

ELIZABETH II



FALKLAND ISLANDS

NIGEL ROBERT HAYWOOD C.V.O.,
Governor.

Offshore Minerals (Amendment) Ordinance 2011

(No: 10 of 2011)

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OFFSHORE MINERALS (AMENDMENT) ORDINANCE 2011

(No: 10 of 2011)

(assented to: 31 October 2011)

(commencement: on publication)

(published: 2 November 2011)

AN ORDINANCE

To amend the Offshore Minerals Ordinance (Title 53.1).

ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Offshore Minerals (Amendment) Ordinance 2011.

2. Commencement

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

3. Amendment of the Offshore Minerals Ordinance

This Ordinance amends the Offshore Minerals Ordinance.

4. Section 64 substituted

Section 64 is repealed and the following section substituted —

“64. Interpretation in sections 64A to 67

In sections 64A to 67 —

“applicant” means the person making an application;

“application” means an application to the Governor for a relevant consent;

“effect” includes an effect whether it is —

- (a) direct, indirect, secondary or cumulative;
- (b) short, medium or long-term;
- (c) permanent or temporary; and
- (d) positive or negative;

“environment” means the environment in relation to each of the following (individually or in combination) —

- (a) controlled waters and their dependent and associated ecosystems;
- (b) the seashore and seabed and their dependent or associated ecosystems;
- (c) the atmosphere and its dependent or associated ecosystems;
- (d) the land area of the Falkland Islands and its dependent or associated ecosystems; and
- (e) public amenity in relation to persons residing in the Falkland Islands or present there;

“environmental impact assessment” means an assessment conducted by or on behalf of an applicant in accordance with section 64C(1)(a);

“environmental impact statement” means a statement produced in accordance with section 64C(1)(b);

“project” means the activity, process or works for which the relevant consent is (or are) being sought;

“regulated well” means a well that —

- (a) is not a test well;
- (b) would be drilled for the purposes of (or in connection with) one or more of the following —
 - (i) exploring for petroleum;
 - (ii) establishing the existence of petroleum in a particular location;
 - (iii) appraising the quantity, characteristics or quality of the petroleum in a particular location; and

(iv) extracting petroleum;

“relevant consent” means an authority, dispensation, exemption, licence or permission in relation to which both of the following conditions are satisfied —

(a) either —

(i) the Governor has authority to grant it under a provision of this Ordinance; or

(ii) it is required under conditions that the Governor lawfully imposed when granting another authority, dispensation, exemption, licence or permission under this Ordinance; and

(b) it is (or would be) for or in relation to —

(i) an activity (including exploration for or exploitation of minerals and the abandonment or proposed abandonment of an offshore installation);

(ii) a process (including the liquefaction of gas and the refining of petroleum); or

(iii) works (including the enlargement or alteration of an offshore installation or the enlargement or alteration of its capacity or capability).

“test well” means a well in relation to which each of the following conditions are satisfied —

(a) it is being drilled below the surface of the seabed to a depth of no more than 350 metres;

(b) it is being drilled in connection with exploring for petroleum;

(c) it is being drilled to obtain geological information about strata or a drilling operation; and

(d) its main purpose of drilling is to test of the stability of the seabed; and

“well” includes a borehole.”

5. New sections 64A to 64C

The following sections are inserted after section 64 —

“64A. Environmental impact assessment and environmental impact statements required for applications to drill regulated wells in controlled waters

(1) An environmental impact assessment and an environmental impact statement are required for each application for permission to drill a regulated well in controlled waters.

(2) An applicant for permission to drill a regulated well in controlled waters must comply with the requirements of section 64C(1) before making the application.

64B. Power to require environmental impact assessment and environmental impact statements for other applications

(1) This section applies to applications other than those for permission to drill regulated wells in controlled waters.

(2) The Governor must consider in relation to each application whether or not the environment might be significantly affected if the application were to be granted.

(3) When considering whether or not the environment might be significantly affected if an application were to be granted, the Governor must have regard to the factors set out in schedule 5.

(4) If the Governor determines that the environment might be significantly affected if an application were to be granted, the Governor must require an environmental impact assessment and an environmental impact statement for that application.

64C. Environmental impact assessment and environmental impact statements

(1) If an environmental impact assessment and an environmental impact statement are required for an application —

(a) the applicant must conduct an environmental impact assessment of the likely adverse and beneficial effects upon the environment that there would be if the application were to be granted;

(b) the applicant must deliver to the Governor an environmental impact statement that contains (at least) the information required by schedule 4; and

(c) the applicant must publish that environmental impact statement and consult upon it in accordance with sections 65, 65A and 65B.

