

EXECUTIVE COUNCIL

PUBLIC

Title: Criminal Law – Amendments and Revision

Paper Number: 17/19

Date: 30 January 2019

Responsible Director: Attorney General

Report Author: Crown Counsel

Portfolio Holder: Hon. Roger Spink MLA

Reason for paper: For policy approval and approval of draft legislation.

Publication: Yes with deletions are suggested as **highlighted**

Not Recommended:

Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld

The categories which are potentially relevant to this paper are:
Paragraph 12: Information about legal advice

Previous papers: 123/18 “Criminal Law – Amendments and Revision 25.07.2018”

List of Documents: Appendix A: Crimes (Amendment) Bill 2019

Appendix B: Criminal Procedure and Evidence (Miscellaneous Amendments) Bill 2019

Appendix C: Administration of Justice (Payments to Jurors and Witnesses) (Amendment) Rules 2019

Appendix D: Coroners (Amendment) Rules 2019

1. Recommendations

Honourable Members are recommended to approve:

- (a) The following draft legislation:

- (i) Crimes (Amendment) Bill 2019
 - (ii) Criminal Procedure and Evidence (Miscellaneous Amendments) Bill 2019
 - (iii) Administration of Justice (Payments to Jurors and Witnesses) (Amendment) Rules 2019
 - (iv) Coroners (Amendment) Rules 2019
- (b) The additional proposed amendments to the Criminal Procedure and Evidence Ordinance 2014 and the Crimes Ordinance 2014.
- (c) Honourable Members are recommended to authorise the Attorney General to correct typographical errors and non-substantive drafting errors found in the Bill prior to publication; or subsidiary legislation prior to signature.

2. Additional Budgetary Implications

2.1 None

3. Executive Summary

- 3.1 Honourable Members have already approved policy to make a number of amendments, additions and revisions to the criminal law (see paper 123/18).
- 3.2 Draft legislation has now been prepared that gives effect to the policy decisions that Honourable Members have previously made and Honourable Members are asked to approve the draft legislation.
- 3.3 During the drafting process further amendments were identified. These amendments have been included in the draft legislation. Honourable Members are asked to approve these further amendments.

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

- 4.1 Honourable Members are referred to paper 123/18 for background and an explanation of the links to the Islands Plan and Directorate Business Plan.

5. Options and Reasons for Recommending Relevant Option

- 5.1 This document sets out the additional amendments that Honourable Members are asked to approve.

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

Topic: Attorney General’s Reference (undue leniency)

Proposal: To widen the circumstances in which the Attorney General can seek a review of a sentence

- 5.2 At present section 671 of the CPEO allows the Attorney General to refer a sentence imposed in the Magistrates Court to the Supreme Court where the Attorney General considers that the sentence imposed was so lenient as to be one which no reasonable

court, properly directing itself in law, could have passed. If the Supreme Court agrees then the sentence can be increased.

- 5.3** The power to refer a sentence for review is limited to offences where the maximum penalty is imprisonment for 10 years or more. This time limit places a significant restriction on the Attorney General’s ability to seek a review and some offences, such as theft (maximum 7 years imprisonment) are excluded from the procedure completely.
- 5.4** In the UK, the power of the Attorney General to refer an unduly lenient sentence for review has been the subject of some discussion in recent years in Parliament. The power is available there in relation to all offences triable on indictment. It is also available for certain specified offences which are “triable either way” (this means triable either on indictment before the Crown Court, or summarily before a Magistrates’ Court). The list of these offences has been amended on an ad hoc basis over the years. It is considered by some, including the current Solicitor General, that there are inconsistencies and anomalies in the current UK scheme, such that some serious offences are not covered by the scheme, without any clear explanation. It is important for there to be finality in sentencing. It is also important that the public can have confidence in the criminal justice system, and that unduly lenient sentences can be referred for review. It is also relevant to consider the potential burden if the procedure is available for a greater range of sentences.
- 5.5** It is, on balance, proposed to decrease the maximum sentence qualifying period to 12 months to allow for greater oversight of Magistrates Court sentencing by the Supreme Court in appropriate cases.
- 5.6** In addition to decreasing the qualifying term it has been identified that the grounds upon which the Supreme Court can alter a sentence referred for review can be expressed in simpler terms. It is therefore proposed to amend the section to allow for sentences to be altered where the Supreme Court reaches the conclusion that sentence was unduly lenient. Undue leniency is an established legal term and matches the test applied by the Court of Appeal when reviewing sentences imposed by the Supreme Court. The proposed amendment will promote simplicity and uniformity.

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

Topic: Consequential Amendments
Proposal: To revoke subsection no longer required.

- 5.7** As a result of revocation of section 647(4) and the re-using of the subsection for a separate matter subsection 647(7) is no longer required and can be revoked.

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

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

Topic: Assaulting an Emergency Worker
Proposal: Add the offence of assaulting an emergency worker

5.8 Since Honourable Members considered paper 123/18 legislation creating the new criminal offence of assaulting an emergency worker has been enacted in England and Wales. This offence carries a higher maximum penalty than common assault to reflect the aggravating factor that the person assaulted was a public servant. It is proposed to create a similar offence in the Falkland Islands by adopting provisions of the Assaults on Emergency Workers (Offences) Act 2018 with appropriate amendments.

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

Topic: Charging historic offences
Proposal: Revoke provision to give increased certainty

5.9 It is a well-established principle that the law that creates a criminal offence does not act retrospectively. This principle is reflected in section 6(5) of the Constitution. There are very few exceptions to this principle and the most well-known exception in English law is in respect of war crimes.

5.10 Having regard to this principle, practice has been that alleged criminal offences are charged under the law that existed at the time of the alleged offence. For example an allegation of rape may be charged under the Crimes Ordinance 2014, Sexual Offences Ordinance 2005 or Sexual Offences Act 1956 depending on the date when the alleged offence occurred. This practice matches the practice of charging in England and Wales.

5.11 Section 583 deals with transition between the old law and the new law, which is now contained in the Criminal Procedure and Evidence Ordinance 2014. Section 583(2) states:

(2) If proceedings for an offence committed under any of the repealed Ordinances or repealed or disappplied Acts have not been commenced at the commencement of this Ordinance —
(a) if there is an equivalent offence under this Ordinance - proceedings must be brought under this Ordinance;
(b) if there is no equivalent offence - proceedings cannot be brought.

5.12 REDACTED

5.13 REDACTED

5.14 REDACTED.

5.15 It is therefore recommended that Section 583(2) is revoked to clarify the applicability of transitional provisions to the charging of historical offences.

Topic: Minor Procedural Amendments and Corrections
Proposal: Correct minor errors

5.16 Section 33 is amended to correct a cross referencing error.

5.17The word “order” has been omitted from section 107A and it has been added.

5.18Reference to section 109 in section 108 should be a reference to section 107A.

5.19Schedule 5 is amended to provide for the repeal of the Bribery and Corruption Overseas Ordinance 2006 the provisions of which are now replaced with the bribery provisions contained in the CO.

