

Falkland Islands Environment Trust Bill 2020

(ORDINANCE No. OF 2020)

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Falkland Islands Environment Trust Bill 2020

(assented to:)
(commencement: in accordance with section 1)
(published:)

A BILL

for

AN ORDINANCE

To establish the Falkland Islands Environment Trust, responsible for managing payments received from contributors; to provide for applications for funding by persons engaging in an activity that promotes environmental management, and conservation and enhancement of the environment for the benefit of the Falkland Islands; and to provide for connected matters.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 - PRELIMINARY

1. Title and commencement

- (1) This Ordinance is the Falkland Islands Environment Trust Ordinance 2020.
- (2) This Ordinance comes into operation on a day appointed by the Governor by notice in the *Gazette*.

2. Interpretation

In this Ordinance —

“**activity**” means an activity that a person engages in or intends to engage in, that promotes or advances the purpose of the Trust stated in section 4;

“**biodiversity**” means the variety of genes, species and ecosystems in the environment;

“**Board**” means the Board of Trustees appointed under section 7;

“**Chief Executive**” means the Chief Executive referred to in section 83 of the Constitution;

“**contributor**” means a person who makes a payment to the Trust;

“**controlled waters**” has the same meaning as given in the Offshore Minerals Ordinance 1994;

“**environment**” means the natural environment of the Falkland Islands including the controlled waters;

“**financial year**” means the twelve months ending on the thirtieth day of June in any year;

“**MLA**” means an elected Member of the Legislative Assembly;

“**offsetting payment**” means a payment made to the Trust to compensate for negative impacts on the environment which were caused by or resulted from that contributor’s operations;

“**payment**” means an offsetting payment, a gift or any other contribution to the Trust whether monetary or not;

“**Secretary**” means the Secretary of the Trust appointed under section 17;

“**special funds**” means a payment that is made subject to a condition that the money is to be used in a particular manner or for a particular purpose;

“**Trustee**” means a member of the Board; and

“**the Trust**” means the Falkland Islands Environment Trust established under section 3.

PART 2 - ESTABLISHMENT, FUNCTIONS AND BOARD

3. The Trust

(1) There is established the Falkland Islands Environment Trust.

(2) The Trust is a body corporate and may sue or be sued in its own name.

4. Purpose of Trust

(1) The purpose of the Trust is to receive and manage payments to be used for the support of persons engaged in or who intend to engage in the conservation, management and enhancement of the environment for the benefit of present and future generations of the Falkland Islands.

(2) Without limiting the generality of subsection (1), the Trust may support persons engaged in activities that —

(a) offset negative environmental impacts;

(b) benefit biodiversity; or

(c) are incidental to activities set out in paragraphs (a) or (b).

(3) The Trust must ensure that special funds are used for the purpose requested by the contributor.

(4) The Trust must consider Government policies and contributors’ priorities in carrying out the purposes of the Trust.

5. Functions of Trust

(1) Subject to subsection (2), the Trust has the following functions —

(a) receive and assess applications for funding under this Ordinance;

(b) award grants to applicants that qualify for funding under this Ordinance;

- (c) monitor and support a person engaged in an activity for which the Trust has awarded a grant;
- (d) keep records of all the money that is received and paid out as grants;
- (e) accept payments for the purposes of the Trust;
- (f) acquire and dispose of property;
- (g) employ on such terms as it thinks fit, any person to discharge any of the purposes of the Trust;
- (h) engage persons, whether or not for reward, on such terms as the Trust considers necessary, to advise in relation to, or to discharge, any of the functions of the Trust;
- (i) accept the services of any person upon secondment by their employer on such terms as may be agreed between the Trust and that employer;
- (j) invest surplus funds in an interest bearing account in the Falkland Islands or, with the consent of the Governor, in another location;
- (k) open and maintain bank accounts in the Falkland Islands and, with the consent of the Governor, overseas;
- (l) provide advice to the Government and others on the purposes of the Trust; and
- (m) promote interest and knowledge in the purposes of the Trust.

(2) The Trust must not expend or commit the expenditure for any of its purposes beyond funds currently available to it or which will, to the knowledge of the Trust, be available to it before the expenditure in question falls to be met.

(3) The Trust may borrow money for any of the purposes set out in subsection (1) with the consent of, and only on terms and conditions approved by the Governor.

6. Board of Trustees

- (1) The management of the affairs of the Trust will be carried out by the Board of Trustees.
- (2) The Board may authorise a person referred to in section 5(1)(f) and (g) to exercise any of the functions of the Trust.
- (3) Subsection (2) does not prevent the Board from carrying out the function itself.