(2) The Governor must not determine an application for which an environmental impact assessment and an environmental impact statement are required until the applicant has complied with subsection (1).

(3) If an environmental impact assessment and an environmental impact statement are required for an application and the Governor grants that application —

(a) the Governor may impose conditions on the consent for one or more of the following purposes —

(i) to eliminate or reduce significant adverse effects on the environment of the project and the infrastructure associated with the project;

(ii) if possible, to remedy those effects; and

(iii) to offset them; and

(b) the Governor may impose those conditions even if there is no other power to do so.

(4) When considering an application for which an environmental impact assessment and an environmental impact statement are required, the Governor must take the following into account before deciding whether or not to grant it and whether or not to impose conditions —

- (a) the environmental impact statement;
- (b) if the Governor has sent the environmental impact statement to a technical expert for review, the representations made by that technical expert;
- (c) representations from the public (and representations in reply from the applicant) submitted to the Governor in accordance with section 65B; and
- (d) if the Governor has requested additional information or evidence under section 66, that additional information or evidence.”

6. Section 65 substituted

Section 65 is repealed and the following section substituted —

“65. Consultation on environmental impact statement: timetable

(1) Whenever an environmental impact statement is delivered by an applicant to the Governor in accordance with section 64C(1)(b), the applicant must seek to agree with the Governor the date on which the process of consultation on it will start.

(2) If no agreement is reached within a reasonable period, the Governor may give a direction as to the date on which the process will start.

(3) In sections 65A and 65B, the following definitions apply in relation to an environmental impact statement —

(a) “start date” means either —

- (i) the date agreed between the applicant and the Governor under subsection (1); or
- (ii) the date directed by the Governor under subsection (2);

(b) “closing date” means the date 42 days after the start date;

(c) “consultation period” (during which members of the public may make representations) means the period starting on the start date and ending on the closing date; and

(d) “follow-up period” (during which the applicant may make representations in reply) means the period —

- (i) starting on the date on which confirmation is given to the applicant under section 65B(3) that copies of all of the representations made during the consultation period have been forwarded under section 65B(2); and

(ii) ending on the date 28 days after that date.”

7. New sections 65A and 65B

The following sections are inserted after section 65 —

“65A. Publicity for environmental impact statement and consultation process

(1) The Governor must arrange for a notice to be issued in the *Gazette* on the start date for each environmental impact statement.

(2) That notice must refer to the publication of the environmental impact statement and describe the consultation process.

(3) The applicant must make arrangements for each of the following things to happen —

(a) throughout the consultation period, a paper copy of the environmental impact statement must be available in Stanley (and, if the Governor directs, at one or more other places in the Falkland Islands) for the public to inspect (without charge) during at least normal government office hours;

(b) a paper copy of the non-technical summary of the environmental impact statement must be provided (without charge and as soon as possible) to each member of the public who requests one during the consultation period;

(c) an electronic copy of the environmental impact statement must be provided (without charge, as soon as possible and in a format that has been approved by or on behalf of the Governor) to each member of the public who requests one during the consultation period; and

(d) an electronic copy of the non-technical summary of the environmental impact statement must be provided (without charge, as soon as possible and in a format that has been approved by or on behalf of the Governor) to each member of the public who requests one during the consultation period.

(4) The applicant must also arrange for the publication of the environmental impact statement and the arrangements made under subsection (3) to be advertised in the following way —

(a) on the start date, there must be at least one announcement on the broadcast service provided by the Media Trust under section 5(1)(aa) of the Media Trust Ordinance (Title 59.1);

(b) throughout the rest of the consultation period, there must be further announcements on that radio service either —

(i) as agreed with the Governor; or

(ii) if an agreement cannot be reached, as directed by the Governor; and

(c) throughout the consultation period, there must be a notice in each edition of the newspaper published by the Media Trust under section 5(1)(a) of the Media Trust Ordinance.

(5) The announcements made and notices given under subsection (4) must also inform members of the public about —

(a) their right to make representations under section 65B;

(b) how to make those representations; and

(c) the closing date (by which those representations need to be made).

(6) The applicant may take other steps to publish the environmental impact statement and publicise the consultation process.

65B. Representations

(1) During the consultation period, anyone who wishes to do so may make written representations to the Governor about —

(a) the contents of the environmental impact statement; and

(b) in particular, the applicant's proposals to protect the environment from adverse effects that there might be if the application were to be granted.

(2) The Governor must arrange for copies of the written representations made during the consultation period to be forwarded to the applicant as soon as possible after they are received.

