



# FALKLAND ISLANDS

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## Falkland Islands Defence Force Ordinance 1991

(ORDINANCE No. 26 OF 1991)

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## FALKLAND ISLANDS

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### Falkland Islands Defence Force Ordinance 1991

AN ORDINANCE To make new provision in relation to the Falkland Islands Defence Force.

*[DATE OF COMMENCEMENT: 16TH MARCH 1992]*

*(Unless otherwise indicated)*

### PART I INTRODUCTORY

#### 1 Short title and commencement

This Ordinance may be cited as the Falkland Islands Defence Force Ordinance 1991 and shall come into operation on such date as is appointed by notice published in the Gazette.

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

*[Date of commencement: 19th December 1991.]*

#### 2 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"**active member of the Force**" has the meaning given by section 4(1);

"**British subject**" means a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a Commonwealth citizen within the meaning of those expressions under the British Nationality Act 1981;

"**Commander British Forces**" means the officer for the time being commanding Her Majesty's Forces in the Falkland Islands;

"**Commanding Officer**" means the officer for the time being commanding the Force;

"**Crown**" means the Crown in right of the Government of the Falkland Islands;

**"Governor"** means the Governor acting after consultation with the Commander British Forces and in accordance with such advice he gives him;

**"Her Majesty's armed forces"** means all or any of the armed forces of Her Majesty to which any of the Services Acts apply;

**"home defence service"** means service in the Falkland Islands as a member of the Force;

**"man"** means a person of either gender who is a member of the Force and who is not an officer of the Force, and includes a warrant officer and a non-commissioned officer;

**"maximum age"** means the age of fifty-five years;

**"minimum age"** means the age of seventeen years;

**"officer"** means a person commissioned under the provisions of this Ordinance or the provisions of the repealed Ordinance as an officer of the Force and who continues to hold his commission as such;

**"the repealed Ordinance"** means the Falkland Islands Defence Force Ordinance 1954;

**"rules and regulations"** includes Standing Orders of the Force made under section 46(1);

**"reserve member of the Force"** has the meaning given by section 5(1);

**"the Service Acts"** means the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 and any statutory modification or re-enactment of any such Act for the time being in force.

(2) The question as to whether the Governor has on any matter consulted with the Commander British Forces or has acted in accordance with his advice shall not be called into question or enquired into by any court of law.

(3) Save as expressly provided by any rules or regulations under this Ordinance, any order or determination required or authorized under this Ordinance by the Governor, Commander British Forces, any officer of the Force or by any other authority whatsoever may be signified under the hand of any person authorized in that behalf by the person authorized in any provision of this Ordinance or any rules or regulations made under this Ordinance to make or give that order or determination; and any instrument signifying such an order or determination and purporting to be signed by a person stated therein to be so authorized shall unless the contrary is proved be deemed to be signed by a person so authorized.

(4) The Force is on active service for the purposes of this Ordinance if-

- (a) the Force has by Proclamation under section 54 been called out for active service and that Proclamation has not been rescinded and has not lapsed;
- (b) the Force, whether or not such a Proclamation has been made, is engaged in operations against an enemy or engaged in operations for the protection of life or property.

(5) A component or unit of the Force is on active service for the purposes of this Ordinance if-

- (a) that component or unit has by Proclamation under section 54 been called out for active service and that Proclamation has not been rescinded and has not lapsed;
  - (b) that component or unit whether or not a Proclamation under section 54 is in force in relation to it, is engaged in operations against an enemy or engaged in operations for the protection of life or property.
- (6) A member of the Force is on active service if he is actually serving at the time in question-
- (a) with the Force at a time when, having regard to subsection (4), it is on active service;
  - (b) with a component of the Force at a time when, having regard to subsection (5), it is on active service;
  - (c) by virtue of his capacity as a member of the Force with any component or unit of Her Majesty's armed forces at a time when such of the members of that component or unit as are members of Her Majesty's armed forces are by virtue of any provision of the Services Acts regarded as being on active service.
- (7) Subject to subsection (8), a member of the Force shall not be deemed to be by reason only of his being a member of the Force and the receipt of any bounty, allowance or other payment as a result of such membership, the holder of any public office for the purposes of any law providing for the disqualification of persons as candidates for election as members of the Legislative Council.
- (8) Subsection (7) does not apply in respect of any member of the Force who, otherwise than when on active service, is in the whole-time service of the Crown as a member of the Force.

## **PART II**

### **CONSTITUTION OF THE FORCE, RECRUITMENT AND DISCHARGE**

#### *The Force and its classes of members*

### **3 Continuation of the Falkland Islands Defence Force**

- (1) There shall continue to be a force known as the Falkland Islands Defence Force.
- (2) All persons who, immediately prior to the commencement of this Ordinance, were members of the Force under the repealed Ordinance continue, subject to this Ordinance, to be members of the Force.
- (3) The Force shall be divided into three classes:
  - (a) active members;
  - (b) reserve members; and
  - (c) emergency reserve members.

#### **4 Active members**

(1) Persons shall be active members of the Force who have enlisted therein as active members and have not been discharged therefrom, and have not transferred to the reserve.

(2) Active members-

- (a) are subject to the training obligations;
- (b) are liable for home defence service;
- (c) may, with their consent, or if a state of war exists between Her Majesty and any foreign power, be called upon by the Governor to serve overseas as a member of the Force.

(3) The training obligations of an active member may vary in accordance with which component or unit of the Force he is for the time being attached.

(4) The Commanding Officer shall determine to which component or unit of the Force an active member for the time being be attached.

#### **5 Reserve members**

(1) A person shall be a reserve member of the Force if he-

- (a) was formerly an active member of the Force and has been transferred to the reserve under the provisions of this Ordinance; or
- (b) was formerly a member of Her Majesty's regular or reserve forces and is-
  - (i) under the maximum age;
  - (ii) ordinarily resident in the Falkland Islands,

and has enlisted in the Force as a reserve member.

(2) Reserve members-

- (a) are subject to such training obligations as may be prescribed in relation to reserve members;
- (b) are liable to serve with the Force for home defence purposes when mustered by the Governor in accordance with section 54(2); and
- (c) are not liable to serve with the Force overseas, except with their consent.

#### **6 Emergency reserve**

(1) There shall be no standing emergency reserve of the Force.