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

6. Resource Implications

6.1 Financial Implications - None

6.2 Human Resource Implications – None

6.3 Other Resource Implications - None

7. Legal Implications

7.1 The legal implications are described in the body of the report. The proposals in this report are considered to be in accordance with the Fundamental Rights and Freedoms protected in Chapter 1 of the Constitution.

8. Environmental & Sustainability Implications

8.1 None

9. Significant Risks

9.1 Honourable Members are referred to paper 123/18. Other legal risks are described in the body of the report.

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

11.1The 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.

Crimes (Amendment) Bill 2019

(No: of 2019)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Ordinance amends Crimes Ordinance 2014
4. Section 33 amended (Supplemental provisions)
5. New section 65A (Causing grievous bodily harm by gross negligence)
6. Section 72 amended (Assaulting police officer)
7. New section 72A (Assaulting emergency worker)
8. Section 77 amended (Causing or allowing the death of or harm to a child or vulnerable adult)
9. New sections 85A to 85H
10. Section 107A amended (Offence of breaching non-molestation order)
11. New section 107B (Controlling or coercive behaviour in intimate or family relationships)
12. Section 108 amended (Guidance)
13. Heading to Part 5 amended
14. New section 122A (Corporate endangerment of life)
15. Section 129 amended (Gross breach: factors)
16. Section 130 amended (Application to public bodies)
17. Section 131 amended (Application to police force)
18. Section 133 amended (Power to order breach, etc. to be remedied)
19. Section 134 amended (Power to order conviction, etc. to be publicised)
20. Section 135 amended (Procedure, evidence and sentencing)
21. Section 136 amended (Convictions under this Part and under health and safety legislation)
22. Section 137 amended (Transfer of functions)
23. Section 139 amended (Power to extend section 122 and 122A to other organisations)
24. New section 217A (Sexual communication with children)
25. Section 302 amended (Method of notification and related matters)
26. New Part 25A (Terrorist Offences)
27. Section 583 amended (Transitional provisions)
28. Schedule 5 amended (Repealed and disapplied laws)

CRIMES (AMENDMENT) BILL 2019

(No: of 2019)

(assented to: 2019)

(commencement: on publication)

(published: 2019)

A BILL

for

AN ORDINANCE

To amend the Crimes Ordinance 2014.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Crimes (Amendment) Ordinance 2019.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Ordinance amends Crimes Ordinance 2014

This Ordinance amends the Crimes Ordinance 2014

4. Section 33 amended (Supplemental provisions)

In section 33(4)(a), omit “section 31(2)” and replace it with “31(4)”.

5. New section 65A (Causing grievous bodily harm by gross negligence)

Insert after section 65 —

“65A. Causing grievous bodily harm by gross negligence

(1) A person commits an offence if the person causes grievous bodily harm to another person by gross negligence.

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

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

6. Section 72 amended (Assaulting police officer)

(1) In section 72(1), omit “Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.” and replace it with “As provided in subsections (3) to (5).”.

(2) In section 72(2), omit “As provided in subsections (3) to (5).” and replace it with “Imprisonment for 1 month or a fine at level 3 on the standard scale, or both.”.

7. New section 72A (Assaulting emergency worker)

Insert after section 72 —

“72A. Assaulting emergency worker

(1) In this section —

“emergency” means an occurrence that —

- (a) causes, or threatens to cause, loss of life or injury to persons;
- (b) causes, or threatens to cause, loss of or damage to property;
- (c) endangers the safety of the public; or
- (d) causes, or threatens to cause, damage to the environment;

“emergency worker” means any of the following persons who is working in response to an emergency —

- (a) a police officer;
- (b) a member of the police reserve enlisted under section 9 of the Police Ordinance 2000 or any other person employed or engaged to provide services for police purposes;
- (c) an Officer in Charge, prison officer or other prison staff appointed under section 6 of the Prisons Ordinance 2017;
- (d) a person employed or engaged to provide fire or rescue services; or
- (e) a person employed or engaged to provide medical care, including in a para medical capacity;

“employed or engaged” includes —

- (a) providing services as a volunteer or in another capacity that is unpaid; and
- (b) employed or engaged on a full or part-time basis.

(2) To avoid doubt, a reference to an emergency worker includes a reference to a person who is not at work or not on duty but who, in working in response to an emergency, is performing duties which, if the person were at work or on duty, the person would perform in the course of the person’s employment.

(3) A person commits an offence if the person assaults —

- (a) an emergency worker; or

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(b) a person assisting an emergency worker.

Penalty: Imprisonment for 12 months or a fine.

(4) A person commits an offence if the person wilfully obstructs —

(a) an emergency worker; or

(b) a person assisting an emergency worker.

Penalty: Imprisonment for 12 months or a fine.

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

8. Section 77 amended (Causing or allowing the death of or harm to a child or vulnerable adult)

In section 77(8), omit “subsection (7)” and replace it with “subsection (1)”.

9. New sections 85A to 85H

Insert after section 85 —

“85A. Definition of CAWN and CAWO

In sections 85B to 85G (inclusive) —

“CAWN” means a child abduction warning notice;

“CAWO” means a child abduction warning order.

85B. Power to issue CAWN

(1) A member of the police force not below the rank of inspector (“the authorising officer”) may issue a CAWN under this section.

(2) A CAWN may be issued to a person (“A”) aged 18 years or over if the authorising officer —

(a) has reasonable grounds for believing that A has without lawful authority or reasonable excuse been found in the company of a child under the age of 18 years (“C”); and

(b) (i) has reasonable grounds for believing that C has, on at least two occasions (including the occasion referred to in paragraph (a)), been reported missing and subsequently found to be in the company of A; or

(ii) has reason to suspect that C’s behaviour is, by reason of association with A, a significant cause for concern.

(3) Before issuing a CAWN, the authorising officer must, in particular, take reasonable steps to gather and consider —

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- (a) representations made by the person with lawful authority for C; and
 - (b) representations made by A as to the issuing of the CAWN.
- (4) A CAWN must prohibit A from being in the company of C.

85C. Contents and service of CAWN

(1) A CAWN must state —

- (a) the grounds on which it has been issued;
 - (b) that a constable may arrest A without warrant if the constable has reasonable grounds for believing that A is in breach of the CAWN;
 - (c) that an application for a CAWO under section 85E will be heard within 48 hours of the time of service of the CAWN and a notice of the hearing will be given to A;
 - (d) that the CAWN continues in effect until that application has been determined; and
 - (e) the provisions that a court may include in a CAWO under sections 85E and 85F.
- (2) A CAWN must be in writing and must be served on A personally by a police officer.
- (3) On serving A with a CAWN, the police officer must ask A for an address for the purposes of being given the notice of the hearing of the application for the CAWO.