7. Trustees

- (1) The Board will be composed of not less than seven and not more than nine Trustees appointed by the Governor as follows —
 - (a) a Chairperson who has an interest in, and experience and knowledge of, the Falkland Islands environment;
 - (b) one person from a list of persons nominated by contributors;

- (c) one person to represent the Government, who is either a public officer nominated by the Chief Executive or an MLA nominated by the MLAs collectively; and
 - (d) the rest of the Trustees being people with skills and interests that will promote the purposes of the Trust, including but not limited to science, management, finance, administration and law.
- (2) The Governor may not appoint a person under subsection (1)(a), (b) or (d), who has been —
- (a) sentenced to a custodial sentence for a period of three months or more;
 - (b) convicted of an offence involving dishonesty which is unspent as provided under Part 29 of the Criminal Procedure and Evidence Ordinance 2014;
 - (c) removed as a Trustee by an order of court for reasons of misconduct in connection with that trust; or
 - (d) adjudged bankrupt.
- (3) A Trustee is eligible for reappointment at the end of their term of office.

8. Additional provisions relating to the Trust and Board

- (1) Additional provisions relating to the Trust and Board are set out in Schedule 1.
- (2) The Governor may amend Schedule 1 by regulations made under section 20.

PART 3 - PAYMENTS AND APPLICATIONS FOR FUNDING

9. Payments by contributors

- (1) Any person may make a payment to the Trust for any of its purposes set out in section 4.
- (2) Payment may be a lump sum or be made periodically in instalments.
- (3) A contributor of special funds may specify how a payment under subsection (1) should be used.
- (4) A contributor may claim a refund of special funds that are not used in accordance with the specification of the contributor.

10. Application for funding

- (1) The Trust may give financial support through grants to an applicant who is engaged or intends to engage in an activity.
- (2) Any person who is engaged or intends to engage in an activity may apply to the Trust for a grant to fund or assist with funding that activity.
- (3) Financial support under this section may be given subject to conditions and the conditions may include repayment of a grant to the Trust in the event of failure by a person to deliver on an activity in a manner that satisfies the Trust.

- (4) The Board must develop a policy on the matters set out in Schedule 2.
- (5) The policy must provide for a fair and transparent process for considering applications for funding activities.
- (6) The Board must make arrangements for the publication of the policy in any way that makes it easily accessible to members of the public.
- (7) The Governor may amend Schedule 2 by regulations made under section 20.

PART 4 - FINANCIAL PROVISIONS OF THE TRUST

11. Funds of the Trust

- (1) The funds of the Trust consist of —
 - (a) payments made to it by any person;
 - (b) income received by it in relation to any investment of any of its funds;
 - (c) money borrowed by the Trust in accordance with section 5(3); and
 - (d) any other income received by the Trust from any source whatsoever.
- (2) There may be granted or lent to the Trust out of the Consolidated Fund such sums as are appropriated in accordance with law for the purpose.

12. Accounts of the Trust

- (1) The Trust must keep books of accounts to record the income, expenditure, source of funds, assets and liabilities of the Trust and must prepare in each financial year, a statement of the accounts.
- (2) The Board may prepare guidelines to assist in the keeping of financial records.
- (3) Where the Trust has received special funds, the Trust must in its books of account keep records necessary to separate the money from —
 - (a) funds available for expenditure on the purposes of the Trust generally; and
 - (b) other funds of the Trust to be used in another particular manner or for another particular purpose.
- (4) The Trust must record expenditure of special funds in such manner as to enable the expenditure attributable to special funds to be readily identified.

13. Audit

- (1) The Board must facilitate the audit of the accounts of the Trust in accordance with arrangements made by the Governor under section 80 of the Constitution.
- (2) The accounts of the Trust must be audited each financial year, within six months of the end of the financial year.

(3) The auditor arranged under subsection (1) must report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on.

14. Annual report and financial statements

(1) Following the end of each financial year, the Trust must prepare an annual report consisting of —

- (a) a report on its work during the financial year; and
- (b) its financial statements for the financial year, which must be audited in accordance with arrangements made under section 13.

(2) The Secretary must submit copies of the annual report and financial statements to the Governor.

15. Tax exemption

For the avoidance of doubt, the Trust qualifies for exemption from any form of taxation in the Falkland Islands under section 57(1)(c) of the Taxes Ordinance 1997.

PART 5 - MEETINGS AND SECRETARY

16. Meetings of the Board

(1) Subject to subsection (2), the Chairperson of the Board presides at all meetings of the Board.

(2) If the Chairperson is absent from a meeting of the Board, the Trustees present must elect one of their number to chair that meeting, and the person so elected exercises the powers of the Chairperson.

17. Secretary

(1) The Board must appoint a person who may be one of their number, excluding the Chairperson, to be the Secretary of the Trust.

