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The following are published in this Supplement —

Crimes (Amendment) Bill 2022; and

Criminal Procedure and Evidence (Amendment) Bill 2022.

Crimes (Amendment) Bill 2022

(ORDINANCE No. OF 2022)

ARRANGEMENT OF PROVISIONS

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3. Amendment of Crimes Ordinance 2014
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7. Part 6 amended - Protection from harassment - and new sections 154A to 154L
8. Section 187 repealed (offences related to minefields)
9. Section 188 amended (possession of unexploded ordnance)
10. Part 10 amended - Sexual offences - and new sections 285A to 285C
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12. Section 547 amended (racially or religiously aggravated assaults)
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19. Amendment of Prisons Regulations 2017

Crimes (Amendment) Bill 2022

(assented to: 2022)
(commencement: on publication)
(published: 2022)

A BILL

for

AN ORDINANCE

To amend the Crimes Ordinance 2014.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 - Introductory

1. Title

This Ordinance is the Crimes (Amendment) Ordinance 2022.

2. Commencement

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

PART 2 - Amendment of Crimes Ordinance 2014

3. Amendment of Crimes Ordinance 2014

This Part amends the Crimes Ordinance 2014.

4. New section 13A inserted

After section 13, insert —

“13A. Offences against the person committed outside the Falkland Islands

(1) If —

- (a) a person does an act in a country outside the Falkland Islands,
- (b) the act constitutes an offence under the law in force in that country, and
- (c) the act, if done in the Falkland Islands, would constitute an offence to which this subsection applies,

the person is guilty of that offence in the Falkland Islands.

(2) The offences to which subsection (1) applies are —

- (a) murder;
- (b) manslaughter;
- (c) an offence under section 64, 65, 65A or 71 (offences relating to bodily harm or injury);
- (d) an offence under section 68 (administering poison); or
- (e) an offence under section 57 (child destruction).

(3) Subsection (1) does not apply where a person would, in the absence of that subsection, be guilty of an offence of murder or manslaughter under section 6.

(4) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsection (1)(a) however it is described in that law.

(5) The condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice —

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;
- (b) showing the grounds for that opinion; and
- (c) requiring the prosecution to prove that it is met.

(6) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(8) In this section —

“**act**” includes a failure to act;

“**country**” includes a British Overseas Territory as defined in section 50 of the British Nationality Act 1981.

[UK Domestic Abuse Act 2021, s.72]”.

5. New sections 71A and 71B inserted after section 71

After section 71, insert the following sections —

“71A. Strangulation or suffocation

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

- (a) A intentionally strangles another person (“B”), or
- (b) A does any other act to B that —
 - (i) affects B's ability to breathe, and

- (ii) constitutes battery of B.

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

(2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.

(3) Subsection (2) does not apply if —

- (a) B suffers serious harm as a result of the strangulation or other act, and
- (b) A either —
 - (i) intended to cause B serious harm; or
 - (ii) was reckless as to whether B would suffer serious harm.

(4) A is to be taken to have shown the fact mentioned in subsection (2) if —

- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.

(5) In this section “**serious harm**” means —

- (a) grievous bodily harm, within the meaning of section 64;
- (b) wounding, within the meaning of section 64; or
- (c) actual bodily harm, within the meaning of section 71.

[UK Domestic Abuse Act 2021 s.70]

71B. Consent to serious harm for sexual gratification not a defence

(1) This section applies for the purposes of determining whether a person (“D”) who inflicts serious harm on another person (“V”) is guilty of a relevant offence.

(2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.

(3) In this section —

“**relevant offence**” means an offence under section 64, 65, 65A or 71;

“**serious harm**” means —

- (a) grievous bodily harm, within the meaning of section 64;
- (b) wounding, within the meaning of section 64; or
- (c) actual bodily harm, within the meaning of section 71.

(4) Subsection (2) does not apply in the case of an offence under section 65 or 71 where —

- (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity; and

- (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

(6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

[UK Domestic Abuse Act 2021 s.71]".

6. Part 4 amended - Domestic violence protection - new sections 102 to 108Z

In Part 4, replace the subheading "Domestic violence protection" and sections 102 to 108 with the following —

"Domestic abuse protection

102. Definition of "domestic abuse"

- (1) This section defines "**domestic abuse**" for the purposes of this Ordinance.
- (2) Behaviour of a person ("A") towards another person ("B") is "**domestic abuse**" if —
 - (a) A and B are each aged 16 or over and are personally connected to each other; and
 - (b) the behaviour is abusive.
- (3) Behaviour is "**abusive**" if it consists of any of the following —
 - (a) physical or sexual abuse;
 - (b) violent or threatening behaviour;
 - (c) controlling or coercive behaviour;
 - (d) economic abuse (see subsection (4)); or
 - (e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) "**Economic abuse**" means any behaviour that has a substantial adverse effect on B's ability to —

- (a) acquire, use or maintain money or other property; or
- (b) obtain goods or services.

(5) A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).

(6) For the meaning of "**personally connected**", see section 103.

[UK Domestic Abuse Act 2021 s.1]

103. Definition of “personally connected”

(1) For purposes of this Ordinance, two people are “**personally connected**” to each other if any of the following applies —

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another (whether or not the agreement has been terminated);
- (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (e) they are, or have been, in an intimate personal relationship with each other;
- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (2)); or
- (g) they are relatives.

(2) For the purposes of subsection (1)(f) a person has a parental relationship in relation to a child if —

- (a) the person is a parent of the child; or
- (b) the person has parental responsibility for the child.

(3) In this section —

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

“**parental responsibility**” has the same meaning as in the Children Ordinance 2014 (see section 6 of that Ordinance);

“**relative**” means —

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or
- (b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner,

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

[UK Domestic Abuse Act 2021 s.2, with definition from UK Family Law Act 1996 s. 63]

104. Children as victims of domestic abuse

(1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.

(2) Any reference in this Ordinance to a victim of domestic abuse includes a reference to a child who —

- (a) sees or hears, or experiences the effects of, the abuse; and
- (b) is related to A or B.

(3) A child is related to a person for the purposes of subsection (2) if —

- (a) the person is a parent of, or has parental responsibility for, the child; or
- (b) the child and the person are relatives.

(4) In this section “**child**”, “**parental responsibility**” and “**relative**” have the same meaning as in section 103(3).

[UK Domestic Abuse Act 2021 s.3]

Domestic abuse protection notices

105. Power to give a domestic abuse protection notice

(1) A police officer of at least the rank of inspector (“**senior police officer**”) may give a domestic abuse protection notice to a person (“P”) if conditions A and B are met.

(2) A “**domestic abuse protection notice**” is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected.

(3) Condition A is that the senior police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(4) Condition B is that the senior police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(5) It does not matter whether the abusive behaviour referred to in subsection (3) took place in the Falkland Islands or elsewhere.

(6) A domestic abuse protection notice may not be given to a person who is under the age of 18.

[UK Domestic Abuse Act 2021 s.22]

106. Provision that may be made by notices

(1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”) —

- (a) may not contact the person for whose protection the notice is given;
- (b) may not come within a specified distance of any premises in which that person lives.

“**Specified**” means specified in the notice.

(2) If P lives in premises in which the person for whose protection the notice is given also lives, the notice may also contain provision —

- (a) prohibiting P from evicting or excluding that person from the premises;

- (b) prohibiting P from entering the premises; or
- (c) requiring P to leave the premises.

[UK Domestic Abuse Act 2021 s.23]

107. Matters to be considered before giving a notice

(1) Before giving a domestic abuse protection notice to a person (“P”), a senior police officer must, among other things, consider the following —

- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person and P are personally connected);
- (b) the opinion of the person for whose protection the notice would be given as to the giving of the notice;
- (c) any representations made by P about the giving of the notice; and
- (d) in a case where the notice includes provision relating to premises lived in by the person for whose protection the notice would be given, the opinion of any relevant occupant as to the giving of the notice.

(2) In subsection (1)(d) “**relevant occupant**” means a person other than P or the person for whose protection the notice would be given —

- (a) who lives in the premises; and
- (b) who is personally connected to —
 - (i) the person for whose protection the notice would be given; or
 - (ii) if P also lives in the premises, P.

(3) The officer must take reasonable steps to discover the opinions mentioned in subsection (1).

(4) It is not necessary for the person for whose protection a domestic abuse protection notice is given to consent to the giving of the notice.

[UK Domestic Abuse Act 2021 s.24]

108. Further requirements in relation to notices

(1) A domestic abuse protection notice must be in writing.

(2) A domestic abuse protection notice given to a person (“P”) must state —

- (a) the grounds on which it has been given;
- (b) that a police officer may arrest P without warrant if the officer has reasonable grounds for believing that P is in breach of the notice;
- (c) that an application for a domestic abuse protection order under section 108C will be heard by a court within 48 hours of the time of giving the notice (disregarding

any days mentioned in section 108D(3)) and a notice of the hearing will be given to P;

(d) that the notice continues in effect until that application has been determined or withdrawn; and

(e) the provision that a court may include in a domestic abuse protection order.

(3) The notice must be served on P personally by a police officer.

(4) On serving the notice on P, the police officer must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.

(5) Subsection (6) applies where —

(a) a senior police officer gives a domestic abuse protection notice to a person (“P”) who the officer believes is a person subject to service law in accordance with sections 367 to 369 of the Armed Forces Act 2006, in its application to the Falkland Islands;

(b) the notice includes provision by virtue of section 106(2) prohibiting P from entering premises, or requiring P to leave premises; and

(c) the officer believes that the premises are relevant service accommodation.

(6) The officer must make reasonable efforts to inform P’s commanding officer of the giving of the notice.

(7) In this section —

“**commanding officer**” has the meaning given by section 360 of the Armed Forces Act 2006 in its application to the Falkland Islands; and

“**relevant service accommodation**” means premises which fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of that Act.

[UK Domestic Abuse Act 2021 s.25]

108A. Breach of notice

(1) If a police officer has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the officer may arrest the person without warrant.

(2) A police officer may enter and search any premises for the purpose of arresting a person under subsection (1).

(3) A person arrested by virtue of subsection (1) must be held in custody and brought before the appropriate court —

(a) before the end of the period of 24 hours beginning with the time of the arrest; or

(b) if earlier, at the hearing of the application for a domestic abuse protection order against the person.

(4) In subsection (3) “**the appropriate court**” means the court which is to hear the application mentioned in subsection (3)(b).

(5) In calculating when the period of 24 hours mentioned in subsection (3)(a) ends, the following days are to be disregarded —

- (a) any Sunday;
- (b) Christmas Day; and
- (c) any day which is a public holiday.

(6) If the person is brought before the court as mentioned in subsection (3)(a), the court may remand the person in custody or on bail.

(7) If the person is remanded in custody, the adjournment may not be for more than 3 weeks at a time.

(8) If the person is remanded on bail, the adjournment may not be for more than 4 weeks at a time.

(9) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

[UK Domestic Abuse Act 2021 s.26]

Domestic abuse protection orders

108B. Meaning of “domestic abuse protection order”

(1) A “**domestic abuse protection order**” is an order which, for the purpose of preventing a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected —

- (a) prohibits P from doing things described in the order; or
- (b) requires P to do things described in the order.

(2) A domestic abuse protection order may be made —

- (a) on application; or
- (b) in the course of proceedings referred to in section 108F.

(3) Section 108G sets out the conditions for making a domestic abuse protection order.

[UK Domestic Abuse Act 2021 s.27]

108C. Domestic abuse protection orders on application

(1) A court may make a domestic abuse protection order under this section against a person (“P”) on an application made to it in accordance with this section.

(2) Where P is given a domestic abuse protection notice by a senior police officer under section 105, the Attorney General must apply for a domestic abuse protection order against P.

(3) An application made by the Attorney General for an order under this section must be made to the Summary Court, or, if that court is not sitting, to the Magistrate’s Court.

(4) Where an application is made to a court in accordance with this section —

- (a) the court may adjourn the hearing of the application;
- (b) on the hearing of the application, section 279 of the Criminal Procedure and Evidence Ordinance 2014 (Power of justice of the peace to summon witnesses) does not apply in relation to a person for whose protection the order is sought, unless that person has given oral or written evidence at the hearing.