85D. Breach of CAWN

- (1) A constable may arrest a person without a warrant if the constable has reasonable grounds for believing that the person is in breach of a CAWN.
- (2) A person arrested by virtue of section 85C(1)(b) for a breach of a CAWN must be held in custody and brought before the court which will hear the application for a CAWO under sections 85E and 85F —
- (a) before the end of the period of 24 hours beginning with the time of the arrest; or
 - (b) if earlier, at the hearing of that application.
- (3) If the person is brought before the court by virtue of subsection (2)(a), the court may remand the person.
- (4) If the court adjourns the hearing of the application by virtue of section 85E(8), the court may remand the person.

(5) In calculating when the period of 24 hours mentioned in subsection (2)(a) ends, Christmas Day, any Sunday and any day which is a public holiday in the Falkland Islands are to be disregarded.

85E. Application for a CAWO

(1) If a CAWN has been issued, the Attorney General must apply for a CAWO.

(2) The application must be made by complaint to the Magistrate's Court and any hearing relating to the application will be heard by the Senior Magistrate or, if the Senior Magistrate is not available, three Justices of the Peace.

(3) The application must be heard by the Court no later than 48 hours after the CAWN was served pursuant to section 85C(2).

(4) In calculating when the period of 48 hours mentioned in subsection (3) of this section ends, Christmas Day, any Sunday and any day which is a public holiday in the Falkland Islands are to be disregarded.

(5) A notice of the hearing of the application must be given to A.

(6) The notice is deemed given to A if it is left at the address given by A under section 85C(3).

(7) But if the notice has not been given because no address was given by A under section 85C(3), the court may hear the application for the CAWO if the court is satisfied that reasonable efforts have been made to give A the notice.

(8) The court may adjourn the hearing of the application.

(9) If the court adjourns the hearing, the CAWN continues in effect until the application has been determined.

(10) On the hearing of the application for a CAWO, sections 278 and 279 of the Criminal Procedure and Evidence Ordinance 2014 do not apply in relation to a person for whose protection the CAWO would be made, except where the person has given oral or written evidence at the hearing.

85F. Conditions for, effect and contents of CAWO

(1) The court may make a CAWO if two conditions are met.

(2) The first condition is that the court is satisfied on the balance of probabilities that the criteria in section 85B(2)(a) and (b) are satisfied.

(3) The second condition is that the court thinks that making the CAWO is necessary to protect C from harm as a result of association with A.

- (4) A CAWO prohibits A from doing anything described in the order.
- (5) The only prohibitions that may be included in a CAWO are those necessary to protect C from harm as a result of association with A.
- (6) A CAWO must state that it is a criminal offence to breach the CAWO.
- (7) A CAWO may be in force for —
 - (a) no fewer than 14 days beginning with the day on which it is made; and
 - (b) until the date of the 18th birthday of C.
- (8) A CAWO must state the period for which it is to be in force.

85G. Breach of CAWO

A person in respect of whom a CAWO has been made and who contravenes the order in any respect commits an offence.

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

85H. Guidance

(1) The Attorney General may issue guidance relating to the exercise by a police officer of functions under sections 85B to 85G (inclusive).

(2) The guidance must set out the behaviours associated with “giving significant cause for concern”, including, in particular, behaviours associated with giving cause for concern of sexual exploitation or grooming.

(3) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.”.

10. Section 107A amended (Offence of breaching non-molestation order)

In section 107A, insert “order” after “non-molestation”.

11. New section 107B (Controlling or coercive behaviour in intimate or family relationships)

Insert after section 107A —

“107B. Controlling or coercive behaviour in intimate or family relationships

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

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive;
- (b) at the time of the behaviour, A and B are personally connected;

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- (c) the behaviour has a serious effect on B; and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
Penalty: Imprisonment for 5 years or a fine, or both.
- (2) A and B are “personally connected” if —
- (a) A is in an intimate personal relationship with B; or
 - (b) A and B live together and —
 - (i) they are members of the same family; or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question —
- (a) A has responsibility for B, for the purposes of section 5 of the Children Ordinance 2014; and
 - (b) B is under 16.
- (4) A’s behaviour has a “serious effect” on B if —
- (a) it causes B to fear, on at least two occasions, that violence will be used against B; or
 - (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.
- (5) For the purposes of subsection (1)(d), A “ought to know” that which a reasonable person in possession of the same information would know.
- (6) For the purposes of subsection (2)(b)(i), A and B are members of the same family if —
- (a) they are, or have been, married to each other;
 - (b) they are, or have been, civil partners of each other;
 - (c) they are relatives;
 - (d) they are both parents of the same child; or
 - (e) they have, or have had, parental responsibility for the same child.
- (7) In subsection (6) —

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“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Ordinance 2014;

“relative” means —

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner; or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

(8) In proceedings for an offence under this section it is a defence for A to show that —

(a) in engaging in the behaviour in question, A believed that A was acting in B’s best interests; and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if —

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them; and

(b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

[UK Serious Crime Act 2015 s. 76]”.

12. Section 108 amended (Guidance)

In section 108(1), omit “sections 102 to 109” and replace it with “sections 102 to 107A”.

13. Heading to Part 5 amended

Omit the heading to Part 5 and replace it with —

“CORPORATE MANSLAUGHTER AND ENDANGERMENT OF LIFE”.

14. New section 122A (Corporate endangerment of life)

Insert after section 122 —

“122A. Corporate endangerment of life

(1) An organisation to which this section applies commits the offence of corporate endangerment of life if the way in which its activities are managed or organised —

(a) causes a person (A) grievous bodily harm; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to A.

Penalty: A fine.

(2) The organisations to which this section applies are —

(a) a corporation;

(b) a department of the Government (other than an exempt department);

(c) a police force;

(d) a partnership, or a trade union or employers’ association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part —

(a) “relevant duty of care” has the same meaning given by section 123, read with sections 124 to 128;

(b) a breach of a duty of care by an organisation is a “gross” breach if the act alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances; and

(c) “senior management”, in relation to an organisation, means the persons who play significant roles in —

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) The offence of corporate endangerment of life is triable on indictment only.

(6) This section applies only if the harm resulting in grievous bodily harm is sustained —

(a) in the Falkland Islands (including in its territorial waters);

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(b) on a ship or aircraft registered in the Falkland Islands; or

(c) on, under or above an installation in waters to which section 179 of the Criminal Procedure and Evidence Ordinance 2014 applies, or any waters within 500 metres of any such installation.

(7) For the purposes of subsection (6)(b), harm sustained on a ship or aircraft includes harm sustained by a person who —

(a) is no longer on board the ship or aircraft in consequence of the wrecking of it or of some other mishap affecting it or occurring on it; and

(b) sustains the harm in consequence of that event.”.

15. Section 129 amended (Gross breach: factors)

In section 129(2)(b), insert “or grievous bodily harm” after “death”.

16. Section 130 amended (Application to public bodies)

In section 130(3), omit “section 122” and replace it with “sections 122 and 122A”.

17. Section 131 amended (Application to police force)

(1) In section 131(2) and (3), omit “section 122” and replace it with “sections 122 and 122A”.

(2) In section 131(5)(a), omit “section 122” and replace it with “section 122 or 122A”.

18. Section 133 amended (Power to order breach, etc. to be remedied)

(1) In section 133(1) insert “or corporate endangerment of life” after “manslaughter”.

