

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title of Report:** Proposed Statistics legislation  
**Paper No:** 174/10  
**Date:** 29 July 2010  
**Report of:** Head of Policy/Legislative Drafter

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### 1.0 Purpose

The purposes of this paper are to seek Executive Council's approval for various matters relating to the proposed new statistics legislation.

### 2.0 Recommendations

2.1 Executive Council is recommended to approve in principle the proposed establishment of a Statistical Service within the Policy Unit of FIG and the appointment of the Senior Economic and Statistical Analyst as the Statistician.

2.2 Executive Council is recommended to approve in principle an initial programme for the gathering of information and the publication of annual national accounts and other social, economic and cultural statistics.

2.3 Executive Council is recommended to approve the transfer of responsibility for the five-yearly census from the Registrar General and the Attorney General to the proposed new Statistical Service.

2.4 Executive Council is recommended to approve the publication of the Statistics Bill (in the form of the draft annexed to this paper) in the *Gazette* and its presentation to the Legislative Assembly at its session in October 2010.

2.5 Executive Council is recommended to approve in principle the draft Statistics Order annexed to this paper and to advise the Governor, subject to the passage of the Statistics Bill, to make the order.

### 3.0 Summary of Financial Implications

None

## 4.0 Background

4.1 Statistical information is necessary for the purposes of monitoring and evaluating the economy and for policy and strategic planning.

4.2 There is currently no statistics legislation in the Falkland Islands and no legal requirement for individuals or companies to provide information that can be used as such for the purposes of producing statistics.

4.3 Currently, the only ways of obtaining information (other than information provided voluntarily, which is limited and incomplete) for the purposes of producing statistics are via the five-yearly census or via the Taxation Office.

4.4 Information supplied to the Taxation Office may be used for policy and national accounts purposes on the authority of the Governor. This authority has been exercised in the past. However, not only is it less than entirely satisfactory (for both practical and legal reasons) to use information collected for one purpose for another, but there is a significant time lag involved.

4.5 The limitations of the current approach to producing national accounts and other statistical information have been identified by both the previous and current Heads of Policy. Both have indicated the need to introduce statistics legislation in the Falkland Islands.

4.6 At its meeting on 25 September 2008, Executive Council (with its previous membership) considered paper number 168/08 from the current Head of Policy regarding proposals for a Statistics Ordinance for the Falkland Islands and approved the development and implementation of a draft Statistics Bill.

4.7 A Statistics Bill has subsequently been included in the list of legislative priorities agreed by current MLAs and was included in the Legislative Programme for the current year, as announced by the Governor at the session of the Legislative Assembly on 26 May 2010.

4.8 In early 2009, the Policy Unit engaged Roger Jullion, a statistical and national accounts expert from Statistics Canada, on a short-term contract. His basic terms of reference were as follows:

- (a) to review the current Gross Domestic Product methodology;
- (b) to help prepare the 2007 GDP account;
- (c) to produce a Balance of Payments;
- (d) to create an Input/Output table which describes the structure and the flows of goods and services by industry in the economy, and
- (e) to train the Senior Economic and Statistics Analyst and other Policy Unit staff in the above.

4.9 A further critical part of Roger Jullion's terms of reference was to identify the data gaps and the late delivery of data under the current system of national accounts, and to recommend an action plan to address these limitations.

4.10 One of his key recommendations to address data deficiencies and to assist with strategic planning was for the adoption into Falkland Islands legislation of a Statistics Ordinance. He proposed that it should establish "Chinese walls" to ensure confidentiality and protection of privacy, as well as to improve the capacity to produce accurate and timely economic statistics.

4.11 It was also proposed that it would be appropriate to transfer responsibility for the five-yearly census to the Policy Unit from the Registrar General (who is currently responsible for carrying out the census) and the Attorney General (who is currently responsible for reporting on the outcome).

4.12 This would ensure consistency across various data collection avenues and focus responsibility for confidentiality and data control into a single point. It would also facilitate synergy as it cuts any duplication of work in data collection that may currently exist.

4.13 Since Executive Council gave its approval in principle for the development and implementation of a Statistics Bill, the Policy Unit has worked with the Attorney General's Chambers (who have, in turn, worked with an outside drafter using Overseas Territories Programme Funding) to produce the draft legislation annexed to this paper.

## **5.0 Policy Implications**

5.1 The relationship between FIG and the private sector regarding data collection for economic and policy analysis has in the past been difficult. In particular, the private sector have voiced their concerns about sharing commercially sensitive information and worries concerning the confidentiality of information and the potential for its misuse by FIG officials in policy making.

5.2 The introduction of a Statistics Ordinance will serve two key purposes by:

- (a) creating a legal basis for all parties to provide relevant and up to date information for the production of accurate national accounts, and
- (b) providing legal assurance that the data collected will remain confidential and will be used only by the Policy Unit for the production of the national accounts, economic and statistical information.

5.3 The production of timely and accurate national accounts will allow both public and private sector decision makers to fully appraise and shape effective economic policies.

5.4 A Statistics Ordinance would also benefit FIG in the following ways:

- 1) It would facilitate *more timely production of national accounts* and other economic measures, which shall be used in predicting and judging the relative success of policies and initiatives.
- 2) It would also facilitate *access to more timely, accurate and relevant data* than is currently being used. This is because tax information is relatively limited in scope and there is also an 18 month lag in obtaining it. Timely and accurate economic statistics are essential to FIG's policy requirements (formulating tax policy, budget planning, revenue forecasting).
- 3) There would be *financial savings to FIG* due to greater efficiency and time management among Government departments who currently contribute to the production of national accounts statistics.
- 4) It would enable the *development of a more comprehensive system of national accounts*, including an input-output model to enable economic impact analysis for FIG, FIDC and the business community (such as with the recent study into FIMCo).
- 5) There should be *increased public and private sector confidence* in decisions based on strong economic evidence. This is especially important in the context of the Economic and Rural Development Strategies.
- 6) A more robust statistical database will be useful in *facilitating submissions to the EU and FCO for external funding requests*.