(2) Persons shall be emergency reserve members of the Force who-

- (a) are over the minimum age;
- (b) are under the maximum age;

- (c) are ordinarily resident in the Falkland Islands; and
- (d) have been mustered by the Governor under section 54(3) to serve as members of the Force-
  - (i) for the period specified in the Proclamation under that section; or
  - (ii) for the duration of the emergency specified in that Proclamation,and remain subject to that requirement.

(3) Persons who are emergency reserve members are liable for home defence service.

### *Aliens and women*

#### **7 Aliens not to serve**

No person who is not a British subject shall-

- (a) be enlisted in the Force; or
- (b) be liable to be called upon to serve as an emergency reserve member of the Force.

#### **8 Women**

(1) Every provision of this Ordinance applies, unless the contrary is expressly stated, to women as it does to men, and shall be construed accordingly.

(2) Nothing in subsection (1) shall preclude different arrangements being made in respect of, and different requirements applying in respect of, women who are members of the Force when the Force, or any component or unit thereof, is on active service.

### *Force to be a land force*

#### **9 Force to be a land force**

(1) The Force shall be a land force. Accordingly, nothing in this Ordinance authorizes the maintenance and use at the expense of the Falkland Islands of vessels of war or shall constitute the Force a force for the naval defence of the Falkland Islands.

(2) Subsection (1)-

- (a) is without prejudice to the powers of the legislature under section 1(1) and (2) of the Colonial Naval Defence Act 1931;
- (b) shall not have effect if the legislature has made provision in accordance with the said section 1 applicable to the Force and that provision has been approved by Her Majesty in Council and vessels of war are maintained and used in connection with or by the Force by virtue of that provision;

- (c) shall not be construed as preventing the Force or any part of the Force being deployed aboard any ship or other vessel, whether belonging to the Force or not or being deployed on, or as part of the crew of any aircraft, whether belonging to the Force or not.

(3) Further to, and supplementary to, the provisions of subsection (2) above it is declared that every provision of this Ordinance, so far as it would otherwise derogate from any provision of or any law made under any provision of the Colonial Naval Defence Act 1931 shall have effect subject to that provision and the exercise of any power thereunder.

### *Recruitment*

#### **10 Enlistment**

(1) A person offering to enlist in the Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him. The Commanding Officer shall not enlist any person as an active member of or as a reserve member of the Force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) The procedure for enlistment shall be that set out in Schedule 1.

(3) A person under the age of eighteen years shall not be enlisted unless the Commanding Officer is satisfied that consent to his enlistment has been given in writing-

- (a) if the person offering to enlist is living with both or one of his parents, by the parent or parents;
- (b) if he is not living with both or one of his parents, but any person (whether a parent or not) whose whereabouts are known or can after reasonable enquiry be ascertained has parental rights and powers in respect of him, by that person;
- (c) if there is no such person as is mentioned in paragraph (b) or after reasonable enquiry it cannot be ascertained whether there is any such person, by any person in whose care (whether in law or in fact) the person offering to enlist may be.

(4) Where the Commanding Officer is satisfied, by the production of a certified copy of an entry in the registry of births or by any other evidence appearing to him to be sufficient that a person offering to enlist has or has not attained the age of eighteen years that person shall be deemed for the purpose of this Ordinance to have attained, or as the case may be not to have attained, that age.

(5) A document purporting to be a certificate signed by the Commanding Officer, stating that he is satisfied as aforesaid shall be sufficient evidence, until the contrary is proved, that he is so satisfied.

(6) The Commanding Officer shall not be bound unless so directed by the Governor, to enlist any person as a member of the Force.

## **11 Proof of citizenship**

(1) A person shall not be enlisted as an active member of or as a reserve member of the Force unless the Commanding Officer is satisfied that that person is a British subject.

(2) Where the Commanding Officer is satisfied that a person was born in the Falkland Islands he may, unless he has, in the particular case, reason to believe that the person may not be a British subject, be satisfied without further enquiry that that person is a British subject.

(3) Where the Commanding Officer is satisfied, by the production of a passport relating to the person concerned, and issued by or on behalf of Her Majesty's Government in the United Kingdom or by or on behalf of the Government of any other country which is a member of the Commonwealth that the person is-

- (a) a British citizen,
- (b) a British Dependent Territories citizen;
- (c) a British Overseas citizen;
- (d) a citizen of the Commonwealth country by or on behalf of the government of which the passport was issued,

he may accept that passport as sufficient evidence that the person concerned is a British subject.

(4) Subsections (2) and (3) have effect without prejudice to any other means by which the Commanding Officer may be satisfied that the person concerned is a British subject.

## **12 Oath or affirmation of allegiance**

A person offering to enlist as an active member or as a reserve member of the Force shall before being enlisted be required to make the oath or affirmation of allegiance in the form appearing in Schedule 2.

## **13 Entry of name on roll**

(1) Where the Commanding Officer is satisfied that-

- (a) a person offering to enlist ("**the recruit**") appears duly and properly to have completed the attestation paper;
- (b) the recruit is below the maximum age and is of or above the age of eighteen years or, if he is below that age, one of the requirements of section 10(3) has been satisfied in respect of him;
- (c) the recruit is a British subject or a British protected person;
- (d) there is no good and sufficient reason why the recruit should not be enlisted; and
- (e) the recruit has made the oath or affirmation of allegiance,

the Commanding Officer shall enrol his name upon the roll of active or, as the case may be, of reserve members, of the Force. The recruit shall then be deemed to have been enlisted.

(2) If the Commanding Officer refuses to enlist a recruit he shall, if so required to do, inform the person in writing of the reason or reasons he refused to do so.

#### **14 Medical examination of persons desiring to enlist**

(1) A person desiring to enlist as an active member of the Force may be required before his name is enrolled under section 15(1) to submit himself for medical examination by a Government medical officer.

(2) If a person required to submit himself for medical examination appears as a result of such an examination not to be reasonably medically fit for useful service as an active member of the Force, the Commanding Officer shall refuse to enlist him and a refusal to enlist him for such a reason is, for the purposes of section 13(1)(d) a good and sufficient reason why he should not be enlisted.

(3) For the purposes of this section, "medical examination" includes examination as to the presence of or absence of any disorder of the mind or intellect and the acuity of sight and hearing as well as the presence or absence of any disease or affliction of body or limb and the physique of the person concerned and "medically fit" shall be construed accordingly.