(2) In section 133(1)(a), omit “section 122(1)” and replace it with “section 122(1) or 122A(1)”.

(3) In section 133(1)(b), insert “or grievous bodily harm” after “death”.

19. Section 134 amended (Power to order conviction, etc. to be publicised)

In section 134(1), insert “or corporate endangerment of life” after “manslaughter”.

20. Section 135 amended (Procedure, evidence and sentencing)

In section 135(2) and (3), insert “or corporate endangerment of life” after “manslaughter”.

21. Section 136 amended (Convictions under this Part and under health and safety legislation)

In section 136(1)(a) and (2), insert “or corporate endangerment of life” after “manslaughter”.

22. Section 137 amended (Transfer of functions)

In section 137(1)(a), (3) and (5), insert “or grievous bodily harm” after “death”.

16.01.19-VA (21.1.19-RC)

23. Section 139 amended (Power to extend section 122 to other organisations)

In section 139(1), omit “section 122” and replace it with “section 122 or 122A”.

24. New section 217A (Sexual communication with children)

Insert after section 217 —

“217A. Sexual communication with children

(1) A person aged 18 or over (A) commits an offence if —

(a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B);

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual; and

(c) B is under 16 and A does not reasonably believe that B is 16 or over.

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

(2) For the purposes of this section, a communication is sexual if —

(a) any part of it relates to sexual activity; or

(b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider any part of the communication to be sexual.

(3) In subsection (2)(a), “sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.

[UK Sexual Offences Act 2003 s. 15A]”

25. Section 302 amended (Method of notification and related matters)

In section 302(1)(a), omit “cutody” and replace it with “custody”.

26. New Part 25A (Terrorist Offences)

Insert after section 577 —

“PART 25A – TERRORIST OFFENCES

Interpretation of Part

577A. Definitions

In this Part —

“act” includes —

(a) an omission and a course of action;

(b) one or more acts that are part of a series of acts;

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- (c) an act for a specific purpose and an act of a general nature;
- (d) an act that occurs in or outside the Falkland Islands; and
- (e) an act that is taken by or for the purposes of an organisation proscribed under an Act;

“article” includes —

- (a) a device or thing for mechanically or electronically storing or recording data; and
- (b) a device or thing by or from which data is capable of being reproduced with or without the aid of another article, device or thing;

“document” includes a photographic record;

“glorification” includes any form of praise or celebration;

“government” means the Government of Falkland Islands or the government of a country outside of the Falkland Islands;

“publication” includes matter that may be listened to or watched;

“publish” includes publish by or through using the internet or other electronic service;

“provide”, in relation to money or other property, includes give, lend or make available, whether or not for consideration;

“service” includes a facility;

“terrorism” means engaging in a terrorist act that —

- (a) is designed to influence a government or an international organisation;
- (b) is designed to intimidate the public; and
- (c) is made for the purpose of advancing a political, religious, racial, ethnic, cultural or ideological cause;

“terrorist act” means one or more acts taken, being taken or threatened to be taken that —

- (a) involve serious violence against a person or serious damage to property, including by the use of firearms or explosives;
- (b) endanger a person’s life (other than the life of the person committing the action);
- (c) create a serious risk to the health or safety of the public;

(d) are designed to interfere seriously with, or to disrupt seriously, an electronic system;
or

(e) as part of a course of action, enable or will enable a terrorist act.

[UK Terrorism Act 2000 s.121]

577B. References in this Part to persons, property and the public

(1) A reference in this Part to a person is a reference to a person in the Falkland Islands or in a country outside the Falkland Islands.

(2) A reference in this Part to property is a reference to property in the Falkland Islands or in a country outside the Falkland Islands.

(3) A reference in this Part to the public includes a reference to people attending a meeting that members of the public may attend, whether the people's admission to the meeting is unconditional, on the payment of a fee or on satisfaction of another condition.

[UK Terrorism Act 2000 s.121]

Offences relating to financing terrorism

577C. Fund raising for terrorism

(1) A person commits an offence if the person —

(a) asks or invites another person to provide money or other property; and

(b) intends, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

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

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

(a) receives money or other property; and

(b) intends, or has reasonable grounds to suspect, that the money or property will be or may be used for terrorism.

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

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

(a) provides money or other property to a person; and

(b) knows, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

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

(4) An offence under this section is triable only on indictment.

(5) In subsection (2)(a), a reference to receiving money or other property is a reference to being given, lent or otherwise provided the money or other property, whether or not for consideration.

[UK Terrorism Act 2000 s. 15]

577D. Possession and use of money or other property for terrorism

(1) A person commits an offence if the person uses money or other property for terrorism.
Penalty: Imprisonment for 14 years or a fine, or both.

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

(a) possesses money or other property; and

(b) intends to use the money or property for terrorism.

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

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

(a) possesses money or other property; and

(b) has reasonable grounds to suspect that the money or property will or may be used for terrorism.

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

(4) An offence under this section is triable only on indictment.

[UK Terrorism Act 2000 s. 16]

577E. Entering into funding arrangements for terrorism

(1) A person commits an offence if —

(a) the person enters into, or becomes concerned in, an arrangement;

(b) as a result of the person entering into or becoming concerned in the arrangement, money or other property is, or will be, provided to another person; and

(c) the person knows, or has reasonable grounds to suspect, that the money or property will or may be used for terrorism.

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

(2) An offence under this section is triable only on indictment.

[UK Terrorism Act 2000 s. 17]

577F. Arrangements to deal with money or other property that funds terrorism

(1) In this section —

“dealing with money or other property” means —

- (a) receiving, possessing or controlling the money or property;
- (b) concealing or attempting to conceal the money or property;
- (c) passing or transferring the money or property to another person; or
- (d) disposing of the money or property in any other way.

(2) A person commits an offence if the person enters into, or becomes concerned in, an arrangement to deal with money or other property that is being used, or is intended to be used, for terrorism.

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

(3) It is a defence for a person charged with an offence under this section to prove that the person did not know, and did not have reasonable grounds to suspect, that the arrangement related to money or other property that is being used, or is intended to be used, for terrorism.

(4) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for entering into, or becoming concerned in, the arrangement to deal with money or other property.

(5) An offence under this section is triable on indictment only.

[UK Terrorism Act 2000 s. 18]

Offences relating to information about terrorism

577G. Non-disclosure of information about acts of terrorism

(1) This section applies to a person who has information that the person knows or believes is of material assistance for —

- (a) preventing another person from committing a terrorist act; or
- (b) apprehending, prosecuting or convicting another person in the Falkland Islands for an offence under this Part or under the law of a country outside the Falkland Islands.

(2) The person commits an offence if the person does not disclose the information to a police officer.

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

(3) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for not disclosing the information to a police officer.

16.01.19-VA (21.1.19-RC)

(4) Proceedings for an offence under this section may be commenced in the Falkland Islands or, subject to subsection (5), in a country outside the Falkland Islands.

