3) Cancellation of registration takes effect at the expiry of the appeal period if the registered person does not appeal or on the date of the decision on appeal if the appeal fails.

#### **15. Notice of cancellation or suspension of registration**

The Scheme Administrator must give the registered person notice of a cancellation or suspension of registration and the notice must —

(a) give reasons for the cancellation or suspension;

(b) include details of the registered person's right of appeal against the cancellation or suspension; and

(c) in the case of suspension, include the period of suspension.

#### **16. Lifting of suspension**

(1) The Scheme Administrator must lift the suspension of a registered person at any time if he or she is satisfied that the grounds for suspension no longer apply.

(2) Where the Scheme Administrator decides to lift a registered person's suspension, he or she must notify the registered person of the decision within five working days.

(3) A decision by the Scheme Administrator to lift a suspension takes effect on the date specified in the notice.

#### **17. Appeals**

(1) A registered person who is aggrieved by a decision of the Scheme Administrator —

(a) to suspend his or her registration;

(b) to cancel his or her registration; or

(c) related to such suspension or cancellation;

may appeal within 10 working days of the date of the notice of suspension or cancellation by making representations in writing to the Governor.

(2) The Governor must promptly consider any representations made under sub-regulation (1) and notify the appellant and the Scheme Administrator of the decision on the appeal.

(3) If the Governor allows an appeal under sub-regulation (1), the Scheme Administrator must lift the suspension or reinstate the registration and credit the registered person's account with the travel credits which would have accrued during the relevant period.

### **18. Delivery of notices**

(1) A notice under the Ordinance or these regulations may be given to a registered person —

(a) by delivering it to the registered person;

(b) by sending it by post; or

(c) subject to sub-regulation (3), by transmitting it electronically.

(2) A notice is deemed to be properly addressed if it is addressed to the last address of the registered person as stated in their application for registration or as subsequently notified to the Scheme Administrator.

(3) If the notice is transmitted electronically —

(a) the registered person must have indicated to the Scheme Administrator a willingness to receive notices transmitted by electronic means and provided a suitable address for that purpose;

(b) the notice must be sent to the electronic address provided by the registered person; and

(c) any notice sent in terms of this sub-regulation will be deemed to have been received by the registered person on the next working day after the day on which it is sent.

### **19. Additional circumstances of temporary absence**

In addition to the circumstances set out in section 8A of the Electoral Ordinance 1988, a registered person's residence is not interrupted if he or she is temporarily absent from the Falkland Islands in order to —

(a) receive medical treatment; or

(b) support a dependant or a relative who is receiving medical treatment.

Made

2018

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EXPLANATORY NOTE  
*(not part of the regulations)*

These regulations provide for certain administrative and procedural arrangements related to the Travel Credit Scheme Ordinance 2018. Further arrangements will be contained in guidance.

Regulation 3 provides for the application procedure including the details that must be supplied by an applicant. A qualifying person whose name is in a Register of Electors does not have to submit any supporting documents. An application on behalf of a child must include the documents listed in regulation 3(6). A qualifying person who is 16 years or over may submit his or her own application for registration.

The Scheme Administrator must maintain a record of travel credits accrued, redeemed or forfeited (regulation 4). A registered person may request a statement of his or her record of travel credits and the Scheme Administrator must provide the information within 10 working days.

The cut-off date for initial registration is 31 January 2019. All qualifying persons who register by that date accrue credits with effect from 1 July 2018. Any other qualifying person (except an infant) accrues travel credits with effect from the date of registration. A child born after 1 July 2018 who is registered within six months of birth, accrues travel credits from the date of birth. A person who qualifies for registration after the cut-off date accrues travel credits with effect from the date of registration (regulation 5).

A registered person who is 16 years or over accrues travel credits at the rate of £1.00 per day and may accumulate up to a maximum of £1,826.00. A child under 16 years accrues travel credits at the daily rate of £0.50 and may accumulate up to a maximum of £913.00 (regulation 6). A registered person who has accumulated the maximum number of travel credits cannot accrue further travel credits until he or she has used some of the travel credits to reduce the number below the maximum. Travel credits accumulated by a person who dies or whose registration is cancelled (including voluntary cancellation) are forfeited in accordance with regulation 7. A person whose registration is cancelled is allowed six months in which to redeem his or her travel credits before the travel credits are forfeited.