(3) The Governor must arrange that, as soon as copies of all of the representations made during the consultation period have been forwarded under subsection (2), this is confirmed to the applicant.

(4) During the follow-up period, the applicant may make written representations to the Governor in reply to representations made under subsection (1)."

8. Sections 66 and 67 substituted

Sections 66 and 67 are repealed and the following sections substituted —

"66. Further information and evidence

(1) Subsection (2) applies to an application if an environmental impact statement has been submitted under section 64C(1)(b) in relation to that application.

(2) If this subsection applies, the Governor may require the applicant to provide further information in relation to the environmental impact statement.

(3) The Governor may require an applicant to produce evidence to verify —

(a) information contained in the applicant’s environmental impact statement; or

(b) further information provided under subsection (2).

(4) If the Governor requires the applicant to provide further information or produce evidence —

(a) the Governor must specify what information is to be provided or evidence produced; and

(b) the Governor may specify —

(i) the format in which it is to be provided or produced; and

(ii) a reasonable period within which it must be provided or produced.

67. Requests for exemption from requirements on basis that environment would not be significantly affected

(1) The Governor may grant a request from an applicant for exemption from some or all of the requirements of section 64C(1) if the Governor is satisfied that the environment would not be significantly affected even if the application to which the request relates were to be granted.

(2) When deciding whether or not to grant an exemption under subsection (1), the Governor must have regard to the factors set out in Schedule 5.

(3) Before deciding whether or not to grant a request for exemption under subsection (1), the Governor may require the applicant to provide further information in relation to the request.

(4) If the Governor requires the applicant to provide further information —

(a) the Governor must specify what information is to be provided; and

(b) the Governor may specify —

(i) the format in which it is to be provided; and

(ii) a reasonable period within which it must be provided.”

9. New section 67A

The following section is inserted after section 67 —

“67A. Requests for exemption from requirements on basis of previous environmental impact statement

(1) The Governor may grant an exemption from some or all of the requirements of section 64C(1) if both of the following conditions are met —

(a) the application to which the request relates is already covered by a previous environmental impact statement; and

(b) the Governor is satisfied that, even if the application were to be granted, there could be no effects on the environment that would be either —

(i) substantially different from the effects mentioned in the previous environmental impact statement; or

(ii) significantly greater than those effects.

(2) When deciding whether or not to grant an exemption under subsection (1) —

(a) the Governor must consider —

(i) the previous environmental impact statement;

(ii) if the Governor sent the previous environmental impact statement to a technical expert for review, the representations made by that technical expert;

(iii) representations from the public (and representations in reply from the applicant) made in relation to the previous environmental impact assessment; and

(iv) if the Governor requested additional information or evidence in relation to the previous environmental impact statement, that additional information or evidence; and

(b) the Governor must also consider whether there are material factors that would indicate that the previous environmental impact statement does not provide sufficient information to enable the Governor to determine what the effects on the environment might be if the application to which the request relates were to be granted.

(3) The material factors referred to in subsection (2)(b) may include (but are not limited to) —

(a) geographical location;

(b) lapse of time since the previous environmental impact assessment was conducted;

(c) new information received since the previous environmental impact assessment was conducted;

(d) proposed changes to the project;

(e) proposed changes to measures to protect the environment from adverse effects.

(4) Before deciding whether or not to grant a request for exemption under subsection (1), the Governor may require the applicant to provide further information in relation to the request.

- (5) If the Governor requires the applicant to provide further information —
- (a) the Governor must specify what information is to be provided; and
 - (b) the Governor may specify —
 - (i) the format in which it is to be provided; and
 - (ii) a reasonable period within which it must be provided.”

10. Schedule 4 substituted

Schedule 4 is repealed and the following Schedule substituted —

**“SCHEDULE 4
CONTENTS OF ENVIRONMENTAL IMPACT STATEMENTS**

1. Project description

- (1) Every environmental impact statement must provide a description of the project to which it relates.
- (2) The description of the project must include details of the project’s location, design and size.
- (3) Sub-paragraph (4) applies to the following extent —
- (a) it applies to the extent that it is relevant to either or both of the following —
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and
 - (b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).
- (4) To the extent that this sub-paragraph applies, the description of the project must also include details of each of the following —
- (a) the land and seabed use requirements during the construction and operational phases of the project;
 - (b) the main characteristics of the production processes, including the nature and quantity of the materials used; and
 - (c) an estimate by type and quantity of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the project.