[UK Domestic Abuse Act 2021 s.28]

108D. Applications where domestic abuse protection notice has been given

- (1) This section applies where, as a result of a person (“P”) being given a domestic abuse protection notice under section 105, the Attorney General is required by section 108C(2) to apply for a domestic abuse protection order against P.
- (2) The application must be heard by the court not later than 48 hours after the notice was given to P.
- (3) In calculating when the period of 48 hours mentioned in subsection (2) ends, the following days are to be disregarded —
 - (a) any Sunday;
 - (b) Christmas Day; and
 - (c) any day which is a public holiday.
- (4) P must be given a notice of the hearing of the application.
- (5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 108(4).
- (6) If the notice has not been given because P did not give an address under section 108(4), the court may hear the application if satisfied that reasonable efforts have been made to give P the notice.
- (7) If the court adjourns the hearing of the application, the domestic abuse protection notice continues in effect until the application has been determined or withdrawn.
- (8) If —
 - (a) P is brought before the court at the hearing of the application as a result of P’s arrest by virtue of section 108A(1); and
 - (b) the court adjourns the hearing;

the court may remand P in custody or on bail.

[UK Domestic Abuse Act 2021 s.29]

108E. Remand under section 108D(8) of person arrested for breach of notice

- (1) This section applies where —
 - (a) as a result of a person being given a domestic abuse protection notice under section 105, the Attorney General has applied for a domestic abuse protection order against the person; and

(b) the court remands the person under section 108D(8).

(2) If the person is remanded in custody, the adjournment may not be for more than 3 weeks at a time.

(3) If the person is remanded on bail, the adjournment may not be for more than 4 weeks at a time.

(4) If the court has reason to suspect that a medical report will be required, the power to remand the person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(5) If the court has reason to suspect that the person is suffering from mental disorder within the meaning of the Mental Health Ordinance 2010, the court has the same power to make an order under section 48 of that Ordinance (remand to hospital for report on accused's mental condition) as it has under that section in the case of an accused person (within the meaning of that section).

(6) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

[UK Domestic Abuse Act 2021 s.30]

108F. Domestic abuse protection orders otherwise than on application

(1) A court may make a domestic abuse protection order under this section in any of the cases set out in subsections (2), (4) and (5).

(2) Where a person ("P") has been convicted of an offence, the court dealing with P for that offence may (as well as sentencing P or dealing with P in any other way) make a domestic abuse protection order against P.

(3) Subsection (2) does not apply where the Court of Appeal is dealing with a person for an offence.

(4) A court by or before which a person is acquitted of an offence may make a domestic abuse protection order against the person.

(5) Where the Supreme Court allows a person's appeal against a conviction for an offence, the court may make a domestic abuse protection order against the person.

[UK Domestic Abuse Act 2021 s.31]

108G. Conditions for making an order

(1) The court may make a domestic abuse protection order under section 108C or 108F against a person ("P") if conditions A and B are met.

(2) Condition A is that the court is satisfied on the balance of probabilities that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(3) Condition B is that the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(4) It does not matter —

- (a) whether the abusive behaviour referred to in subsection (2) took place in the Falkland Islands or elsewhere; or

- (b) whether it took place before or after the coming into force of this section.

(5) A domestic abuse protection order may not be made against a person who is under the age of 18.

[UK Domestic Abuse Act 2021 s.32]

108H. Matters to be considered before making an order

(1) Before making a domestic abuse protection order against a person (“P”), the court must, among other things, consider the following —

- (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the order (whether or not that person and P are personally connected);
- (b) any opinion of the person for whose protection the order would be made —
 - (i) which relates to the making of the order, and
 - (ii) of which the court is made aware;
- (c) in a case where the order includes provision relating to premises lived in by the person for whose protection the order would be made, any opinion of a relevant occupant —
 - (i) which relates to the making of the order; and
 - (ii) of which the court is made aware.

(2) In subsection (1)(c) “**relevant occupant**” has the same meaning as given in section 107(2).

(3) It is not necessary for the person for whose protection a domestic abuse protection order is made to consent to the making of the order.

[UK Domestic Abuse Act 2021 s.33]

108I. Provision that may be made by orders

(1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse.

“**Requirement**” includes any prohibition or restriction.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect the person for whose protection the order is made from different kinds of abusive behaviour.

(3) Subsections (4) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be made.

(4) A domestic abuse protection order may provide that the person against whom the order is made (“P”) —

- (a) may not contact the person for whose protection it is made;

- (b) may not come within a specified distance of any premises in which that person lives;
- (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description.

“Specified” means specified in the order.

(5) If P lives in premises in which the person for whose protection the order is made also lives, the order may contain provision —

- (a) prohibiting P from evicting or excluding that person from the premises;
- (b) prohibiting P from entering the premises; or
- (c) requiring P to leave the premises.

(6) A domestic abuse protection order may require P to submit to electronic monitoring (**“electronic monitoring requirement”**) of P’s compliance with other requirements imposed by the order.

(7) Sections 108J and 108K contain further provision about the requirements that may be imposed by a domestic abuse protection order.

[UK Domestic Abuse Act 2021 s.35]

108J. Further provision about requirements that may be imposed by orders

(1) Requirements imposed on a person by a domestic abuse protection order must, so far as practicable, be such as to avoid —

- (a) conflict with the person’s religious beliefs;
- (b) interference with the person’s work or with the person’s attendance at an educational establishment; and
- (c) conflict with the requirements of any other court order or injunction to which the person may be subject.

(2) A domestic abuse protection order that imposes a requirement to do something on a person (“P”) must specify the person who is to be responsible for supervising compliance with that requirement.

(3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person to be specified under subsection (2).

(4) Subsections (2) and (3) do not apply in relation to electronic monitoring requirements (see instead section 108K(3) to (5)).

(5) It is the duty of a person specified under subsection (2) —

- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the **“relevant requirements”**);
- (b) to promote P’s compliance with the relevant requirements;

- (c) if the person considers that P has failed to comply with a relevant requirement, to inform a police officer; and
- (d) if the person considers that P has complied with all relevant requirements, to inform the Attorney General.

(6) A person (“P”) who is subject to a requirement imposed by a domestic abuse protection order —

- (a) must keep in touch with the person specified under subsection (2) in relation to that requirement, in accordance with any instructions given by that person;
- (b) if P changes home address, must notify the person specified under subsection (2) of the new home address;
- (c) if P ceases to have any home address, must notify the person specified under subsection (2) of that fact.

(7) The obligations under subsection (6) have effect as requirements of the order.

[UK Domestic Abuse Act 2021 s.36]

108K. Further provision about electronic monitoring requirements

(1) Subsections (2) to (4) apply for the purpose of determining whether a court may impose an electronic monitoring requirement on a person (“P”) in a domestic abuse protection order.

(2) The requirement may not be imposed in P’s absence.

(3) If there is a person (other than P) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person’s consent.

(4) The court may impose the requirement only if —

- (a) electronic monitoring arrangements are available; and
- (b) it is satisfied that the necessary provision can be made under the arrangements currently available.

(5) A domestic abuse protection order that includes an electronic monitoring requirement must specify the person who is to be responsible for the monitoring (“**the responsible person**”).

(6) Where a domestic abuse protection order imposes an electronic monitoring requirement on a person, the person must (among other things) —

- (a) submit, as required by the responsible person, to —
 - (i) being fitted with, or the installation of, any necessary apparatus; and
 - (ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring;
- (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring; and

- (c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.

(7) The obligations under subsection (6) have effect as requirements of the order.

[UK Domestic Abuse Act 2021 s.37]

108L. Duration of orders

(1) Subject to subsection (2), a domestic abuse protection order takes effect on the day on which it is made.

(2) If, on the day on which a domestic abuse protection order (“**the new order**”) is made against a person, the person is subject to another domestic abuse protection order (“**the previous order**”), the new order may be made so as to take effect on the previous order ceasing to have effect.

(3) A domestic abuse protection order has effect —

- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until further order.

“**Specified**” means specified in the order.

(4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.

(5) A domestic abuse protection order may not provide for an electronic monitoring requirement to have effect for more than 12 months.

(6) Subsection (5) is subject to any variation of the order under section 108Q.

[UK Domestic Abuse Act 2021 s.38]

108M. Breach of order

(1) A person who is subject to a domestic abuse protection order commits an offence if without reasonable excuse the person fails to comply with any requirement imposed by the order.

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

(2) Where a person is convicted of an offence under this section in respect of any behaviour, that behaviour is not punishable as a contempt of court.

(3) A person may not be convicted of an offence under this section in respect of any behaviour which has been punished as a contempt of court.

(4) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014 (conditional discharge).

[UK Domestic Abuse Act 2021 s 39]

108N. Notification requirements

(1) Subsections (2) to (6) apply where a person is subject to a domestic abuse protection order.

(2) The person must, within the period of three days beginning with the day on which the order is made, notify the police of the information in subsection (3).

(3) The information referred to in subsection (2) is —

- (a) the person's name and, if the person uses one or more other names, each of those names; and
- (b) the person's home address.

(4) If the person uses a name which has not been notified under this section, the person must, within the period of three days beginning with the day on which the person first uses that name, notify the police of that name.

(5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of the new home address.

(6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.

(7) The requirements imposed by subsections (2) to (6) do not apply where —

- (a) the person is subject to another domestic abuse protection order (and accordingly those requirements already apply); or
- (b) the person is subject to notification requirements under Part 11 or section 154I.

(8) If on any day the person ceases to be subject to any notification requirements as mentioned in subsection (7)(a) or (b), the requirements imposed by subsections (2) to (6) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day.

(9) For provision about how to give a notification under subsection (2), (4), (5) or (6), see section 108O.

[UK Domestic Abuse Act 2021 s.41]

108O. Further provision about notification under section 108N

(1) A person gives a notification under section 108N(2), (4), (5) or (6) by —

- (a) attending at a police station; and
- (b) giving an oral notification to —
 - (i) a police officer; or
 - (ii) any person authorised for the purpose by the officer in charge of the station.

(2) A notification given in accordance with this section must be acknowledged in writing.

(3) When a person ("P") gives a notification under section 108N, P must, if requested to do so by the person to whom notification is given, allow that person to do any of the following things—

- (a) take P's fingerprints;

(b) photograph, or otherwise produce an image of, P or any part of P.

(4) The power in subsection (3) is exercisable for the purpose of verifying P's identity.

[UK Domestic Abuse Act 2021 s.42]

108P. Offences relating to notification

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

- (a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 108N, or
- (b) notifies the police, in purported compliance with such a requirement, of any information which P knows to be false.

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

(2) A person who fails, without reasonable excuse, to comply with section 108O(3) commits an offence.

Penalty: Imprisonment for 12 months or a fine, or both.

(3) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 108N.

(4) The person continues to commit the offence throughout any period during which the failure continues.

(5) The person may not be prosecuted more than once in respect of the same failure.

[UK Domestic Abuse Act 2021 s.43]

108Q. Variation and discharge of orders

(1) A court may vary or discharge a domestic abuse protection order subject to section 108R.

(2) A court may vary or discharge a domestic abuse protection order under this section

(a) on the application of —

- (i) the person for whose protection the order was sought;
- (ii) the person against whom the order was made ("P");
- (iii) the Attorney General; or

(b) in any case in which it could make a domestic abuse protection order under section 108F.

(3) Before deciding whether to vary or discharge an order under this section, the court must hear from —

- (a) the Attorney General if they wish to be heard; and

- (b) in a case where the person for whose protection the order was made is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, the person for whose protection it was made.

(4) Section 108H (matters to be considered before making an order) applies in relation to the variation or discharge of a domestic abuse protection order as it applies in relation to the making of such an order, but as if references to the person for whose protection the order would be made were references to the person for whose protection the order was made.

(5) Subject to subsections (6) to (10), the court may make any order varying or discharging a domestic abuse protection order that it considers appropriate.

(6) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect, only if it is satisfied that it is necessary to do so in order to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.

(7) The court may not extend the period for which an electronic monitoring requirement has effect by more than 12 months at a time.

(8) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.

(9) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court —

- (a) may not extend the requirement; and
- (b) must remove the requirement.

(10) The court may discharge the order only if satisfied that the order is no longer necessary to protect the person for whose protection it was made from domestic abuse, or the risk of domestic abuse, carried out by P.