(5) Proceedings referred to in subsection (4) may be commenced in a country outside the Falkland Islands if —

(a) the person alleged to have committed the offence was in the country when the person became aware, or at any time after the person became aware, that the person had information referred to in subsection (1); and

(b) the acts constituting the offence constitute an offence under the law in that country.

577H. Collecting, recording, possessing information that may be used for terrorism

(1) A person commits an offence if the person —

(a) collects or records information of a kind likely to be useful to a person committing or preparing for a terrorist act; or

(b) possesses a document containing information referred to in paragraph (a).

Penalty: Imprisonment for 10 years or a fine, or both.

(2) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for collecting or recording the information or possessing the document.

(3) An offence under this section is triable only on indictment.

577I. Disseminating terrorist publications

(1) In this section —

“act” means an act for doing any of the following —

(a) distributing or circulating a terrorist publication;

(b) giving, selling or lending a terrorist publication;

(c) offering a terrorist publication for sale or loan;

(d) transmitting the content of a terrorist publication electronically;

(e) possessing a terrorist publication for the purposes of paragraph (a), (b), (c) or (d);

(f) providing a service by which another person is able to obtain, read, listen to or watch a terrorist publication; or

16.01.19-VA (21.1.19-RC)

(g) providing a service by which another person may purchase or loan a terrorist publication or be gifted a terrorist publication;

“lend” or “on loan” includes let on hire;

“terrorist publication” means a publication or part of a publication —

(a) that contains material —

(i) which glorifies committing or preparing for a terrorist act or type of terrorist act (whether a current, future or past act);

(ii) from which a member of the public could reasonably be expected to infer that the act or type of act that is gloried is an act or type of act that the member should emulate; and

(iii) by which it is likely that a member of the public would be directly or indirectly encouraged or induced to commit, prepare for or instigate a terrorist act;

(b) that contains material that is likely to be useful for committing or preparing for a terrorist act; or

(c) that was likely published wholly or mainly for the purpose of being used by a member of the public to commit or prepare for a terrorist act.

(2) A person commits an offence if the person does an act with the intention that an effect of the act is to —

(a) directly or indirectly encourage or otherwise induce another person to commit, prepare for or instigate a terrorist act; or

(b) provide assistance to another person for committing or preparing for a terrorist act.

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

(3) A person commits an offence if the person does an act recklessly as to whether, because of the act, the person —

(a) directly or indirectly encourages or otherwise induces another person to commit, prepare for or instigate a terrorist act; or

(b) provides assistance to another person for committing or preparing for a terrorist act.

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

(4) In subsections (2) and (3), a reference to an effect of the act includes a reference to a terrorist publication becoming available to a person as a consequence of the act and, because of the availability of the publication to the person, it is likely that the person —

16.01.19-VA (21.1.19-RC)

(a) is directly or indirectly encouraged or otherwise induced to commit, prepare for or instigate a terrorist act; or

(b) is provided assistance for committing or preparing for a terrorist act.

(5) In proving the commission of an offence under subsection (2) or (3), the question whether a publication is a terrorist publication must be determined —

(a) as at the time the defendant allegedly carried out the act the subject of the offence; or

(b) having regard to the whole contents of the publication and to the circumstances in which the defendant allegedly carried out the act.

(6) In proving the commission of an offence under subsection (2) or (3), the following is immaterial —

(a) whether all or some of the persons to whom the terrorist publication became available likely understood that the publication —

(i) was directly or indirectly encouraging or otherwise inducing a person to commit, prepare for or instigate a terrorist act; or

(ii) was providing assistance for committing or preparing for a terrorist act; and

(b) whether, as a consequence of the defendant's alleged act, a person was —

(i) directly or indirectly encouraged or otherwise induced to commit, prepare for or instigate a terrorist act; or

(ii) provided assistance for committing or preparing for a terrorist act.

(7) It is a defence for a person charged with an offence under subsection (2)(a) or (3)(a) to show that —

(a) the terrorist publication the subject of the alleged offence did not express the person's views or ideology or the person did not publically express support for the publication;

(b) in the circumstances of the act the subject of the alleged offence, it is clear that the terrorist publication did not express the person's views or ideology or that the person did not publically express support for the publication; and

(c) the defendant did not carry out the alleged act with the intention that an effect of the act was to directly or indirectly encourage or otherwise induce another person to commit, prepare for or instigate a terrorist act.

577J. Use of information to encourage terrorism

(1) A reference in this section to a statement is a reference to a statement which is likely to be understood by one or more members of the public to whom is it made as directly or indirectly encouraging or otherwise inducing the member or members to commit, prepare for or instigate a terrorist act.

(2) For this section, a statement that is likely to be understood by one or more members of the public as directly or indirectly encouraging or otherwise inducing the member or members to commit, prepare for or instigate a terrorist act is a statement —

(a) which glorifies committing or preparing for a terrorist act or a type of terrorist act (whether a current, future or past act); and

(b) from which one or more members of the public could reasonably be expected to infer that the act or type of act that is gloried is an act or type of act that the member should emulate.

(3) A person commits an offence if the person publishes a statement, or causes another person to publish a statement, with the intention of directly or indirectly encouraging or inducing one or more members of the public to commit, prepare for or instigate a terrorist act.

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

(4) A person commits an offence if the person publishes a statement, or causes another person to publish a statement and, at the time the statement is published, is reckless as to whether the statement will directly or indirectly encourage or induce one or more members of the public to commit, prepare for or instigate a terrorist act.

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

(5) In a proceeding for an offence under this section, a question about how a statement is likely to be understood by a member of the public, or about what a member of the public could reasonably be expected to infer from a statement, must be determined having regard to —

(a) the whole content of the statement;

(b) the circumstances of its publication; and

(c) the manner in which it is published.

(6) It is a defence for a person charged with an offence under this section to show that —

(a) the statement did not express the person's views or ideology or the person did not publically express support for the statement; and

(b) in the circumstances of the statement's publication, it is clear that the statement did not express the person's views or ideology or that the person did not publically express support for the statement.

Other offences relating to terrorism

577K. Possession of article for terrorism

(1) A person commits an offence if the person possesses an article in circumstances which give rise to a reasonable suspicion that the person possesses the article for a purpose connected with committing, preparing for or instigating a terrorist act.

Penalty: Imprisonment for 15 years or a fine, or both.

(2) In proceedings for an offence under this section, the court may assume that the defendant possessed the article if it is proved that an article was —

- (a) on premises at the same time as the accused;
- (b) on premises that the accused was occupying; or
- (c) on premises that the accused habitually used other than as a member of the public.

(3) Subsection (2) does not apply if the defendant proves that the defendant —

- (a) did not know that the article was on the premises; or
- (b) had no control over the article.

(4) If a person charged with an offence under this section possesses the article, it is a defence for the person to prove that the person did not possess the article for a purpose connected with committing, preparing for or instigating a terrorist act.

(5) An offence under this section is triable only on indictment.

577L. Preparing for committing terrorist act

(1) In this section —

“person” means a person who intends to —

- (a) commit a terrorist act; or
- (b) assist another person commit a terrorist act.