5.5 It is important to note that, whilst the proposed legislation would allow the Statistician power and flexibility in collecting commercial and private data for policy purposes, any such public request or questionnaire will be driven by the needs of the Legislative Assembly and the appropriateness of any such request from FIG would have to follow the normal Executive Council review process.

5.6 At this stage, Executive Council's approval in principle is being sought in relation to an initial programme of work, which is set out in the draft Statistics Order annexed to this paper. Extensions to this would require further subsidiary legislation for which approval would have to be sought from Executive Council at the time.

5.7 Throughout any data collection and collation process as well as any internal or public release of collected information, confidentiality would be paramount and is well protected by the Ordinance.

5.8 Finally, with regard to adding the five-yearly census into the Statistics Ordinance, there is already an existing Census Ordinance, but there are advantages in replacing the provisions of that Ordinance in the Statistics Bill. This would ensure consistency in the administration of the census and other information gathering activities under the proposed Statistics Ordinance (the business surveys, more limited additional business surveys and household surveys).

5.9 In any event, the proposed transfer of responsibility for the five-yearly census to the Policy Unit from the Registrar General and the Attorney General would require amendment of the Census Ordinance even without the adoption of new statistics legislation. Completing this work all in one go as part of the production of the proposed statistics legislation makes sense.

5.10 Preparations for the next census (to be held in 2011) are underway and a further paper on the census itself will be submitted in due course.

## **6.0 Consultation**

6.1 There has not been any formal consultation process in relation to the draft legislation annexed to this paper. However, there has been informal engagement while policy was being developed.

6.2 During the visit of Roger Jullion in early 2009 and since the Senior Economic and Statistical Analyst took up his post in January 2009, there have been discussions with the Chamber of Commerce regarding data collection and use.

6.3 There also exists an informal agreement with the Chamber from 2001 on the public presentation of financial and economic statistics. For example, it was agreed that no single company can make up more than 70% of any quoted number (such as industry profit, wages, etc) and companies should be grouped together with at least 3 others when presenting numbers publicly. This arrangement has been adhered to with the latest round of national accounts and economic figures.

6.4 It is worth noting, therefore, that the concept of a Statistics Ordinance will not come as a surprise to many in the private sector and they should hopefully have an understanding of the purpose and scope of the proposed Ordinance.

## **7.0 Financial Implications**

There are no financial implications arising from this paper as all resulting work has been budgeted for in 2010/11 and 2011/12.

## **8.0 Legal Implications**

### *Introduction*

8.1 This section does not contain a line by line analysis of the draft Statistics Bill or the draft Statistics Order. Executive Council is referred to the Objects and Reasons sections at the end of the draft Bill and the Explanatory Note at the end of the draft order.

8.2 However, this section does contain a summary of the issues to which it is considered that Executive Council's attention ought to be drawn.

### *Summary of the key points in the Bill*

8.3 The Bill (if passed) would provide for each of the following:

- (a) the formal establishment of a Statistical Service within the Falkland Islands Government and provisions for the staffing of the Service, including contracting out of functions, if required (see clauses 4, 5, 7 and 8);
- (b) an obligation on the Service to produce national accounts for the Falkland Islands economy and other social, economic and cultural statistics (see clause 10);
- (c) a clear legal basis for the collection of the information necessary for this purpose (see clauses 11, 12, 13, 14, 15 and 16);
- (d) the necessary powers to achieve this, including making criminal sanctions and civil penalties available for use in appropriate cases (see clauses 7, 8, 11, 12, 15(3), 16(2), 26 to 28, 29 and 31);
- (d) the necessary safeguards in relation to both the confidentiality of the information collected and the integrity of the national accounts and other statistics produced (see clauses 5(5), 6, 9, 12(2), 17 to 19, 20 to 24 and 30); and
- (e) safeguards in the other direction to ensure that line management and budgetary control measures that do not affect confidentiality or integrity can still be exercised (see clauses 5(6) and 9(2)).

#### *Census*

8.4 The Bill would also implement the proposal to transfer responsibility for the five-yearly census from the Registrar General and the Attorney General to the Policy Unit. To achieve this, clause 33 would repeal the existing Census Ordinance and clause 13 (and subsidiary legislation to be made under it) would make new provision for the census.

8.5 The existing Census Ordinance does not provide how often censuses are to be held but clause 13(2) would reflect current practice by providing that a census is to be carried out in 2011 and every five years thereafter with a power to prescribe by order the month in which the census is held within the year. However, although it is envisaged that the next census will be held in 2011 and that future censuses will continue to be carried out every five years, clause 13(3) would create a corresponding power to postpone a census by means of an order, in case the need (or wish) to do that were ever to arise.

8.6 Clause 13(4) provides for the questions in a census to be prescribed by order and clause 13(5) is an attempt to “future proof” the census legislation by allowing for the method by which the census is undertaken to be prescribed by order, which would allow, for instance, an e-census but would not be tied to a particular technology.

8.7 The arrangements for the next census (due to take place some time in 2011) will have to be the subject of future subsidiary legislation to be submitted to Executive Council between now and then.

8.8 Information gathered in a census would be subject to the same safeguards as information gathered in other ways under the proposed legislation and the same offence provisions and proposed civil penalty regime (as to which see paragraphs 8.23 (b) and (c) and paragraphs 8.29 to 8.33 below).

#### *Draft order*

8.9 In relation to the Statistics Order, it was possible to produce a draft in advance and it is thought sensible that Executive Council should have the opportunity to consider the proposed statistics legislation as a package.

