



## **FALKLAND ISLANDS**

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### **Proceeds of Crime Ordinance 2006**

### **(ORDINANCE No. 22 OF 2006)**

#### **ARRANGEMENT OF PROVISIONS**

##### *Section*

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## FALKLAND ISLANDS

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### Proceeds of Crime Ordinance 2006

AN ORDINANCE To provide for confiscation orders in relation to persons who benefit from criminal conduct to prohibit dealing with property, to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct, to make provision about money laundering.

*[DATE OF COMMENCEMENT: IN ACCORDANCE WITH SECTION 1]*

#### **1 Short title and commencement**

This Ordinance may be cited as the Proceeds of Crime Ordinance 2006 and shall come into force on such date as is appointed by the Governor by notice published in the Gazette.

#### **2 Adoption of Parts 2, 4, 5 and 7 to 12 of Proceeds of Crime Act 2002 (c.29)**

Parts 2, 4, 5 and 7 to 12 of the Proceeds of Crime Act 2002 (c.29) are adopted as law of the Falkland Islands subject to the modifications and exceptions specified in the Schedule to this Ordinance.

#### **3 Amendments and repeals of existing laws**

- (1) Schedule 2 shall have effect to amend existing laws in the manner specified therein.
- (2) Schedule 3 shall have effect to repeal existing laws to the extent specified therein.

### **SCHEDULE 1**

#### **MODIFICATIONS, ADAPTATIONS AND EXCEPTIONS SUBJECT TO WHICH PARTS 2, 4, 5 AND 7 TO 12 OF THE PROCEEDS OF CRIME ACT 2002 SHALL HAVE EFFECT IN THE FALKLAND ISLANDS**

##### **1. (1) In this Schedule-**

- (a) **"the Act"** means the Proceeds of Crime Act 2002 (c.29);

- (b) every reference to a section, without more, is to a section of the Act.

(2) In the Act-

- (a) unless otherwise specified, every reference to the Director is replaced by a reference to the Attorney General;
- (b) the words "section 130 of the Sentencing Act", wherever they appear, are replaced by the words "section 53 of the Criminal Justice Ordinance 1989";

*[Revision w.e.f. 31/07/2017]*

- (c) unless otherwise specified, the words "the Secretary of State", wherever they appear, are replaced by the words "the Governor";
- (d) the words "England and Wales", and "United Kingdom", wherever they appear, are replaced by the words "the Falkland Islands"; and
- (e) except where provided to the contrary the words "the Crown Court", wherever they appear, are replaced by the words "the Magistrate's Court".

3. In section 6(2)(b) all words appearing after the word "offences" are omitted.

4. In section 8, subsection (7) is replaced by-  
"(7) These are the provisions-

- (a) the Drug Trafficking Offences Ordinance 1997;

*[Revision w.e.f. 31/07/2017]*

- (b) Part IV of the Criminal Justice Ordinance 1989;

*[Revision w.e.f. 31/07/2017]*

- (c) Part 4 of this Act."

5. In section 9, subsection (3) is modified by the addition of the words "as if it formed part of the law of the Falkland Islands".

6. In section 13-

- (a) the words "section 27 of the Misuse of Drugs Act 1971 (c.38)" in paragraph (b) of subsection (3) are replaced by the words "section 24 of the Misuse of Drugs Ordinance 1987";

*[Revision w.e.f. 31/07/2017]*

- (b) the words "section 143 of the Sentencing Act" in paragraph (c) of subsection (3) are replaced by the words "section 59 of the Criminal Justice Ordinance 1989";
- (c) paragraph (d) of subsection (3) is omitted; and
- (d) in paragraph (a) of subsection (5) the words "the Crown Court" are replaced by the words "the court" and the words "section 130 of the Sentencing Act" are replaced by the words "section 53 of the Criminal Justice Ordinance 1989".

*[Revision w.e.f. 31/07/2017]*

**7. In section 15(5)-**

- (a) paragraph (a) is replaced by-

"(a) any time limit for notice of appeal or of application for leave to appeal;" and

- (b) paragraph (b) is omitted.

**8. Section 23 is modified-**

- (a) in subsection (6) by replacing all words appearing after the words "be wound up under" by the words "Companies Act 1948 in its application to the Falkland Islands"

- (b) by the addition of the following subsection-

"(7) An application to vary a confiscation order may only be made to the court which made that order."

**9. Section 25 is modified-**

- (a) by omitting subsection (1)(b);

- (b) by inserting after the words "the court" in subsection (2), the words "acting of its own motion".

**10. Section 28 is modified by the addition of the following subsection-**

"(8) In this section "the court" means the Magistrate's Court unless the proceedings referred to in subsection (1) are proceedings on indictment in the Supreme Court, when "the court" means the Supreme Court."

**11. Section 29 is modified by the addition of the following subsection-**

"(5) In this section "the court" means the court which made the order under section 6 as applied by section 28."

**12. Section 31 is modified by replacing subsection (1) with-**

"(1) If a court makes a confiscation order the Attorney General may appeal in respect of the order-

- (a) to the Supreme Court in the case of an order made by the Magistrate's Court; or

- (b) to the Court of Appeal in the case of an order made by the Supreme Court."

**13. Section 32 is modified-**

- (a) by replacing the words "Court of Appeal", wherever they appear, with the words "appellate court";

- (b) by replacing the words "the Crown Court", wherever they appear, with the words "the court against whose decision the appeal was brought".

**14. Section 33 is modified by-**

- (a) replacing the words "House of Lords", wherever they appear, with the words "Court of Appeal"; and

- (b) replacing the "Court of Appeal", wherever they appear in section 33 as enacted in England, with the words "Supreme Court".

**15. Section 35 is modified by replacing subsection (2) with the following-**

"(2) Section 73 of the Criminal Justice Ordinance 1989 (application of procedure for enforcing fines) shall apply as if the amount ordered to be paid had been ordered to be paid under section 63 (confiscation orders) of that Ordinance."

*[Revision w.e.f. 31/07/2017]*

**16. Section 36 is modified by replacing the words "section 139(2) to (4) and (9) of the Sentencing Act" with the words "section 14(1) to (7) and (9) (with the omission from that subsection of the words "subject to subsection (10)") of the Criminal Justice Ordinance 1989."**

*[Revision w.e.f. 31/07/2017]*

**17. Section 38 is modified-**

- (a) in subsection (2) by the replacement of the words "section 108 of the Sentencing Act" with the words "section 40 of the Criminal Justice Ordinance 1989"; and

*[Revision w.e.f. 31/07/2017]*

- (b) in paragraph (a) of subsection (4) by inserting before the words "section 189(1) of the Criminal Justice Act 2003" the words "any law of the Falkland Islands corresponding to";
- (c) by omitting paragraph (b) of section 38(4); and
- (d) in paragraph (c) of section 38(4), by replacing the words "section 139(2) of the Sentencing Act" with the words "section 14(2) of the Criminal Justice Ordinance 1989".