(2) The Secretary must carry out corporate functions and duties as directed by the Board in addition to functions given under this Ordinance.

(3) The Secretary may attend all meetings of the Board, but may not vote upon any matter at any meeting if they are not a Trustee.

(4) The Secretary has custody of and is responsible for the safekeeping of all records of the Trust and must prepare or cause to be prepared minutes of all meetings of the Trust.

PART 6 - GENERAL

18. Contracts by the Trust

- (1) This section deals with the formalities required for contracts being made by the Trust and making a contract includes varying it or discharging it.
- (2) In the case of contracts being made by deed, the Trust must make them by means of a deed sealed in accordance with paragraph 1 of Schedule 1.
- (3) In the case of contracts being made in writing (but not by deed), the Trust may make them by means of a document signed by a person who has express or implied authority to act on behalf of the Trust.
- (4) In the case of contracts being made in some other way, the Trust may make them through the actions of a person who has express or implied authority to act on behalf of the Trust.
- (5) Any instrument required by law to be under seal is sufficiently executed if it is executed under the common seal of the Trust in accordance with paragraph 1(3) of Schedule 1.
- (6) Subject to subsection (7), all cheques and other bills of exchange drawn by or on behalf of the Trust must be signed by two Trustees or by one Trustee and the Secretary.
- (7) A cheque or other bill of exchange drawn by the Trust for a sum not exceeding £1,000 may be signed by one Trustee or by the Secretary.

19. Notices, etc.

- (1) Any notice, legal process or other document required to be served upon the Trust is validly served if served upon or sent by post to the Secretary at the Secretary's usual address or place of business and, if sent by post, addressed to the Secretary in their capacity as Secretary of the Trust.
- (2) Any notice or other document expressed to be sent by or on behalf of the Trust may be signed by any Trustee or by the Secretary.
- (3) The Board must make arrangements for the publication of its address and contact details in a way that make them accessible to the public.

20. Regulations

The Governor after consulting the Board may make regulations for any of the following purposes—

- (a) to prescribe the forms of records and other documents to be kept by the Trust;
- (b) to prescribe expenses payable to Trustees in connection with the business of the Trust; and
- (c) to amend Schedules 1 or 2 to this Ordinance.

SCHEDULE 1 - Additional Provisions relating to the Trust and Board

section 8

1. Seal

- (1) The Trust must have a seal the nature of which is to be determined by the Board.
- (2) The Secretary must keep the seal.
- (3) The Chairperson (or any person authorised in that behalf by a resolution of the Board) must authenticate the affixing of the seal.

2. Staff

- (1) The Board must ensure good corporate governance of the Trust.
- (2) The Board must prepare guidelines or manuals for staff on subjects including human resources, job descriptions, financial provisions and other matters relevant to the efficient operation of the Trust.

3. Tenure of office of Trustees

- (1) A Trustee referred to in section 7(1)(a), (b) and (d) holds office for a period not exceeding four years as specified in the Trustee's instrument of appointment.
- (2) The Governor must ensure that the periods for which Trustees are appointed are staggered and the interests that they represent are varied, in such a way that a quorum can be achieved at all times.

4. Removal and suspension of Trustees

- (1) The Governor may, in writing, remove a Trustee from the Board if the Trustee —
 - (a) referred to in section 7(1)(a), (b) and (d) —
 - (i) engages in conduct that in the opinion of the Governor, brings the Trust into disrepute;
 - (ii) is sentenced to a custodial sentence for a period of three months or more, either immediately or suspended for a period or until the happening of some other event; or
 - (iii) is adjudged bankrupt or
 - (b) referred to in section 7(1)(c) vacates the office by virtue of which they are a Trustee.
- (2) A Trustee may only be removed under subparagraph (1)(a) after a fair process appropriate to the circumstances.
- (3) The Governor may suspend a Trustee from the Board while the process referred to in sub-paragraph (2) is underway.

5. Resignations

A Trustee may resign from office by giving 30 days' notice in writing to the Governor.

6. Meeting of Board

- (1) Subject to the provisions of this Ordinance, the Board will regulate its own proceedings.
- (2) The Board must meet at least two times annually.
- (3) Three Trustees form a quorum at any meeting of the Board.
- (4) No business may be transacted at any meeting of the Board at which there is no quorum except to adjourn that meeting.
- (5) A decision of the Board on any question must be by the majority of the Trustees voting at the meeting and, in the event of an equality of votes, the Trustee presiding has a casting vote in addition to that person's deliberative vote.
- (6) The validity of anything done by the Board will not be affected even if there are one or more vacancies on it.