8.10 It is also worth mentioning that, although neither the proposed Ordinance nor the proposed order would come into force until publication in the *Gazette*, the Governor would have the power to make the order as soon as he gives his assent to the Bill (assuming that it is approved for publication and presentation and subsequently passed). This would mean that both items of legislation could be published in the *Gazette* together and come into force at the same time.

8.11 It is for that reason that Executive Council is being asked to approve the draft order in principle and advise the Governor at this stage to make it, subject to the Statistics Bill being passed.

8.12 Articles 4, 5 and 7 of the draft order reflect the scope of the initial programme of work to be carried out under the proposed legislation. Article 4 provides for the scope of the national accounts and other statistics that it is proposed to produce; articles 5 and 7 provide for the scope of the business and household surveys that it is proposed to carry out. The scope of all of these could be extended by means of further subsidiary legislation in the future.

8.13 Articles 6 and 8 provide for how business and household surveys are to be carried out. They are intended to provide for a reasonable amount of flexibility without being too open-ended. They provide for existing technologies but do not preclude future technologies being accommodated when they emerge. This could be done by further subsidiary legislation in the future.

#### *Structural issues in relation to the proposed legislation*

8.14 In relation to the structure of the legislation, two questions arose during the drafting process:

(a) whether or not the scope of the national accounts and other statistics and the surveys to be carried out should be spelled out in full on the face of the Bill or left to subsidiary legislation; and

(b) whether or not the draft order should have been restricted to the proposed initial programme of work.

8.15 The legal advice in relation to (a) is that it is far more appropriate that the scope of the national accounts should be left to subsidiary legislation to provide the necessary flexibility and to permit a phased approach to the introduction of the legislation. This would provide for further “future proofing” of the legislation allowing for its scope to be varied in this way (which may be necessary due to either economic or policy changes) without the need for further primary legislation, whilst retaining the safeguard of the need for subsidiary legislation.

8.16 The legal advice in relation to (b) is that it would be an important element of the necessary safeguards in the legislation to restrict the scope of the legislation at this stage to the initial programme of work. It would also limit both the legal duty and burden of expectation on the proposed new Statistical Service to what it can reasonably be expected to achieve in the initial phase. It would also assist in ensuring that the legislation is compatible with the constitutional right of privacy (as to which see paragraphs 8.25 to 8.28 below).

### *Safeguards*

8.17 The safeguards referred to throughout this section are a vital and integral part of the proposed legislation.

8.18 The legislation is designed to provide a number of safeguards. These are intended to protect the confidentiality of the information to be obtained by the proposed Statistical Service and held by it. They are also intended to protect the integrity of the national accounts and other statistics that the Service produces.

8.19 In relation to the safeguards, a key provision is clause 9(1), which provides for the Statistician and the other members of the staff of the Service to be independent in relation to the key concepts of confidentiality and integrity by preventing any public officer from directing them in any way that would affect either of these key concepts.

8.20 It could be questioned whether clause 9(1) goes too far and would prevent the normal line management of the Statistician or any other member of the staff of the Service or would prevent normal budgetary controls from being carried out.

8.21 However, Executive Council’s attention is drawn to clause 9(2). That expressly provides that the Statistician would have to ensure that the Service carries out its functions in accordance with any direction that does not affect either of the key concepts, which would permit normal line management and budgetary control to be carried out.

8.22 Executive Council’s attention is also drawn to clause 5(6) which has been included specifically to address concerns in relation to line management and budgetary controls without compromising the safeguards in relation to the key concepts.

8.23 Examples of some of the other safeguards in the draft legislation are as follows:

(a) Clause 5(5) would place the Statistician under a duty to ensure that the terms and conditions under which a person is appointed to carry out functions on behalf of the Service safeguard the confidentiality of information and do not create any conflict of interest.

(b) Clauses 17 to 19 would provide specific protections for the confidentiality of information by prohibiting the disclosure of information, limiting the publication of information and providing that information is privileged in legal proceedings (other than in relation to alleged offences against the Ordinance itself).

(c) The offences in clauses 20 to 24 are designed to deter various forms of potential misconduct by members or former members of the staff of the Service. On the other hand, the offence in clause 30 is designed to prevent information from being acquired illegally and is aimed at those seeking to gain from the information acquired, as well as those simply prying.

8.24 These safeguards are important for a number of reasons, not least of which is the pragmatic one to ensure the effectiveness of the legislation by promoting trust in it among the population at large and the business community in particular. However, trust in the legislation and the key concepts of confidentiality and integrity are also important for more principled reasons of legitimacy and good governance.

#### *Constitutional right to privacy*

8.25 It is also worth mentioning in this connection that, although the right is still somewhat ill-defined, there is the basis for a constitutional right to privacy under section 9 of the Constitution (which deals with protection for private and family life and for privacy of home and other property) and, as interpreted, this right would apply to companies as well as individuals.

8.26 However, even that right would not preclude the collection of information provided that:

- (a) it is for a legitimate purpose in the public interest;
- (b) there is a legal basis for it; and
- (c) it is reasonable and proportionate, balancing the public interest against the right of the individual.

8.27 In relation to the first two elements of that test, the legitimate purpose would be the need to obtain statistical information in order to promote the economic and social well-being of the Islands and the legal basis would be provided by the proposed legislation.

8.28 The safeguards provided for in the legislation are an important element in relation to the balancing exercise to be carried out as the third element of the test.

However, the need to ensure that the collection of information is reasonable and proportionate is another good reason for ensuring both that the necessary safeguards are in place and that the scope of the legislation is no greater than actually necessary.

### *Enforcement*

8.29 The need to ensure that there is public trust and that the constitutional right to privacy is respected are both all the more important because the proposed powers to collect information would be backed up by potential criminal sanctions and a proposed civil penalty regime.