*[Revision w.e.f. 31/07/2017]*

**18. Section 39 is modified-**

- (a) in paragraph (b) of subsection (1) and in subsection (5) by replacing the words "section 139(4) of the Sentencing Act" by the words "section 14(4) of the Criminal Justice Ordinance 1989";

*[Revision w.e.f. 31/07/2017]*

- (b) in paragraph (c) of subsection (1) and in subsections (2) and (4) by replacing the words "section 139(2) of the Sentencing Act" with the words "section 14(2) of the Criminal Justice Ordinance 1989";

*[Revision w.e.f. 31/07/2017]*

- (c) in subsection (5) by replacing the words "appropriate person" by the words "Attorney General"; and
- (d) by omitting subsection (6).

**19. Section 41 is modified-**

- (a) in subsection (1) by replacing the words "Crown Court" with the words "Magistrate's Court"; and
- (b) in subsection (8) by replacing paragraphs (a) to (c) with-

"(a) section 11 of the Drug Trafficking Offences Ordinance 1997;

*[Revision w.e.f. 31/07/2017]*

(b) section 77 of the Criminal Justice Ordinance 1989; and

*[Revision w.e.f. 31/07/2017]*

(c) section 29 of the Drug Trafficking Ordinance 1997."

*[Revision w.e.f. 31/07/2017]*

**20. Section 42 is modified-**

- (a) in paragraph (b) of subsection (1) by replacing the words "a judge" with the words "the Senior Magistrate"; and
- (b) in subsection (2) by replacing the words "Crown Court" by the words "Magistrate's Court".

**21. Section 43 is modified-**

- (a) by replacing the words "Court of Appeal", wherever they appear in the section) with the words "Supreme Court"; and
- (b) in subsection (2) by replacing the words "Crown Court's" with the words "Magistrate's Court's".

**22. Section 44 is modified-**

- (a) by replacing the words "House of Lords", wherever they appear, with the words "Court of Appeal"; and
- (b) by replacing the words "Court of Appeal", wherever they appear in the section as enacted in England with the words "Supreme Court".

**23. Section 45(1) is modified by replacing the words "officer of Revenue and Customs" with the words "Customs officer".**

**24. Section 47 is modified-**

- (a) in subsection (1) by replacing the words "The registration Acts" with the words "the Land Charges Ordinance 1996 " and by replacing the word "apply" with the word "applies"; and

*[Revision w.e.f. 31/07/2017]*

- (b) by omitting subsections (2), (3) and (4).

**25. Section 48 is modified by replacing the words "the Crown Court", wherever they appear, with the words "the Magistrate's Court".**

**26. Section 49(8) is modified by replacing paragraphs (a) to (c) with-**

"(a) section 11 of the Drug Trafficking Offences Ordinance 1997;

*[Revision w.e.f. 31/07/2017]*

(b) section 77 of the Criminal Justice Ordinance 1989; and

*[Revision w.e.f. 31/07/2017]*

(c) section 29 of the Drug Trafficking Ordinance 1997."

*[Revision w.e.f. 31/07/2017]*

**27.** Section 50(2) is modified by replacing the words "Crown Court" with the words "Magistrate's Court".

**28.** Section 51(7) is modified by replacing paragraphs (a) to (c) by-

"(a) section 11 of the Drug Trafficking Offences Ordinance 1997;

*[Revision w.e.f. 31/07/2017]*

(b) section 77 of the Criminal Justice Ordinance 1989; and

*[Revision w.e.f. 31/07/2017]*

(c) section 29 of the Drug Trafficking Ordinance 1997."

*[Revision w.e.f. 31/07/2017]*

**29.** Section 52 is modified-

(a) by replacing the words "Court of Appeal", wherever they appear, with the words "Supreme Court";

(b) by replacing the words "Crown Court", wherever they appear, with the words "Magistrate's Court"; and

(c) by omitting paragraph (a) of subsection (6).

**30.** Section 53(7) is modified by replacing paragraphs (a) to (c) in the same way as paragraphs (a) to (c) of section 51(7) are replaced by paragraph 28 of this Schedule.

**31.** Section 54(7) is modified by replacing the words "appropriate designated officer" with the words "Courts Administrator".

**32.** Section 55 is modified-

(a) by replacing the words "designated officer", wherever they appear, and the words "designated officer's" by the words "Courts Administrator" and "Courts Administrator's", respectively; and

(b) by omitting subsection (7).

**33.** Section 57 is modified by omitting subsection (6).

**34.** Section 65 is modified by replacing the words "Court of Appeal", wherever they appear, by the words "Supreme Court".

**35.** Section 66 is modified in the like manner as section 44 is modified by virtue of paragraph 22 of this Schedule.

**36.** Section 67 is modified-

(a) in paragraph (a) of subsection (2)-

- (i) by replacing the word "constable" with the words "police officer";
- (ii) by replacing the words "section 19 of the Police and Criminal Evidence Act 1984 (c.60)" with the words "section 190 of the Criminal Justice Ordinance 1989";

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- (b) by omitting paragraph (b) of subsection (2);
- (c) in subsection (3)-
  - (i) by replacing paragraph (a) of subsection (3) with-
    - "(a) has been seized by a customs officer under any provision of law conferring a general power of seizure etc on customs officers;" and
  - (ii) by omitting paragraph (b) of that subsection;
- (d) by replacing subsection (5) with-
  - "(5) In such a case a court of summary jurisdiction may order the Financial Secretary (if the money is held by him in any fund under his control) or any bank or other financial institution holding the money in an account maintained by the Royal Falkland Islands Police or by the Customs Department to pay the money to the Courts Administrator for the court on account of the money due under the confiscation order.";
- (e) in subsection (6)-
  - (i) by replacing the words "building society" by the words "financial institution";
  - (ii) by replacing the words "magistrate's court" with the words "court of summary jurisdiction";
- (f) by replacing subsection (8) with-
  - "(8) For the purposes of this section "bank" and "financial institution" have the same meanings as they have under the Banking Ordinance 1987."

*[Revision w.e.f. 31/07/2017]*

**37.** Section 68 is omitted.

**38.** Section 70 is modified by replacing the words "magistrate's court", wherever they appear, with the words "Summary Court".

**39.** Section 72 is modified by replacing subsection (9) with-

"(9) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund."

**40.** Section 73 is modified by replacing subsection (3) with-

"(3) Compensation under this section is payable by the Crown to the applicant and is a charge on the Consolidated Fund."