#### **15 Administration of oaths and affirmations**

Any oath or affirmation required or authorized to be administered under the provisions of this Ordinance may be administered-

- (a) by the Governor or other officer for the time being administering the Government of the Falkland Islands;
- (b) the Attorney General;
- (c) the Commanding Officer;
- (d) the Senior Magistrate;
- (e) any justice of the peace, or
- (f) where any provision of the Army Act 1955 applies, by any person authorized by the provisions of that Act for the purpose of the first-mentioned provision.

#### *Discharge*

#### **16 Voluntary discharge**

(1) Subject to this Ordinance, a member of the Force shall be entitled to be discharged therefrom-

- (a) on the expiration of the period of notice referred to in section 21(1) (but without prejudice to any obligation he may have under this Ordinance to continue as a reserve member of the Force);

- (b) on attaining the age of fifty-five years or such greater age as may be prescribed by regulations;
- (c) if he is an emergency reserve member, at the expiration of the period for which he has been obliged under this Ordinance to serve as an emergency reserve member of the Force;
- (d) on satisfying the Commanding Officer-
  - (i) that he is about to leave the Falkland Islands for the purpose of becoming ordinarily resident overseas;
  - (ii) that he is ordinarily resident overseas and is unlikely, within the period of twelve months next following, to return to the Falkland Islands so as again to be ordinarily resident therein;
- (e) on satisfying the Commanding Officer that he has enlisted in the regular armed forces of Her Majesty or is about to so enlist;
- (f) being a member of any of Her Majesty's Reserve Forces, he has been called out in pursuance of any provision of the Reserve Forces Act 1980 to appear at any place for permanent service;
- (g) being a member of the Territorial Army or the Royal Auxiliary Air Force, has been called out for permanent service or home defence service under any provision of the said Act.

(2) In subsection (1)-

**"regular armed forces of Her Majesty"** means any of Her Majesty's military forces other than-

- (a) the Army reserve;
- (b) the Air Force Reserve;
- (c) the Royal Fleet Reserve;
- (d) the Royal Marines Reserve;
- (e) the Royal Naval Reserve;
- (f) the Royal Auxiliary Air Force;
- (g) the Ulster Defence Regiment;
- (h) the Home Guard;
- (i) the Territorial Army;
- (j) the Force; and
- (k) any force raised under the law of any other Overseas Territory,

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

and, for the purposes of this section any expression used in paragraphs (a) to (i) of this definition has the meaning it has generally for the purposes of such of the Services Acts as principally regulates the force in question; and

**"Reserve Forces"** means any of the forces referred to in paragraphs (a) to (g) of the definition of "regular forces" above and the Territorial Army.

### **17 Discharge by the Governor**

(1) The Governor, without assigning any reason, may require the Commanding Officer to discharge any member of the Force, but if a member is discharged under the provisions of this subsection, he is entitled to honourable discharge.

(2) The Commanding Officer shall not discharge any member of the Force, other than at his own request-

- (a) except with the consent or by direction of the Governor; or
- (b) as provided by this Ordinance.

### **18 Discharge of emergency reserve members**

(1) The Commanding Officer shall discharge any emergency reserve member of the Force at the expiration of the period for which he has been obliged under the provisions of this Ordinance to serve as an emergency reserve member of the Force, but without prejudice to any obligation under this Ordinance to serve again as an emergency reserve member of the Force.

(2) The Commanding Officer shall discharge any emergency reserve member of the Force who appears to him to be engaged in a reserved occupation.

(3) A person who is discharged under the foregoing provisions of this section shall be deemed to be honourably discharged.

### **19 Discharge for medical reasons**

(1) The Commanding Officer shall discharge any member of the Force who he is satisfied is not medically fit for further useful service as a member of the Force.

(2) Where the Commanding Officer proposes to discharge a member of the Force under subsection (1), he shall, unless that member consents to such discharge or has requested his discharge under that subsection, inform the member prior to his discharge of the grounds on which the Commanding Officer believes that the member is not reasonably medically fit for further useful service as a member of the Force.

(3) A member of the Force who is informed pursuant to subsection (2) and who has not, within the two preceding months, been medically examined in accordance with section 20, is entitled to request that he be so examined pursuant to that section before he is discharged under subsection (1) and shall not be discharged pursuant to subsection (1) if that medical examination establishes that he is reasonably medically fit for further useful service as a member of the Force.

(4) For the purposes of this section and section 20, "medical examination" and "medically fit" have the same meaning as they have for the purposes of section 14 under subsection (3) of that section and correlatives of those expressions have corresponding meanings.

(5) A person who is discharged under subsection (1) above shall be deemed to be honourably discharged.

## **20 Supplementary to section 19**

(1) If the Commanding Officer reasonably believes that any member of the Force may be medically unfit for further useful service as a member of the Force, he may require that member to present himself for medical examination before a Government medical officer on a date and at a time and place notified to him by or on behalf of the Commanding Officer or any Government medical officer.

(2) A member of the Force who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence under this Ordinance.

(3) Where a member of the Force has himself requested the Commanding Officer pursuant to section 19(3) that he should be medically examined, the Commanding Officer shall in accordance with subsection (1) require that member to present himself for medical examination.

(4) Upon the attendance of a member of the Force for medical examination pursuant to the provisions of this section, the Government medical officer before whom the member is required to attend shall carry out such tests and examinations of that member as are, in his opinion, sufficient to establish whether or not that member is reasonably medically fit for further useful service as a member of the Force.

(5) As soon as possible, the Government medical officer shall send to the Commanding Officer a report in writing indicating his opinion, and in so far as may be appropriate, the reasons for it.

(6) On receipt of a report under subsection (5) the Commanding Officer shall communicate its contents to the member concerned and, if so requested by that member, he shall permit him to take a copy of it.

(7) For the purposes of this section, "reasonably medically fit for further useful service as a member of the Force" does not include service as a member of the force engaged only in light duties unless the Commanding Officer has notified the Government medical officer to the contrary and if any such notification has been made, the Government medical officer's report under subsection (6) shall state-

- (a) whether or not in his opinion the member is reasonably medically fit for future useful service as a member of the Force undertaking duties of which a reasonably fit man might believe to be at times of a physically strenuous nature; and
- (b) unless he has stated that the member is so fit, whether or not in his opinion the member is likely for the foreseeable future only to be reasonably medically fit for light duties.