8.30 Clauses 26 to 29 set out the offences that could be committed by those required to provide information (and the corresponding proposed maximum penalties following conviction).

8.31 The decision has also been taken as a matter of criminal justice policy to propose that there should be a civil penalty regime for these offences. Clause 31 sets out the proposed regime, which is based on the similar regimes already introduced under the Public Accounts Committee Ordinance and the Complaints Commissioner Ordinance.

8.32 There may be some concern as to whether or not there should be a civil penalty regime and, if there is, whether it should be operated by someone other than the Statistician (on the basis that having the power to impose fines, let alone exercising it, might engender mistrust and prejudice co-operation).

8.33 However, as a matter of criminal justice policy, it is considered that there should be an alternative means of disposing of appropriate cases without having to resort to prosecution – although that option would remain open in cases where it is the appropriate course of action (eg more serious or repeated infringements). It is also considered that what is effectively a three stage process provides appropriate safeguards. Nor is it obvious who else could exercise the power.

## **9.0 Human Resources Implications**

9.1 The creation of a statistics service within the Policy unit will entail the appointment of a Statistician, a role that it is proposed would be filled by the existing Senior Economic and Statistical Analyst as part of his existing duties. The same person employed for the above role will serve as Statistician as defined in the Statistics Ordinance.

9.2 There will be a need to redraft the Job Description for the role of Senior Economic and Statistical Analyst to incorporate the duties of the Statistician. Whilst there could be regrading implications in the longer term, the individual currently holding the post has been fully consulted and is fully in agreement.

**DRAFT: 15.7.2010 (RMB)**

**Statistics Bill 2010**

(No: of 2010)

**ARRANGEMENT OF PROVISIONS**

Clause

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2. Commencement
3. Interpretation

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4. The Statistical Service
5. The staff of the Service
6. Oath of office
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9. The independence of the Statistician and the Service

**PART 3 - THE FUNCTIONS OF THE STATISTICAL SERVICE**

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**PART 4 - CENSUS AND SURVEYS**

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*Offences by members (or former members) of the staff of the Service*

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25. Application of sections 26 and 27
26. Failure to provide information
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*Other offences*

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30. Civil penalties

**PART 7 - FINAL PROVISIONS**

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# STATISTICS BILL 2010

(No: of 2010)

(assented to: 2010)  
(commencement: )  
(published: 2010)

A BILL

for

AN ORDINANCE

To establish a Statistical Service and for related purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

## PART 1 PRELIMINARY PROVISIONS

### 1. Title

This Ordinance is the Statistics Ordinance 2010.

### 2. Commencement

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

### 3. Interpretation

In this Ordinance —

“authorised officer” means either —

(a) the Statistician; or

(b) another member of the staff of the Service appointed to be an authorised officer by the Statistician under section 7(1);

“function” includes a power or duty;

“Service” means the Statistical Service established by section 4(1);

“staff of the Service” means —

(a) the Statistician;

(b) the other public officers appointed by the Statistician under section 5(1) to be members of the staff of the Service; and

(c) the other persons appointed by the Statistician under section 5(2) to carry out functions of the Service; and

“the Statistician” means —

(a) the person appointed to the office of Statistician; or

(b) a person for the time being carrying out the functions of the office.

## **PART 2 THE STATISTICAL SERVICE**

### **4. The Statistical Service**

(1) There is established, as the central statistical authority for the Falkland Islands Government, a Statistical Service.

(2) It consists of the Statistician and the other members of the staff of the Service.

(3) The Statistician has the control of, and overall responsibility for, the Service and its staff.

(4) Accordingly, the Statistician must make such arrangements and do everything necessary to ensure that the functions of the Service are carried out.

### **5. The staff of the Service**

(1) The Statistician may appoint public officers to be members of the staff of the Service.

(2) In addition, the Statistician may appoint persons (who need not be public officers) to carry out specific functions of the Service.

(3) A person other than a public officer who is appointed under sub-section (2) must enter into a contract with the Statistical Service through the Statistician.

(4) Sub-section (5) applies to —

(a) the terms and conditions on which public officers are appointed under sub-sections (1) and (2); and

(b) the terms and conditions of contracts entered into under sub-section (3).

(5) However, the Statistician must ensure that the terms and conditions —

(a) safeguard the confidentiality of the information gathered by the Service and made available to it; and

(b) create no conflict between the interests of the Service and the interests of the person appointed.

(6) Subject to section 9 (which provides for the independence of the Statistician in relation to the confidentiality of information and the integrity of the statistics produced), the functions of the Statistician under this section must be carried out within the scope of the Statistician's delegated authority within the Falkland Islands Government.

## **6. Oath of office**

(1) The staff of the Service must, before entering on their duties under this Ordinance, take and subscribe the oath or affirmation set out in Schedule 1.

(2) If a person appointed by the Statistician to carry out a function of the Service is a body corporate, each of the following persons must take and subscribe the oath or affirmation set out in Schedule 2 —

(a) the chief executive officer of the body corporate; and

(b) each of its officers, employees or agents who will be engaged in carrying out the function.

(3) An oath or affirmation under this section is to be taken before either —

(a) a commissioner for oaths appointed under section 2 of the Commissioners for Oaths Ordinance (Title 22.3); or

(b) if an oath under sub-section (2) is taken outside the Falkland Islands, a person with authority to administer oaths in the place where the oath is taken.

## **7. Authorised officers**

(1) The Statistician may appoint a member of the staff of the Service to be an authorised officer.

(2) The appointment must be in writing signed by the Statistician.

## **8. Delegation of functions**

(1) The Statistician may delegate to an authorised officer a function of the Service.

(2) The delegation must be in writing signed by the Statistician.