**41.** Section 79(4) is modified by replacing paragraphs (a) to (c) with-

"(a) section 11 of the Drug Trafficking Offences Ordinance 1997;

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- (b) section 77 of the Criminal Justice Ordinance 1989; and

*[Revision w.e.f. 31/07/2017]*

- (c) section 29 of the Drug Trafficking Ordinance 1997."

*[Revision w.e.f. 31/07/2017]*

**42. Section 82 is modified-**

- (a) by replacing paragraph (a) with-

"(a) section 24 of the Misuse of Drugs Ordinance 1987";

*[Revision w.e.f. 31/07/2017]*

- (b) by omitting paragraphs (b) and (c);

- (c) by replacing paragraph (d) with-

"(d) section 59 of the Criminal Justice Ordinance 1989"; and

*[Revision w.e.f. 31/07/2017]*

- (d) by omitting paragraph (e).

**43. Section 85 is modified-**

- (a) in subsection (1)(c) by replacing the words "High Court" with the words "Supreme Court";
- (b) by replacing the words "Court of Appeal", wherever they appear in subsections (5) and (6) with the words "Supreme Court"; and
- (c) by replacing the words "House of Lords" wherever they appear in subsection (6) with the words "Court of Appeal".

**44. Section 88 is modified by omitting subsection (5).**

**45. Section 89 is modified-**

- (a) in subsection (1) by inserting the words "the Supreme Court or" before the words "the Court of Appeal";
- (b) by omitting subsection (2);
- (c) in subsection (3) by replacing the words "in the Criminal Appeal Act 1968 (c.19)(subject to any specified modifications)" with the words "relating to criminal appeals in the Court of Appeal Ordinance 1998";

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- (d) in subsection (4) by replacing-

- (i) the words "criminal division of the Court of Appeal" with the words "the Supreme Court or the Court of Appeal";
- (ii) in paragraph (a) by replacing all words appearing after the words "section 43(1) or (2)" with-

"(appeals to the Supreme Court against orders made in restraint proceedings and to the Court of Appeal under section 44 (appeals to Court of Appeal against decision of Supreme Court under section 43))",

(iii) by inserting in paragraph (b) after the word "appeals" the words "to the Supreme Court"; and

(iv) by adding a further paragraph-

"(c) section 65 (appeals to the Court of Appeal against decision of the Supreme Court under section 64),".

**46.** Section 90 is omitted.

**47.** Section 91 is replaced by-

**"91 Criminal Procedure Rules**

Any Criminal Procedure Rules made under section 91 of the Act in the form it has effect in England and Wales in relation to-

(a) proceedings under this Part, or

(b) receivers appointed under this Part,

shall have effect in the Falkland Islands with all necessary modifications."

**48.** Section 240 is modified-

(a) in paragraph (a) by replacing the words "High Court or Court of Session" with the words "Supreme Court"; and

(b) in paragraph (b) by omitting all words appearing after the words "civil proceedings" with the words "before a court of summary jurisdiction".

**49.** Section 241 is modified-

(a) by replacing subsection (1) with-

"(1) Conduct occurring in the Falkland Islands is unlawful conduct if it is unlawful under the criminal law of the Falkland Islands."

(b) in paragraph (a) of subsection (2), by replacing the words "of that country" with the words "of that country or territory";

(c) by replacing paragraph (b) of subsection (2) with-

"(b) if it occurred in the Falkland Islands, would be unlawful under the criminal law of the Falkland Islands; and

(d) in subsection (3), by omitting the words "or sheriff".

**50.** In sections 243(1), 245A(1), 245D(2) and 246(1) the words "High Court" are replaced by the words "Supreme Court".

**51.** Section 244 is omitted.

**52.** Section 245(1) is modified by omitting paragraph (d).

**53.** Section 245C(6) is modified by omitting paragraph (b).

**54.** Section 246(7) is modified by omission of all words appearing after the words "interim receiver".

**55.** Section 248 is modified-

(a) in subsection (1)-

(i) by replacing the words "The registration Acts" by the words "the Land Charges Ordinance 1996", and

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(ii) by replacing the words "interim receiving orders", wherever they appear, with the words "property freezing orders and in relation to interim receiving orders";

(b) by omitting subsections (2), (3) and (4).

**56.** Section 249 is omitted.

**57.** Section 252 is modified by replacing with immediate effect subsection (4) with the new subsection (4) substituted by section 109 and Schedule 6 paragraphs 4, 14(1) and (2) of the Serious Organised Crime and Police Act 2005 from the date appointed under section 178(8) of that Act.

**58.** Section 253(2) is modified by replacing the words "High Court" with the words "Supreme Court".

**59.** Sections 255A to 265 (which relate to Scotland) are omitted.

**60.** Section 266 is modified-

(a) by replacing subsection 2(b) with-

"(b) any provision which is incompatible with the Constitution";

(b) by omitting subsection (5) (which relates to Scotland);

(c) by inserting after subsection (8) with immediate effect the subsections (8A) and (8B) which were inserted by section 109 and Schedule 6 paragraphs 4 and 15 of the Serious Organised Crime and Police Act 2005 as from a day to be appointed under section 178(8) of that Act.

**61.** Section 268 (which relates to Scotland) is omitted.

**62.** Section 269(2) is modified by omitting the words "right of irritancy".

**63.** Section 271 is modified by replacing subsection (4) with-

"(4) But if-

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

- (b) the enforcement authority agrees that the person has suffered loss as a result of the order mentioned in paragraph (a), the amount of the payment may be reduced by any amount the enforcement authority and that person agree is reasonable, having regard to that loss and relevant circumstances."

**64.** Section 272 is modified by replacing subsection (5) with-

"(5) If-

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and
- (b) the court is satisfied that the person who holds the associated property has suffered loss from the order mentioned in paragraph (a), a recovery order making provision by virtue of subsection (2) or (3) may require the enforcement authority to pay compensation to that person."

**65.** Section 273 is modified by replacing subsection (5) with-

"(5) None of the following provisions applies to a court making a recovery order by virtue of subsection (2)-

- (a) any provision of any enactment (whenever passed or made and whether passed or made in the Falkland Islands or passed or made elsewhere and having effect in the Falkland Islands) which prevents assignment and the making of orders that restrain a person from receiving anything he is prevented from assigning; and
- (b) any provision of the pension scheme in question corresponding to any of those provisions."

**66.** Section 275 is modified by omitting the references to the legislation of Northern Ireland which appear in subsections (4) and (6).

**67.** Section 280 is modified by-

- (a) replacing subsection (2) with-

"(2) The trustee is to make out of the sums-

- (a) first any payment required to be made by him by section 272;
- (b) next, any payment of legal expenses which, after giving effect to section 266(8B) are payable under this subsection in pursuance of provision under section 266(8A) contained in the recovery order;
- (c) then, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 432(10), and any sum which remains is to be paid to the enforcement authority."; and

- (b) by omitting subsection (4).