(2) A person commits an offence if the person does an act in preparation for giving effect to the person's intention.

Penalty: Imprisonment for life.

(3) An offence under this section is triable only on indictment.”.

16.01.19-VA (21.1.19-RC)

27. Section 583 amended (Transitional provisions)

(1) Revoke section 583(2).

(2) In section 583(3), omit “Subsections (1) and (2) do” and replace it with “Subsection (1) does”.

28. Schedule 5 amended (Repealed and disapplied laws)

In Schedule 5, Part A, insert in the appropriate order and format —

“Bribery and Corruption Overseas Ordinance 2006”.

OBJECTS AND REASONS

This Bill amends the Crimes Ordinance 2014 revises and corrects minor errors and inserts new provisions based on developments in the Falkland Islands and in the criminal law in England and Wales to effect procedural amendments and specify new offences.

Clause 1 specifies the title of the Ordinance.

Clause 2 specifies the commencement of the Ordinance.

Clause 3 provides that this Ordinance amends the Crimes Ordinance 2014 which is referred to as “the Ordinance”.

Clause 4 amends section 33 to correct a cross reference.

Clause 5 inserts new section 65A to create an offence of causing grievous bodily harm by gross negligence.

Clause 6 amends section 72 to correct penalties for offences against that section by swapping the penalty specified for subsections (1) and (2).

Clause 7 inserts new section 72A to create an offence for assaulting an emergency worker and is based on the Assaults on Emergency Workers (Offences) Act 2018.

Clause 8 amends section 77 to correct a cross reference.

Clause 9 inserts new sections 85A to 85H to introduce a scheme for safeguarding children from abduction and creates an offence for contravening a child abduction warning order.

Clause 10 amends section 107A to correctly refer to a non-molestation order.

Clause 11 inserts new section 107B to create an offence for engaging in controlling or coercive behaviour by a person towards another person with whom there is an intimate personal relationship, and is based on section 15A of the Sexual Offences Act 2003.

16.01.19-VA (21.1.19-RC)

Clause 12 amends section 108 to correctly refer to sections 102 to 107A.

Clause 13 amends the heading to Part 5 of the Ordinance so include corporate endangerment of life provided for in new section 122A inserted by clause 11.

Clause 14 inserts new section 122A to create an offence of corporate endangerment of life for gross negligence that causes really serious harm, but not death, by an organisation.

Clauses 15, 16, 17, 18, 19, 20, 21, 22, and 23 effect amendments consequential to inserting new section 122A.

Clause 24 inserts new section 217A to create an offence of having a sexual communication with a child and is based on section 15A of the Sexual Offences Act 2003.

Clause 25 effects a typographical amendment to section 302.

Clause 26 inserts new Part 25A to insert 10 new criminal offences dealing with terrorist related activity.

Clause 27 amends section 583 to revoke subsection (2) and remove a reference to subsection (2) in subsection (3) to reflect the practice of charging historic offences.

Clause 28 amends Schedule 5 to the Ordinance to provide for the repeal of the Bribery and Corruption Overseas Ordinance 2006 by listing it in the Schedule.

Criminal Procedure and Evidence (Miscellaneous Amendments) Bill 2019

(No: of 2019)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – PRELIMINARY

1. Title
2. Commencement

**PART 2 – AMENDMENTS OF CRIMINAL PROCEDURE AND
EVIDENCE ORDINANCE 2014**

3. Amendment of Criminal Procedure and Evidence Ordinance 2014
4. Section 259 amended (Proceedings invalid if defendant did not know of them)
5. Section 299 amended (Choice of mode of trial: supplementary provisions)
6. Section 316 amended (Qualification for jury service – Schedule 6)
7. New section 324A (Summoning for jury service in exceptional circumstances)
8. New section 435A (Observing proceedings by live link)
9. Section 563 amended (Duration of sentences of imprisonment)
10. Sections 566 and 567 revoked
11. Section 569 amended (Court by which suspended sentence may be dealt with)
12. Section 574 revoked
13. Section 583 amended (Revocation of licences and recall of prisoners on licence)
14. Section 585 amended (Warrants for imprisonment)
15. Section 605 amended (Disposal of fines and recognisances)
16. Section 627 amended (Rehabilitated persons and spent convictions)
17. Section 633 amended (Exceptions to rehabilitation – Schedule 11)
18. Section 647 amended (Award of costs)
19. Section 664 amended (Appeals against sentence)
20. Section 671 amended (Prosecution appeal from Magistrate’s Court in respect of rulings and sentence)
21. Schedule 11 amended (Exceptions to rehabilitation)

PART 3 – CONSEQUENTIAL AMENDMENTS OF OTHER ORDINANCES

22. Administration of Justice Ordinance 1949 amended
23. Fisheries (Conservation and Management) Ordinance 2005 amended
24. Licensing Ordinance 1994 amended
25. Misuse of Drugs Ordinance 1987 amended
26. Oil in Territorial Waters Ordinance 1960 amended
27. Road Traffic Ordinance 1948 amended

**CRIMINAL PROCEDURE AND EVIDENCE (MISCELLANEOUS
AMENDMENTS) BILL 2019**

(No: of 2019)

(assented to: 2019)

(commencement: on publication)

(published: 2019)

A BILL

for

AN ORDINANCE

To amend the Criminal Procedure and Evidence Ordinance 2014 and to consequentially amend various other Ordinances to apply consistently with the Criminal Procedure and Evidence Ordinance 2014.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 – PRELIMINARY

1. Title

This Ordinance is the Criminal Procedure and Evidence (Miscellaneous Amendments) Ordinance 2019.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

**PART 2 – AMENDMENTS OF CRIMINAL PROCEDURE AND
EVIDENCE ORDINANCE 2014**

3. Amendment of Criminal Procedure and Evidence Ordinance 2014

This Part amends the Criminal Procedure and Evidence Ordinance 2014.

4. Section 259 amended (Proceedings invalid if defendant did not know of them)

In section 259(4), insert “in the Summary Court” after “tried again”.

5. Section 299 amended (Choice of mode of trial: supplementary provisions)

In section 299(1)(g), omit “section 338(1)” and replace it with “section 336(1)”.

6. Section 316 amended (Qualification for jury service – Schedule 6)

In section 316(1)(b)(iii), omit “36 months” and replace it with “12 months”.

7. New section 324A (Summoning for jury service in exceptional circumstances)

After section 324, insert —

“324A. Summoning for jury service in exceptional circumstances

(1) If it appears to a judge that a jury to try an indictment will be, or probably will be, incomplete, the judge may require any persons who are in, or in the vicinity of, the court, to be summoned, without written notice, for jury service up to the number needed to make up a full jury (after allowing for any who may not be qualified under section 316, and for excusals and challenges).

(2) The names of the persons summoned under subsection (1) must be added to the panel for the court sittings and treated as if they were specified on the panel under section 321(1).