## **9 The independence of the Statistician and the Service**

(1) No public officer may direct the Statistician or any member of the staff of the Service in any way that would affect either —

(a) the integrity of the statistics produced by the Service;

(b) the confidentiality of the information obtained or held by the Service.

(2) However, the Statistician must ensure that the Service carries out its functions in accordance with directions that do not affect either of these matters.

### **PART 3 FUNCTIONS OF THE STATISTICAL SERVICE**

#### **10. Functions of the Service**

(1) The primary functions of the Service are —

(a) to assist the Falkland Islands Government in determining its policies by producing —

- (i) an annual national account; and
- (ii) social, economic and cultural statistics; and

(b) to provide these to the Governor and the Legislative Assembly.

(2) The Governor may prescribe by order the matters in relation to which the Service is to collect, compile, analyse, abstract and include in the annual national account and other statistics produced by the Service.

#### **11. Power of authorised officer to obtain information**

(1) This section applies where information is required to enable the Service to carry out its functions.

(2) An authorised officer may require a person who has the information to supply it to the officer.

(3) The officer may require the person to supply the information —

- (a) by interviewing the person; or
- (b) by giving the person a notice requiring the the information to be provided within a specified period.

(4) A notice given under sub-section (3)(b) may be —

- (a) left at the person's last known address;
- (b) posted to the person at that address; or
- (c) sent to the person by fax or e-mail.

#### **12. Information held by a governmental body**

- (1) It is the duty of a governmental body, if required to do so by an authorised officer, to supply to the officer information that is in the possession of the body.
- (2) If the information required by the officer is subject to any restriction or prohibition on its supply or publication, it must still be supplied to the authorised officer but, except as provided by this Ordinance, otherwise remains subject to the restriction or prohibition.
- (3) The public officer with responsibility for a governmental body must ensure that the body complies with its duty under sub-section (1).
- (4) In this section, “governmental body ” means —
  - (a) a Department of the Falkland Islands Government;
  - (b) a court;
  - (c) a statutory body; or
  - (d) a company in which the Government owns all or a majority of the shares.

#### **PART 4 CENSUS AND SURVEYS**

### **13. Service to carry out census**

- (1) It is a further function of the Service —
  - (a) to organise and to carry out censuses of the population of the Falkland Islands; and
  - (b) to provide the Governor and the Legislative Assembly with a report on the findings of each such census as soon as reasonably possible after the census has been carried out.
- (2) A census is to be carried out in 2011, and in every fifth year thereafter, in a month to be fixed by the Governor by order.
- (3) The Governor may, by order, either —
  - (a) bring forward a census to be held in one year to an earlier year; or
  - (b) postpone a census to be held in one year to the following year (and may do so even if that census has already been postponed).
- (4) The questions to be asked in a census are to be prescribed by the Governor by order.
- (5) The Governor may prescribe by order the method by which the census is to be undertaken.

#### **14. Service to hold surveys**

- (1) It is also a function of the Service to carry out business and household surveys.
- (2) It is also the function of the Service to carry out additional business surveys that are more limited in scope, both as to the number of businesses surveyed and the information sought.
- (3) As far as possible, business surveys are to be carried out at 12 month intervals and an additional business survey is to be carried out 6 months after each business survey has been carried out.
- (4) As far as possible, household surveys are to be carried out at 12 month intervals.

#### **15. Business surveys**

- (1) When carrying out a business survey, the Service must seek information from each business surveyed relating (to the extent relevant to the business) to each matter prescribed by the Governor by order.
- (2) When carrying out an additional business survey, the Service must seek information from each business surveyed relating (to the extent relevant to the business) to some (but not necessarily all) of the matters prescribed by the Governor under sub-section (1).
- (3) For the purpose of a business survey or an additional business survey, an authorised officer may require a person to do one or more things prescribed by the Governor by order.

#### **16. Household survey**

- (1) When carrying out a household survey, the Service must seek information from each household surveyed relating (to the extent relevant to the household) to each matter prescribed by the Governor by order.
- (2) For the purpose of a household survey, an authorised officer may require a person to do one or more things prescribed by the Governor by order.

### **PART 5 CONFIDENTIALITY**

#### **17. Prohibition on divulging information**

- (1) This section applies to information supplied to the Service that identifies (or could be used to identify) one or more of the following —
  - (a) the supplier of the information;
  - (b) the individual, company, body or organisation that it is about; and
  - (c) the undertaking or business to which it relates.
- (2) A person who is or has been a member of the staff of the Service must not —

(a) permit a person who is not a member of the staff of the Service to examine the information; or

(b) otherwise knowingly disclose the information.

(3) Sub-section (2) does not apply to information that identifies (or could be used to identify) an undertaking, a business or an organisation solely because the undertaking, a business or an organisation is the only one in the Falkland Islands within a particular sphere of activity.

(4) However, sub-section (2) does apply to information that reveals any of the following in relation to an undertaking or business —

(a) the costs of production;

(b) the capital employed; or

(c) the profits made.

(5) This section does not apply to information required for the purposes of either —

(a) proceedings relating to an offence or alleged offence against this Ordinance; or

(b) the reference of the details of an alleged offence to the Attorney General under section 30(1).

## **18. Publication of information**

(1) This section applies to information supplied to the Service that identifies (or could be used to identify) one or more of the following —

(a) its supplier;

(b) the individual, company, body or organisation that it is about; or

(c) the undertaking or business to which it relates.

(2) The Service may publish the information if it is already available to the public.

(3) The Service may publish the information, even if it is not already available to the public, but only with the consent of both —

(a) its supplier; and

(b) either —

(i) the individual, company, body or organisation that the information is about; or

(ii) the owner of the undertaking or business to which it relates.