[UK Domestic Abuse Act 2021 s.44]

108R. Variation and discharge: supplementary

Any application to vary or discharge a domestic abuse protection order under section 108Q must be made to the court that made the order.

[UK Domestic Abuse Act 2021 s.45]

108S. Appeals

(1) A person listed in subsection (2) may appeal against any decision of a court on an application for a domestic abuse protection order under section 108C (to the extent that it would not otherwise be so appealable).

(2) The persons referred to in subsection (1) are —

- (a) the person for whose protection the order was sought;
- (b) the person against whom the order was made; and

- (c) the Attorney General.

(3) An appeal arising by virtue of subsection (1) —

- (a) in the case of a decision made by the Summary Court, is to be made to the Magistrate's Court;
- (b) in the case of a decision made by the Magistrate's Court, is to be made to the Supreme Court; and
- (c) in the case of a decision made by the Supreme Court, is to be made to the Court of Appeal.

[UK Domestic Abuse Act 2021 s.46]

108T. Further provision about appeals

(1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 108S), the court must hear from the Attorney General.

(2) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against —

- (a) confirm, vary or revoke any part of the decision;
- (b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;
- (c) make any order which the court that made the decision appealed against could have made; or
- (d) make any incidental or consequential orders that appear to it to be just.

(3) For the purposes of section 108R (variation and discharge: supplementary) —

- (a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (2)(a) or otherwise) remains an order of the court that first made it; and
- (b) a domestic abuse protection order made by a court on an appeal (whether under subsection (2)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

[UK Domestic Abuse Act 2021 s.47]

108U. Nature of certain proceedings

(1) In proceedings before a court by virtue of sections 108F and 108Q, the court —

- (a) is not restricted to considering evidence that would have been admissible in proceedings in which the person concerned was convicted or (as the case may be) acquitted.
- (b) may adjourn any proceedings even after sentencing or acquitting the person concerned or allowing the person's appeal.

(2) A domestic abuse protection order may be made or varied in addition to an order discharging the person conditionally or absolutely despite sections 502 and 505 of the Criminal Procedure and Evidence Ordinance 2014 (which relate to orders discharging a person conditionally or absolutely and their effect).

(3) In proceedings before a court by virtue of sections 108C, 108F and 108Q, the court may make a special measures direction under sections 434 to 442 of the Criminal Procedure and Evidence Ordinance 2014 in relation to any person giving evidence in the proceedings.

[UK Domestic Abuse Act 2021 (UK), ss.48, 49 modified]

108V. Interpretation of sections 105 to 108U

(1) In sections 105 to 108U —

“**domestic abuse protection notice**” has the meaning given by section 105(2);

“**domestic abuse protection order**” has the meaning given by section 108B(1);

“**electronic monitoring requirement**” has the meaning given by section 108I(6);

“**home address**”, in relation to a person, means —

- (a) the address of the person’s sole or main residence in the Falkland Islands, or
- (b) if the person has no such residence —
 - (i) the address or location of a place in the Falkland Islands where the person can regularly be found;
 - (ii) if there is more than one such place, the address or location of whichever one of those places the person selects;

“**requirement**”, in relation to a domestic abuse protection order, is to be read in accordance with section 108I(1);

“**senior police officer**” has the meaning given by section 105(1).

(2) Any reference to changing home address includes a reference to a case where —

- (a) a person acquires a home address at any time; and
- (b) immediately before that time, the person did not have a home address.

[UK Domestic Abuse Act 2021 s.56]

108W. Offence of breaching non-molestation order

(1) A person who without reasonable excuse does anything that is prohibited by a non-molestation order commits an offence.

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

(2) For the purposes of subsection (1) a “**non-molestation order**” means an order containing either or both of the following provisions —

- (a) provision prohibiting a person from molesting another person;
- (b) provision prohibiting the person from molesting a child.

(3) In the case of a non-molestation order that was made ex parte a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

(4) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.

(5) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

[UK Protection from Harassment Act 1997 s.3]

108X. Controlling or coercive behaviour in intimate or family relationships

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

- (a) A repeatedly or continuously engages in behaviour towards another person (“B”) that is controlling or coercive;
- (b) at the time of the behaviour, A and B are personally connected (as defined by section 103(1));
- (c) the behaviour has a serious effect on B; and
- (d) A knows or ought to know that the behaviour will have a serious effect on B.

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

(2) A does not commit an offence under this section if at the time of the behaviour in question—

- (a) A has parental responsibility for B for the purposes of section 5 of the Children Ordinance 2014; or
- (b) A is otherwise legally liable to maintain B; or
- (c) A has care of B; and
- (d) B is under 16.

(3) A’s behaviour has a “**serious effect**” on B if —

- (a) it causes B to fear, on at least two occasions, that violence will be used against B; or
- (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.

(4) For the purposes of subsection (1)(d), A “**ought to know**” that which a reasonable person in possession of the same information would know.

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

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

- (b) the behaviour was in all the circumstances reasonable.
- (6) A is to be taken to have shown the facts mentioned in subsection (5) if —
 - (a) sufficient evidence of the facts is adduced to raise an issue with respect to them; and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) The defence in subsection (5) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

[UK Serious Crime Act 2015 s.76]

108Y. Offences under section 108X committed outside the Falkland Islands

If —

- (a) a person’s behaviour consists of or includes behaviour in a country outside the Falkland Islands; and
- (b) the behaviour would constitute an offence under section 108X if it occurred in the Falkland Islands,

the person is guilty in the Falkland Islands of that offence.

[UK Serious Crime Act 2015 s.76A(1)]

108Z. Guidance

- (1) The Attorney General may from time to time issue guidance relating to the exercise of functions by police officers under sections 105 to 108U.
- (2) A police officer must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.

[UK Domestic Abuse Act 2022 s. 50 modified]

7. Part 6 amended - Protection from harassment - and new sections 154A to 154L

In Part 6 —

- (a) replace the heading with “**PART 6 – PROTECTION FROM HARASSMENT AND STALKING**”;
- (b) after section 147, insert —

“147A. Offences under sections 143 and 144 committed outside the Falkland Islands

(1) If —

- (a) a person’s course of conduct consists of or includes conduct in a country outside the Falkland Islands; and
- (b) the course of conduct would constitute an offence under section 143 or 144 if it occurred in the Falkland Islands,

the person is guilty in the Falkland Islands of that offence.

(2) In this section “**country**” includes a British Overseas Territory as defined in section 50 of the British Nationality Act 1981.

[UK Protection from Harassment Act 1997 s.4B]”.

(c) in section 152, after subsection (5), add —

“(6) A defendant who without reasonable excuse does anything which the defendant is prohibited from doing by an order under this section commits an offence.

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

[UK Protection from Harassment Act 1997 s.5A(2D)]”.

(d) after section 154, insert —

“Stalking protection orders

154A. Applications for orders

(1) The Attorney General may apply to the Summary Court for an order (a “**stalking protection order**”) in respect of a person (the “**defendant**”) if it appears to the Attorney General that —

- (a) the defendant has carried out acts associated with stalking;
- (b) the defendant poses a risk associated with stalking to another person; and
- (c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

(2) A stalking protection order is an order which, for the purpose of preventing the defendant from carrying out acts associated with stalking —

- (a) prohibits the defendant from doing anything described in the order; or
- (b) requires the defendant to do anything described in the order.

(3) A “**risk associated with stalking**” —

- (a) may be in respect of physical or psychological harm to the other person; or
- (b) may arise from acts which the defendant knows or ought to know are unwelcome to the other person even if, in other circumstances, the acts would appear harmless in themselves.

(4) It does not matter —

- (a) whether the acts mentioned in subsection (1)(a) were carried out in the Falkland Islands or elsewhere; or
- (b) whether they were carried out before or after the commencement of this section.

[UK Stalking Protection Act 2019 s.1]

154B. Power to make orders

(1) The court may make a stalking protection order on an application under section 154A(1) if satisfied that —

- (a) the defendant has carried out acts associated with stalking;
- (b) the defendant poses a risk associated with stalking to another person; and
- (c) the proposed order is necessary to protect another person from such a risk (whether or not the other person was the victim of the acts mentioned in paragraph (a)).

(2) The court may include a prohibition or requirement in a stalking protection order only if satisfied that the prohibition or requirement is necessary to protect the other person from a risk associated with stalking.

(3) Prohibitions or requirements must, so far as practicable, be such as to avoid —

- (a) conflict with the defendant’s religious beliefs; and
- (b) interference with any times at which the defendant normally works or attends an educational establishment.

(4) It does not matter —

- (a) whether the acts mentioned in subsection (1)(a) were carried out in the Falkland Islands or elsewhere; or
- (b) whether they were carried out before or after the commencement of this section.

(5) Subsection (6) applies where the court makes a stalking protection order in relation to a defendant who is already subject to such an order (whether made by that court or another).

(6) The court may not include any prohibition or requirement in the new stalking protection order which is incompatible with a prohibition or requirement in the earlier stalking protection order.

[UK Stalking Protection Act 2019 s.2]

154C. Duration of orders

(1) A stalking protection order has effect —

- (a) for a fixed period specified in the order; or
- (b) until a further order.

(2) Where a fixed period is specified it must be a period of at least 2 years beginning with the day on which the order is made.

(3) Different periods may be specified in relation to different prohibitions or requirements.

[UK Stalking Protection Act 2019 s.3]

154D. Variations, renewals and discharges

(1) The defendant or the Attorney General may apply to the Summary Court for an order varying, renewing or discharging a stalking protection order.

- (2) Before making a decision on an application under subsection (1), the court must hear—
- (a) the defendant; and
 - (b) the Attorney General if they wish to be heard.
- (3) On an application under subsection (1) the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.
- (4) The court may not —
- (a) in renewing or varying an order, impose an additional prohibition or requirement unless satisfied that it is necessary to do so in order to protect a person from a risk associated with stalking; or
 - (b) discharge an order before the end of 2 years beginning with the day on which the order was made without the consent of the defendant and the Attorney General.

[UK Stalking Protection Act 2019 s.4]

154E. Interim stalking protection orders

- (1) This section applies where an application for a stalking protection order (the “**main application**”) has not been determined.
- (2) The Summary Court may make an order (an “**interim stalking protection order**”) in respect of the defendant on an application by the Attorney General.
- (3) The court may, if it considers it appropriate to do so, make an interim stalking protection order —
- (a) prohibiting the defendant from doing anything described in the order; or
 - (b) requiring the defendant to do anything described in the order.
- (4) Prohibitions or requirements must, so far as practicable, be such as to avoid —
- (a) conflict with the defendant’s religious beliefs; and
 - (b) interference with any times at which the defendant normally works or attends an educational establishment.
- (5) An interim stalking protection order —
- (a) has effect only for a fixed period specified in the order; and
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (6) The defendant or the Attorney General may apply to the court for an order varying, renewing or discharging the interim stalking protection order.
- (7) On an application under subsection (6), the court may make any order varying, renewing or discharging the stalking protection order that the court considers appropriate.

[UK Stalking Protection Act 2019 s.5]

154F. Content of orders

A stalking protection order and an interim stalking protection order must specify —

- (a) the date on which the order is made;
- (b) whether it has effect for a fixed period and, if it does, the length of that period;
- (c) each prohibition or requirement that applies to the defendant;
- (d) whether any prohibition or requirement is expressly limited to a particular locality and, if it is, what the locality is; and
- (e) whether any prohibition or requirement is subject to a fixed period which differs from the period for which the order has effect and, if it is, what that period is.

[UK Stalking Protection Act 2019 s.6]

154G. Appeals

(1) A defendant may appeal to the Magistrate's Court against —

- (a) the making of a stalking protection order;
- (b) the making of an interim stalking protection order;
- (c) the making of an order under section 154D; and
- (d) the refusal to make an order under section 154D on an application by the defendant.

(2) The Attorney General may appeal to the Magistrate's Court against —

- (a) the refusal to make a stalking protection order,
- (b) the refusal to make an interim stalking protection order,
- (c) the refusal to make an order under section 154D, or
- (d) the making of an order under section 154D on an application by the defendant.

(3) On any such appeal, the Magistrate's Court may make —

- (a) such orders as may be necessary to give effect to its determination of the appeal, and
- (b) such incidental or consequential orders as appear to it to be appropriate.