(8) The Commanding Officer shall not notify the Government medical officer to the effect specified in subsection (7) unless he is satisfied that the member of the Force concerned if

medically fit only for light duties, having regard to the needs of the Force, may with utility to the Force usefully be required only to perform light duties.

(9) Where a member of the Force is as a result of a medical examination found medically fit only for light duties he is, unless any members of the Force are presently called out to active service under this Ordinance, entitled to require his discharge from the Force.

## **21 Discharge of active members on resignation**

(1) An active member of the Force is, subject to the provisions of this section, entitled to be discharged from the Force on the expiry of one month's notice in writing given by him to the Commanding Officer requesting his discharge, but the Commanding Officer may waive the requirements of this subsection as to notice.

(2) Subsection (1) shall be of no effect if any members of the Force are currently called out for active service under the provisions of this Ordinance.

(3) Where this subsection applies to him and the member of the Force giving notice under subsection (1) is an active member (and subject to subsection (2)) then, if he will be under the age of fifty-five years on the date the notice would otherwise take effect, he shall be entitled on the expiry of that notice to be transferred so as to become a reserve member of the Force but shall not be entitled to be discharged from the Force.

(4) Subsection (3) applies to all persons who enlist as active members of the Force after the commencement of this Ordinance.

(5) A member of the Force who is discharged under subsection (1) shall be deemed to be honourably discharged.

## **22 Discharge of reserve members of the Force**

(1) A reserve member of the Force shall be discharged therefrom upon his attaining the age of fifty-five years.

(2) A member of the Force who is discharged under subsection (1) shall be deemed to be honourably discharged.

## **23 Discharge of active member not to affect liability to serve as emergency reserve member**

The discharge of an active member of the Force under section 21(1) shall not affect his liability to service under this Ordinance as an emergency reserve member of the Force.

## **24 Dishonourable discharge**

A member of the Force may be dishonourably discharged from the Force in the circumstances provided for in subsequent provisions of this Ordinance.

## *Medical*

### **25 Further provisions as to medical examinations**

A Government medical officer shall ignore for the purposes of any medical examination under section 14 or section 20 any ailment, infection, disease, injury or affliction which the Government medical officer considers to be only of a temporary nature.

### **26 Government medical officers**

(1) Every physician in the employment of the Crown for the purposes of its Government of the Falkland Islands is a Government medical officer for the purposes of this Ordinance.

(2) Any physician holding Her Majesty's commission as an officer in any of Her Majesty's armed forces shall for the purposes of this Ordinance be deemed to be a Government medical officer at any time when members of the Force are called out under this Ordinance for active service.

## *Reports to Governor*

### **27 Reports to the Governor**

(1) If the Commanding Officer has reason to believe that a member of the Force-

- (a) has by his own voluntary act come under any obligation of allegiance to a foreign power, and that allegiance to a foreign power is prejudicial to the interests of Her Majesty in so far as those interests have relevance to the Force;
- (b) is a national or citizen of a foreign power between which and Her Majesty a state of war currently exists or with which a state of war the Commanding Officer apprehends may possibly be imminent;
- (c) has by words or action exhibited disloyalty or disaffection towards Her Majesty or has been guilty of treasonous or traitorous behaviour or conduct,

the Commanding Officer shall forthwith report to the Governor the facts and circumstances known to him concerning that member and, pending the decision of the Governor under this section, shall suspend that member of the Force from all duties with the Force.

(2) On receipt of a report under subsection (1) the Governor-

- (a) may cause such investigation into the matter to be undertaken as he sees fit by such person or persons as he sees fit;
- (b) shall, if in his opinion the public interest reasonably so admits, afford to the member of the Force concerned a full and fair opportunity of answering any allegations of an unfavourable nature relating to him as have been made by the Commanding Officer or have come to light as a result of any investigation under paragraph (a) (but so that in no case where a state of war exists or warlike operations exists between Her Majesty and any foreign power of which the Governor believes the member of the Force to be a

national or citizen shall the Governor be bound to afford the member any opportunity under this paragraph);

- (c) shall then direct the Commanding Officer to discharge the member of the Force or retain him as a member of the Force, as the case may be, and may give the Commanding Officer such further or consequential directions as may, in the opinion of the Governor, be necessary.

(3) The Governor when giving directions under subsection (1)(c) shall stipulate whether the member shall be treated as being honourably or dishonourably discharged and shall, unless the Governor is of opinion that the member is personally culpable for the circumstances giving rise to his discharge, stipulate that he shall be treated as being honourably discharged.

(4) The Commanding Officer shall take such action as is necessary to give effect to a direction or stipulation of the Governor under this section.

(5) The Governor may at any time, either of his own motion or at the request of any other person, vary any direction or stipulation of his or any predecessor of his under this section and direct the Commanding Officer to give effect to such variation and the Commanding Officer shall give effect to any direction made under this subsection.

### *Miscellaneous*

#### **28 Exclusion of jurisdiction of the courts**

(1) No decision or purported decision of the Commanding Officer-

- (a) to enlist or not to enlist any person as a member of the Force;
- (b) to discharge any member of the Force,

shall be called into question or be the subject of review or appeal or in any other way be justiciable or give rise to any cause of action which any court has any jurisdiction to entertain, consider or try or to allow or suffer to be raised, pleaded or argued in any civil proceedings whatsoever.

(2) No direction or stipulation of the Governor under section 27 shall be called into question or be the subject of review or appeal or called into question in any civil proceedings whatsoever.

**PART III  
ORGANIZATION AND ADMINISTRATION OF THE FORCE**

*General*

**29 Establishment**

(1) The Force shall have an establishment of such number of officers, warrant officers, non-commissioned officers and men as the Governor may from time to time approve.

(2) Nothing in subsection (1) or done thereunder shall have effect so as to limit the number of persons who may be enlisted as reserve members of the Force or so as to prevent any person being called out to active service as an emergency reserve member.

**30 Division of Force into components or units**

(1) The Force shall be divided into such components or units, so composed, as the Governor may from time to time approve.

(2) Except as below provided active members of the Force shall be attached to one or other of the units of the Force, but the Commanding Officer may at any time transfer any active member of the Force from one unit of the Force to another and shall so transfer him if so directed by the Governor.

(3) The preceding provisions of this section shall apply to reserve members and emergency reserve members of the Force at any time they are called out under this Ordinance for active service.

*Appointment of the Commanding Officer and other officers*

**31 Commanding Officer of the Force**

(1) The Commanding Officer of the Force shall be appointed by the Governor and may be removed from command by the Governor at any time.