(3) If a judge is satisfied that for any reason it is or was not practicable to summon jurors under section 319, the judge may require any persons who are in, or in the vicinity of, the court, to be summoned, without written notice, for jury service up to the number needed to make up a full jury (after allowing for any who may not be qualified under section 316, and for excusals and challenges).

(4) The names of persons summoned under subsection (3) must be treated as if they were specified on a panel prepared for the court sittings under section 321(1).

(5) If a trial is to take place in Stanley, a reference in subsection (1) or (3) to a person being in the vicinity of the court is a reference to the person being within Stanley.”.

8. New section 435A (Observing proceedings by live link)

After section 435, insert —

“435A. Observing proceedings by live link

(1) A court that gives a special measures direction for a witness to give evidence by live link under section 435, may, if it considers it is in the interests of justice to do so, give a direction providing that the witness may, after giving evidence, observe the remainder of the proceedings by live link.

(2) In giving the direction, the court may also provide for the witness to observe the proceedings in the company of a person. The direction must specify who that person is.

(3) In deciding whether to make the direction, and the content of the direction, the court must have regard to the wishes of the witness.

(4) Reference in this section to a live link is a reference to a live link arrangement by which —

(a) the witness is able to see and hear (from a place outside the place where the criminal proceedings are held) a person in the place where the criminal proceedings are held; and

(b) it is not possible for a person to see or hear (from a place outside the place where the witness observes the proceedings) the witness.”.

9. Section 563 amended (Duration of sentences of imprisonment)

(1) In section 563(5), omit “but subject to subsections (6) and (7) as regards partly suspended sentences,”.

(2) Revoke section 563(6) and (7).

10. Sections 566 and 567 revoked

Revoke sections 566 and 567.

11. Section 569 amended (Court by which suspended sentence may be dealt with)

(1) In section 569(1), omit “or a partly suspended sentence”.

(2) In section 569(1)(a), (b) and (c) and (2), omit “or partly suspended sentence”.

12. Section 574 revoked

Revoke section 574.

13. Section 583 amended (Revocation of licences and recall of prisoners on licence)

(1) In section 583(3)(b), omit “section 581(1)” and replace it with “section 582(1).”

(2) Revoke section 583(5).

14. Section 585 amended (Warrants for imprisonment)

In section 585, insert “, or under the hand of the Registrar or Clerk of the Court,” after “at the trial”.

15. Section 605 amended (Disposal of fines and recognisances)

In section 605(1), omit paragraphs (a) and (b) and replace them with —

“(a) firstly, in payment of any damages or compensation so ordered on the conviction to be paid to a person;

(b) secondly, in payment of any costs ordered on the conviction to be paid to the prosecutor;”.

16. Section 627 amended (Rehabilitated persons and spent convictions)

Revoke section 627(5).

17. Section 633 amended (Exceptions to rehabilitation – Schedule 11)

In section 633(8), omit “Section 628(4)” and replace it with “Section 628”.

18. Section 647 amended (Award of costs)

(1) In section 647(1), insert after paragraph (a) —

“(aa) to any person acquitted of any offence, including where the information alleging the offence is withdrawn, dismissed or discontinued;”.

(2) Revoke section 647(4) and replace it with —

“(4) Costs payable to a person pursuant to subsection (1)(aa) are payable out of the Consolidated Fund.”.

(3) Revoke section 647(7).

19. Section 664 amended (Appeals against sentence)

In section 664, insert, after subsection (2) —

“(2A) If the Supreme Court hears an appeal against a sentence passed by the Magistrate’s Court or the Summary Court, the Supreme Court must allow the appeal if the Court thinks that the sentence is manifestly excessive.”.

20. Section 671 amended (Prosecution appeal from Magistrate’s Court in respect of rulings and sentence)

(1) In section 671(1)(b), omit “10 years or more” and replace it with “12 months or more”.

(2) Omit section 671(2)(c) and replace it with —

“(c) that the sentence imposed was unduly lenient.”.

21. Schedule 11 amended (Exceptions to rehabilitation)

(1) In Schedule 11, Part 4, add after paragraph 4 —

“5. Taxi driver’s permits issued under the Road Traffic (Taxi Drivers’ Permits) Order 2013.”.

(2) In Schedule 11, Part 5, add after paragraph 14 —

“15. Proceedings relating to a taxi driver’s permit issued under the Road Traffic (Taxi Drivers’ Permits) Order 2013.”.

PART 3 – CONSEQUENTIAL AMENDMENTS OF OTHER ORDINANCES

22. Administration of Justice Ordinance 1949 amended

(1) This section amends the Administration of Justice Ordinance 1949.

(2) In Schedule 2, paragraph 4, omit “under the Administration of Justice Ordinance 1949” and replace it with “under the Criminal Procedure and Evidence Ordinance 2014”.

23. Fisheries (Conservation and Management) Ordinance 2005 amended

(1) This section amends the Fisheries (Conservation and Management) Ordinance 2005.

(2) Revoke section 2(3).

24. Licensing Ordinance 1994 amended

(1) This section amends the Licensing Ordinance 1994.

(2) Revoke section 76(13).

(3) In Schedule 2, paragraph 3(a), omit “Government Secretary” and replace it with Chief Executive”.

25. Misuse of Drugs Ordinance 1987 amended

(1) This section amends the Misuse of Drugs Ordinance 1987.

(2) Revoke section 23.

26. Oil in Territorial Waters Ordinance 1960 amended

(1) This section amends the Oil in Territorial Waters Ordinance 1960.

(2) Revoke section 6.

27. Road Traffic Ordinance 1948 amended

(1) This section amends the Road Traffic Ordinance 1948.

(2) Revoke section 58.

OBJECTS AND REASONS

This Bill amends —

(a) the Criminal Procedure and Evidence Ordinance 2014 to abolish partly suspended sentences, reinstate the power of talesman, regulate the allocation of cases, reduce the residential qualification to be eligible to sit on a jury and clarify appeals against sentence; and

(b) the Administration of Justice Ordinance 1949, the Fisheries (Conservation and Management) Ordinance 2005, the Licensing Ordinance 1994, the Misuse of Drugs Ordinance 1987, the Oil in Territorial Waters Ordinance 1960 and the Road Traffic Ordinance 1948 consequentially to be consistent with the Criminal Procedure and Evidence Ordinance 2014.

Clause 1 specifies the title of the Ordinance.

Clause 2 specifies the commencement of the Ordinance.

Clause 3 provides that the Ordinance amends the Criminal Procedure and Evidence Ordinance 2014.

Clause 4 amends section 259 of the Criminal Procedure and Evidence Ordinance 2014 to ensure that void proceedings under subsection (1) cannot be tried again in the Summary Court by any of the same justices.

Clause 5 amends section 299 of the Criminal Procedure and Evidence Ordinance 2014 to correct the cross reference to section 336(1).

Clause 6 amends section 316 of the Criminal Procedure and Evidence Ordinance 2014 to change eligibility for jury service to being ordinarily resident in the Falkland Islands for the preceding 12 months.

Clause 7 inserts new section 324A into the Criminal Procedure and Evidence Ordinance 2014 to insert the power to summons for jury service in exceptional circumstances as it was provided for in the repealed Jury Ordinance.

