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The following are published in this Supplement —

Education (Financial Assistance for Higher Education and Post-Graduate Qualifications) Regulations 2022 (SR&O No 17 of 2022); and

Falkland Islands Status (Amendment) Bill 2022.

SUBSIDIARY LEGISLATION

Education (Financial Assistance for Higher Education and Post-Graduate Qualifications) Regulations 2022

(No. 17 OF 2022)

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SUBSIDIARY LEGISLATION

Education (Financial Assistance for Higher Education and Post-Graduate Qualifications) Regulations 2022

(made: 15 September 2022)

(commencement: on publication)

(published: 15 September 2022)

I make these Regulations under section 19 of the Education (Governance and Accountability) Ordinance 2022 on the advice of Executive Council.

1. Title and commencement

These Regulations are the Education (Financial Assistance for Higher Education and Post-Graduate Qualifications) Regulations 2022 and come into force on publication in the *Gazette*.

2. Application

These Regulations apply to financial assistance provided in relation to courses of higher education or post-graduate courses starting on or after 1 September 2023.

3. Interpretation

In these Regulations —

“**application**” means an application for financial assistance;

“**beneficiary**” means a person whose application is accepted;

“**financial assistance**” means —

- (a) tuition fees, after deduction of any scholarship, bursary or other grant that an applicant is entitled to receive in respect of a course;
- (b) a living allowance;
- (c) travel expenses;
- (d) the cost of materials or other equipment reasonably required for the purposes of a course or to enable a person to access a course that are not text books or general study materials;
or
- (e) other expenses reasonably and properly incurred in connection with attending a course of higher education or a post-graduate course;

“**higher education**” means full-time tertiary education that provides academic or professional knowledge, skills and competencies and —

- (a) is of not less than 3 academic years' duration, leading to the award of a first degree or equivalent qualification at level 6 or 7 of the 2011 version of the International Standard Classification of Education structure maintained by the United Nations Educational, Scientific and Cultural Organisation ("**ISCE**"); or
- (b) is of not less than 2 academic years' duration, leading to the award of a qualification at level 4 or 5 of the ISCE;

"parent" means a parent of a young person (including any person who has parental responsibility for the young person within the meaning of the Children Ordinance 2014) who submits an application on behalf of the young person;

"policy" has the meaning in regulation 4(2);

"post-graduate course" means a course of study —

- (a) for which successful completion of a course of higher education is usually required; and
- (b) which leads to a professional qualification that is an essential requirement for entry to, or progression in, the profession to which it relates;

"tuition fees" means the fees charged by a university or equivalent educational institution for providing a course of higher education or a post-graduate course and includes fees for registration, participating in any educational activity that is an essential component of the course and examination fees; and

"young person" means a person who is under the age of 18 years.

4. Financial assistance

(1) The Director may provide financial assistance to Falkland Islanders who are ordinarily resident in the Falkland Islands to pursue —

- (a) a course of higher education; or
- (b) a post-graduate course.

(2) Financial assistance must be provided in accordance with the policy approved by the Governor from time to time and published on the Government's website ("**the policy**").

5. Applying for financial assistance

(1) An application must include such information as may reasonably be required by the Director.

(2) An application by a young person must be submitted by a parent and the parent must be ordinarily resident in the Falkland Islands.

(3) The Director may require any person to receive careers information, advice and guidance before applying for financial assistance.

6. Acceptance of applications

(1) The Director must accept an application in relation to a course of higher education if the application is in accordance with the policy and the Director is satisfied that the applicant —

- (a) is ordinarily resident in the Falkland Islands; and
- (b) is capable of successfully completing the course.

(2) The Director may accept up to 2 applications in each academic year in relation to post-graduate courses and if the Director receives more than 2 such applications, the Director must determine which to accept in accordance with the policy.

(3) The Director must notify applicants in writing whether their application is accepted or refused.

(4) If an application is refused, the notification must include the reasons for the decision and information about the right to a review of the decision under regulation 10.