(4) The Service may also publish the information in the form of an index or list of undertakings, businesses and organisations, showing —

(a) their names, addresses and telephone numbers; and

(b) the products they produce, manufacture, process, transport, store, purchase or sell, or the services they provide.

### **19. Information privileged**

(1) This section applies to information supplied to the Service under this Ordinance that the Service is prohibited by this Ordinance from divulging.

(2) The information is privileged and may not be used as evidence in any proceedings (apart from those relating to an offence or alleged offence against this Ordinance).

(3) A person who is or has been a member of the staff of the Service may not, by an order of a court, tribunal or other body, be required in any proceedings (other than those relating to an offence or alleged offence against this Ordinance) —

(a) to give oral testimony in respect of information; or

(b) to produce a record that contains the information.

(4) In this section, “record” means any method of storing information.

## **PART 6 OFFENCES**

### *Offences by members of the staff of the Service*

### **20. False declarations, statements and reports**

(1) A member of the staff of the Service who wilfully makes a false declaration, statement or report when carrying out a function of the Service is guilty of an offence.

(2) A person convicted of an offence against sub-section (1) is liable to a fine not exceeding level 4 on the standard scale.

### **21. Obtaining information by pretending to carry out function of the Service**

(1) A member of the staff of the Service who pretends to be carrying out a function of the Service to obtain information that the officer is not authorised to obtain is guilty of an offence.

(2) A person convicted of an offence against sub-section (1) is liable to a fine not exceeding level 4 on the standard scale.

## **22. Publishing false or misleading information**

(1) A member of the staff of the Service who publishes, under the name of the Service, information that the person knows or ought to reasonably know is false or misleading is guilty of an offence.

(2) A person who is convicted of an offence against sub-section (1) is liable to a fine not exceeding level 4 on the standard scale.

### *Offences by members (or former members) of the staff of the Service*

## **23. Divulging information**

(1) A person who is or has been a member of the staff of the Service and who contravenes section 17 is guilty of an offence.

(2) A person convicted of an offence against sub-section (1) is liable to a fine not exceeding level 4 on the standard scale.

## **24. Use of information for gain**

(1) A member or former member of the staff of the Service who uses for gain (whether by that person or another) information that is held by the Service but that is not available to the public is guilty of an offence.

(2) A person convicted of an offence against sub-section (1) is liable to one or more of the following penalties —

- (a) forfeiture of the amount gained;
- (b) a fine not exceeding level 6 on the standard scale;
- (c) imprisonment for up to 1 year.

### *Offences by persons required to provide information*

## **25. Application of sections 26 and 27**

Sections 26 and 27 apply to persons required to provide information by an authorised officer carrying out a function of the Service.

## **26. Failure to provide information**

(1) A person who, without reasonable excuse, refuses or neglects to provide information is guilty of an offence.

(2) A person convicted of an offence under sub-section (1) is liable —

- (a) in the case of an individual, to a fine not exceeding level 3 on the standard scale; or

(b) in any other case, to a fine not exceeding level 6 on the standard scale.

**27. Providing false or misleading information**

(1) A person who knowingly provides information that is false or misleading in a material particular is guilty of an offence.

(2) A person who provides information but is reckless as to whether the information is false or misleading in a material particular commits an offence.

(3) A person convicted of an offence under sub-section (1) or (2) is liable —

(a) in the case of an individual, to a fine not exceeding level 5 on the standard scale; or

(b) in any other case, to a fine not exceeding level 7 on the standard scale.

*Other offences*

**28. Hindering or obstructing an authorised officer**

(1) A person who hinders or obstructs an authorised officer carrying out a function of the Service is guilty of an offence.

(2) A person convicted of an offence under sub-section (1) is liable —

(a) in the case of an individual, to a fine not exceeding level 3 on the standard scale; or

(b) in any other case, to a fine not exceeding level 6 on the standard scale.

**29. Pretending to be a member of the staff of the Service or an authorised officer**

(1) A person who pretends to be a member of the staff of the Service or an authorised officer to obtain information from a person is guilty of an offence.

(2) A person convicted of an offence against sub-section (1) is liable to one or more of the following penalties —

(a) forfeiture of the amount (if any) gained (whether by that person or another) as a result;

(b) a fine not exceeding level 6 on the standard scale;

(c) imprisonment for up to 1 year.

*Civil penalties*

**30. Civil penalties**

(1) This section applies if the Statistician is satisfied that a person has committed an offence under section 26, 27 or 28.

- (2) The Statistician may refer details of the alleged offence to the Attorney General.
- (3) If the Attorney General is satisfied that it is an appropriate case in which to do so, the Attorney General may, instead of bringing a prosecution for the alleged offence, authorise the Statistician to impose a penalty on the person.
- (4) If the Attorney General does so, the Statistician may impose a penalty on the person not exceeding —
- (a) in the case of an individual, an amount equivalent to a fine of level 1 on the standard scale; or
  - (b) in any other case, an amount equivalent to a fine of level 5 on the standard scale.
- (5) If the Statistician imposes a penalty on a person under sub-section (4), the Statistician must notify the person of —
- (a) the decision that has been made;
  - (b) the reasons for it; and
  - (c) the period (which must be at least 14 days) within which the penalty is to be paid.
- (6) A penalty imposed under sub-section (4) —
- (a) must be paid by the person within the period specified in the notice given under sub-section (5); and
  - (b) if not paid, may be recovered from the person as a statutory debt.

## **PART 7**

### **FINAL PROVISIONS**

#### **31. Subsidiary legislation**

The Governor may make regulations and orders necessary or convenient for the purposes of this Ordinance.

#### **32. Census Ordinance and subsidiary legislation repealed**

- (1) The Census Ordinance (Title 62.1) is repealed.
- (2) The following are revoked —
- (a) Census Order (No. 19 of 2006);
  - (b) Census (Forms) Regulations (No. 20 of 2006); and

(c) Census (Forms) Regulation Order (No. 21 of 2006).