**68.** Section 282 is modified-

- (a) in subsection (1), by omitting the words "after consultation with the Scottish Ministers"; and

- (b) by omitting subsections (3) and (4).

**69. Section 283 is modified-**

- (a) in subsection (3)-
  - (i) by replacing the words "High Court in England and Wales" in paragraph (a) by the words "Supreme Court"; and
  - (ii) by omitting paragraph (b); and
- (b) by replacing subsection (5) with-

"(5) If the court is satisfied that the applicant has suffered loss as a result of a property freezing order, or an interim receiving order, it may require the enforcement authority to pay compensation to him."

**70. Sections 284, 285 and 286 (which relate to Scotland) are omitted.**

**71. Section 287 is modified-**

- (a) in subsection (2) by omitting the words "after consultation with the Scottish Ministers";
- (b) by replacing subsection (3) with-

"(3) If the authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings."; and

- (c) by replacing subsection (4) with-

"(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or interim receiving order."

**72. Section 289 is modified-**

- (a) in subsection (1) and (2) by replacing the words "officer of Revenue and Customs or constable" with the words "Customs officer or police officer";
- (b) in subsections (3) and (4), by omitting the words "or constable";
- (c) in subsection (5), by omitting paragraph (b); and
- (d) in subsection (6), by omitting all words after the words "Secretary of State";
- (e) in subsection (7) by replacing the words "section 164 of the Customs and Excise Management Act 1979" with the words "section 164 of the Customs Ordinance 2003".

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**73. Section 290 is modified-**

- (a) in subsections (2), (6) and (7) by replacing the words "judicial officer" with the words "justice of the peace";
- (b) by omitting subsection (3); and

(c) by replacing subsection (4) with-

"(4) A senior officer means-

- (a) in relation to the exercise of the power by a customs officer, the Collector of Customs; and
- (b) in relation to the exercise of the power by a police officer, a police officer of at least the rank of inspector."

(d) by omitting subsection (5);

(e) in subsection (6), by replacing-

- (i) the word "constable" by the words "police officer";
- (ii) the words "appointed person" by the words "Chief Executive"; and

(f) by omitting subsections (8) and (9).

**74. Section 291 is modified-**

- (a) in subsection (1), by replacing the words "appointed person" by the words "Chief Executive";
- (b) in subsection (2), by replacing the words "officer of the Revenue and Customs or constable" with the words "customs officer or police officer";
- (c) in subsection (4), by omitting the words "or, as the case may be, the Scottish Ministers,"; and
- (d) by omitting subsection (5).

**75. Section 292 is modified-**

(a) by replacing subsection (1) with-

"(1) The code of practice made and in operation under section 292(1) and (4) of the Act in the form it has effect in England shall with all necessary modifications apply in relation to the exercise of powers under section 289 by customs officers and police officers."

(b) by omitting subsections (2), (3), (4) and (5); and

(c) in subsection (6), by replacing the words "an officer of the Revenue and Customs or constable" with the words "a customs officer or police officer".

**76. Section 293 (which relates to Scotland) is omitted.**

**77. Section 294 is modified, in subsections (1) and (2) by replacing the words "An officer of the Revenue and Customs or constable" with the words "A customs officer or a police officer".**

**78. Section 295 is modified-**

- (a) in subsection (1) by replacing the words "the officer of the Customs and Revenue or constable" with the words "the customs officer or police officer";

(b) in subsection (1B)-

(i) by replacing paragraph (d) with-

"(d) any public holiday";

(ii) by omitting paragraph (e);

(c) by replacing subsection (4) with-

"(4) An application for an order under subsection (2) may be made by a customs officer or a police officer, and the justice may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met."

**79. Section 297 is modified-**

(a) by omitting all words only relevant to an application in Scotland;

(b) in subsection (4) by replacing the words "An officer of Revenue and Customs or constable" with the words "A customs officer or police officer".

**80. Section 298 is modified-**

(a) by replacing subsection (1) with-

"(1) While cash is detained under section 295 an application for the forfeiture of the whole or any part of it may be made by the Attorney General or a person authorised by the Attorney General to make the application."

(b) by omitting the words "or Sheriff" in subsection (2).

**81. Section 299 (in the form it was substituted by section 101 of the Serious Organised Crime Act 2005) is modified in subsection (1) by-**

(a) in paragraph (a) by replacing the words "Crown Court" with the words "Supreme Court"; and

(b) by omitting paragraphs (b) and (c).

**82. Section 300 is replaced by-**

"(1) Cash forfeited under this Chapter and any accrued interest on it is to be paid into the Consolidated Fund.

(2) If, as a result of an appeal under section 299 the Supreme Court orders the repayment by the Crown of any sum forfeited pursuant to section 298 the court shall also order the payment by the Crown of such sum by way of interest as it considers just."

**83. Section 301 is modified-**

(a) in subsection (1)-

(i) by replacing the words "magistrates' court" with the words "Magistrate's Court"; and

(ii) by omitting all words appearing in subsection (1) thereafter;

- (b) by omitting the words "or sheriff" wherever they appear in subsections (2) and (3).

**84. Section 302 is modified-**

- (a) in subsection (1) by omitting the words "or (in Scotland) the sheriff";
- (b) in subsections (2), (3), (4) and (5) by omitting the words "or sheriff" wherever they appear;
- (c) by replacing subsection (6) with-  
    "(6) The compensation is to be paid by the Crown and is a charge on the Consolidated Fund."; and
- (d) by omitting subsection (7).

**85. Section 303(1) is replaced by-**

"303. (1) In this Chapter, the minimum amount is the amount in sterling for the time being specified in an order made under section 303(1) in the form it has effect in England."

**86. Section 308 is modified-**

- (a) in subsection (3), by the omission of the last subsection;
- (b) in subsection (4) by the replacement of paragraph (a) with-  
    "(a) a payment is made to a person in pursuance of a compensation order under section 53 of the Criminal Justice Ordinance 1989.";

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- (c) by the omission of subsections (5), (6) and (7);
- (d) in subsection (8) by the replacement in paragraph (b) of the words "section 8(7)(a) to (g)" with the words "section 8(7)(a) and (b)"; and
- (e) in subsection (9) by the replacement of the same words in paragraph (b) of that subsection in the like manner as in subparagraph (d) of this paragraph.