(2) The person who was Commanding Officer of the Force immediately prior to the coming into force of this Ordinance shall continue to be the Commanding Officer of the Force as if he had been appointed as such under subsection (1).

(3) The Commanding Officer shall be an officer holding a rank in the Force not lower than that of Major. Subject to this Ordinance, the Commanding Officer shall be responsible to the Governor for the discipline and training of the Force and for all Government moneys, property and stores committed to his charge and for such other things as may be prescribed by regulations under this Ordinance.

### **32 Commissioned officers**

- (1) The Governor may commission any member of the Force to be an officer of the Force and any such commission shall not be vacated by reason only of the death, transfer or retirement from office of the Governor by whom the officer's commission was issued.
- (2) An officer's commission in the Force ceases to be of any effect, unless the Governor otherwise determines in the circumstances of the particular case, in the event of the holder no longer being ordinarily resident in the Falkland Islands.
- (3) Every commission issued by the Governor under this section or under the corresponding provisions of the repealed Ordinance shall be held during the Governor's pleasure.
- (4) Any commission held by any person as an officer of the Force issued under the repealed Ordinance shall remain in force.
- (5) A commission continues to have effect notwithstanding any change in the person who is for the time being Governor.

### **33 Appointment of officers to ranks**

- (1) Every officer on being commissioned shall be appointed by the Governor to a rank.
- (2) The Governor may promote any officer to a higher rank than that which he previously held.

### **34 Seniority and powers of command of officers of the Force**

- (1) As between officers of the Force of the same rank, their seniority shall subject to subsection (2) be determined by relation to the date on which they were appointed or promoted to the rank which they for the time being hold and, if in any case that date is the same date, in accordance with their ages.
- (2) Notwithstanding subsection (1) the Commanding Officer shall always be the most senior officer of the Force while he continues to be the Commanding Officer.
- (3) Officers of any rank in the Force shall, in relation to any officer of a corresponding rank in Her Majesty's regular armed forces, be deemed to hold a rank immediately junior to that which that officer holds.
- (4) The power of command of any officer of the Force extends over-
  - (a) all other officers of the Force junior to him or lower in rank and serving in or attached for duty to the same unit of the Force as that in which that officer of the Force is for the time being serving; and
  - (b) all members of the Force who are not officers.

### **34A Honorary ranks in the Force**

(1) The Governor may commission and appoint any person to an honorary rank as an officer in the Force, and any person so appointed shall hold that commission and rank during the Governor's pleasure.

(2) A person holding an honorary rank in the Force shall not have any power of command.

(3) Nothing in section 31(3), 34(1) or (2) shall have effect so as to limit the seniority of the rank to which the Governor may make an appointment under subsection (1) nor shall section 32(2) apply to a person appointed under that provision.

[S. 2/Ord. 27/96/w.e.f. 24/12/96.]

### ***Warrant officers and non-commissioned officers***

#### **35 Warrant officers and non-commissioned officers**

(1) The Commanding Officer may appoint or promote any member of the Force who is not an officer to a warrant officer or non-commissioned officer rank but may not appoint or promote a person to any warrant officer or non-commissioned officer rank that does not for the time being exist in Her Majesty's Regular Army.

(2) A member of the Force who immediately prior to the commencement of this Ordinance held rank in the Force as a warrant officer or non-commissioned officer shall subject to this Ordinance continue to hold that rank.

#### **36 Training instructor and training obligations**

(1) The Governor may appoint any person appearing to him to be a fit and proper person to assist the Commanding Officer with the training of the Force and the Commanding Officer shall at the request of the Governor appoint the person in question to such warrant officer or non-commissioned officer rank as the Governor may stipulate.

(2) Active members of the Force shall be liable to attend for and undergo such training as they may be required by the Governor so to do, or as may be prescribed.

### ***Uniforms, equipment, etc.***

#### **37 Officers' uniforms**

(1) Every officer of the Force shall, as the Governor may determine after consultation with the Executive Council either-

- (a) provide his own uniform or uniforms;
- (b) be provided by the Crown with a uniform or uniforms,

but, in either case, the uniform or uniforms shall be of a pattern, design and standard approved by the Governor.

(2) Where an officer is required to provide his own uniform or uniforms, the Governor may, subject to the provision of the funds by the legislature, reimburse him with such part of the cost of the uniforms as the Governor, on the advice of the Executive Council, shall determine.

(3) In any case where an officer is required to provide his own uniform or uniforms, the uniforms shall be the property of the officer but, if he has received pursuant to subsection (2) reimbursement of any part of the cost, he may be required by the Governor to refund, without interest, the whole or part of the sum reimbursed. Such a requirement may only be made if the officer ceases to be an officer of the Force within five years of the reimbursement.

(4) Where subsection (3) does not apply, the uniform remains the property of the Crown.

### **38 Men's uniforms**

(1) Every man who is an active member of the Force shall be provided at the expense of the Crown with a uniform or uniforms of such a pattern, design and standard as the Governor, on the advice of the Executive Council, may determine. Any such uniform remains the property of the Crown and section 40 applies in respect of it.

(2) A man who is a reserve member of the Force who is called out to active service shall, if it is reasonably practicable in all the circumstances so to do, be provided at the expense of the Crown with a uniform or uniforms. Any such uniform remains the property of the Crown and section 40 applies in respect of it.

(3) Subsection (2) applies in respect of persons who as emergency reserve members of the Force are called out for active service with the Force as it does in respect of reserve members of the Force.

### **39 Application of Uniforms Act 1894 and Army Act 1955, section 185**

(1) ...

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

(2) The application of section 185 of the Army Act 1955 to the Falkland Islands shall extend to arms, ammunition, equipment, instruments or clothing used by a member of the Force for military purposes as it does to the same things when used by a member of Her Majesty's military forces for military purposes.

### *Application of disciplinary provisions*

### **40 Certain provisions of Army Act 1955 to apply subject to modifications**

(1) Subject to sections 41 and 42, such of the provisions of the Army Act 1955 as by virtue of section 212(1) to (5) of that Act apply to the Home Guard apply to the Force and members of the

Force but subject to the modifications set out in Part 1 of Schedule 3 to this Ordinance and to the modification set out in subsection (2) below.