[UK Stalking Protection Act 2019 s.7]

154H. Offence of breaching stalking protection order etc

(1) A person who, without reasonable excuse, breaches a stalking protection order or an interim stalking protection order commits an offence.

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

(2) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order under subsection (1)(b) (**conditional discharge**) of section 502 of the Criminal Procedure and Evidence Ordinance 2014.

(3) In proceedings for an offence under this section, a copy of the original stalking protection order or interim stalking protection order, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

[UK Stalking Protection Act 2019 s.8]

154I. Notification requirements

(1) A person subject to —

- (a) a stalking protection order (other than one which replaces an interim stalking protection order); or
- (b) an interim stalking protection order,

must, within the period of 3 days beginning with the date of service of the order, notify to the police the information set out in subsection (2).

(2) The information is —

- (a) the person's name and, where the person uses one or more other names, each of those names; and
- (b) the person's home address.

(3) A person who —

- (a) is subject to a stalking protection order or an interim stalking protection order; and
- (b) uses a name which has not been notified under this section,

must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police that name.

(4) A person who —

- (a) is subject to a stalking protection order or an interim stalking protection order; and
- (b) changes home address,

must, before the end of the period of 3 days beginning with the date on which that happens, notify to the police the new home address.

(5) The requirements imposed by this section do not apply to a person who is subject to notification requirements under Part 11 of the Crimes Ordinance 2014 (**sexual offence orders**).

(6) Subsection (7) applies where —

- (a) a person is subject to a stalking protection order or an interim stalking protection order;

- (b) at the time the order is made, the requirements imposed by this section do not apply to the person as a result of subsection (5);
- (c) the person ceases on a subsequent day (“**the final day**”) to be subject to the notification requirements mentioned in that subsection; and
- (d) the order remains in effect on the final day.

(7) The requirements imposed by this section apply to the person as from the final day, but as if the reference in subsection (1) to the date of service of the order were a reference to the final day.

[UK Stalking Protection Act 2019 s. 9]

154J. Method of notification and related matters

(1) A person gives a notification under section 154I(1), (3) or (4) by —

- (a) attending at a police station; and
- (b) giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) In relation to a person giving a notification under section 154I(4), the references in subsections (1) and (2) to the person’s home address are references to —

- (a) the person’s new home address if the person gives the notification after changing home address; or
- (b) the person’s old home address if the person gives the notification before changing home address.

(3) A notification given in accordance with this section must be acknowledged —

- (a) in writing; and
- (b) in such form as the Chief Police Officer may direct.

(4) When a person gives notification under section 154I(1), (3) or (4), the person must, if requested to do so by the police officer or person mentioned in subsection (1)(b), allow that officer or person to —

- (a) take the person’s fingerprints;
- (b) photograph any part of the person; or
- (c) do both of these things.

(5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the person.

[UK Stalking Protection Act 2019 s.10]

154K. Offences relating to notification

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

- (a) fails, without reasonable excuse, to comply with section 154I(1), (3) or (4), or with section 154J(4); or
- (b) notifies to the police, in purported compliance with section 154I(1), (3) or (4), any information which the person knows to be false.

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

(2) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with section 154I(1), (3) or (4).

(3) The person continues to commit the offence throughout any period during which the failure continues.

(4) The person may not be prosecuted more than once in respect of the same failure.

[UK Stalking Protection Act 2019 s.11]

154L. Interpretation - sections 154A to 154K

In sections 154A to 154K —

“**acts**” includes omissions;

“**defendant**” has the meaning in section 154A(1);

“**home address**”, in relation to a person, means —

- (a) the address of the person’s sole or main residence in the Falkland Islands; or
- (b) if the person has no such residence, the address or location of a place in the Falkland Islands where the person can regularly be found and, if there is more than one such place, such of those places as the person may select;

“**interim stalking protection order**” has the meaning in section 154E(2);

“**Summary Court**”, in relation to a defendant under the age of 18, means youth court;

“**photograph**” includes any process by means of which an image may be produced; and

“**stalking protection order**” has the meaning in section 154A(1).

(2) References to “**risk associated with stalking**” are to be read in accordance with section 154A(3).

[UK Stalking Protection Act 2019 s.14]”.

8. Section 187 repealed (offences related to minefields)

Repeal section 187.

9. Section 188 amended (possession of unexploded ordnance)

In section 188(2), replace the definition of “without lawful authority” with —

““**without lawful authority**” means without authority given by or on behalf of the Commander British Forces;”.

10. Part 10 amended - Sexual offences - and new sections 285A to 285C

In Part 10 —

- (a) in section 226 —
 - (i) in subsection (4), omit “and subsection (6) applies”;
 - (ii) in subsection (5), omit “or if subsection (6) does not apply,”
 - (iii) delete subsection (6);
- (b) in section 227 —
 - (i) in subsection (4), omit “and subsection (6) applies”;
 - (ii) in subsection (5), omit “or if subsection (6) does not apply,”
 - (iii) delete subsection (6).
- (c) omit the subheading, “Abuse of children through prostitution and pornography” immediately before section 259, and replace with “Sexual exploitation of children”;
- (d) in section 260 —
 - (i) replace the section heading with “Causing or encouraging sexual exploitation of a child”; and
 - (ii) in paragraph (a), replace “become a prostitute, or to be involved in pornography” with “be sexually exploited”;
- (e) in section 261 —
 - (i) replace the section heading with “Controlling a child in relation to sexual exploitation”; and
 - (ii) in paragraph (a), replace “prostitution or involvement in pornography” with “sexual exploitation”;
- (f) in section 262 —
 - (i) replace the section heading with “Arranging or facilitating sexual exploitation of a child”; and
 - (ii) in paragraph (a), replace “prostitution or involvement in pornography” with “sexual exploitation”; and
- (g) replace section 263 with —

“263. Sections 259 to 262: Interpretation

- (1) For the purposes of sections 259 to 262, a person (“B”) is sexually exploited if —

- (a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or
- (b) an indecent image of B is recorded or streamed or otherwise transmitted; and “**sexual exploitation**” is to be interpreted accordingly.

(2) In this section, “**payment**” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

[UK Sexual Offences Act 2003 ss. 48 to 53]”; and

(h) after section 285 insert —

“285A. Voyeurism: additional offences

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

- (a) A operates equipment beneath the clothing of another person (“B”);
- (b) A does so with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (3), to observe —
 - (i) B’s genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering B’s genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible; and
- (c) A does so —
 - (i) without B’s consent; and
 - (ii) without reasonably believing that B consents.

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

(2) A person (“A”) commits an offence if —

- (a) A records an image beneath the clothing of another person (“B”);
- (b) the image is of —
 - (i) B’s genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering B’s genitals or buttocks;

in circumstances where the genitals, buttocks or underwear would not otherwise be visible;

- (c) A does so with the intention that A or another person (“C”) will look at the image for a purpose mentioned in subsection (3); and
- (d) A does so —

- (i) without B's consent; and
- (ii) without reasonably believing that B consents.

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

(3) The purposes referred to in subsections (1) and (2) are —

- (a) obtaining sexual gratification (whether for A or C); or
- (b) humiliating, alarming or distressing B.

[UK Sexual Offences Act 2003 s.67A]

285B. Disclosing or threatening to disclose private sexual photographs and films with intent to cause distress

(1) A person commits an offence if —

- (a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“**the relevant individual**”) appears;
- (b) by so doing, the person intends to cause distress to that individual; and
- (c) the disclosure is, or would be, made without the consent of that individual.

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

(2) It is not an offence under this section for the person to disclose, or threaten to disclose, the photograph or film to the relevant individual.

(3) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove —

- (a) that the photograph or film referred to in the threat exists; or
- (b) if it does exist, that it is in fact a private sexual photograph or film.

(4) It is a defence for a person charged with an offence under this section to prove that they reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

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

- (a) the disclosure, or threat to disclose, was made in the course of, or with a view to, the publication of journalistic material; and
- (b) the person reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

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

- (a) the person reasonably believed that the photograph or film had previously been disclosed for reward, whether by the relevant individual or another person; and

- (b) the person had no reason to believe that the previous disclosure for reward was made without the consent of the relevant individual.
- (7) A person is taken to have shown the matters mentioned in subsection (5) or (6) if—
- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.
- (8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.
- (9) For the purposes of subsection (1) at the time a person discloses, or threatens to disclose, a private sexual photograph or film it does not matter whether the person was outside of the Falkland Islands.

[UK Criminal Justice and Courts Act 2015 s.33]

285C. Disclosing private sexual photographs: Interpretation

- (1) For the purpose of section 285B —
- (a) “**consent**” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure; and
 - (b) “**publication**” of journalistic material means disclosure to the public at large or to a section of the public.
- (2) A person “**discloses**” something to a person if, by any means, they give or show it to the person or makes it available to the person.
- (3) Something that is given, shown or made available to a person is disclosed —
- (a) whether or not it is given, shown or made available for reward; and
 - (b) whether or not it has previously been given, shown or made available to the person.
- (4) “**Photograph or film**” means a still or moving image in any form that —
- (a) appears to consist of or include one or more photographed or filmed images; and
 - (b) in fact consists of or includes one or more photographed or filmed images.
- (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
- (6) “**Photographed or filmed image**” means a still or moving image that —
- (a) was originally captured by photography or filming; or
 - (b) is part of an image originally captured by photography or filming.
- (7) “**Filming**” means making a recording, on any medium, from which a moving image may be produced by any means.

(8) References to a photograph or film include —

- (a) a negative version of an image described in subsection (4); and
- (b) data stored by any means which is capable of conversion into an image described in subsection (4).

(9) A photograph or film is “**private**” if it shows something that is not of a kind ordinarily seen in public.

(10) A photograph or film is “**sexual**” if —

- (a) it shows all or part of an individual’s exposed genitals or pubic area;
- (b) it shows something that a reasonable person would consider to be sexual because of its nature; or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(11) Subsection (12) applies in the case of —

- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way;
- (b) a photograph or film that combines two or more photographed or filmed images; and
- (c) a photograph or film that combines a photographed or filmed image with something else.

(12) The photograph or film is not private and sexual if —

- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual;
- (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (11); or
- (c) it is only by virtue of the alteration or combination mentioned in subsection (11) that the relevant individual (within the meaning of section 285B) is shown as part of, or with, whatever makes the photograph or film private and sexual.

[UK Criminal Justice and Courts Act 2015 ss.34 and 35]”.

11. New section 499A inserted

After section 499, insert —

“499A. Corrupt or other improper exercise of police powers and privileges

(1) A police officer commits an offence if they —

- (a) exercise the powers and privileges of a police officer improperly; and

- (b) know or ought to know that the exercise is improper.

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

(2) For the purposes of subsection (1) a police officer includes a reserve police officer or any other person exercising the powers and privileges of a police officer.

(3) For the purposes of this section, a police officer exercises the powers and privileges of a police officer improperly if —

- (a) the police officer exercises a power or privilege of a police officer for the purpose of achieving —
 - (i) a benefit for themselves; or
 - (ii) a benefit or a detriment for another person; and
- (b) a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.

(4) For the purposes of this section, a police officer is to be treated as exercising the powers and privileges of a police officer improperly in the cases described in subsections (5) and (6).

(5) The first case is where —

- (a) the police officer fails to exercise a power or privilege of a police officer;
- (b) the purpose of the failure is to achieve a benefit or detriment described in subsection (3)(a); and
- (c) a reasonable person would not expect a police officer to fail to exercise the power or privilege for the purpose of achieving that benefit or detriment.

(6) The second case is where —

- (a) the police officer threatens to exercise, or not to exercise, a power or privilege of a police officer;
- (b) the threat is made for the purpose of achieving a benefit or detriment described in subsection (3)(a); and
- (c) a reasonable person would not expect a police officer to threaten to exercise, or not to exercise, the power or privilege for the purpose of achieving that benefit or detriment.

(7) An offence is committed under this section if the act or omission in question takes place in the Falkland Islands or in Falkland Islands waters.

(8) In this section —

“**benefit**” and “**detriment**” mean any benefit or detriment, whether or not in money or other property and whether temporary or permanent; and

“**Falkland Islands waters**” means the sea and other waters within the seaward limits of the Falkland Islands territorial sea.