**87. Section 309 is modified in subsection (4) by omission of the words "after consultation with the Scottish Ministers".**

**88. Section 311 is modified-**

- (a) in subsection (3)-
  - (i) by replacing paragraph (b) with-  
    "(b) is an asset of a company and a compromise or arrangement made pursuant to section 206 of the Companies Act 1948 has effect in relation to the company and that asset;"
  - (ii) by omitting paragraph (c);
  - (iii) by omitting all words appearing after "adjudged bankrupt" in paragraph (d);
  - (iv) by replacing paragraph (e) with-

- "(e) it is an asset of an individual and a composition or scheme or arrangement accepted and approved pursuant to section 16 of the Bankruptcy Act 1914 has effect in relation to him;" and
- (b) by replacing subsection (4) with-
  - "(4) An application under this section or under any provision of the Bankruptcy Act 1914 for leave to take proceedings for a recovery order may be made without notice to any person."
- (c) by replacing subsection (6) with the following-
  - "(6) For the purposes of the application of the Bankruptcy Act 1914 to insolvent partnerships and estates of deceased persons under any provision of that Act, subsections (1) to (3) of this section shall be deemed to be part of that Act.";
- (d) subsection (7) is omitted;
- (e) subsection (8) is modified-
  - (i) by replacing paragraph (a) with-
    - "(a) an asset means any property within the meaning of section 167 of Bankruptcy Act 1914";
  - (ii) in paragraph (b)-
    - (aa) by omitting the words "or trust deed"; and
    - (bb) by replacing all words appearing after the words "is the court" with the words "for the purposes of the application in the Falkland Islands of the Bankruptcy Act 1914"; and
  - (iii) by omitting paragraph (d).

**89.** Sections 312 to 315 are omitted.

**90.** In section 316-

- (a) the definitions of "constable", "the court", "interim administration order", "interim receiving order" and "part" are omitted;
- (b) the definition of "enforcement authority" is replaced by-
  - " "enforcement authority" means the Attorney General";
- (c) the definition of "interest" is replaced by-
  - " "interest" in the case of land means any legal estate and any equitable interest or power";
- (d) paragraph (b) of the definition of "respondent" is omitted;
- (e) subsection (4) is replaced by-

"(4) Property is all property wherever situated whether real or personal and includes things in action and incorporeal property.";

- (f) in subsection (9), paragraph (b) is modified by omitting all words appearing after the word "discontinued".

**91. Section 327 is modified-**

- (a) by omitting all words after the words "England and Wales" (the latter being replaced by the words "the Falkland Islands" by paragraph 1(b)(iv) of this Schedule);
- (b) by inserting the following subsections after subsection (2)-

"(2A) Nor does a person commit an offence under subsection (1) if-

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Falkland Islands, and
- (b) the relevant criminal conduct-
  - (i) was not at the time it occurred, unlawful under the law of that country or territory, and
  - (ii) is not of a description specified by an order made by the Secretary of State for the purposes of section 327(2A)(b) of the Act in the form it has effect in England.

(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property."

**92. Section 329 is modified by inserting the following subsections after subsection (2)-**

"(2A) Nor does a person commit an offence under subsection (1) if-

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the Falkland Islands; and
- (b) the relevant criminal conduct-
  - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
  - (ii) is not of a description prescribed by an order made by the Secretary of State for the purposes of section 329(2A) in the form it has effect in England.

(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if-

- (a) it does the act in operating an account maintained with it, and
- (b) the arrangement facilitates the acquisition, retention, use or control of criminal property that is less than the threshold amount determined under section 339A for the act."

**93. Section 330 is modified-**

- (a) by replacing subsection (1) with-

"(1) A person commits an offence if the conditions in subsections (2) to (4) are satisfied."

- (b) by inserting the following subsection after subsection (3)-

"(3A) The third condition is-

- (a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property; or
- (b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.";

- (c) by inserting the following subsections after subsection (5)-

"(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if-

- (a) he has a reasonable excuse for not making the required disclosure,
- (b) he is a professional legal adviser, and
  - (i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances; or
  - (ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or"; and

- (d) by inserting the following subsection after subsection (7)-

"(7A) Nor does a person commit an offence under this section if-

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and
- (b) the money laundering-
  - (i) is not unlawful under the criminal law applying in that country or territory; and
  - (ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 330(7A) in the form it has effect in England."

- (e) by inserting the following subsection after subsection 9-

"(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure-

- (a) is a professional legal adviser;
- (b) makes it for the purpose of obtaining advice about making a disclosure under this section; and
- (c) does not intend it to be a disclosure under this section."

**94. Section 331 is modified-**

- (a) by inserting the following subsection after subsection (3)-

"(3A) The third condition is-

- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,
- (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
- (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property."

- (b) in subsection (4), by replacing the words "Director General of the Serious Organised Crime Agency" with the words "Attorney General";

- (c) by inserting the following subsection after subsection (5)-

"(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in."

- (d) by inserting the following subsection after subsection (6)-

"(6A) Nor does a person commit an offence under this section if-

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and
- (b) the money laundering-
  - (i) is not unlawful under the criminal law applying in that country or territory; and
  - (ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 331(6A) of the Act in the form it has effect in England."

**95. Section 332 is modified-**

- (a) in subsection (1), by replacing the words "section 338" by the words "section 337 or 338";

- (b) by inserting the following subsection after subsection (3)-

"(3A) The third condition is-

- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the application section,
- (b) that the other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
- (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.";
- (c) in subsection (4) by replacing the words "Director General of the Serious Organised Crime Agency" by the words "Attorney General (who may authorise himself for the purposes of this Part)";
- (d) by inserting the following two subsections after subsection (5)-
 

"(5A) The laundered property is the property forming the subject matter of the money laundering that he knows or suspects that other person to be engaged in.

(5B) The application section is section 337 or, as the case may be, section 338.";
- (e) by inserting the following subsection after subsection (6)-
 

"(7) Nor does a person commit an offence under this section if-

  - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Falkland Islands, and
  - (b) the money laundering-
    - (i) is not unlawful under the criminal law applying in that country or territory; and
    - (ii) is not of a description prescribed in an order made by the Secretary of State for the purposes of section 332 for the purposes of section 332 in the form it has effect in England."

**96. Section 334 is replaced by-**

**"334 Penalties**

- (1) A person guilty of an offence under section 337, 328 or 329 is liable on conviction to imprisonment for a term not exceeding 14 years or to a fine of such amount as the court sees fit, or both.
- (2) A person guilty of an offence under section 330, 331, 332 or 333 is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding the maximum of level 12 on the standard scale, or both.
- (3) A person guilty of an offence under section 339A is liable to a fine not exceeding level 5 on the standard scale."

**97. Section 335 is modified-**

- (a) by replacing references to "nominated officer" wherever they occur, with references to "police officer of the rank of inspector or above or to the Collector of Customs"; and

- (b) in subsection (7) by replacing all the words appearing after "Good Friday or a day which is a" with the words "public holiday."