7. Registration of interests by Trustees

- (1) Before taking part in the proceedings of the Trust, a Trustee must complete and furnish to the Secretary in writing in the form approved by the Board, the particulars of the Trustee's registrable interests.
- (2) A registrable interest includes information on any benefit which a Trustee receives and which might be considered to influence actions taken in their capacity as a Trustee.
- (3) Further provision relating to registrable interests and declaration of interests may be set out in the Code of Conduct referred to in paragraph 10.

8. Attendance at Board meetings

The Board may invite other persons to attend any of its meetings and such persons may speak at the meeting but they are not entitled to vote.

9. Remuneration of Trustees

Trustees must not receive any remuneration from the Trust but they may be reimbursed for reasonable expenses they incur in the course of their duties.

10. Code of Conduct

- (1) The Board must adopt (and keep under review) a Code of Conduct for the Trustees.
- (2) The Code of Conduct must include provisions dealing with —
 - (a) what constitutes registrable interests by Trustees; and
 - (b) resolving conflict of interest.

SCHEDULE 2 – Matters to be included in policy

section 10

The following matters must be included in the policy of the Trust —

- (a) when it will consider applications for funding;
- (b) how applications are assessed;
- (c) information to be included in support of an application for funding;
- (d) how applicants are notified of the decision of the Board;
- (e) environmental priorities for funding by the Trust; and
- (f) implementation, monitoring and evaluation of activities.

OBJECTS AND REASONS

Background

The Bill establishes a Trust that will receive and manage money paid to it by contributors. It is anticipated that companies that are engaged in operations that result in environmental impacts that cannot be avoided or mitigated will make contributions that will be managed by the Trust. The contributions will be used to give financial support to persons engaged in or intending to engage in activities that benefit the Falkland Islands environment. The Trust will also provide a means for other persons (including Government) to contribute funds for the purpose of the Trust.

Part 1 of the Bill provides for preliminary matters i.e. title, commencement and interpretation.

Part 2 establishes the Trust in *clause 3*. *Clause 4* sets out the purpose of the Trust. The Trust will support through grants persons engaged in, or intending to engage in, the conservation, management and enhancement of the environment for the benefit of present and future generations of the Falkland Islands. Without limiting this general purpose, the Trust may specifically support persons engaged in activities that offset negative environmental impacts, benefit biodiversity or are incidental to those activities such as education or research. *Clause 5* provides for the functions of the Trust. The Trust will receive and consider applications for funding from persons engaged in activities as provided in *clause 4*. Where funding is approved, the Trust must ensure that the funds are used for the intended purpose through monitoring. The Trust can claim a refund from a person who does not deliver on an activity to the satisfaction of the Trust.

The affairs of the Trust will be managed by a Board of Trustees composed of not less than seven and not more than nine Trustees, *clauses 6* and *7*. Trustees are appointed by the Governor and one is a representative of the Government who is either an MLA nominated by the MLAs collectively or a public officer nominated by the Chief Executive. The chairperson must have an interest in, experience and knowledge of the Falkland Islands environment. The Trustees must have relevant skills and interests that will benefit the purposes of the Trust including but not limited to science, management, finance, administration and law. A person

specified in clause 7(2) does not qualify for appointment. Trustees are eligible for reappointment.

Part 3 provides for payments into the Trust and applications for funding. Payments are contributory or can be earmarked for a specific purpose, *clause 9*. Special funds must be used for the purpose requested by the contributor. A contributor may claim a refund from the Trust if their contribution is not used in accordance with their request.

Clause 10 deals with applications for funding by any person who is engaged in or intending to engage in an activity that promotes the purposes of the Bill. The Board must issue a policy on the procedures for submitting applications and the assessment criteria. Some of the matters to be included in the policy are in Schedule 2.

Part 4 deals with the finances and accounts of the Trust. The main source of funds is payments made to the Trust by contributors. Money may also be appropriated to the Trust from the Consolidated Fund, *clause 11*.

Clause 12 provides for the accounts of the Trust and the requirement to keep financial records. Under *clause 13*, the financial records and statements must be audited in accordance with section 80 of the Constitution. The auditor must produce an audit report. The Trust must prepare an annual report and financial statements. The Secretary of the Trust must submit copies of the financial statements to the Governor. *Clause 15* affirms that the income of the Trust is exempt from tax under section 57(1)(c) of the Taxes Ordinance.

Part 5: Meetings of the Board must be chaired by the Chairperson and in the absence of the Chairperson, by a Trustee elected by Trustees present. The Board must appoint a Secretary who may or may not be a Trustee. The Secretary performs the functions set out in *clause 17*.

Part 6 deals with general matters (contracts by the Trust, notices, and regulations), *clauses 18, 19, and 20*.

Schedule 1 contains additional provisions relating to the Trust and the Board. *Schedule 2* sets out matters that must be included in policy. Both Schedules may be amended through regulations made under clause 20