(9) References in this section to exercising, or not exercising, the powers and privileges of a police officer include performing, or not performing, the duties of a police officer.

(10) Nothing in this section affects what constitutes the offence of misconduct in public office contrary to section 499.

[UK Criminal Justice and Courts Act 2015 s.26]”.

12. Section 547 amended (racially or religiously aggravated assaults)

In section 547, replace paragraphs (c) and (d) with —

“(c) section 70 (Common assault) and section 72A (Assaulting emergency worker);

(d) section 71 (Assault occasioning actual bodily harm) and section 71A (Strangulation or suffocation),”.

13. New Parts 23A and 23B inserted after Part 23

Insert Parts 23A and 23B after section 556 —

“PART 23A - DANGEROUS DOGS

556A. Dangerous dogs bred for fighting

(1) This section applies to any dog of any type designated for the purposes of this section by the Governor, being a type appearing to the Governor to be bred for fighting or to have the characteristics of a type bred for that purpose.

(2) No person may —

- (a) breed, or breed from, a dog to which this section applies;
- (b) sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;
- (c) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift;
- (d) allow such a dog of which the person is the owner or of which they are for the time being in charge to be in a public place without being muzzled and kept on a lead; or
- (e) abandon such a dog of which the person is the owner or, being the owner or for the time being in charge of such a dog, allow it to stray.

(3) After such day as the Governor may by order appoint for the purposes of this subsection no person may have a dog to which this section applies in their possession or custody except—

- (a) in pursuance of the power of seizure conferred by the subsequent provisions of this Part; or
- (b) in accordance with an order for its destruction made under those provisions;

but the Governor must by order make a scheme for the payment to the owners of such dogs who arrange for them to be destroyed before that day of sums specified in or determined under the scheme in respect of those dogs and the cost of their destruction.

(4) Subsection (2)(b) and (c) does not apply to anything done with a view to the dog in question being removed from the Falkland Islands before the day appointed under subsection (3).

(5) The Governor may by order provide that the prohibition in subsection (3) does not apply in cases under subsection (3), subject to such conditions as are specified in the order and the order may provide for a scheme of exemption with such arrangements (including provision for the payment of charges or fees) as the Governor thinks appropriate.

(6) A person who contravenes this section commits an offence.

Penalty: Imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(7) A person who publishes an advertisement in contravention of subsection (2)(b) or (c)—

- (a) is not on being convicted, liable to imprisonment if they show that they published the advertisement to the order of someone else and did not devise it; and
- (b) must not be convicted if, in addition, the person shows that they did not know and had no reasonable cause to suspect that it related to a dog to which this section applies.

(8) An order under subsection (1) adding dogs of any type to those to which this section applies may provide that subsections (3) and (4) apply in relation to those dogs with the substitution for the day appointed under subsection (3) of a later day specified in the order.

[UK Dangerous Dogs Act 1991 s.1]

556B. Other specially dangerous dogs

(1) If it appears to the Governor that dogs of any type to which section 556A does not apply present a serious danger to the public the Governor may by order impose in relation to dogs of that type restrictions corresponding, with such modifications, if any, as the Governor thinks appropriate, to all or any of those in section 556A(2)(d) and (e).

(2) An order under this section may provide for exceptions from any restriction imposed by the order in such cases and subject to compliance with such conditions as are specified in the order.

(3) An order under this section may contain such supplementary or transitional provisions as the Governor thinks necessary or expedient and may create offences punishable on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(4) In determining whether to make an order under this section in relation to dogs of any type and, if so, what the provisions of the order should be, the Governor must consult with such persons or bodies as appear to have relevant knowledge or experience, including a body concerned with animal welfare, a body concerned with veterinary science and practice and a body concerned with breeds of dogs.

[UK Dangerous Dogs Act s.2]

556C. Keeping dogs under proper control

(1) If a dog is dangerously out of control in any place, public or private —

- (a) the owner; and
- (b) if different, the person for the time being in charge of the dog,

commit an offence.

Penalty: As provided in subsection (2) or (4).

(2) The maximum penalty on conviction for an offence under this section, if the dog while out of control injures any person, is the relevant maximum term of imprisonment specified in subsection (3) or a fine or both.

(3) For the purposes of subsection (2), the relevant maximum is —

- (a) imprisonment for 14 years if a person dies as a result of being injured;
- (b) imprisonment for 5 years in any other case where a person is injured; or
- (c) imprisonment for 3 years in any case where an assistance dog is injured (whether or not it dies).

(4) If subsection (2) does not apply, the maximum penalty on conviction for an offence under this section is imprisonment for 6 months or a fine at level 5 on the standard scale, or both.

(5) A person (“D”) is not guilty of an offence where —

- (a) the dog is dangerously out of control while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both), and
- (b) at that time —
 - (i) the person in relation to whom the dog is dangerously out of control (“V”) is in, or is entering, the building or part as a trespasser; or
 - (ii) D (if present at that time) believed V to be in, or entering, the building or part as a trespasser.

(6) In proceedings for an offence under subsection (1) against a person who is the owner of a dog but was not at the material time in charge of it, it is a defence for the accused to prove that the dog was at the material time in the charge of a person whom they reasonably believed to be a fit and proper person to be in charge of it.

[UK Dangerous Dogs Act 1991 s.3]

556D. Destruction and disqualification orders

(1) Where a person is convicted of an offence under section 556A or 556C(1) or of an offence under an order made under section 556B the court —

- (a) may order the destruction of any dog in respect of which the offence was committed and subject to subsection (2), must do so in the case of an offence under

section 556A or an aggravated offence under section 556C(1) to which section 556C(2) applies; and

- (b) may order the offender to be disqualified, for such period as the court thinks fit, from having custody of a dog.

(2) Nothing in subsection (1)(a) requires the court to order the destruction of a dog if the court is satisfied that the dog does not constitute a danger to public safety.

(3) For the purposes of subsection (2), when deciding whether a dog constitutes a danger to public safety, the court —

- (a) must consider —

- (i) the temperament of the dog and its past behaviour; and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog; and

- (b) may consider any other relevant circumstances.

(4) Where a court makes an order under subsection (1)(a) for the destruction of a dog owned by a person other than the offender the owner may appeal to the Supreme Court against the order.

(5) A dog must not be destroyed pursuant to an order under subsection (1)(a) —

- (a) until the end of the period for giving notice of appeal against the conviction or, where the order was not one which the court was required to make, against the order; and
- (b) if notice of appeal is given within that period, until the appeal is determined or withdrawn,

unless the offender and, in a case to which subsection (4) applies, the owner of the dog gives notice to the court that made the order that there is to be no appeal.

(6) Where a court makes an order under subsection (1)(a) it may —

- (a) appoint a person to undertake the destruction of the dog and require any person having custody of it to deliver it up for that purpose; and
- (b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.

(7) Any sum ordered to be paid under subsection (6)(b) must be treated for the purposes of enforcement as if it were a fine imposed on conviction.

(8) Any person who is disqualified for having custody of a dog by virtue of an order under subsection (1)(b) may, at any time after the end of the period of one year beginning with the date of the order, apply for a direction terminating the disqualification.

(9) An application pursuant to subsection (8) may be heard by the Summary Court, Magistrate's Court or Supreme Court.

(10) On an application under subsection (8) the court may —

- (a) having regard to the applicant's character, conduct since the disqualification was imposed and any other circumstances of the case, grant or refuse the application; and
- (b) order the applicant to pay all or any part of the costs of the application;

and where an application in respect of an order is refused no further application in respect of that order must be entertained if made before the end of the period of one year beginning with the date of the refusal.

(11) Any person who —

- (a) has custody of a dog in contravention of an order under subsection (1)(b); or
- (b) fails to comply with a requirement imposed on him under subsection (6)(a),

commits an offence.

Penalty: A fine at level 5 on the standard scale.

[UK Dangerous Dogs Act 1991 s.4]

556E. Contingent destruction orders

(1) Where —

- (a) a person is convicted of an offence under section 556A or 556C(1);
- (b) the court does not order the destruction of the dog under section 556D(1)(a); and
- (c) in the case of an offence under section 556A, the dog is subject to the prohibition in section 556A(3);

the court must order that, unless the dog is exempted from that prohibition within the requisite period, the dog must be destroyed.

(2) Where an order is made under subsection (1) in respect of a dog, and the dog is not exempted from the prohibition in section 556A(3) within the requisite period, the court may extend that period.

(3) Subject to subsection (2), the requisite period for the purposes of such an order is the period of two months beginning with the date of the order.

(4) Where a person is convicted of an offence under section 556C(1), the court may order that, unless the owner of the dog keeps it under proper control, the dog will be destroyed.

(5) An order under subsection (4) —

- (a) may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise; and
- (b) if it appears to the court that the dog is a male and would be less dangerous if neutered, may require it to be neutered.

(6) Subsections (2) to (4) of section 556D apply in relation to an order under subsection (1) or (4) as they apply in relation to an order under subsection (1)(a) of that section.

[UK Dangerous Dogs Act 1991 s.4A]

556F. Destruction orders otherwise than on a conviction

(1) Where a dog is seized under section 556G(1) or (2) or in exercise of a power of seizure conferred by any other enactment and on an application to the Summary Court it appears to the court —

- (a) that no person has been or is to be prosecuted for an offence under this Part (whether because the owner cannot be found or for any other reason); or
- (b) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition in section 556A(3);

the court may order the destruction of the dog and, subject to subsection (2), must do so if it is one to which section 556A applies.

(2) Nothing in subsection (1)(b) requires the court to order the destruction of a dog if satisfied that the dog does not constitute a danger to public safety.

(3) For the purposes of subsection (2), when deciding whether a dog constitutes a danger to public safety, the court —

- (a) must consider —
 - (i) the temperament of the dog and its past behaviour; and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog; and
- (b) may consider any other relevant circumstances.

(4) Where in a case falling within subsection (1)(b) the court does not order the destruction of the dog, the court must order that, unless the dog is exempted from the prohibition within the requisite period, the dog is destroyed.

(5) Subsections (2) to (4) of section 556D apply in relation to an order under subsection (1)(b) or (4) as they apply in relation to an order under subsection (1)(a) of that section.

(6) Subsections (2) and (3) of section 556E apply in relation to an order under subsection (3) as they apply in relation to an order under subsection (1) of that section.

[UK Dangerous Dogs Act 1991 s.4B]

556G. Seizure, entry of premises and evidence

(1) A police officer, customs officer or other person authorised by the Governor to exercise the powers conferred by this subsection may seize —

- (a) any dog which appears to be a dog to which section 556A applies and which is in a public place —
 - (i) after the time when possession or custody of it has become unlawful by virtue of that section; or

- (ii) before that time, without being muzzled and kept on a lead;
- (b) any dog in a public place which appears to be a dog to which an order under section 556B applies and in respect of which an offence against the order has been or is being committed; and
- (c) any dog in a public place (whether or not a dog to which that section or such an order applies) which appears to be dangerously out of control.

(2) A police officer, customs officer or other person authorised by the Governor may seize any dog not in a public place (whether or not a dog to which that section or such an order applies) which appears to be dangerously out of control.

(3) If in any proceedings it is alleged by the prosecution that a dog is one to which section 556A or an order under section 556B applies it is presumed that it is such a dog unless the contrary is shown by the accused by such evidence as the court considers sufficient; and the accused must not be permitted to adduce such evidence unless they have given the prosecution notice of intention to do so not later than the fourteenth day before that on which the evidence is to be adduced.

[UK Dangerous Dogs Act 1991 s.5]

556H. Dogs owned by young persons

Where a dog is owned by a person who is less than sixteen years old any reference to its owner includes a reference to any person who has responsibility for the young person.

[UK Dangerous Dogs Act 1991 s.6]

556I. Muzzling and leads

(1) In this Part —

- (a) references to a dog being muzzled are to its being securely fitted with a muzzle sufficient to prevent it biting any person; and
- (b) references to its being kept on a lead are to its being securely held on a lead by a person who is not less than sixteen years old.

(2) The Governor may by order prescribe the kind of muzzle or lead to be used for the purpose of complying with any provision contained in this Part.