**98.** Section 336 is replaced with the following-  
"336.

(1) A nominated officer must not give the appropriate consent unless he makes a disclosure that property is criminal property to the Attorney General or Principal Crown Counsel and one of the following conditions is satisfied-

- (a) the Attorney General gives consent to the doing of the act; or
- (b) before the end of seven working days starting with the first working day after the nominated officer makes the disclosure, he does not receive notice from the Attorney General that consent to the doing of the act is refused;
- (c) before the end of the period referred to in paragraph (b) he receives such a notice but the moratorium period has expired.

(2) A person who is a nominated officer commits an offence if-

- (a) in breach of subsection (1) he gives consent to a prohibited act, and
- (b) he knows or suspects that the act is a prohibited act.

(3) A person guilty of such an offence is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding level 10 on the standard scale.

(4) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(5) A working day is a day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a public holiday.

(6) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(7) A nominated officer is a person nominated to receive disclosures under section 338."

**99.** Section 337 is modified-

- (a) by replacing subsection (4) with-

"(4) The third condition is that the disclosure is made to a police officer of the rank of inspector or above or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.";

- (b) by the insertion after subsection (4) of-

"(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of-

- (a) the identity of the other person mentioned in subsection (3), and

- (b) the whereabouts of property forming the subject matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting the other person to be engaged in, the disclosure of the thing mentioned in paragraph (a) or (b) is not to be taken to breach any restriction on the disclosure of information (however imposed)."

**100. Section 338 is modified-**

- (a) by replacing subsection (1) with-

"(1) For the purposes of this Part, a disclosure is authorised if-

- (a) it is a disclosure to a police officer of the rank of inspector or above or to a nominated officer that property is criminal property, and
- (b) the first, second or third condition set out below is satisfied."

- (b) by inserting the following subsection after subsection (2)-

"(2A) The second condition is that-

- (a) the disclosure is made while the alleged offender is doing the prohibited act,
- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and
- (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct."

- (c) in paragraph (a) of subsection (3) by inserting the word "third" between the word "The" at the commencement of the subsection, and the word "condition".

**101. Section 339 is modified-**

- (a) by inserting the following subsections after subsection (1);

"(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332, or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed."

- (b) by replacing subsections (2) and (3) with-

"(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.

(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must-

- (a) state that there is no obligation to comply with the request, and
- (b) explain the protection conferred by subsection (4) on a person who complies with the request."; and
- (c) by omitting subsections (5) and (6).

**102.** The following section is inserted after section 339-

**"339A Threshold amounts**

(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).

(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) The Collector of Customs or a police officer of the rank of inspector or above (or a nominated officer), may specify the threshold amount for acts done by a deposit-taking body in operating an account-

- (a) when he gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or
- (b) on a request from the deposit-taking body.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, the Collector of Customs or a police officer of the rank of inspector or above or a nominated officer may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.

(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Governor may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.

(9) The Governor may exercise his powers under subsection (7) by adopting, with such modifications as he sees fit, an order made by the Secretary of State under subsection (7) in the form it has effect in England."

**103.** Section 340 is modified-

- (a) by omitting subsection (13); and

- (b) by omitting paragraph (b) of subsection (14).

**104. Section 343 is modified-**

- (a) by replacing subsection (2) with-

"(2) In relation to an application for the purposes of a confiscation investigation, a judge is the Senior Magistrate;" and

- (b) by replacing the words "High Court" in subsection (3) with the words "Supreme Court".

**105. Section 344 is modified-**

- (a) by replacing the words "Crown Court" with the words "Magistrate's Court"; and

- (b) by replacing the words "High Court" with the words "Supreme Court".

**106. Section 350 is modified-**

- (a) by omitting the word "authorised" in subsection (1);

- (b) by replacing the words "officer of the department" in subsection (2) with the words "public officer";

- (c) by replacing paragraphs (a) and (b) of subsection (5) with-

"(a) the Senior Magistrate, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

(b) a Supreme Court judge, in the case of an order made for the purposes of a civil recovery investigation."

**107. Section 351 is modified by replacing subsection (5) with-**

"(5) Every application under this section must, except with the leave of the judge, be made by the Attorney General or by a person authorised by him to make the application."

**108. Section 352 is modified-**

- (a) by replacing the words "a constable or an officer of Revenue and Customs" in paragraph

(a) of subsection (5) with the words "a police officer of the rank of inspector or above or the Collector of Customs"; and

- (b) by replacing the words "a named member of the staff of the Agency" in paragraph (b) of subsection (5) with the words "a public officer named by the Attorney General".

**109. Section 353 is modified by replacing subsection (10) with-**

"(10) An appropriate person is-

(a) a police officer or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;

(b) a public officer named by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation."

**110.** Section 354 is modified by replacing the words "High Court" in subsection (2) with the words "Supreme Court".

**111.** Section 355 is modified-

(a) by replacing subsection (3) with-

"(3) This subsection applies to the following provisions of the Criminal Justice Ordinance

1989-

*[Revision w.e.f. 31/07/2017]*

(a) section 186 (search warrants - safeguards);

(b) section 187 (execution of warrants);

(c) section 192 (access and copying);

(d) section 193 (retention).";

(b) by omitting subsection (4).

**112.** Section 359 is modified by replacing subsection (4) with-

"(4) A person guilty of an offence under subsection (3) is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding level 10 on the standard scale."

**113.** Section 360 is modified by omitting all words appearing after the words "section 5 of the Perjury Act 1911 (c.6)" in paragraph (c) of subsection (2).

**114.** Section 364 is modified-

(a) in subsection (3)-

(i) by replacing all words appearing in paragraph (d) after the words "allocated to it" with the words "Companies Act 1948 or any corresponding legislation of any country or territory outside the Falkland Islands".

(ii) by omitting paragraph (e);

(iii) by replacing paragraph (f) with-

"(f) its registered office, and any previous registered offices under the Companies Act 1948 or anything similar under corresponding legislation of any country or territory outside the Falkland Islands;" and

(iv) by replacing all words appearing after "Limited Liability Partnerships Act 2002 (c.12)" with the words "of Great Britain or anything similar under corresponding legislation of any country or territory outside the Falkland Islands."

(b) in subsection (5)-

(i) by inserting after paragraph (a)-

"(aa) constitutes an offence specified in section 415(1A) of this Act,"; and

- (ii) by inserting in paragraph (b), after the words "paragraph (a)", the words "or (aa)".

**115. Section 369 is modified-**

- (a) by replacing paragraph (a) of subsection (3) with-  
"(a) the Attorney General or any public officer named by him";
- (b) by omitting subsections (5) and (6);
- (c) by replacing subsection (7) with-  
"(7) Except as provided by paragraph (b) of subsection (3), an application under this section may only be made by the Attorney General or a public officer named by him."

