

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Criminal Justice (Amendment) Bill
Paper No: 145/11
Date: 24 May 2011
Report of: Attorney General

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for the presentation of a Criminal Justice (Amendment) Bill to the Legislative Assembly at its meeting on 28 May 2011 under a certificate of urgency.

2.0 Recommendations

2.1 Executive Council is recommended to approve the presentation to the Legislative Assembly of the Criminal Justice (Amendment) Bill. The draft Bill is attached to this paper.

2.2 Executive Council is also recommended to advise the Governor to issue a certificate of urgency for the Bill, so that it can be presented when the Legislative Assembly meets on 27 May 2011.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 It was recently discovered that Schedule 3 of the Criminal Justice Ordinance had been repealed by mistake in 2003. This means that important provisions relating to bail in criminal cases do not currently apply (and, indeed, they have not applied since 2003).

4.2 The mistake (which no-one seems to have noticed previously) seems to have arisen from confusion over re-numbering of provisions in a consolidated version of the Criminal Justice Ordinance.

4.3 The intended effect of paragraph 2 of Schedule 1 to the 2003 Ordinance was not to repeal the bail provisions but to repeal entirely different provisions that had

already been disapplied in 2000 by the Criminal Justice (Evidence) Ordinance or that had been duplicated in that Ordinance.

4.4 Similar issues regarding numbering apply to the other amendments that were supposed to have been made in paragraphs 3 and 4 of Schedule 1 to the 2003 Ordinance.

4.5 Paragraph 1 of Schedule 1 to the 2003 Ordinance was simply a standard form provision containing a definition used elsewhere in that Schedule.

4.6 A short Bill has now been drafted to sort all of this out:

- Schedule 1 to the 2003 Ordinance would be treated as if it had never come into force.
- This would reinstate Schedule 3 to Criminal Justice Ordinance (as if it had never been repealed). The bail provisions could then be treated as having continued to apply throughout the period, as everyone had assumed they did.
- The duplicated provisions would also be reinstated but they would be re-repealed as from the date on which the 2003 Ordinance originally came into force.
- The provisions that had been disapplied would not need to be re-repealed because they had already been left out in an update to the Revised Laws.
- The provisions that were supposed to have been amended would be re-amended as from the date on which the 2003 Ordinance originally came into force.

4.7 It is not proposed to re-open previous cases in which the unintended repeal of the bail provisions may have been relevant in the past. That is consistent with the principle of legal certainty.

5.0 Urgency

5.1 The change needs to be made by means of an Ordinance, so a Bill has to be brought before the Legislative Assembly.

5.2 If the Bill is not presented to the Legislative Assembly when it meets on 27 May 2011, there will not be another opportunity for the situation to be sorted out until the end of August, when the Legislative Assembly next meets.

5.3 The issue in relation to the bail provisions has arisen in a case currently before the courts. Although it made no practical difference in that particular case (because the individual concerned was already in custody), the question of bail still needed to be dealt with and still had procedural implications.

5.4 That issue will arise again the next time a serious criminal offence is committed (or alleged). When it does, it is much more likely to make a practical difference.

5.5 Although it must be hoped that no serious criminal offence will be committed between now and the end of August, the situation does need to be sorted out sooner rather than later.

5.6 The other issues are also potentially relevant to procedural aspects of the same case currently before the courts and it is highly desirable that the position is put beyond doubt sooner rather than later.

5.7 In all of the circumstances, it is strongly recommended that the Bill should be considered by the Legislative Assembly now rather than in three months time. For that reason, it is recommended that the Bill should proceed under a certificate of urgency.

6.0 Financial Implications

None

7.0 Legal Implications

The legal implications of this paper are set out in sections 4 and 5.

8.0 Human Resources Implications

None

DRAFT: 13.5.2011 (RMB with input from RCC)

Criminal Justice (Amendment) Bill 2011

(No: of 2011)

(assented to: 2011)

(commencement: on publication)

(published: 2011)

A BILL

for

AN ORDINANCE

To amend the Criminal Justice Ordinance (Title 24.1) as from 27 February 2003.

BE IT ENACTED by the Legislature of the Falkland Islands —

**PART 1
INTRODUCTORY**

1. Title

This Ordinance is the Criminal Justice (Amendment) Ordinance.