(2) In its application by virtue of subsection (1), section 212(5) of the Army Act 1955 shall be modified by replacing the words "Home Guard" (where they first appear) up to the end of that subsection with the words-

"Falkland Islands Defence Force, he shall not have power to deal with a charge summarily except during a period during which the component or unit of the Force to which the accused belongs is on active service (as defined in section 2(5) of the Falkland Islands Defence Force Ordinance)."

#### **41 Restriction on application of provisions applied by section 40**

(1) Subject to subsections (3) and (4) and with the exception of provisions of the Act mentioned in Part II of Schedule 3 to this Ordinance, the provisions of the Army Act 1955 referred to in section 40(1) do not apply to any member of the Force unless-

- (a) he is on active service or called out for full- or part-time active service under the provisions of this Ordinance; or
- (b) the component or unit of the Force of which he is a member is attached to or is otherwise acting as part of any of Her Majesty's regular forces; or
- (c) he is, as a member of the Force, attached to or acting as a member or component or unit of any of Her Majesty's regular forces; or
- (d) he is, as a member of the Force, serving outside the Falkland Islands.

(2) A member of the Force is not liable to be punished both under a provision of the Army Act 1955 and under a provision of this Ordinance other than this section and section 42.

(3) Nothing in section 40 or in subsection (1)(b) or (c) above shall operate so as to derogate from the provisions of section 207(2) of the Army Act 1955 and section 40 of this Ordinance and subsection (1) of this section and Schedule 3 to this Ordinance shall have effect subject to the provisions of the said section 207(2).

(4) Nothing in subsection (1) shall be construed as limiting the operation in relation to members of the Force when not subject to military law of section 208A of the Army Act 1955 (which enables Her Majesty's Defence Council to apply Part II (sections 24 to 143) of the said Act to persons embarked as passengers on board Her Majesty's ships or aircraft to such extent and subject to such modifications as may be prescribed by regulations made by the said Council) or as limiting the operation of section 209 of the said Act (application of Act to civilians).

#### **42 Supplementary to section 41**

(1) When a provision of the Army Act 1955 mentioned in Part II of Schedule 3 to this Ordinance applies to the Force or a member of the Force by virtue of this Ordinance and otherwise than by reason of one or more of the circumstances mentioned in section 41(1)(a) to (d) any offence under any such provision shall be dealt with and punishable in accordance with subsections (2) to (4) below.

(2) When subsection (1) above applies-

- (a) a member of the Force may not be dealt with for an offence against military law under a provision mentioned in Part II of Schedule 3 to this Ordinance unless-
  - (i) the Commander British Forces has requested the Governor in writing that he be so dealt with; and
  - (ii) the Attorney General has advised the Governor in writing-
    - (aa) that he is satisfied that the offence was committed by the member of the Force in question in the course of his service as a member of the Force or arises out of and is sufficiently connected with his membership of the Force; and
    - (bb) that the member of the Force cannot in his opinion be more appropriately dealt with under any subsequent provision of this Ordinance, or under any other provision of the law of the Falkland Islands;
- (b) the offence shall be a criminal offence under the law of the Falkland Islands and shall be dealt with in accordance with the general law of the Falkland Islands relating to the trial of and procedure in relation to such offences, the punishment of such offences and the enforcement of sentence and orders of the courts in relation to such offences to the exclusion of any law which might otherwise require the offence to be dealt with in any other way;
- (c) a person convicted of such an offence shall have the like rights of appeal and further appeal against conviction or sentence by virtue of paragraph (b) as apply in respect of criminal offences generally.

(3) On convicting a person of an offence by virtue of subsection (2)(b) the court may sentence him in any manner-

- (a) to imprisonment for a term not exceeding two years;
- (b) with dishonourable discharge from the Force;
- (c) to forfeiture of seniority for a specified term or otherwise;
- (d) to reduction to the ranks or any less reduction in rank;
- (e) to a fine not exceeding level 6 on the standard scale;

*[S.R. & O. 7/2003/w.e.f. 24/3/2003.]*

- (f) to severe reprimand;
- (g) to reprimand;
- (h) in the case of an offence which has occasioned any expense, loss or damage, to pay such sum to such person in compensation for or in reparation for such damage as the court thinks fit;
- (i) to such one or more of the foregoing punishments as the court thinks appropriate:

Provided that-

- (i) an offence under sections 24 to 26 and 30 to 32, 60 and 63A of the Army Act 1955, if dealt with under this section, shall be tried by the Supreme Court on indictment;
- (ii) an offender convicted of an offence under this section by a court inferior to the Supreme Court shall not be sentenced to a term of imprisonment exceeding six months or ordered to pay a fine exceeding level 4 on the standard scale.

[S.R. & O. 7/03/w.e.f. 24/3/03.]

(4) The Commanding Officer shall give effect to any sentence to which paragraphs (b), (c), (d), (f) or (g) of subsection (3) relates.

### *Offences and further disciplinary provisions*

#### **43 Miscellaneous provisions as to offences by members of the Force**

(1) This section has effect in addition to but without prejudice to the provisions of the Army Act 1955 applying under section 40(1) above but no person shall be proceeded against both under those provisions or any of them and under any subsequent provision of this section.

(2) A member of the Force shall, when required by or on behalf of the Commanding Officer so to do, produce any arms, ammunition, uniform, appointments or any other thing issued to him as a member of the Force.

(3) A member of the Force shall not-

- (a) other than as he may be authorized by or under this Ordinance so to do, pawn, pledge or otherwise part with possession of any thing to which subsection (2) applies;
- (b) use, or permit any other person to use, anything to which subsection (2) applies in any manner or in any place other than that in which he is authorized by or under this Ordinance so to do;
- (c) knowing that no requisitioning order is in force under Part IV authorizing him to give directions for the provision of any vehicle, or that he is otherwise not authorized to give such directions, give directions for the provision of the vehicle or order or procure another person to give such directions;
- (d) in purported exercise of powers conferred by a requisitioning order under Part IV, take, or order or procure any other person to take, possession of a vehicle knowing that no requisitioning order is in force under the said Part IV under which the taking possession of the vehicle could be authorized, or that the taking possession thereof is otherwise not authorized;
- (e) take or agree to take, or demand, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under Part IV;

- (f) knowing that no billeting requisition is in force under Part IV authorizing him to demand any billets or that he is otherwise not authorized to demand them, obtain those billets or order or procure another person to obtain them;
- (g) take or agree to take, or demand, from a person on whom he or any other person or any vehicle is to be billeted in pursuance of a billeting requisition under Part IV any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle;
- (h) wilfully or by wilful neglect damage, or cause or allow to be damaged, any premises in which he is billeted in pursuance of such a requisition, or any property being in such premises.