(3) If a muzzle or lead of a particular kind is for the time being prescribed in relation to any provision contained in this Part then references to a muzzle or lead is to be construed as references to a muzzle or lead of that kind.

[UK Dangerous Dogs Act 1991 s.7]

556J. Dangerous dogs: Interpretation

In this Part —

- (a) “**advertisement**” includes any means of bringing a matter to the attention of the public and “**advertise**” is construed accordingly;

“**assistance dog**” means —

- (i) a dog which has been trained to guide a blind person;
- (ii) a dog which has been trained to assist a deaf person;
- (iii) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects; or
- (iv) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind; and

“public place” means any street, road or other place (whether or not enclosed) to which the public have or are permitted to have access whether for payment or otherwise and includes the common parts of a building containing two or more separate dwellings;

(b) a dog is regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so; and

(c) references to a dog injuring a person or assistance dog or there being grounds for reasonable apprehension that it will do so do not include references to any case in which the dog is being used for a lawful purpose by a police officer or a person in the service of the Crown.

[UK Dangerous Dogs Act 1991 s.10]

PART 23B - LASER MISUSE

556K. Offence of shining or directing a laser beam towards a vehicle

(1) In sections 556K and 556L —

“aircraft” means any vehicle used for travel by air;

“laser beam” means a beam of coherent light produced by a device of any kind; and

“vehicle” means any vehicle used for travel by land, water or air.

[UK Laser Misuse (Vehicles) Act 2018 s.3]

(2) A person commits an offence if —

- (a) the person shines or directs a laser beam towards a vehicle which is moving or ready to move; and
- (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle.

(3) It is a defence to show —

- (a) that the person had a reasonable excuse for shining or directing the laser beam towards the vehicle, or
- (b) that the person —

- (i) did not intend to shine or direct the laser beam towards the vehicle; and
 - (ii) exercised all due diligence and took all reasonable precautions to avoid doing so.
- (4) A person is taken to have shown a fact mentioned in subsection (3) if —
- (a) sufficient evidence is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.

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

(5) A mechanically propelled vehicle which is not moving or ready to move but whose engine or motor is running is to be treated for the purposes of subsection (2)(a) as ready to move.

(6) In relation to an aircraft, the reference in subsection (2)(b) to “a person with control of the vehicle” is a reference to any person on the aircraft who is engaged in controlling it, or in monitoring the controlling of it.

(7) In relation to any vehicle used for travel by water, the reference in subsection (2)(b) to “a person with control of the vehicle” is a reference to the master, the pilot or any person engaged in navigating the vehicle.

[UK Laser Misuse (Vehicles) Act 2018 s.3]

556L. Offences relating to air traffic services

(1) In this section —

“**air traffic facility**” means any building, structure, vehicle or other place from which air traffic services are provided;

“**air traffic services**” means —

- (a) providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions (whether in the air or on the ground);
- (b) providing instructions, information or advice with a view to securing safe and efficient flying;
- (c) managing the flow of air traffic with a view to ensuring the most efficient use of airspace;
- (d) providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft; or
- (e) notifying organisations of aircraft needing search and rescue facilities, and assisting organisations to provide such facilities.

(2) A person commits an offence if —

- (a) the person shines or directs a laser beam —
 - (i) towards an air traffic facility; or

- (ii) towards a person providing air traffic services; and
- (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person providing air traffic services.

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

(3) It is a defence to show —

- (a) that the person had a reasonable excuse for shining or directing the laser beam towards the facility or person, or
- (b) that the person —
 - (i) did not intend to shine or direct the laser beam towards the facility or person; and
 - (ii) exercised all due diligence and took all reasonable precautions to avoid doing so.

(4) A person is taken to have shown a fact mentioned in subsection (3) if —

- (a) sufficient evidence is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond reasonable doubt.

[UK Laser Misuse (Vehicles) Act 2018 s.2]”.

14. Schedule 2 amended (sexual offences to which sections 289 and 290 apply)

In Schedule 2 Part A paragraph 1, before subparagraph (a) insert —

“(Aa) an offence under any of sections 203 to 206 where the victim of the offence was 18 or over at the time of the offence.”.

15. Schedule 3 amended (sexual offences for purposes of Part 11)

In Schedule 3 under subheading “Offences under Part 10 of this Ordinance”, after paragraph 23 insert —

“23A.(1) An offence under section 285A if —

- (a) the offence was committed for the purpose mentioned in section 285A(3)(a) (sexual gratification); and
- (b) the relevant condition is met.

(2) Where the offender was under 18, the relevant condition is that the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

(3) In any other case, the relevant condition is that —

- (a) the victim was under 18; or
- (b) the offender, in respect of the offence or finding, is or has been —

- (i) sentenced to a term of imprisonment;
- (ii) detained in a hospital; or
- (iii) made the subject of a community sentence of at least 12 months.”.

16. Schedule 4 amended (other offences for the purposes of Part 11)

After “An offence under section 71 ...” insert —

“An offence under section 71A (Strangulation or suffocation)”.

17. Minor amendments

(1) In section 2 —

(a) delete the definition of “civil partner”;

(b) in the definition of “family proceedings” replace paragraph (b) with —

“(b) under any enactment relating to divorce, separation or dissolution of a civil partnership, family homes, domestic abuse or adoption;”.

(2) In section 16(6) omit “as defined in section 2” and “as so defined”.

(3) In section 431 replace “410 to 413” with “409 to 412” in both places it occurs.

PART 3 - Miscellaneous Amendments

18. Repeal of Crimes (Amendment) Ordinance 2017

The Crimes (Amendment) Ordinance 2017 is repealed.

19. Amendment of Prisons Regulations 2017

Regulation 10(4) of the Prisons Regulations 2017 is deleted.

OBJECTS AND REASONS

This Ordinance amends some sections of, and adds new sections to, the Crimes Ordinance 2014 (the Ordinance). The criminal law is constantly reviewed and updated in line with developments in England and Wales. This Bill gives effect to various changes to the law of England and Wales that are considered to be needed in the Falkland Islands, with modification to ensure that the provisions suit local circumstances.

Clauses 1, 2 and 3 provide for preliminary matters (title of the Bill and commencement). The amendments commence on publication of the Amendment Ordinance in the *Gazette*.

The laws of England and Wales adopted in this Bill are:

The Domestic Abuse Act 2021

The Stalking Protection Act 2019
The Sexual Offences Act 2003
The Voyeurism (Offences) Act 2019
The Criminal Justice and Courts Act 2015 (sections 26 and 33 to 35 as amended by the Domestic Abuse Act 2021)
The Dangerous Dogs Act 1991
The Laser Misuse (Vehicles) Act 2018.

1. Domestic Abuse *clauses 4 to 6* (Domestic Abuse Act 2021)

Clauses 4 to 6 insert new sections in the Ordinance are based on provisions from the Domestic Abuse Act 2021, (DAA) that are relevant to the Falkland Islands. (New sections (13A, 71A, 71B, 102 to 108Z)).

The amendments make substantial changes to the current domestic violence provisions. Only those provisions relating to criminal law are adopted from the Domestic Abuse Act 2021.

New section 13A provides that an offence listed in 13A(2), if committed outside the Falkland Islands, may be prosecuted in the Falkland Islands. These are offences against the person i.e. murder, manslaughter, offences relating to bodily harm, administering poison or child destruction. Section 13A maximises protection for victims of offences committed against the person and it replicates section 72 of the DAA.

Clause 5 inserts in the Ordinance a new section 71A which criminalises strangulation or suffocation and section 71B which makes it clear that consent to serious harm for sexual gratification is not a defence.

Strangulation or suffocation is a common form of assault by perpetrators of domestic abuse. The new offence under section 71A carries a maximum sentence of 5 years imprisonment. It is a defence under section 71A(2) to establish that a person consented to strangulation or suffocation as part of sexual or other non-criminal activity but the defence is not available where serious harm is caused or is intended. Serious harm is defined in section 71A(5).

Domestic violence provisions currently in the Ordinance do not reflect the different forms of domestic abuse and the different relationships in which domestic abuse can occur. New sections 102 to 108Z (22 to 56 DAA) replace and update those provisions and provide for domestic abuse. A definition of domestic abuse is in section 102 and it includes physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse and psychological, emotional or other abuse (section 102(3)).

Domestic abuse occurs where people are personally connected as defined in section 103 and this includes children who witness domestic abuse.

The procedures for enforcement against perpetrators of domestic abuse have been simplified. A senior police officer may give a domestic abuse protection notice to a person over the age of 18 years. A notice may provide that the person to whom it is given must not contact or come within a specified distance of the person for whose protection it is made. Before giving a notice, the senior police officer must consider the matters set out in section 107.

Domestic abuse orders are covered under sections 108B to 108N. A domestic abuse order may be issued after an application by the Attorney General (section 108C) or as incidental to criminal proceedings (section 108F). When making an order the court must be satisfied that a person has been abusive to another person to whom they are personally connected and who is aged 16 years or over and that it is necessary and proportionate to protect that person from domestic abuse (section 108G).

Breach of a domestic abuse protection order is an offence punishable by up to 5 years' imprisonment (section 108M). Under section 108Q the court may vary and discharge a domestic abuse protection order on application of the person for whose protection, or the person against whom, the order is made or by the Attorney General (section 108S). The court may also vary or discharge an order in any case in which it could have made an order under section 108F. Section 108S deals with appeals against any decision of a court on an application for a domestic abuse protection order.

Section 108U lowers the evidential bar for proceedings under sections 108F and 108Q and the court is allowed to adjourn any proceedings to which those sections apply, even after sentencing or acquitting the person concerned. In proceedings under sections 108C, 108F and 108Q, the court may make special measures directions under the Criminal Procedure and Evidence Ordinance 2014 (108U(3)). A domestic abuse order may also be made or varied in addition to an order discharging the person conditionally or absolutely despite sections 502 and 505 of the Criminal Procedure and Evidence Ordinance 2014.

The Ordinance is amended to make changes to the criminal law as follows: sections 108W (offence of breaching non-molestation order), 108X (controlling or coercive behaviour in intimate or family relationships) and 108Y (offences under section 108X committed outside the Falkland Islands).

2. Stalking and harassment *clause 7* (Stalking Protection Act 2019)

Clause 7 amends Part 6 of the Ordinance (Protection from harassment) so as to introduce stalking protection orders. Sections 154A to 154L are added to the Ordinance and they allow the making of protection orders to prohibit a person from engaging in acts associated with stalking and impose notification requirements intended to monitor and supervise those engaged in stalking behaviour.

Section 154A allows the Attorney General to apply for a stalking protection order where a defendant has carried out acts associated with stalking; poses a risk associated with stalking to another person or there is reasonable cause to believe that the proposed order is necessary. An order has effect for a fixed period specified in the order or until further notice (section 154C). Section 154D provides for variations, renewals and discharges of orders. Breach of a stalking protection order is an offence punishable by up to five years' imprisonment.

3. *Clause 8* repeals section 187 (Offences related to minefields).

4. *Clause 9* amends section 188 (Possession of unexploded ordinance) by moving the definition of "without lawful authority" to section 188 as a consequence of the repeal of section 187.

5. Sexual Offences, *clause 10* (Sexual Offences Act 2003 sections 47 - 51)

Clause 10 makes amendments to Part 10 of the Ordinance to give effect to sections 47 to 51 of the Sexual Offences Act 2003. The title heading is changed to “Sexual exploitation of children”. The amendment widens the scope of the Part. Sections 260 to 263 are amended to introduce the concept of sexual exploitation. Section 263 is replaced with a definition of “sexually exploited” for purposes of sections 259 to 262. The definition includes situations where an indecent image is recorded or streamed or otherwise transmitted.

6. Voyeurism offences, *clause 10* (Voyeurism (Offences) Act 2019 section 67A of Sexual Offences Act 2003)

Section 285 provides for the offence of voyeurism, but in England and Wales, the Voyeurism (Offences) Act 2019 amended the Sexual Offences Act 2003 by adding section 67A which introduces two new criminal offences. *Clause 10(f)* inserts new sections 285A, 285B and 285C which introduce additional offences related to voyeurism.