(5) If an application is accepted, the notification must specify any conditions subject to which financial assistance is provided.

7. Conditions

The Director may make the provision of financial assistance subject to conditions relating to —

- (a) the behaviour of the beneficiary;
- (b) the beneficiary's attendance at the course;
- (c) the provision of reports on the beneficiary's progress with their studies; and
- (d) the welfare of the beneficiary.

8. Acceptance of conditions

A person who is notified that an application is accepted must accept any conditions by notice in writing to the Director before financial assistance is provided.

9. Circumstances affecting the provision of financial assistance

(1) In the circumstances in subregulation (2), the Director must not provide financial assistance for a course of higher education.

(2) The circumstances are that on the relevant date —

- (a) the beneficiary and, in the case of a beneficiary who is a young person, the beneficiary's parent have not been ordinarily resident in the Falkland Islands for a continuous period of 12 months; or
- (b) the beneficiary and, in the case of a beneficiary who is a young person, the beneficiary's parent do not have Falkland Islands status.

(3) In the circumstances in subregulation (4), the Director may —

- (a) stop providing financial assistance;
- (b) reduce the amount of financial assistance; or
- (c) subject to subregulation (7), require a beneficiary to repay part or all of such financial assistance as may have been provided before the Director became aware of the relevant circumstance.

(4) The circumstances are —

- (a) the beneficiary, or any person on the beneficiary's behalf, provides false or misleading information that is material to a decision to provide financial assistance;
- (b) the beneficiary is in breach of one or more of the conditions that apply to the financial assistance;
- (c) the beneficiary ceases to attend or does not make satisfactory progress on the course for which financial assistance is provided; or
- (d) the beneficiary or, at any time while the beneficiary is a young person, the beneficiary's parent, ceases to be ordinarily resident in the Falkland Islands.

(5) Before exercising the Director's powers under subregulation (3), the Director must give the beneficiary and, if the beneficiary is a young person, their parent an opportunity to make representations.

(6) The Director must give written notice of any change to financial provision made under this regulation and the notice must include the reasons for the decision and information about the right to a review of the decision under regulation 10.

(7) In respect of financial assistance provided at a time when a beneficiary was a young person, the Director may require their parent to make the repayment.

(8) Any sum repayable under this regulation is recoverable in any manner in which a civil debt may be recovered by the Crown.

(9) In this regulation "**relevant date**" means the date on which a course for which financial assistance is provided, starts.

10. Review of decisions

(1) A person or, if a person is a young person, their parent may request a review by the Board of Education of a decision by the Director —

- (a) to refuse to accept the person's application; or
- (b) under regulation 9, in relation to financial assistance provided for the person.

(2) A request for a review must be made —

- (a) within 28 days of being informed of the decision in question; and

- (b) in writing, including a statement of the reasons for requesting the review and any documentary evidence relied on.
- (3) The Board of Education must determine the review as soon as reasonably practicable and may confirm or rescind the decision.
- (4) If the decision is rescinded, the Board may remit the matter to the Director for reconsideration or substitute its own decision.

Made 15 September 2022

D. P. MORGAN,
Acting Governor.

EXPLANATORY NOTE
(not forming part of these Regulations)

These Regulations are the Education (Financial Assistance for Higher Education) Regulations 2022 and are made under section 19 of the Education (Governance and Accountability) Ordinance 2022. The Regulations come into force on publication in the *Gazette (regulation 1)*. The Regulations apply in relation to funding for courses starting on or after 1 September 2023 (*regulation 2*).

Financial assistance may be provided for Falkland Islanders who are ordinarily resident in the Falkland Islands in accordance with the policy approved by the Governor in Council (*regulation 4*). It can be provided to enable Falkland Islanders to pursue:-

- full-time courses of “**higher education**”, that is courses at universities or equivalent institutions, providing academic or professional skills and competencies lasting either not less than 3 years and leading to a bachelor’s degree or not less than 2 years and leading to a level 4 or 5 qualification (e.g. a Higher National Diploma or BTEC National Diploma); and
- “**post-graduate courses**” that are an essential requirement for a career in the professional sphere to which it relates.