(4) Paragraphs (c) and (d) to (g) of subsection (3) apply in relation to horses, mules, food, forage and stores as they apply in relation to vehicles.

(5) A member of the Force who contravenes subsection (2) or (3) (in the case of subsection (2) without reasonable excuse) commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding level 4 on the standard scale or to both such imprisonment and fine.

*[S.R. & O. 7/03/w.e.f. 24/3/03.]*

#### **44 Delivery up of uniform and equipment, etc.**

(1) A member of the Force shall, on being required so to do by or on behalf of the Commanding Officer, deliver up to the Commanding Officer or such person as he may designate, all or any of the things to which section 44(2) applies as he may have been required by him to deliver up.

(2) A member of the Force, on being discharged shall forthwith deliver up to the Commanding Officer or such person as he may designate all arms, ammunition, uniform, appointments and any other thing issued to him as a member of the Force except any uniform the Commanding Officer has authorized the member of the Force to retain notwithstanding his discharge.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding level 4 on the standard scale or to both such imprisonment and fine.

*[S.R. & O. 7/03/w.e.f. 24/3/03.]*

#### **45 Standing orders of the Force**

(1) The Commanding Officer may, with the approval of the Commander British Forces, make standing orders, not inconsistent with the provisions of this Ordinance and may, with such approval, revoke or amend any standing orders previously made under the provisions of this subsection.

(2) Standing orders made under subsection (1) may provide-

- (a) for the training obligations of active members of the Force or of members of any component or unit of the Force;

- (b) as to the occasions on which members of the Force are required to or may wear the uniform or a uniform of the Force;
- (c) the care and maintenance of any uniform, arms, ammunition or equipment belonging to the Force and the places and the circumstances in which they shall be kept;
- (d) the manner in which any ammunition or other expendable items belonging to the Force are to be accounted for;
- (e) generally as to the efficiency of the Force and the standards to be maintained by the Force;
- (f) any other matter in relation to which the Commander British Forces advises him standing orders ought to be made, and whether or not for any purpose similar to any of the foregoing purposes.

### *Offences and further disciplinary provisions*

#### **46 False answers to attestation papers, etc.**

(1) A person who knowingly makes any false or misleading answer to any question in the form referred to in section 10(1) or any other question put to him by the Commanding Officer or any other person acting on the Commanding Officer's authority prior to and in connection with his enlistment in the Force commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(2) A person who-

- (a) in connection with his application for enlistment in the Force produces any document which he knows to be false or misleading;
- (b) in connection with the application of another for enlistment provides any information produces or utters any document which he knows to be false or misleading;

commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(3) For the avoidance of doubt it is hereby declared that a person may be proceeded against under subsection (1) or (2) above notwithstanding that he has since become a member of the Force.

(4) A person who has been convicted of an offence under this section may be discharged by the Commanding Officer with the consent of the Governor, provided that he shall not after the expiry of six months from the date of the conviction be discharged under this subsection. A person discharged under this section shall be deemed to have been dishonourably discharged.

#### **47 Unlawful parting with possession**

(1) A person who, except as he may be lawfully authorized so to do, parts with possession of, or permits any person to use, any uniform, arms, ammunition or equipment or other thing to which

section 44(1) relates, commits an offence and is liable on conviction to a fine not exceeding the maximum of level 3 on the standard scale.

(2) A person commits an offence who pledges or charges by way of security anything to which subsection (1) above relates and any pledge or charge in contravention of that subsection is absolutely void.

#### **48 Further disciplinary offences**

(1) A member of the Force commits a disciplinary offence if-

- (a) he commits any offence under any provision of this Ordinance or any provision of any Act applying to him under this Ordinance (and whether or not proceedings for that criminal offence are instituted);
- (b) he disobeys any lawful order given to him as a member of the Force;
- (c) he does anything likely to bring the Force into disrepute;
- (d) he contravenes any provision of standing orders;
- (e) while performing duties as a member of the Force (and whether or not he is on active service) he commits an offence under any written law of the Falkland Islands.

(2) The Commanding Officer may, if he considers that a member of the Force may have committed a disciplinary offence, charge that member in writing with that offence, provided that the Commanding Officer shall not charge a member with an offence-

- (a) after the expiry of six months from the apparent date of the offence; or
- (b) after the expiry of six months from the date on which the Commanding Officer first became aware of the facts and circumstances leading him to suppose that the member may have committed that offence;

whichever is the later.

(3) When the Commanding Officer charges a member of the Force with an offence he shall serve a copy of the charge upon him and shall transmit a copy of the charge to the Governor.

(4) The copy of the charge served on a member of the Force shall be accompanied by a written statement which shall-

- (a) set out succinctly the reasons for the Commanding Officer's belief that the member may have committed the offence;
- (b) inform the member that he may, within fourteen days after he receives the charge make representations in writing to the Governor concerning the alleged offence both as to his guilt of it or otherwise and in mitigation and request an oral hearing by the Governor in relation thereto, but if he does neither of those things within such period, the Governor may find him guilty of the charge and punish him in accordance with the subsequent provisions of this section.

(5) If no written representations or requests are received by him made under subsection (4) the Governor may (but shall not do so if he is not satisfied that the offence has been committed) find the member guilty as charged and if he decides that any punishment is appropriate punish him in accordance with subsection (9).

(6) If written representations are received by him under subsection (4) the Governor shall take them fully into account before finding the member guilty of the offence and, if he finds him guilty of that offence, before deciding whether to punish him and, if he finds him guilty of that offence, before deciding what punishment under subsection (9) to impose on him.

(7) Where a member of the Force has requested under subsection (4) an oral hearing the Governor shall accord to him a reasonable opportunity to be orally heard and, if he wishes, to call evidence in his own defence. A member of the Force may, if he wishes, be represented thereat by another person and the Commanding Officer shall be entitled to attend that oral hearing and, if he wishes, to call evidence thereat. Any witness may be cross-examined by the party other than the party calling him. Subject to the foregoing, the procedure at such hearing shall be such as the Governor determines.

(8) After considering the written representations or concluding the hearing, as the case may be, the Governor shall decide the guilt or otherwise of the member charged and whether, if he decides to punish him, what punishment under subsection (9) is appropriate.