**SCHEDULE 1**  
**OATH (OR AFFIRMATION) TO BE TAKEN BY MEMBERS OF THE STAFF OF THE**  
**SERVICE**

section 6(1)

“I, ....., solemnly swear (or affirm) that:

- (a) I will fulfil my duties as a member of the staff of the Statistical Service (of the Falkland Islands Government\*);
- (b) I will do that faithfully and honestly;
- (c) I will abide by the Statistics Ordinance (of the Falkland Islands\*); and
- (d) I will only divulge anything that comes to my knowledge when carrying out my duties if I have lawful authority to do so.”

Note: The bracketed words marked “\*” are to be included if the oath (or affirmation) is taken outside the Falkland Islands.

**SCHEDULE 2**  
**OATH (OR AFFIRMATION) TO BE TAKEN BY INDIVIDUALS IF A BODY**  
**CORPORATE IS APPOINTED TO CARRY OUT FUNCTIONS OF THE SERVICE**

section 6(2)

“I, ....., solemnly swear (or affirm) that:

- (a) I will fulfil my duties as an (officer/employee/agent) of (name of body corporate) to enable it to fulfil its contract with the Statistical Service (of the Falkland Islands Government\*);
- (b) I will do that faithfully and honestly;
- (c) I will abide by the Statistics Ordinance (of the Falkland Islands\*); and
- (d) I will only divulge anything that comes to my knowledge when carrying out my duties if I have lawful authority to do so.”

Note: The bracketed words marked “\*” are to be included if the oath (or affirmation) is taken outside the Falkland Islands.

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## OBJECTS AND REASONS

The purposes of this Bill are as follows:

- (a) to establish a Statistical Service within the Falkland Islands Government;
- (b) to provide for the production of national accounts for the Falkland Islands economy and other social, economic and cultural statistics;
- (c) to provide for the collection of the information necessary for this; and
- (d) to provide for the necessary safeguards in relation to the confidentiality of the information collected and the integrity of the national accounts and other statistics produced.

*Clause 3* defines key terms that are used elsewhere in the Bill.

***Part 2 of the Bill deals with the proposed new Statistical Service.***

*Clause 4* would establish the proposed new Statistical Service (“the Service”), to consist of a Statistician (who would have control of and responsibility for the Service and its staff and who would be under a duty to ensure that the functions of the Service are carried out) and the other staff of the Service.

*Clause 5* deals with the staff of the Service and allows for others to be appointed to carry out specific functions. It contains safeguards that are intended to ensure confidentiality and prevent conflicts of interest from arising. However, *clause 5(6)* also makes it clear that the Statistician’s functions would have to be exercised within delegated authority.

*Clause 6 (and the Schedules)* would require oaths (or affirmations) to be taken by the staff of the Service and other carrying out functions on its behalf.

*Clause 7* provides for the appointment of authorised officers to carry out various functions under the Ordinance and *clause 8* would allow the Statistician to delegate functions to authorised officers.

*Clause 9* provides for the independence of the Statistician and members of the staff of the Service in relation to the integrity of the statistics produced by the Service and the confidentiality of the information obtained by or held by the Service. It does not prevent management of the Statistician and the staff of the Service in other respects.

***Part 3 of the Bill deals with the functions of the Service.***

*Clause 10* provides for the production of an annual national account and other social, economic and cultural statistics by the Service. The Governor would have the power to prescribe matters

to be covered by the Service and the national account and other statistics would have to be presented to both the Governor and the Legislative Assembly.

*Clauses 11 and 12* would give authorised officers the power to collect information from both private individuals and businesses and from governmental bodies. *Clause 12(2)* would allow information to be collected even if it would otherwise be protected but the lifting of that protection would be restricted to the purposes of the Ordinance.

***Part 4 of the Bill deals with the five-yearly census and surveys of businesses and households.***

*Clause 13(1)* would transfer responsibility for the five-yearly census from the Registrar General and the Attorney General to the Service and the remainder of *clause 13* would make new provision for the carrying out of the five-yearly census. (*Clause 32* would repeal the existing Census Ordinance (Title 62.1).)

Under *clause 14*, the Service would have an additional function of carrying out business and household surveys at regular intervals. *Clause 15* deals with business surveys (and the smaller additional business surveys that would be carried out between the main business surveys) and *clause 16* deals with household surveys. In each case, the Governor would have the power to prescribe the matters to be covered in the surveys and the things that those being surveyed may be required to do.

***Part 5 deals with the confidentiality of the information to be obtained by the Service and held by it.***

*Clause 17* would impose a prohibition (subject only to qualified exceptions) on the divulging of information that would identify (or could be used to identify) who supplied the information or the subject of the information. (Under *clause 23*, a breach of this prohibition by a member of the staff of the Service would be a criminal offence.)

*Clause 18* would allow for the publication of information in certain, limited circumstances.

Under *clause 19*, information protected under the proposed Ordinance would be privileged in legal proceedings (other than proceedings relating to offences or alleged offences against the Ordinance itself).

***Part 6 of the Bill deals with offences and penalties (including civil penalties in certain cases).***

*Clauses 20 to 22* deal with offences that could be committed by members of the staff of the Service.

*Clause 20* would cover false declarations, statements and returns. The maximum penalty for this offence would be a level 4 fine (currently, £1,500).

*Clause 21* would cover pretending to carry out a function of the Service to obtain information. The maximum penalty for this offence would be a level 4 fine (currently, £1,500).

*Clause 22* would cover publishing false or misleading information. The maximum penalty for this offence would be a level 4 fine (currently, £1,500).

*Clauses 23 and 24* deal with offences that could be committed by members of the staff of the Service or by former members of the staff of the Service.