**116. Section 375 is modified-**

- (a) in subsection (2) in the like manner as section 369(3)(a) is modified above; and
- (b) by omitting subsections (4) and (5).

**117. Section 377 is modified-**

- (a) by replacing paragraphs (a) to (e) of subsection (1) with-  
"(a) the Attorney General and persons exercising functions on his behalf;  
(b) police officers; and  
(c) customs officers."
- (b) by omitting subsections (2) to (5);
- (c) by inserting the following subsection after subsection (7)-  
"(7A) The code of practice mentioned in subsection (1) has effect in the Falkland Islands with such modifications as would apply to it if it were a UK enactment to which Part 1 of Schedule 2 to the Law Revision and Publication Ordinance 2017 applied."; and

*[Revision w.e.f. 31/07/2017/S.R. & O. 20/2017/w.e.f. 31/07/2017]*

- (d) by omitting subsection (9).

**118. Section 378 is modified-**

- (a) by replacing subsection (1) with-  
"(1) In relation to a confiscation investigation or money laundering investigation these are appropriate officers-  
(a) the Attorney General and Principal Crown Counsel;  
(b) a police officer of the rank of sergeant or above;  
(c) the Collector of Customs; and  
(d) any person appointed by the Governor to be an appropriate officer for the purpose of confiscation investigations."

(b) by replacing subsection (2) with-

"(2) In relation to a confiscation investigation and a money laundering investigation these are senior appropriate officers-

- (a) the Attorney General and Principal Crown Counsel;
- (b) any police officer of the rank of inspector or above; and
- (c) a person appointed by the Governor to be a senior appropriate officer."; and

(c) by omitting subsections (4) to (7).

**119. Section 379 is modified-**

- (a) by replacing the words "Police and Criminal Evidence Act 1984 (c.60)" with the words "for the purposes of Part XII of the Criminal Justice Ordinance 1989"; and

*[Revision w.e.f. 31/07/2017]*

- (b) by omitting all words having relation to Northern Ireland.

**120. Sections 380 to 412 (which apply only to Scotland) are omitted.**

**121. Section 417 is replaced by the following-**  
**"417.**

- (1) This section applies if a person is adjudged bankrupt in the Falkland Islands.
- (2) The following property is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act 1914-
  - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging him bankrupt;
  - (b) any property in respect of which an order under section 50 or 52 is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198 or 200 is in force.
- (3) If in the case of a debtor an interim receiver stands at any time appointed under section 8 of the Bankruptcy Act 1914 and any property of the debtor is then subject to a restraint order under section 41, 120 or 190 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order."

**122. Section 418 is modified-**

- (a) in subsection (3)-
  - (i) by replacing paragraph (a) with-  
"(a) property of the bankrupt for the purposes of the Bankruptcy Act 1914";

- (ii) by omitting paragraph (b);
- (iii) by replacing paragraph (c) with-

"(c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 26(2) of the Bankruptcy Act 1914;"

- (b) in subsection (4) by replacing the words "1986 Act" with the words "Bankruptcy Act 1914"; and
- (c) by omitting subsection (5).

**123. Section 419 is modified-**

- (a) by replacing the words "sections 339, 340 or 423 of the 1986 Act" in subsections (2) and (3) in each case with the words "section 27, 42 or 44 of the Bankruptcy Act 1914."; and
- (b) by omitting subsection (5).

**124. Sections 420 to 422 (which relate to Scotland) are omitted.**

**125. Sections 423 to 425 (which relate to Northern Ireland) are omitted.**

**126. Section 426 is modified-**

- (a) in subsections (1) and (7) by replacing in each case the words "1986 Act" with the words "Companies Act 1948"; and
- (b) by omitting subsections (3), (8) and (10).

**127. Section 427 is modified-**

- (a) in subsection (1) by replacing the words "1986 Act" with the words "Companies Act 1948";
- (b) subsections (3) and (4) are replaced by-

"(3) No order may be made corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986 (avoidance of certain transactions), or otherwise in relation to that gift at any time when-

- (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
- (b) there is in force of such property an order under section 50, 52, 128(3), 198 or 200.

(4) An order corresponding with an order which, in England, may be made under section 238, 239 or 423 of the Insolvency Act 1986, or otherwise, after an order mentioned in subsection (3)(a) or (b) is discharged must take into account any realisation under Part 2 of this Act held by the recipient of the tainted gift."

**128. Sections 428 to 429 (which relate to Northern Ireland) are omitted.**

**129. Section 430 is modified-**

- (a) by replacing subsection (1) with-  
"(1) In this section "company" means a company which may be wound up under the Companies Act 1948.";
- (b) by omitting subsection (3);
- (c) in subsection (7) by replacing the words "1986 Act or 1989 Order" with the words "Companies Act 1948"; and
- (d) by omitting subsection (8).

**130. Section 431 is modified by replacing the words "1986 Act" in subsection (1) with the words "Bankruptcy Act 1914".**

**131. Section 432 is modified-**

- (a) by replacing the words "interim receiving order under section 246" in paragraph (b) of subsection (1), in paragraph (a) of subsection (8) and in paragraph (a) of subsection (9) in each case with the words "a property freezing order made under section 245A or an interim receiving order made under section 246"; and
- (b) in subsection (4) by replacing the words "1985 Act, the 1986 Act, the 1989 Order" with the words "the Bankruptcy Act 1914, the Companies Act 1948, any other written law of the Falkland Islands.".

**132. Section 433 is modified by-**

- (a) replacing subsection (2) with the following subsections-  
"(2) A person acts as an insolvency practitioner in relation to a company by acting-
  - (a) as its liquidator, or provisional liquidator, or
  - (b) as the supervisor of any compromise or arrangement with its creditors approved by it;  
(2A) A person acts as an insolvency practitioner in relation to an individual by acting-
  - (a) as his trustee in bankruptcy or interim receiver of his property;
  - (b) as trustees under a deed which is a deed of arrangement made for the benefit of his creditors; or
  - (c) as administrator of the insolvent estate of a deceased person."
- (b) by omitting subsections (4) and (5).

**133. Section 434 is omitted.**

**134. Section 436 is modified-**

- (a) in subsection (1) by replacing the words "a permitted person" by the words "a customs officer, police officer, other public officer or the Commissioner of Taxes",

- (b) by omitting subsections (3), (5), (8) and (9).

**135. Section 437 is modified-**

- (a) by replacing all references in that section to the Commissioners of Inland Revenue with references to the Commissioner of Taxes;
- (b) by replacing all references in that section to "the Commissioners of Customs and Excise" with references to "Collector of Customs";
- (c) in paragraph (a) of subsection (4) by replacing the words "Board of Inland Revenue" with the words "the Taxation Officer".