“**Financial assistance**” includes course fees, accommodation costs, travel expenses, living expenses (i.e. a weekly allowance), materials and equipment (*regulation 3*).

Applications for financial assistance must be submitted to the Director of Education (*regulation 5*). If the applicant is under 18 years of age, the application must be submitted by their parent who must be ordinarily resident in the Falkland Islands.

The Director must accept an application for funding for a course of higher education if the application complies with the policy and the Director is satisfied that applicant is ordinarily resident and capable of successfully completing the course. The Director may accept up to 2

applications in each academic year from Falkland Islanders wishing to take post-graduate qualifications (*regulation 6*).

The provision of financial assistance may be subject to compliance with conditions that, broadly speaking, are aimed at ensuring the student is able to make the most of their course (*regulation 7*). The conditions must be formally accepted in writing (*regulation 8*).

Financial assistance must not be provided if the student is not a Falkland Islander with at least 12 months' ordinary residence, on the first day of the course (*regulation 9(1) and (2)*).

The Director may refuse to provide financial assistance, reduce the amount of financial assistance or require repayment of financial assistance if the recipient is in breach of any of the conditions; the application included false or misleading information; the recipient ceases to attend the course or does not make satisfactory progress; or the recipient ceases to be ordinarily resident in the Falkland Islands (*regulation 9(3) and (4)*). If financial assistance was provided for someone who is under 18, repayment can be claimed from the beneficiary's parent.

Regulation 10 provides for reviews of the Director's decisions by the Board of Education.

Falkland Islands Status (Amendment) Bill 2022

(ORDINANCE No. OF 2022)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 - INTRODUCTORY

1. Title
2. Commencement
3. Repeal and revocation

PART 2 - AMENDMENT OF FALKLAND ISLANDS STATUS ORDINANCE 1998

4. Amendment of Falkland Islands Status Ordinance 1998
5. Section 2 amended - Interpretation
6. Section 3 amended - Applications for the grant of Falkland Islands status
7. Section 5 amended - Revocation of Falkland Islands status
8. Section 7 amended - Regulations
9. New section 7A inserted

Falkland Islands Status (Amendment) Bill 2022

(assented to: 2022)
(commencement: in accordance with section 2)
(published: 2022)

A BILL

for

AN ORDINANCE

To amend the Falkland Islands Status Ordinance 1998.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 - INTRODUCTORY

1. Title

This Ordinance is the Falkland Islands Status (Amendment) Ordinance 2022.

2. Commencement

This Ordinance comes into force on a date to be determined by the Governor by publication of a notice in the *Gazette*.

3. Repeal and revocation

- (1) The Falkland Islands Status (Amendment) Ordinance 2017 is repealed.
- (2) The Falkland Islands Status (Form of Application) Regulations 1999 are revoked.

PART 2 - AMENDMENT OF FALKLAND ISLANDS STATUS ORDINANCE 1998

4. Amendment of Falkland Islands Status Ordinance 1998

This Part amends the Falkland Islands Status Ordinance 1998.

5. Section 2 amended - Interpretation

In section 2 —

- (a) insert after the definition of “the new Constitution” —

“**permanent residence permit**” has the same meaning as in section 2(1) of the Immigration Ordinance 1999;” and

- (b) replace the definition of “**qualified person**” with —

“**qualified person**” means a person who is a British citizen, a British overseas territories citizen or a British Overseas citizen and either —

- (a) holds a permanent resident permit and has been ordinarily resident in the Falkland Islands for at least 7 years immediately before the date of application under section 3; or
- (b) meets the following criteria —
 - (i) the person held Falkland Islands status under section 17(5)(b)(ii) or 17(5)(d) of the former Constitution;
 - (ii) the person does not hold Falkland Islands status under the new Constitution because their domicile changed before the commencement of the new Constitution (so the person did not acquire Falkland Islands status under section 22(5)(a) of the new Constitution); and
 - (iii) the person is present and ordinarily resident in the Falkland Islands on the date of application under section 3;”.

