

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title of Report:** Standard scale of fines – review and proposed increase  
**Paper No:** 116/11  
**Date:** 28 April 2011  
**Report of:** Legislative Drafter

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### 1.0 Purpose

The purpose of this paper is to submit, for Executive Council's approval, a draft order increasing the standard scale of fines to take account of inflation since 2001.

### 2.0 Recommendations

Executive Council is recommended:

- (a) to approve the draft order annexed to this paper; and
- (b) to advise the Governor that he should make it.

### 3.0 Summary of Financial Implications

None

### 4.0 Background

4.1 In many (though by no means all) cases, Falkland Islands legislation provides that the maximum fine that can be imposed for offences against it is linked to the standard scale of fines in section 11 of the Criminal Justice Ordinance.

4.2 The purpose of linking a maximum fine to a level on a standard scale rather than fixing an amount in money terms is to ensure that the maximum fine can be kept up to date with changes in the value of money (which usually means keeping pace with inflation).

4.3 A standard scale of fines was introduced in the Falkland Islands in 1993 and updated in 2001.

4.4 To the extent that the maximum fines for offences are still fixed in money terms rather than being linked to the standard scale, that is currently being addressed on a sporadic basis. A comprehensive project to review the maximum penalties for all offences remains nothing more than a long term aspiration for now.

4.5 However, the existing standard scale of fines still needs to be kept under review. Since 2001 (when the standard scale of fines was last revised), the Retail Prices Index has increased by just over 35%.

4.6 When the standard scale was revised in 2001, there was an adjustment in the levels of the scale that went beyond simply increasing each level in line with inflation and the relationships between some of the levels changed. However, it is no longer clear why this was done or on what basis it was done.

4.7 Some consideration was given to reconsidering the entire basis of the standard scale and one option might have been to make the scale logarithmic with each level being double the one below.

4.8 However, a less ambitious approach is being proposed in which the adjusted values of the 1993 and 2001 levels have been considered and a round (or fairly round) figure chosen accordingly. The calculations are shown in the table at Annex A.

- The suggested increases for levels 2-9 are fairly consistent with the 35% increase in RPI since 2001.
- The increase for level 1 is higher but this is skewed by rounding and the need to ensure that a realistic maximum penalty is available to justify prosecution in appropriate cases, even for level 1 offences.
- For levels 10-12, the proposed increase (25%) is below inflation.<sup>1</sup>

## **5.0 The draft order**

5.1 There is power in section 11 of the Criminal Justice Ordinance for the Governor to vary the standard scale of fines.

5.2 That means that the standard scale of fines can be updated relatively straightforwardly, by means of an order rather than a Bill.

5.3 Annex B is a draft of the order that has been prepared with a view to implementing the proposed change to the standard scale.

5.4 It is proposed that the order should be brought into force from 15 May 2011. In order to comply with section 6(5) of the Constitution, the amendment that would be made by the order expressly provides that the new standard scale would only to apply to offences committed on or after 15 May – the existing standard scale would continue to apply to offences committed before that date.

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<sup>1</sup> Research suggests that the only offences that attract fines at these levels are fisheries offences and imprisonment and/or forfeiture (potentially a much more significant penalty than even a level 12 fine) can also be imposed for these offences. The Director of Natural Resources was specifically asked to confirm that the proposed new fines would provide a sufficient deterrent against fisheries offences and indicated that they should do.

## **6.0 Financial Implications**

None

## **7.0 Legal Implications**

The legal implications of this paper are set out in the body of the paper.

## **8.0 Human Resources Implications**

None

<b>Level</b>	<b>1989 amount</b>	<b>2001 amount</b>	<b>1989 rpi adjusted</b>	<b>2001 rpi adjusted</b>	<i>Suggested amount</i>
1	£50	£200	£104.95	£271.00	<i>£250</i>
2	£100	£350	£209.90	£474.25	<i>£500</i>
3	£400	£800	£839.60	£1,084.00	<i>£1,000</i>
4	£1,000	£1,500	£2,099.00	£2,032.50	<i>£2,000</i>
5	£2,000	£3,000	£4,198.00	£4,065.00	<i>£4,000</i>
6	£6,000	£7,500	£12,594.00	£10,162.50	<i>£10,000</i>
7	£10,000	£12,500	£20,990.00	£16,937.50	<i>£17,500</i>
8	£15,000	£17,500	£31,485.00	£23,712.50	<i>£25,000</i>
9	£25,000	£35,000	£52,475.00	£47,425.00	<i>£50,000</i>
10	£50,000	£100,000	£104,950.00	£135,500.00	<i>£125,000</i>
11	£100,000	£200,000	£209,900.00	£271,000.00	<i>£250,000</i>
12	£250,000	£500,000	£524,750.00	£677,500.00	<i>£625,000</i>

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SUBSIDIARY LEGISLATION

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CRIMINAL JUSTICE

**Criminal Justice (Revised Standard Scale of Fines) Order 2011**

S. R. & O. No. of 2011

*Made: ..... 2011*

*Published: ..... 2011*

*Coming into force: 1 May 2011*

I make the following order under section 11(5) of the Criminal Justice Ordinance (Title 24.1) on the advice of the Executive Council.

**1. Title**

This order is the Criminal Justice (Variation of Fines) Order 2011.

**2. Commencement**

This order comes into force on 15 May 2011.

**3. Section 11(2) of the Criminal Justice Ordinance substituted – revised standard scale of fines**

Section 11(2) of the Criminal Justice Ordinance is repealed and the following subsection substituted —

“(2) The standard scale of fines for offences committed on or after 15 May 2011 is —

<i>Level</i>	<i>Amount</i>
1	£250
2	£500
3	£1,000
4	£2,000
5	£4,000
6	£10,000
7	£17,500
8	£25,000
9	£50,000
10	£125,000
11	£250,000

12

£625,000”

Made

2011

N.R. Haywood,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of the order)*

Section 11 of the Criminal Justice Ordinance (Title 24.1) deals with the standard scale of fines for criminal offences.

The standard scale of fines is set out in subsection (2) and subsection (5) gives the Governor the power to vary it by order.

The standard scale was last updated on 2 April 2001 and the Retail Prices Index has increased by approximately 35% since then. (The RPI on 31 March 2001 was 106.52 and the RPI on 31 December 2010 was 144.36.)

This order will introduce a new standard scale for offences committed on or after 15 May 2011. (The previous scale will continue to apply to offences committed before that date, whenever the court proceedings take place.)

The following table compares the levels on the previous scale with the new scale and also with the previous scale adjusted for inflation since it came into force:

<b>Level</b>	<b>Previous amount</b>	<b>Previous amount (adjusted for inflation)</b>	<b>New amount</b>
1	£200	£271.05	£250
2	£350	£474.33	£500
3	£800	£1,084.19	£1,000
4	£1,500	£2,032.86	£2,000
5	£3,000	£4,065.72	£4,000
6	£7,500	£10,164.29	£10,000

<b>Level</b>	<b>Previous amount</b>	<b>Previous amount (adjusted for inflation)</b>	<b>New amount</b>
7	£12,500	£16,940.48	<i>£17,500</i>
8	£17,500	£23,716.67	<i>£25,000</i>
9	£35,000	£47,433.35	<i>£50,000</i>
10	£100,000	£135,523.85	<i>£125,000</i>
11	£200,000	£271,047.69	<i>£250,000</i>
12	£500,000	£677,619.23	<i>£625,000</i>