2. Measures to protect environment

Every environmental impact statement must contain a description of the measures that are envisaged in order to —

- (a) eliminate or reduce significant adverse effects on the environment of the project to which it relates;
- (b) if possible, remedy those effects; and
- (c) offset them.

3. Requirement for data

Every environmental impact statement must include the data required to identify and assess the main effects that the project to which it relates is likely to have on the environment.

4. Environmental effects

(1) Sub-paragraphs (2) and (3) apply to the following extent —

- (a) they apply to the extent that it is relevant to either or both of the following —
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and
- (b) they apply to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain a description of specific aspects of the environment likely to be significantly affected by the project to which it relates, including (in particular) —

- (a) the human population;
- (b) fauna;
- (c) flora;
- (d) soil (including the seabed and its subsoil);
- (e) water (including the sea and aquifers under the seabed);
- (f) air;
- (g) climatic factors;
- (h) the landscape and seascape;
- (i) tangible property;

(j) architectural and archaeological heritage;

(k) the interactions between these factors (in any combination).

(3) To the extent that this sub-paragraph applies, every environmental impact statement must also contain a description of the likely significant effects on the environment arising from —

(a) the existence of the project to which it relates;

(b) the use of natural resources in it;

(c) the emission of pollutants from it;

(d) the creation of nuisances by it; and

(e) the elimination of waste from it.

5. Forecasting methods

(1) Sub-paragraph (2) applies to the following extent —

(a) it applies to the extent that it is relevant to either or both of the following —

(i) the particular characteristics of the project; or

(ii) the environmental features likely to be affected by it; and

(b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain details of the forecasting methods used to assess the effects on the environment of the project to which it relates.

6. Remediation

Every environmental impact statement must contain a description of the measures envisaged upon termination of the project to which it relates (whether or not this includes the abandonment or decommissioning of a well or other infrastructure) in order to —

(a) eliminate or reduce significant adverse effects on the environment of the project and the infrastructure associated with the project;

(b) if possible, remedy those effects; and

(c) offset them.

7. Alternatives

Every environmental impact statement must contain —

- (a) an outline of the main alternatives (if any) that were studied by the applicant; and
- (b) an indication of the main reasons for the applicant's choice (taking into account the environmental effects).

8. Non-technical summary

Every environmental impact assessment must contain a non-technical summary of the information provided in relation to paragraphs 1 to 7.

9. Difficulties encountered

(1) Sub-paragraph (2) applies to the following extent —

(a) it applies to the extent that it is relevant to either or both of the following —

- (i) the particular characteristics of the project; or
- (ii) the environmental features likely to be affected by it; and

(b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain an indication of difficulties (including technical difficulties and lack of know-how) encountered by the applicant in compiling the required information.”

11. Schedule 5 added

The following Schedule is added —

**“SCHEDULE 5
MATTERS TO BE TAKEN INTO ACCOUNT IN DECIDING WHETHER PROJECT
MIGHT HAVE SIGNIFICANT EFFECT ON ENVIRONMENT**

1. Characteristics

The characteristics of the project, having regard (in particular) to —

- (a) its size;
- (b) its cumulative effect;
- (c) the use of natural resources;
- (d) the production of waste, pollution and nuisances; and
- (e) the risk of accidents (having regard, in particular, to substances or technologies used).

2. Location

The environmental sensitivity of geographical sites and areas likely to be affected by the project, having regard (in particular) to —

- (a) existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas —
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) landscapes or sites that have historical, cultural, architectural or archaeological significance (including the sites of marine wrecks);
 - (iv) populated areas;
 - (v) National Parks that are designated under section 4(1) of the National Parks Ordinance (Title 34.8);
 - (vi) National Nature Reserves that are either —
 - (aa) designated under section 13(1) of the Conservation of Wildlife and Nature Ordinance (Title 5.7); or
 - (bb) treated as if they had been (because of the effect of section 13(2) of that Ordinance);
 - (vii) areas that are recognised as Important Bird Areas and Important Plant Areas;
 - (viii) sites or areas that have an international environmental designation; and
 - (ix) sites or areas that are classified or protected under other legislation or in some other way.

3. Potential impact

The potential significant effects of the project in relation to the factors listed in paragraphs 1 and 2, having regard (in particular) to —

- (a) the extent of the impact;
- (b) the magnitude and complexity of the impact;
- (c) the probability of the impact; and
- (d) the duration, frequency and reversibility of the impact.”

Passed by the Legislature of the Falkland Islands on 27 October 2011.

C. PRIOR M.B.E.,
Clerk of the Legislative Assembly.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

C. PRIOR M.B.E.,
Clerk of the Legislative Assembly.