**136. Section 438 is modified-**

- (a) in subsection (1)-
  - (i) by the omission of paragraph (e); and
  - (ii) by replacing paragraph (f) with-

"(f) the exercise by any person of his functions under Chapter 3 of Part 5";
- (b) by replacing subsection (3) with-

"(3) But such information may be disclosed by the Attorney General to-

  - (a) the Governor;
  - (b) the Commissioner of Taxation; and
  - (c) the Collector of Customs."
- (c) by omitting subsection (8).

**137. Sections 439 to 441 (which relate to Scotland) are omitted.**

**138. Section 443 is omitted.**

**139. Section 444 is modified-**

- (a) in subsection (1) by replacing the words "Her Majesty" with the words "the Governor";
- (b) in subsection (3)-
  - (i) by replacing the words "listed persons" in paragraph (a) with the words "Attorney General"; and
  - (ii) by replacing the words "a court in the part of the United Kingdom" with the words "the court in which"; and
- (c) by omitting subsection (4) (inserted by section 108 of the Serious Organised Crime and Police Act 2005);
- (d) by adding the following subsection-

"(5) The Governor's powers under subsection (1) include power to apply, with such modifications as he may think fit, any Order in Council made under section 444(1) in the form that subsection has effect in the United Kingdom."

**140.** Section 445 is modified-

(a) in subsection (1) by replacing the words "Her Majesty" with the words "the Governor"; and

(b) in subsection (2) by replacing paragraph (b) with-

"(b) provisions about the functions of the Governor, the Attorney General, police officers, customs officers and tax officers."

**141.** Section 447(8) is modified by replacing the words "in any part of the United Kingdom" in both places they occur, with the words "in the Falkland Islands".

**142.** Section 448 is replaced by-

**"448**

The Governor may by Order make such provision about tax as he considers necessary or expedient to give better effect in the Falkland Islands to the purposes of the Act and, without prejudice to the generality of the foregoing, may for such purposes make any provision corresponding to provision made in Schedule 10 of the Act in the form it has effect in the United Kingdom."

**143.** Sections 449 to 451 are omitted.

**144.** Sections 453 to 458 are omitted.

**145.** Schedule 1 is omitted.

**146.** Schedule 2 is modified by replacing references to the provisions of legislation specified in the left hand column of the following table with the provision of the legislation specified opposite it in the right hand column of that table

**TABLE**

| Provision of English law                         | Corresponding provision of Falkland Islands law |
|--------------------------------------------------|-------------------------------------------------|
| (a) Misuse of Drugs Act 1971 (c.38)              | (a) Misuse of Drugs Ordinance 1987              |
| (1) section 3                                    | (1) section 3                                   |
| (2) section 4(2) or (3)                          | (2) section 4                                   |
| (3) section 5(3)                                 | (3) section 5(2)                                |
| (4) section 8                                    | (4) section 8                                   |
| (5) section 20                                   | (5) section 18(1)                               |
| (b) Customs and Excise Management Act 1979 (c.2) | (b) Customs Ordinance 2003                      |

|                                                                 |                                                                 |
|-----------------------------------------------------------------|-----------------------------------------------------------------|
| (1) section 50(2) or (3)                                        | (1) section 43(2) or (3)                                        |
| (2) section 68(2)                                               | (2) section 60                                                  |
| (3) section 170                                                 | (3) section 159                                                 |
| (c) Criminal Justice (International Cooperation) Act 1990 (c.5) | (c) Criminal Justice (International Cooperation) Ordinance 1991 |
| (1) section 12                                                  | (1) section 13                                                  |
| (2) section 19                                                  | (2) section 19                                                  |
| (d) Firearms Act 1968 (c.27)                                    | (d) Firearms and Ammunition Ordinance 1987                      |
| (1) section 3(1)                                                | (1) section 9(1)                                                |

*[Revision w.e.f. 31/07/2017]*

**147.** Schedules 3 to 5 are omitted.

**148.** Schedule 6 is modified in paragraph 2(4) by omitting the references to Scottish and Northern Irish legislation.

**149.** Schedules 7 and 8 are omitted.

**150.** Schedule 9 is modified-

(a) in paragraph 1(1)-

(i) by replacing paragraph (a) with-

"(a) accepting deposits by a person under a licence under the Banking Ordinance 1987;"

*[Revision w.e.f. 31/07/2017]*

(ii) by omitting sub-paragraphs (b), (c) and (e),

(iii) by replacing the words "15,000 euro" in sub-paragraph (n) with "10,000 pounds";

(b) in paragraph 1(2) by omitting sub-paragraph (b);

(c) by omitting paragraphs (a) to (d) and (f) of paragraph 2;

(d) by omitting paragraph 3(2) to (6) and (7).

(e) by replacing sub-paragraphs (a) to (g) of paragraph 4(1) with-

"(a) in relation to banks and financial institutions, the Financial Secretary,

(b) in relation to any person carrying on business in the Falkland Islands either on his own account, in partnership or as an employee who is a member of, or subject to the exercise of disciplinary powers by, any body which is a designated professional body for the purposes of Part 20 of the Financial Services and Markets Act 2000 (c.8);

(f) by omitting paragraph 2(2) and (3);

(g) by replacing the words "The Treasury" in paragraph 5 with the words "the Governor".

151. Schedules 10, 11 and 12 are omitted.

## **SCHEDULE 2 AMENDMENTS**

### **1 Introduction**

The amendments specified in this Schedule shall have effect.

### **2 Misuse of Drugs Ordinance 1987**

*[Revision w.e.f. 31/07/2017]*

Section 24 of the Misuse of Drugs Ordinance (forfeiture) is amended-

(a) in subsection (1) by replacing the words "a drug trafficking offence" as defined in the Drug Trafficking Offences Ordinance section 2(1)" with the words "an offence falling within subsection (3) of this section"; and

(b) by adding the following subsection after subsection (2)-

"(3) An offence falls within this section if it is an offence which is specified in paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences", or so far as it relates to that paragraph, paragraph 10 of that Schedule."

### **3 Part VII of Criminal Justice Ordinance 1989**

*[Revision w.e.f. 31/07/2017]*

Section 132 of the Criminal Justice Ordinance (rehabilitated persons and spent convictions) is amended by the insertion of the following subsection after subsection (2)-

"(2A) In subsection (2)(a) of this section the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002."

## **SCHEDULE 3 REPEALS**

| <b>Short title and Title No</b>                              | <b>Extent of Repeal</b> |
|--------------------------------------------------------------|-------------------------|
| Drug Trafficking Offences Ordinance 1997                     | the whole Ordinance     |
| Criminal Justice (International Co-operation) Ordinance 1991 | section 16.             |

*[Revision w.e.f. 31/07/2017]*