Section 285A criminalises an activity commonly known as up skirting. Up skirting is when a person operates equipment or records an image under another person’s clothing (without that person’s consent or a reasonable belief in their consent) with the intention of observing or looking at, or enabling another person to observe or look at the person’s private parts (exposed or covered with underwear). The purpose of the offender’s action must be to obtain sexual gratification or cause humiliation, distress or alarm.

Section 285B creates the offence of disclosing or threatening to disclose private sexual photographs and films with intent to cause distress. Recordings of still and moving images and sharing private sexual images is now common practice. Such activity between consenting adults is not unlawful. However, sometimes those who are in possession of private sexual images of others disclose the images to third parties without the consent of the person in the image. This is done with the specific intention of causing distress to the person in the private sexual image (often known as revenge pornography). Section 285B criminalises this activity.

Section 285C contains definitions for purposes of section 285B.

7. Corrupt and improper exercise of police powers, *clause 11* (Criminal Justice Act 2015, section 26)

Section 499A is inserted by *clause 11* to make it an offence for a police officer knowingly to exercise powers and privileges improperly. Improper exercise of power or privilege is doing something for the purpose of achieving a benefit for oneself or a benefit or detriment for someone else. The maximum punishment for the offence is 14 years imprisonment or a fine.

8. Dangerous dogs, *clause 13* (Dangerous dogs Act 1991)

There is no criminal offence relating to dangerous dogs in the Falkland Islands. The Dogs Ordinance 1944 provides that dangerous dogs must be destroyed and does not provide an adequate framework for the courts to deal with the destruction and control of dangerous dogs. A dog is dangerously out of control where there is a reasonable apprehension that the dog will injure a person.

Clause 13 introduces Part 23A (Dangerous dogs) into the Ordinance with provisions borrowed from the Dangerous Dogs Act 1991 with modifications. The scope of the amendments are limited to:

- (a) allowing for prosecution in serious cases where a dog is dangerously out of control;
- (b) allowing the courts to make appropriate orders in criminal proceedings;
- (c) giving the Governor in Council power to ban named breeds, should the need arise; and
- (d) defining a dangerous dog.

New sections 556A to 556J deal with offences related to dangerous dogs. Section 556A allows the Governor to designate a dog and prohibit breeding, selling, exchanging, gifting or abandoning designated dogs. Section 556B allows the Governor to make an order to impose restrictions on dogs which are not covered by section 556A that present serious danger to the public.

Section 556C requires dog owners to keep their dogs under control. It is an offence for a dog owner to fail to keep a dog under control and the dog behaves in a dangerous manner. The criminal courts are given the power to make destruction orders or orders to control dangerous dogs (section 556D). The Act also allows for certain breeds to be banned completely.

9. Laser Misuse *clause 13* (Laser Misuse (Vehicles) Act 2018

New Part 23B, (Laser misuse) is derived from the Laser Misuse (Vehicles) Act 2018 which creates specific criminal offences in England and Wales for directing lasers at motor vehicles, aircraft, vessels and installations.

New sections 556K and 556L criminalise shining or directing a laser beam towards a vehicle. The maximum penalty applicable to the offence is up to 5 years imprisonment.

10. Other amendments

Miscellaneous amendments (*clause 17*) are made to:

- (a) delete the definition of “civil partner”;
- (b) correct cross reference errors in section 431.

Clause 18 repeals the Crimes (Amendment) Ordinance 2017.

Clause 19 deletes regulation 10(4) of the Prisons Regulations 2017.

Criminal Procedure and Evidence (Amendment) Bill 2022

(ORDINANCE No. OF 2022)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of Criminal Procedure and Evidence Ordinance 2014
4. Section 77 amended (conditions of police bail)
5. Section 271 amended (plea of guilty in absence of defendant - Schedule 5)
6. New sections inserted in Part 18 (jury trial)
7. Section 425 amended (interpretation of Part)
8. Section 427 amended (witnesses eligible for assistance on grounds of fear or distress about testifying)
9. Section 459 amended (power to restrict reporting of criminal proceedings involving youths)
10. Section 465 amended (restriction on reporting of identity of victims of certain offences)
11. Section 568 amended (powers of court on conviction for further offence)
12. Section 569 amended (court by which suspended sentence may be dealt with)
13. Section 571 amended (suspended sentence supervision orders)
14. Section 595 amended (power to allow time, etc.)
15. Section 633 amended (exceptions to rehabilitation - Schedule 11)
16. Section 663 amended (appeals against conviction)
17. Section 671 amended (prosecution appeal from the Magistrate's Court in respect of rulings and sentence)
18. Schedule 5 Form 1 amended (forms for pleas of guilty in absence)
19. Miscellaneous amendments

Criminal Procedure and Evidence (Amendment) Bill 2022

(assented to: 2022)
(commencement: on publication)
(published: 2022)

A BILL

for

AN ORDINANCE

To amend the Criminal Procedure and Evidence Ordinance 2014.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Criminal Procedure and Evidence (Amendment) Ordinance 2022.

2. Commencement

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

3. Amendment of Criminal Procedure and Evidence Ordinance 2014

This Ordinance amends the Criminal Procedure and Evidence Ordinance 2014.

4. Section 77 amended (conditions of police bail)

After subsection 77(6) insert —

“(7) If, on a request by a person to whom bail was granted, a custody officer refuses to vary the conditions of bail, or imposes new conditions, then the person may make an application to the Magistrate’s Court or the Summary Court, to vary the conditions.

(8) Upon hearing an application under subsection (7) the Magistrate’s Court or the Summary Court may vary the conditions of bail on any terms on which a police officer could have granted bail.

(9) There is no right to make a further application to a court after a hearing under subsection (8) unless since the date of that hearing there has been a material change in circumstances, or more than 28 days have elapsed and the person has not been charged.”.

5. Section 271 amended (plea of guilty in absence of defendant - Schedule 5)

In section 271 replace —

(a) subsection (2) with —

“(2) The information must be for an offence for which the maximum sentence is a fine at level 3 on the standard scale.”; and

(b) subsection (7)(b) with —

“(b) must not, without adjourning the trial under subsection (3) order the defendant to be subject to any disqualification.”.

6. New sections inserted in Part 18 (jury trial)

After section 338 insert —

“338A. Offence: research by jurors

(1) It is an offence for a member of a jury that tries an issue in a case before a court to research the case during the trial period, subject to the exceptions in subsections (6) and (7).

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

(2) A person researches a case if (and only if) the person —

(a) intentionally seeks information; and

(b) when doing so, knows or ought reasonably to know that the information is or may be relevant to the case.

(3) The ways in which a person may seek information include —

(a) asking a question;

(b) searching an electronic database, including by means of the internet;

(c) visiting or inspecting a place or object;

(d) conducting an experiment; and

(e) asking another person to seek the information.

(4) Information relevant to the case includes information about —

(a) a person involved in events relevant to the case;

(b) the judge dealing with the issue;

(c) any other person involved in the trial, whether as a lawyer, a witness or otherwise;

(d) the law relating to the case;

(e) the law of evidence; and

(f) court procedure.

(5) “**The trial period**”, in relation to a member of a jury that tries an issue, is the period —

(a) beginning when the person is sworn to try the issue; and

- (b) ending when the judge discharges the jury or, if earlier, when the judge discharges the person.
- (6) It is not an offence under this section for a person to seek information if the person needs the information for a reason which is not connected with the case.
- (7) It is not an offence under this section for a person —
 - (a) to attend proceedings before the court on the issue;
 - (b) to seek information from the judge dealing with the issue;
 - (c) to do anything which the judge dealing with the issue directs or authorises the person to do;
 - (d) to seek information from another member of the jury, unless the person knows or ought reasonably to know that the other member of the jury contravened this section in the process of obtaining the information; or
 - (e) to do anything else which is reasonably necessary in order for the jury to try the issue.
- (8) An offence under this section is triable on indictment only.
- (9) Proceedings for an offence under this section may only be instituted by or with the consent of the Attorney General.

[UK Juries Act 1974 s. 20A]

338B. Offence: sharing research with other jurors

- (1) It is an offence for a member of a jury that tries an issue in a case before a court intentionally to disclose information to another member of the jury during the trial period if —
 - (a) the member contravened section 338A in the process of obtaining the information; and
 - (b) the information has not been provided by the court.

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

- (2) Information has been provided by the court if (and only if) it has been provided as part of—
 - (a) evidence presented in the proceedings on the issue; or
 - (b) other information provided to the jury or a juror during the trial period by, or with the permission of, the judge dealing with the issue.
- (3) An offence under this section is triable on indictment only.
- (4) Proceedings for an offence under this section may only be instituted by or with the consent of the Attorney General.
- (5) In this section, “**the trial period**” has the same meaning as in section 338A.

[UK Juries Act 1974 s. 20B]

338C. Offence: jurors engaging in other prohibited conduct

(1) It is an offence for a member of a jury that tries an issue in a case before a court intentionally to engage in prohibited conduct during the trial period, subject to the exceptions in subsections (4) and (5).

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

(2) In this section “**prohibited conduct**” means conduct from which it may reasonably be concluded that the person intends to try the issue otherwise than on the basis of the evidence presented in the proceedings on the issue.

(3) An offence under this section is committed whether or not the person knows that the conduct is prohibited conduct.

(4) It is not an offence under this section for a member of the jury to research the case (as defined in section 338A(2) to (4)).

(5) It is not an offence under this section for a member of the jury to disclose information to another member of the jury.

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

(7) Proceedings for an offence under this section may only be instituted by or with the consent of the Attorney General.

(8) In this section, “**the trial period**” has the same meaning as in section 338A.

[UK Juries Act 1974 s. 20C]

338D. Offence: disclosing jury’s deliberations

(1) Subject to the exceptions in sections 338E to 338G, it is an offence for a person intentionally —

- (a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in proceedings before a court; or
- (b) to solicit or obtain such information.

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

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

(3) Proceedings for an offence under this section may only be instituted by or with the consent of the Attorney General.

[UK Juries Act 1974 s. 20D]

338E. Offence of disclosing jury’s deliberations: initial exceptions

(1) It is not an offence under section 338D for a person to disclose information in the proceedings mentioned in section 338D(1) for the purposes of enabling the jury to arrive at their verdict or in connection with the delivery of that verdict.

(2) It is not an offence under section 338D for the judge dealing with those proceedings to disclose information —

- (a) for the purposes of dealing with the case; or

- (b) for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a juror in the proceedings mentioned in section 338D(1).

(3) It is not an offence under section 338D for a person who reasonably believes that a disclosure described in subsection (2)(b) has been made to disclose information for the purposes of the investigation.

(4) It is not an offence under section 338D to publish information disclosed as described in subsection (1) or (2)(a) in the proceedings mentioned in section 338D(1).

(5) In this section —

“publish” means make available to the public or a section of the public;

“relevant investigator” means —

- (a) a police officer;
- (b) the Attorney General;
- (c) the Advisory Committee; or
- (d) any other person or class of person authorised by the Governor.

[*UK Juries Act 1974 s. 20E*]

338F. Offence of disclosing jury’s deliberations: further exceptions

(1) It is not an offence under section 338D for a person to disclose information to a person listed in subsection (2) if —

- (a) the disclosure is made after the jury in the proceedings mentioned in section 338D(1) has been discharged; and
- (b) the person making the disclosure reasonably believes that —
 - (i) an offence or contempt of court has been, or may have been, committed by or in relation to a juror in connection with those proceedings; or
 - (ii) conduct of a juror in connection with those proceedings may provide grounds for an appeal against conviction or sentence.

(2) Those persons are —

- (a) a member of a police force;
- (b) a judge of the Court of Appeal;
- (c) a court officer; or
- (d) a judge of the court where the proceedings mentioned in section 338D(1) took place.

(3) It is not an offence under section 338D for a member of a police force to disclose information for the purposes of obtaining assistance in deciding whether to submit the information to a court, provided that the disclosure does not involve publishing the information.

(4) It is not an offence under section 338D for a judge to disclose information for the purposes of an investigation by a relevant investigator into —

- (a) whether an offence or contempt of court has been committed by or in relation to a juror in connection with the proceedings mentioned in section 338D(1); or
- (b) whether conduct of a juror in connection with those proceedings may provide grounds for an appeal against conviction or sentence.