Regulation 8 provides for claims for travel credits. Travel credits may start to be claimed from 1 February 2019. A registered person must still meet the qualifying criteria on the date of claiming travel credits. A minimum of £50.00 worth of travel credits must be claimed at any one time. A claim for travel must relate to a journey of not less than ten miles. Claims can be made any number of times as long as the registered person has sufficient travel credits in his or her account.

Regulation 9 deals with designation of travel providers. Regulation 10 provides for payment for travel credits. Payment may be made to the registered person, parent or guardian as

reimbursement only. Alternatively vouchers may be issued to a registered person who must use them to pay a designated travel provider. The Scheme Administrator may require a registered person to produce proof of travel in the form of a boarding pass or other evidence. Where travel is cancelled after payment using travel credits, the amount to be paid back is the amount used to pay for the aborted travel or the amount refunded by the travel provider (regulation 11).

Regulation 12 provides for cancellation or suspension of the Scheme and what happens to travel credits in that eventuality.

Cancellation and suspension of a person's registration must follow the process in regulations 13 to 16. A notice must be given setting out the reasons for the suspension or cancellation. Appeals are to the Governor in accordance with regulation 17

Regulation 19 provides that absence from the Falkland Islands to receive medical treatment or to support a relative who is receiving medical treatment are additional circumstances of temporary absence that do not interrupt residence for the purpose of the Scheme.

## **Travel Credit Scheme Legislation – Addendum to Paper Number: 165/18**

1. On 24 October 2018, on the Executive Council Agenda was report reference 165/18 entitled “Travel Credit Scheme Legislation”. Following a brief discussion, the Acting Governor asked that consideration of the report be deferred, in order to allow the Foreign & Commonwealth Office legal team to consider the report and advise. This was on the basis that the report itself identifies that the proposed legislation is discriminatory, and it was important to consider whether the legislation offends against the protections set out in section 16 of the Constitution.
2. This note arises from discussions between the Attorney General and FCO Legal Adviser on this issue.
3. It is considered right that this issue be considered, and that, if advising the Governor to approve the draft legislation, and to instruct the Attorney General to publish the Bill in the Gazette to begin the legislative process, Members of Executive Council do so, having considered the issue and having determined why it is considered that an objective and reasonable justification for the discrimination exists.
4. In the UK, it is normal practice for the Explanatory Notes accompanying Bills when presented to Parliament to contain a note setting out in brief any issues presented by the Bill in relation to compatibility with the European Convention on Human Rights. In addition, section 19 of the UK Human Rights Act 1998 requires a Minister of the Crown in charge of a Bill, before the second reading of the Bill, either to make and publish a written statement to the effect that in his view the provisions of the Bill are compatible with the Convention Rights, or make a statement that although unable to make a statement of compatibility, the government nevertheless wishes Parliament to proceed with the Bill.
5. This addendum seeks to deal in a similar way with the Constitutional Fundamental Rights and Freedoms, by considering the issues and laying out a statement of compatibility for Members to agree.
6. The formal proposal to introduce a Travel Credit Scheme came when the Legislative Assembly debated and agreed Motion 3/18 on 25 January 2018. Financial provision for the establishment of the Scheme was made when the Appropriation Ordinance 2018 was passed by the Legislative Assembly on 1 June 2018.