Clause 8 inserts new section 435A into the Criminal Procedure and Evidence Ordinance 2014 to enable witnesses to observe the remainder of proceedings by live link after they have given evidence if the court determines it is in the interests of justice to do so.

Clause 9 amends section 563 of the Criminal Procedure and Evidence Ordinance 2014 to remove references to partly suspended sentences.

Clause 10 repeals sections 566 and 567 of the Criminal Procedure and Evidence Ordinance 2014 to remove the power to pass partly suspended sentences.

Clause 11 amends section 569 of the Criminal Procedure and Evidence Ordinance 2014 to remove references to partly suspended sentences.

Clause 12 repeals section 574 of the Criminal Procedure and Evidence Ordinance 2014 to remove references to partly suspended sentences.

Clause 13 amends section 583 of the Criminal Procedure and Evidence Ordinance 2014 to correct a reference to section 582(1) and remove references to partly suspended sentences.

Clause 14 amends section 585 of the Criminal Procedure and Evidence Ordinance 2014 to include reference to the Registrar or Clerk of the Court and assist court administration.

Clause 15 amends section 605 of the Criminal Procedure and Evidence Ordinance 2014 to correct the order in which payments out of court are to be made so that payment of damages or compensation is to be paid before payment of costs to the prosecutor.

Clause 16 amends section 627 of the Criminal Procedure and Evidence Ordinance 2014 to remove references to partly suspended sentences.

Clause 17 amends section 633 of the Criminal Procedure and Evidence Ordinance 2014 so that it correctly refers to the whole of section 628.

Clause 18 amends section 647 of the Criminal Procedure and Evidence Ordinance 2014 to enable the court to make no fault defence costs orders.

Clause 19 amends section 664 so that the Supreme Court must allow an appeal against a sentence it thinks is manifestly excessive.

Clause 20 amends section 671 to enable the prosecution to appeal a sentence imposed on a person convicted of an offence for which the maximum penalty is imprisonment for 12 months, and to make an appeal on the ground that the sentence is unduly lenient.

Clause 21 amends Schedule 11 of the Criminal Procedure and Evidence Ordinance 2014 so that taxi driver permits are added to the list of exceptions in Part 4 and Part 5.

Clause 22 amends Schedule 2 to the Administration of Justice Ordinance 1949 to omit the reference to that Ordinance and replace it with reference to the Criminal Procedure and Evidence Ordinance 2014.

Clause 23 amends section 2 of the Fisheries (Conservation and Management) Ordinance 2005 to revoke subsection (3) because the jurisdiction of the Summary Court and Magistrate's Court is now under the Criminal Procedure and Evidence Ordinance 2014.

Clause 24 amends the Licensing Ordinance 1994 —

(a) by revoking section 76(13), as the principles for sentencing are now specified in the Criminal Procedure and Evidence Ordinance 2014; and

(b) by omitting the reference to the Government Secretary in Schedule 2 to the Ordinance and replacing it with reference to the Chief Executive.

Clause 25 amends the Misuse of Drugs Ordinance 1987 to repeal section 23 because the manner of trial is now prescribed by the Criminal Procedure and Evidence Ordinance 2014.

Clause 26 amends the Oil in Territorial Waters Ordinance 1960 to repeal section 6 because the jurisdiction of the Summary Court and Magistrate's Court is now under the Criminal Procedure and Evidence Ordinance 2014.

Clause 27 amends the Road Traffic Ordinance 1948 to repeal section 58 because the jurisdiction of the Summary Court and Magistrate's Court is now under the Criminal Procedure and Evidence Ordinance 2014.

SUBSIDIARY LEGISLATION

Administration of Justice (Payments to Jurors and Witnesses) (Amendment) Rules 2019

S. R. & O. No. of 2019

Arrangement of Provisions

Rule

1. Title
2. Commencement
3. Rules amend Administration of Justice (Payments to Jurors and Witnesses) Rules 2016
4. Rule 4 amended (Scope of rules and general provisions)
5. Rule 8 amended (Allowances to jurors and witnesses, other than professional or expert, and to others for attendance)
6. Rule 9 amended (Subsistence allowances to jurors, witnesses, other than professional or expert, and to others)

SUBSIDIARY LEGISLATION

Administration of Justice (Payments to Jurors and Witnesses)(Amendment) Rules 2019

S. R. & O. No. of 2019

Made: 2019

Published: 2019

Coming into force: on publication

I make these rules under section 60 of the Administration of Justice 1949, on the advice of the Executive Council.

1. Title

These Rules are the Administration of Justice (Payments to Jurors and Witnesses) (Amendment) Rules 2019.

2. Commencement

These Rules come into force on publication in the *Gazette*.

3. Rules amend Administration of Justice (Payments to Jurors and Witnesses) Rules 2016

These Rules amend the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016.

4. Rule 4 amended (Scope of rules and general provisions)

(1) In rule 4(1)(a), omit “at the instance of the Attorney General”.

(2) In rule 4(1)(c), omit “for the purpose of the prosecution’s case” and “at the instance of the Attorney General”.

(3) In Rule 4(1), omit “conducted by the Attorney General in the discharge of the Attorney General’s functions under section 72 of the Constitution”.

5. Rule 8 amended (Allowances to jurors and witnesses, other than professional or expert, and to others for attendance)

In rule 8(2)(c), omit “the prosecution’s case” and replace it with “a case”.

6. Rule 9 amended (Subsistence allowances to jurors, witnesses, other than professional or expert, and to others)

In rule 9(3)(c), omit “the prosecution’s case” and replace it with “a case”.

Made

2019

N. J. Phillips C.B.E.,
Governor.

EXPLANATORY NOTE
(not forming part of these rules)

Rules 4, 8 and 9 of the Administration of Justice (Payments to Jurors and Witnesses) Rules 2016 are amended so that they apply to both prosecution and defence witnesses.

SUBSIDIARY LEGISLATION

Coroners (Amendment) Rules 2019

S. R. & O. No. of 2019

Made: 2019

Published: 2019

Coming into force: on publication

I make these rules under section 60 of the Administration of Justice Ordinance 1949 on the advice of the Executive Council.

1. Title

These Rules are the Coroners (Amendment) Rules 2019.

2. Commencement

These Rules come into force on publication in the *Gazette*.

3. Rules amend Coroners Rules 1995

These Rules amend the Coroners Rules 1995.

4. Rule 46 amended (Excusal for certain persons and discretionary excusal)

In rule 46(1), omit “Parts I and III of the Schedule to the Jury Ordinance” and replace it with “Schedule 6 to the Criminal Procedure and Evidence Ordinance 2014”.

Made 2019

N. J. Phillips CBE,
Governor.

EXPLANATORY NOTE
(not forming part of these rules)

These Rules update rule 46 of the Coroners Rules 1995 by omitting a reference to the Jury Ordinance 1949, which has been repealed, and replacing it with a reference to the Criminal Procedure and Evidence Ordinance 2014.