2. Commencement

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

**PART 2
SCHEDULE 1 TO THE CRIMINAL JUSTICE ORDINANCE 2003**

3. Schedule 1 to the Criminal Justice Ordinance 2003

Schedule 1 to the Criminal Justice Ordinance 2003 (No. 3 of 2003) is to be treated as if it had never come into force.

**PART 3
AMENDMENT OF THE CRIMINAL JUSTICE ORDINANCE AS FROM 27
FEBRUARY 2003**

4. Amendment of the Criminal Justice Ordinance as from 27 February 2003

This part amends the Criminal Justice Ordinance (Title 24.1) as from 27 February 2003.

5. Section 107 substituted

Section 107 is to be treated as if it had been repealed on 27 February 2003 and the section in the Schedule to this Ordinance substituted on the same date.

6. Section 110 repealed

Section 110 is to be treated as if it had been repealed on 27 February 2003.

7. Section 111(2) amended

Section 111(2) is to be treated as if it had been amended on 27 February 2003 by replacing “newspaper, news agency,” with “news gathering or news reporting organisation or a”.

8. Section 112 repealed

Section 112 is to be treated as if it had been repealed on 27 February 2003.

SCHEDULE

SECTION 107 OF THE CRIMINAL JUSTICE ORDINANCE AS SUBSTITUTED

(section 5)

107. Compellability of accused's spouse

(1) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4), be compellable to give evidence on behalf of that person.

(2) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4) be compellable —

(a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or

(b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the wife or husband of a person charged in any proceedings, an offence is a specified offence for the purpose of subsection (2) if —

(a) it involves an assault on, or injury or a threat of injury to, the wife or husband or a person who was at the material time under the age of sixteen;

(b) it is a sexual offence alleged to have been committed on a person who was at the material time under that age; or

(c) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or paragraph (b) of this subsection.

(4) No person who is charged in any proceedings shall be compellable by virtue of subsection (1) or (2) to give evidence in the proceedings.

(5) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of an offence in the proceedings (whether as a result of pleading guilty or for any other reason).

(6) In any proceedings a person who has been but is no longer married to the accused shall be compellable to give evidence as if that person and the accused had never been married.

(7) In subsection (3), “sexual offence” means an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978 in their respective application to the Falkland Islands.

(8) The failure of the wife or husband of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.

OBJECTS AND REASONS

Schedule 1 to the Criminal Justice Ordinance 2003 (No.3 of 2003) was intended to make several repeals and amendments to provisions in the Criminal Justice Ordinance (Title 24.1).

Intended effects of the 2003 Ordinance

The intention behind paragraph 2 of Schedule 1 to the 2003 Ordinance was to repeal provisions relating to: computer evidence; evidence given by children; and the reporting of proceedings involving children. The provisions relating to children were duplicated in the Criminal Justice (Evidence) Ordinance (Title 24.3). The provisions relating to computer evidence had been covered by a general disapplication provision in the Criminal Justice (Evidence) Ordinance and it was intended to repeal these as a “tidying up” exercise.

Paragraph 3 of Schedule 1 to the 2003 Ordinance was intended to make a textual amendment to what is now section 111(2) of the Criminal Justice Ordinance (dealing with exceptions to the power to clear court).

Paragraph 4 of Schedule 1 to the 2003 Ordinance was intended to substitute into the Criminal Justice Ordinance what would now be section 107 (dealing with the compellability of an accused’s spouse).

Unintended consequence of the 2003 Ordinance

However, owing to confusion over the re-numbering of provisions in the consolidated version of the Criminal Justice Ordinance by Law Revision Order 2002/1, Schedule 3 of the Criminal Justice Ordinance (containing supplementary provisions relating to persons entitled to bail) was repealed in error.

Proposed remedy

Under *clause 3* of this Bill, Schedule 1 to the 2003 Ordinance would be treated as if it had never come into force.

Repeals

This would reinstate all of the provisions repealed by paragraph 2 of Schedule 1 to the 2003 Ordinance (as if they had never been repealed).

Clauses 6 and 8 would then re-repeal the provisions relating to children as from 27 February 2003 (the date on which the 2003 Ordinance originally came into force).

The provisions relating to computer evidence do not need to be re-repealed because the fact that they had been disapplied was reflected in an update to the Revised Laws.

Amendments

Clause 5 (and Schedule 1) and clause 7 would re-make the intended amendments to sections 107 and 111(2) as from 27 February 2003 (the date on which the 2003 Ordinance originally came into force).