*Clause 23* would cover divulging information in breach of section 17. The maximum penalty for this offence would be a level 4 fine (currently, £1,500).

*Clause 24* would cover the use of information for gain. The maximum penalty for this offence would be forfeiture of the amount of the amount gained and/or a level 6 fine (currently, £7,500) and/or imprisonment for up to 1 year.

*Clauses 26 and 27* deal with offences that could be committed by persons who are required by an authorised officer to provide information.

*Clause 26* would cover refusal or neglect to provide information without reasonable excuse. The maximum penalty for this offence would be a level 3 fine (currently, £800) for an individual or a level 6 fine (currently, £7,500) in any other case (eg for a company). (Alternatively, a civil penalty could be imposed under *clause 30*.)

*Clause 27* would cover the provision of false or misleading information (whether knowingly or recklessly). The maximum penalty for this offence would be a level 5 fine (currently, £3,000) for an individual or a level 7 fine (currently, £12,500) in any other case (eg for a company). (Again, alternatively, a civil penalty could be imposed under *clause 30*.)

*Clauses 28 and 29* deal with other offences.

*Clause 28* would cover hindering or obstructing an authorised officer. The maximum penalty for this offence would be a level 3 fine (currently, £800) for an individual or a level 6 fine (currently, £7,500) in any other case (eg for a company). (Alternatively, a civil penalty could be imposed under *clause 30*.)

*Clause 29* would cover pretending to be a member of the staff of the Service or an authorised officer to obtain information. The maximum penalty for this offence would be forfeiture of the amount of any amount gained as a result and/or a fine not exceeding level 6 (£7,500) and/or imprisonment for up to 1 year.

*Clause 30* would establish a regime under which civil penalties could be imposed for certain offences in appropriate cases, as an alternative to prosecution. The maximum civil penalty that could be imposed on an individual would be the equivalent of a level 1 fine (currently, £200) and the maximum civil penalty that could be imposed in any other case (eg on a company) would be the equivalent of a level 5 fine (currently, £3,000).

*Clause 31* would give the Governor the power to make regulations and orders.

**SUBSIDIARY LEGISLATION**

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**CONSTITUTIONAL AND ADMINISTRATIVE**

**Statistics Order 2010**

S. R. & O. No. of 2010

*Made: ..... 2010*

*Published: ..... 2010*

*Coming into force: on publication*

I make the following order under sections 10(2), 15(1), 15(3), 16(1) and 16(2) of the Statistics Ordinance (No. of 2010) on the advice of the Executive Council.

**PART 1  
PRELIMINARY**

**1. Title**

This order is the Statistics (Prescribed Matters) Order 2010.

**2. Commencement**

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

**3. Matters prescribed under the Statistics Ordinance**

This order prescribes various matters under the Statistics Ordinance (No. of 2010).

**4. Matters to be included in the annual national account and other statistics**

For the purposes of section 10(2), the following are the matters in relation to which the Service is to collect, compile, analyse, abstract and include in the annual national account and other statistics produced by the Service —

- (a) the population of the Falkland Islands;
- (b) immigration to and emigration from the Falkland Islands;
- (c) the financial position and performance of the Falkland Islands Government;
- (d) the financial position and performance of the private sector;

- (e) imports to and exports from the Falkland Islands;
- (f) employment and other labour matters; and
- (g) prices and the cost of living.

#### **5. Matters to be included in business surveys**

For the purposes of section 15(1), the following are the matters in relation to which the Service must seek information from businesses when carrying out a business survey —

- (a) the wages and salaries being paid to employees and the other benefits being provided to them;
- (b) operating profits;
- (c) sales and the cost of goods sold;
- (d) imports and exports;
- (e) capital spending on construction, plant and machinery; and
- (f) depreciation in the value of assets.

#### **6. Things authorised officer may require for business surveys**

For the purposes of section 15(3), the following are things that an authorised officer may require a person to do for the purpose of a business survey —

- (a) answer questions in an interview conducted in person;
- (b) answer questions in a survey or interview conducted by telephone;
- (c) answer questions sent by letter or e-mail; and
- (d) complete a questionnaire on paper or over the internet.

#### **7. Matters to be included in household surveys**

For the purposes of section 16(1), the following are the matters in relation to which the Service must seek information from households when carrying out a household survey —

- (a) purchases made by or for the household within the Falkland Islands and the cost of those purchases;
- (b) purchases made by or for the household overseas and the cost of those purchases;
- (c) travel undertaken by members of the household and the cost of that travel.

## **8. Things authorised officer may require for household surveys**

For the purposes of section 16(2), the following are things that an authorised officer may require a person to do for the purpose of a household survey —

- (a) answer questions in an interview conducted in person;
- (b) answer questions in a survey or interview conducted by telephone;
- (c) answer questions sent by letter or e-mail;
- (d) complete a questionnaire on paper or over the internet; and
- (e) maintain a shopping diary.

Made 2010

A. E. Huckle,  
*Governor.*

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### EXPLANATORY NOTE *(not forming part of the regulations)*

Sections 10(2), 15(1), 15(3), 16(1) and 16(2) of the Statistics Ordinance (No. of 2010) allow the Governor to prescribe various matters for the purposes of the Ordinance.

This order prescribes the following matters:

- (a) the matters in relation to which the Statistical Service is to collect, compile, analyse, abstract and include in the annual national account and other statistics it produces;
- (b) the matters in relation to which the Statistical Service must seek information from businesses when carrying out a business survey (and may do when carrying out a smaller additional business survey between main business surveys);
- (c) the things that an authorised officer may require a person to do for the purpose of a business survey;
- (d) the matters in relation to which the Service must seek information from households when carrying out a household survey; and
- (e) the things that an authorised officer may require a person to do for the purpose of a household survey.