7. The policy proposals were discussed in report reference 42/18, which was considered and approved by Executive Council on 25 July 2018.
8. The scheme as approved is directly discriminatory in two aspects.
9. Firstly, the scheme is discriminatory on grounds of age, in that young persons will accrue credits at a lower rate than older persons. A key consideration in that regard is that, in general, travel costs for minors are lower than for adults. Travel away from the Falkland Islands is a significant part of the case for introducing a Travel Credit Scheme. In the case of the “Air Bridge” flight between the Falkland Islands and the UK, the rate of fare charged is higher for those aged 16 and above, than it is for those aged under 16. In fact FIG subsidises the costs for those under 16 on the MOD flights already. It is understood that this is the basis for the discrimination on grounds of age, and that this fact is sufficient objective and reasonable justification for discriminating in level of credit between under 16s and over 16s.
10. Secondly, the scheme is discriminatory on grounds of “immigration status” – it differentiates between categories of residents. This, has been the primary area of concern. Those with Falkland Islands Status will accrue Credits; other residents including those with Permanent Residence Permits (PRP), or other permits, will not be eligible to join the scheme.
11. The second area of discrimination has essentially been justified in part on the basis that provision of the scheme will provide an incentive for those other residents to move towards attaining Falkland Islands Status.
12. Falkland Islands Status is a quality which is either acquired by birth (see section 22(5) of the Constitution), or by application under the Falkland Islands Status Ordinance 1998.
13. Under the 1998 Ordinance, “Status” can currently be obtained after 7 years ordinary residence, by Commonwealth Citizens. Citizens of other countries would first need to naturalise, before they could be granted Status.
14. The Falkland Islands Status (Amendment) Ordinance 2017 is not yet in force; it will remove the rights of “Commonwealth Citizens” generally, and restrict applications only to those who are “British Citizens” (including variants such as British Overseas Territory Citizens). The 2017 Amendment Ordinance will also require applicants for Status to have first obtained a Permanent Residence Permit – this is not currently required, although in practice it is the step most (if not all) people take. These changes were enacted prior to the decision to implement a travel credit scheme. Although it might be more “difficult” for some individuals to obtain status, it will still be open to all to pursue that objective.

15. The Scheme has been designed to be as straightforward to administer as possible. This is, in part, the reason why the electoral register has been chosen to determine eligibility for adults to join the scheme.
16. In seeking to provide travel credits accruing at £1 per day (for adults), this is considered to be a proportionate response to the high cost of travel to and from the Islands.
17. The Members' Islands Plan 2018-2022 includes a number of aims, including that they will:
  - a. Create a long-term labour force development strategy to ensure we train and retain existing workers, and attract new workers in areas of skills shortages;
  - b. Encourage students to return to the Falkland Islands after higher education;
  - c. Encourage contractors and their families to make the Falkland Islands their home;
18. Short-term work permit holders often have "free flights" provided by their employer as part of the contract of employment. At the very least, employers are committed (under the Immigration Regime) to ensuring they return "home" at the end of their contracts. Even some Permanent Residence Permit Holders have flights provided by their employer. This creates a divide with status holders, some of whom may not be able to afford to travel abroad, and are not provided with free flights by their employer (this includes Government employees employed on local terms).
19. By definition, those with Permanent Residence Permits (or other permits) have come from elsewhere. The scheme, in targeting Falkland Island Status holders, is also partly aimed to assist those "born and bred" here to have the opportunity to experience the benefits of travel abroad, which they might not otherwise be able to afford.
20. Members have stated that they believe that the provision of a "benefit" such as a Travel Credit Scheme will "reward" those with a long-term commitment to the Islands, and serve to encourage temporary work permit holders to become permanent residents and, ultimately, Falkland Island Status holders. Similarly, they hope that Permanent Resident Permit holders will be incentivised to cement their occupation and, ultimately, achieve Falkland Islands Status. In a parallel move, some immigration fees have been reduced in order to further encourage this.
21. Recommendation: *That the elected Members of the Executive Council state that, in their view, the Bill is compatible with the Fundamental Rights and Freedoms contained in the Constitution.*

22. Recommendation: *That the Attorney General be authorised to make such further changes to the Draft Bill and Regulations, prior to publication, as he thinks fit in order to*

- a. Make clear that adults will only be qualified to register where they are registered in a current electoral register.*
- b. Further clarify the provisions relating to the accrual of travel credits and “temporary absence” from the Falkland Islands.*
- c. Alter dates, such as the “cut-off date”, and the date from which a person may claim accumulated travel credits, to such dates as will fit with date on which the Bill will first be considered by the Legislative Assembly.*