(5) It is not an offence under section 338D for a judge to disclose information for the purposes of enabling or assisting —

- (a) a person who was the defendant in the proceedings mentioned in section 338D(1); or
- (b) a legal representative of such a person, to consider whether conduct of a juror in connection with those proceedings may provide grounds for an appeal against conviction or sentence.

(6) It is not an offence under section 338D for a person who reasonably believes that a disclosure described in subsection (4) or (5) has been made to disclose information for the purposes of the investigation or consideration in question.

(7) It is not an offence under section 338D for a person to disclose information in evidence in—

- (a) proceedings for an offence or contempt of court alleged to have been committed by or in relation to a juror in connection with the proceedings mentioned in section 338D(1);
- (b) proceedings on an appeal, or an application for leave to appeal, against a decision in the proceedings mentioned in section 338D(1) where an allegation relating to conduct of or in relation to a juror forms part of the grounds of appeal; or
- (c) proceedings on any further appeal or reference arising out of proceedings mentioned in paragraph (a) or (b).

(8) It is not an offence under section 338D for a person to disclose information in the course of taking reasonable steps to prepare for proceedings described in subsection (7).

(9) It is not an offence under section 338D to publish information disclosed as described in subsection (7).

(10) In this section —

“**publish**” means make available to the public or a section of the public;

“**relevant investigator**” means —

- (a) a police officer;

- (b) the Attorney General;
- (c) the Advisory Committee; or
- (d) any other person or class of person authorised by the Governor.

[UK Juries Act 1974 s. 20F]

338G. Offence of disclosing jury’s deliberations: exceptions for soliciting disclosures or obtaining information

- (1) It is not an offence under section 338D to solicit a disclosure described in section 338E(1) to (4) or section 338F(1) to (9).
- (2) It is not an offence under section 338D to obtain information —
 - (a) by means of a disclosure described in section 338E(1) to (4) or section 338F(1) to (9); or
 - (b) from a document that is available to the public or a section of the public.

[UK Juries Act 1974 s. 20G]”.

7. Section 425 amended (interpretation of Part)

In section 425, after the definition of child witness insert —

““**domestic abuse**” has the meaning given to it by section 102 of the Crimes Ordinance 2014;”.

8. Section 427 amended (witnesses eligible for assistance on grounds of fear or distress about testifying)

In section 427(4), after “sexual offence” insert “or an offence where it is alleged that the behaviour of the accused amounted to domestic abuse,”.

9. Section 459 amended (power to restrict reporting of criminal proceedings involving youths)

In section 459(7) —

- (a) delete “or” at the end of paragraph (a);
- (b) replace the full stop at the end of paragraph (b) with “; or”; and
- (c) add the following paragraph after paragraph (b) —
 - “(c) who is named in the proceedings in any other way.”.

10. Section 465 amended (restriction on reporting of identity of victims of certain offences)

In section 465 —

- (a) replace the section heading with —

“Restrictions on reporting of identity of victims in certain proceedings”;

(b) replace subsections (1), (2) and (3) with —

“(1) This section applies —

- (a) where an allegation is made that a sexual offence has been committed against a person;
- (b) where an allegation is made that an offence involving behaviour that amounts to domestic abuse has been committed against a person;
- (c) where a person is accused of a sexual offence;
- (d) where a person is accused of committing an offence involving behaviour that amounts to domestic abuse;
- (e) in proceedings relating to domestic abuse protection orders under sections 108C, 108F or 108Q of the Crimes Ordinance.

(2) No matter under subsection (1) relating to a person may, in that person’s lifetime, be included in any publication if it is likely to lead members of the public to identify the person as the person against whom the offence or behaviour is alleged to have been committed.

(3) This section —

- (a) does not apply in relation to a person by virtue of subsection (1)(a) or (b) at any time after a person has been accused of the offence; and
- (b) in its application in relation to a person by virtue of subsection (1)(c) or (d), has effect subject to any direction given under section 470.”; and

(c) in the introductory words to subsection (4), replace “or (2) apply” with “applies”.

11. Section 568 amended (powers of court on conviction for further offence)

(1) In section 568(2) —

- (a) delete “or” at the end of paragraph (b);
- (b) replace the full stop at the end of paragraph (c) with “; or”; and
- (c) add the following after paragraph (c) —

“(d) impose an unpaid work requirement in accordance with section 510 or a curfew requirement in accordance with section 514 or both.”; and

(2) In section 568(3) insert “sentence” after “suspended” and after “or that the”.

12. Section 569 amended (court by which suspended sentence may be dealt with)

After section 569(2) insert —

“(2A) If an offender is convicted by the Summary Court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Magistrate’s Court, the court must commit the offender in custody or on bail to the Magistrate’s Court.

(2B) Where a court commits an offender under subsection (2) or (2A) the court may also commit the person, in custody or on bail as the case may require, to be dealt with in respect of any other offence in respect of which the court has power to deal with the offender and of which the offender has been convicted.”.

13. Section 571 amended (suspended sentence supervision orders)

In section 571(1), replace “of more than 6 months” with “of 14 days or more”.

14. Section 595 amended (power to allow time, etc.)

In section 595 delete subsection (2).

15. Section 633 amended (exceptions to rehabilitation - Schedule 11)

In section 633, after subsection (8) add —

“(9) Section 628 does not apply to requirements to disclose offences in applications under the Immigration Ordinance 1999 or the Falkland Islands Status Ordinance 1998.”.

16. Section 663 amended (appeals against conviction)

In section 663 replace subsection (1) with —

“(1) Subject to subsection (2), the Supreme Court, upon the hearing of an appeal against conviction —

(a) must allow an appeal against conviction if it thinks that the conviction is unsafe;
and

(b) must dismiss the appeal in any other case.”.

17. Section 671 amended (prosecution appeal from the Magistrate’s Court in respect of rulings and sentence)

In section 671 —

(a) replace subsection (4) with —

“(4) A ruling appealed against under subsection (2)(a) or (b) has no effect while the prosecution is able to take any steps under subsection (5).”;

(b) in subsection (5) —

(i) in the introductory words delete “or sentence”; and

(ii) in paragraph (a), delete “or imposing of the sentence”;

(c) after subsection (10), insert —

“(10A) If the appeal relates to a sentence, the prosecution must lodge the appeal within 28 days after the day on which the sentence, or the last of the sentences imposed in the proceedings, was passed.”.

18. Schedule 5 Form 1 amended (forms for pleas of guilty in absence)

In Form 1 of Schedule 5 under the heading “Prosecution costs” delete “The amount is normally £85.”.

19. Miscellaneous amendments

- (1) In section 2, delete the definition of “civil partner”.
- (2) In section 13(1)(e) replace “subsection (3)” with “subsection (4)”.
- (3) In section 317(3)(b)(ii) replace “36 months” with “12 months”.
- (4) In section 457(3) replace “section 458” with “section 455”.

OBJECTS AND REASONS

This Ordinance amends the Criminal Procedure and Evidence Ordinance 2014 (the Ordinance) to make changes resulting from a review of the criminal justice system. The criminal justice system is kept under constant review to ensure that changes taking place in the law of England and Wales that would benefit the Falkland Islands are given effect.

Clauses 1 to 3 provide for preliminary matters. The amendments commence on publication of the Amendment Ordinance in the *Gazette*.

Clause 4 amends section 77 (conditions of police bail) of the Ordinance. Section 77 provides that police officers must give reasons for imposing bail conditions, or refusing to vary them. Section 77 is amended to provide an explicit mechanism for application to court against a police bail. The amendment will make it clear that police decisions may be challenged.

Clause 5 amends section 271 (plea of guilty in absence of defendant – Schedule 5). The amendment clarifies section 271(2) to ensure that, for example, corporate defendants facing unlimited fines do not plead guilty by post in cases alleging very serious wrong doing (such as serious environmental damage). The amendment provides that a plea of guilty by post is only available where an offence is not punishable by imprisonment.

Clause 6 amends Part 18 (jury trial) by inserting sections 338A to 338G to provide for jury misconduct offences. The new provisions are based on sections 20A to 20G of the Juries Act 1974. Currently jury misconduct is dealt with by using the contempt of court procedure. Making jury misconduct standalone criminal offences will enable the judge to discharge a juror and report the juror to the police or the Attorney General to undertake an investigation and bring criminal proceedings outside of the original trial.

The misconduct offences are:

- (a) research by jurors;
- (b) sharing research with others;
- (c) jurors engaging in other prohibited conduct as defined in 338C(2);
- (d) disclosing jury's deliberations;
- (e) disclosing jury's deliberations: initial exception;
- (f) disclosing jury's deliberations: further exceptions; and
- (g) disclosing jury's deliberations: exceptions for soliciting disclosures or obtaining information.

Clause 7 inserts the definition of “domestic abuse” in section 425. Domestic abuse is defined as having the same meaning as in section 102 of the Crimes Ordinance 2014

Clause 8 amends section 427 (witnesses eligible for assistance on grounds of fear or distress about testifying). Eligibility for assistance under section 427 is extended to a complainant who is a witness in proceedings relating to any behaviour amounting to domestic abuse.

Clause 9 amends section 459 (power to restrict reporting of criminal proceedings involving youths). Section 459 grants the criminal courts the power to make a reporting restriction in criminal proceedings where a youth is a person against or in respect of whom, the proceedings are taken, or who is a witness in the proceedings. This section does not cover youths who are named in the proceedings for any other reason. The proposed amendment gives the criminal courts a discretion to make a reporting restriction to protect a youth who is not just a party or a witness but is otherwise named in the case in any other way.

Clause 10 amends section 465 (restriction on reporting of identity of victims of certain offences). The proposed amendment will introduce reporting restrictions in domestic abuse cases. Domestic abuse cases often result in personal details, relating to private and sensitive matters being revealed in court. The amendment extends reporting restrictions to domestic abuse cases.

Clause 11 amends section 568 (powers of court on conviction for further offence). The proposed amendment adds to the options open to the court when dealing with breaches of suspended sentences. The new power enables the court to sentence an offender to unpaid work or curfew to deal with minor offending rather than activating the term of imprisonment.

Clause 12 amends section 569 (courts by which suspended sentence may be dealt with) to clarify the power to transfer breaches of suspended sentences between courts. The amendment makes it clear that the Summary Court has the power to commit a person to the Magistrate's Court for sentence if convicted of an offence punishable with imprisonment during the operational period of a suspended sentence. A further amendment gives power to commit sentencing of a new offence at the same time so that all matters are dealt with together.

Clause 13 amends section 571 (suspended sentence supervision orders). The amendment removes the restriction on the availability of suspended sentence supervision orders based on the length of

sentence being passed. As currently couched, the section states that suspended sentence supervision orders are only available for suspended sentences where the term of imprisonment is for “more than six months for a single offence”. In practice this means that a term of suspended imprisonment must be for a period of at least six months and one day before a suspended sentence supervision order is made. This period falls below the maximum six-month sentence that a Summary Court may pass before a suspended supervision order is made.

The amendment to section 571 will reduce the qualifying term of imprisonment from “more than six months” to 14 days.

Clause 14 amends section 595 (power to allow time) by deleting subsection (2). The effect of the amendment is that the minimum term (7 days) allowed to pay a fine is removed. This will allow enforcement against offenders who might otherwise leave the Falkland Islands without paying their fine.

Clause 15 amends section 633 (exemptions to rehabilitation) to make it clear that section 628 does not apply to a requirement to disclose offences in an application under the Immigration Ordinance 1999 or the Falkland Islands Status Ordinance 1998.

Clause 16 amends section 663 (appeals against conviction) to replace the three grounds on which the Supreme Court may allow an appeal against conviction from the Magistrate’s Court or the Summary Court. The amendment adopts the simple “safety test”.

Clause 17 amends section 671 (prosecution appeal from the Magistrate’s Court in respect of rulings and sentence). Section 671 combines similar provisions from two pieces of legislation in England and Wales. In combining the provisions, section 671 lost the time period of 28 days in which the prosecution may lodge an appeal against sentence. The amendment allows 28 days in which the prosecution may appeal against sentence.

Clause 18 amends Form 1 in Schedule 5 (forms for pleas of guilty in absence) to remove reference to the rate of prosecution costs.

Clause 19 deletes the definition of “civil partner” from section 2 and makes further amendments to correct minor errors in the Ordinance.