6. Section 3 amended - Applications for the grant of Falkland Islands status

In section 3 —

- (a) replace subsection (2)(b) with —

“(b) by notice in writing to the applicant reject the application because the applicant does not appear to the Principal Immigration Officer to be a qualified person.”;

- (b) insert after subsection (2) —

“(2A) A notice given under subsection (2)(b) must state the reasons why the applicant does not appear to the Principal Immigration Officer to be a qualified person.”;

- (c) replace subsection (3) with —

“(3) Subsection (3A) applies for the purposes of this section, but is without prejudice to any other basis on which a person may be regarded as having been ordinarily resident in the Falkland Islands during the relevant period.”;

- (d) after subsection (3) insert —

“(3A) A person must be regarded as having been ordinarily resident in the Falkland Islands for the seven years immediately preceding their application if the person —

- (a) has been physically present in the Falkland Islands for the whole of the first 180 days of the first of the seven years;
- (b) has not been absent from the Falkland Islands for more than 90 days in aggregate in any one of the seven years; and

- (c) has not been absent from the Falkland Islands for more than 630 days in aggregate during the seven years.”; and
- (e) omit subsection (4).

7. Section 5 amended – Revocation of Falkland Islands status

In section 5(3) —

- (a) replace paragraph (b) with —

“(b) that since the grant to the person concerned of Falkland Islands status, the person has been convicted by a court in any country of an offence which the person has been sentenced to immediate imprisonment or deprivation of liberty of 12 months or more;” and

- (b) replace paragraph (d) with —

“(d) that the person is no longer a British citizen, a British overseas territories citizen or a British Overseas citizen.”.

8. Section 7 amended – Regulations

Replace section 7 with —

“7. Regulations

The Governor may by regulation provide for fees to be payable in connection with —

- (a) an application for Falkland Islands status;
- (b) inspection of the register maintained under section 4B; and
- (c) a Falkland Islands status ceremony.”.

9. New section 7A inserted

After section 7 insert —

“7A. Forms

- (1) The Principal Immigration Officer may specify an application form to be used under this Ordinance, and may issue directions for its use.
- (2) The Principal Immigration Officer must publish any specified form online and make paper copies freely available to the public.”.

OBJECTS AND REASONS

This Bill amends the Falkland Islands Status Ordinance 1998 (“the Ordinance”).

The Bill is made in accordance with section 22(5)(f) of the Constitution, which enables an Ordinance to be made providing for the grant of Falkland Islands Status.

The Bill repeals and replaces the Falkland Islands (Amendment) Ordinance 2017. The Bill also revokes the Falkland Islands Status (Form of Application) Regulations 1999 (*Clause 3*).

Clause 5 replaces the definition of “**qualified person**” in section 2 of the Ordinance which is used in connection with the consideration of applications for Falkland Islands Status.

The changes made to the definition are —

- (a) to require a person to hold either British citizenship, British overseas territories citizenship, or British overseas citizenship, replacing a requirement to hold Commonwealth citizenship;
- (b) to insert a new requirement for a person to hold a permanent residence permit.

Clauses 6 amends section 3 of the Ordinance to simplify the criteria for determining when a person must be regarded as having been ordinarily resident in the Falkland Islands for 7 years for the purposes of that section.

Clause 7 makes consequential and other amendments to section 5 of the Ordinance, which sets out the circumstances in which Falkland Islands Status granted under the Ordinance may be revoked.

Clause 8 amends section 7 of the Ordinance.

Clause 9 inserts a new section 7A to provide that the Principal Immigration Officer may specify an application form to be used under the Ordinance; and that any such form must be published.