(9) Where a member of the Force is found guilty of a disciplinary offence pursuant to this section, one or other of the following punishments may be imposed on that member:

- (a) reprimand;
- (b) a deduction from bounty or other payment the member might otherwise receive, of such amount, not exceeding £50, as the Governor may determine;
- (c) loss of seniority;
- (d) reduction in rank to a rank one lower than the member presently holds or enjoys; and
- (e) dishonourable discharge from the Force.

(10) The Governor shall notify the Commanding Officer and the member concerned of his finding in relation to a charge under this section and, if he finds the member guilty of the charge, what punishment, if any, he has decided to impose. The Commanding Officer shall take all necessary steps to give effect to any decision of the Governor under this section.

(11) No appeal shall lie from any decision of the Governor under this section.

### *Use of land and property, etc.*

#### **49 Land and buildings**

(1) The Force may with the consent of the Governor acting with the advice of the Executive Council, use and enjoy any land or buildings belonging to the Crown and not in the exclusive occupation of any other person by virtue of a lease or otherwise.

(2) It shall be lawful, subject to the necessary funds having been appropriated for the purpose by Ordinance, for the Crown to expend money-

- (a) on the purchase of any land or building for use by the Force;
- (b) on the lease or licence of any land or building for use by the Force;
- (c) on the construction, alteration, repair or maintenance of any building for the purpose of being used or more conveniently being used by the Force.

(3) It shall be lawful for any land or building not belonging to the Crown or in the occupation of another to be used by the Force in accordance with any permission given by the person presently entitled to the use and occupation of the land.

## **50 Equipment, etc.**

(1) It shall be lawful for the Force to use anything belonging to the Crown and otherwise than for the purpose of the Force-

- (a) with the consent of the Governor acting with the advice of the Executive Council; or
- (b) in a case where there is an urgent defence need or the advice of the Executive Council cannot reasonably be speedily obtained, with the consent of the Governor.

(2) It shall be the duty of every public officer to permit the use by the Force of anything in respect of which a consent to which subsection (1) relates has been given.

(3) It shall be lawful for the Force to use with the consent of the person for the time being entitled to the possession and use of the same anything belonging to a person other than the Crown in right of the Government of the Falkland Islands.

(4) Notwithstanding subsections (1) and (3) above, it is not lawful for any member of the Force to drive any motor vehicle contrary to any provision of the Road Traffic Ordinance.

(5) It shall be lawful for the Crown to acquire for the use of the Force with moneys appropriated for the purpose by Ordinance-

- (a) any motor vehicle, boat or aircraft;
- (b) any arms, ammunition or equipment or other thing whatsoever;

but nothing in this subsection authorizes acquisition contrary to the wishes of the owner of the thing in question.

## **51 Liability of the Crown**

(1) The Crown shall make good or pay for any damage or loss occasioned to the owner of any land, building or other thing used by the Force.

(2) The Crown shall indemnify every member of the Force from and against all actions, claims, proceedings and demands arising out of anything done by him in his capacity as a member of the Force but provided that it was so done by him in good faith in the course of his duties as a member of the Force.

## **52 Compensation for death or injury**

(1) If a member of the Force, in the course of his duties as a member of the Force and whether on active service or not, suffers death or any injury or suffers any wound or injury resulting in his death within a year thereafter-

- (a) by reason of any act or action of an enemy;
- (b) by reason of any negligent act or omission of any other member of the Force;
- (c) by reason of any other act or event, other than any pre-existing medical condition not associated with his service as a member of the Force, and not attributable to his own default or neglect,

the Crown shall pay to him (in the case of his injury) or to the persons who would be entitled to claim under the Fatal Accidents Act 1976 if his death had been caused by the neglect of the Crown (in the case of his death) such sum or sums by way of damages, compensation and otherwise as would have been payable had that injury or his death been attributable to the act, omission or default of the Crown.

(2) Where the Crown is liable to pay any sum under subsection (1)-

- (a) the Workmen's Compensation Ordinance shall not apply so as to entitle any person to any payment under the provisions of that Ordinance;
- (b) the Crown shall not be liable to pay any sum in respect of the injury or death of the member of the Force under any other law;
- (c) the Crown shall be subrogated to the member of the Force or, as the case may be, to any person who would otherwise be entitled to bring an action by reason of the member's death, so as to be able to bring in its name any action or proceedings that member or other person could otherwise have brought against any other person arising out of the injury or death of the member of the Force and so as to be able to recover in such action or proceedings any sum or sums which would have been recoverable from that other person by the member of the Force or person claiming by virtue of his death.

## **53 Payments to members of the Force**

(1) Every member of the Force may be paid such sum by way of annual bounty as the Governor advised by the Executive Council may from time to time determine and subject to such conditions as may be so determined.

*[Sch.4/Ord. 17/94.]*

(2) A member of the Force called out to active service may be paid such periodic sums as the Governor advised by the Executive Council determines and such part of any such sum as the Governor determines may be paid by the Crown to the wife or other dependants of the member of the Force concerned.

(3) Payments under subsection (2) may differ from one member of the Force to another by relation to any of the following:

- (a) whether the member of the Force is, or is not, being paid by his ordinary employer during his absence from his ordinary employment and, if so, how much he is being so paid;
  - (b) his family and other responsibilities;
  - (c) any other factor the Governor advised by the Executive Council considers relevant.
- (4) The Commanding Officer and any person engaged whole time in training members of the Force may either in addition to, or in substitution for, any payment under subsection (1) be paid such sums by way of salary, allowances or honorarium as the Governor advised by the Executive Council may determine.
- (5) No sum payable under subsection (1) or (2) shall be liable to be attached for debt or assignable for the benefit of the creditors of any member of the Force.
- (6) Sums payable under this section shall be paid out of moneys appropriated for the purpose by Ordinance.

#### **PART IV CALL OUT, MUSTERING AND EMERGENCY POWERS**

##### *Call out, mustering, etc.*

#### **54 Call out of the Force, etc.**

- (1) If it appears to the Governor that national danger is imminent or that a great emergency has arisen, he may by proclamation call out the Force for active service and do anything provided for by subsections (2) and (3).
- (2) The Governor may by proclamation pursuant to subsection (1) or by any later proclamation pursuant to this subsection and made while a proclamation pursuant to subsection (1) remains in force, muster reserve members of the Force.
- (3) The Governor may by proclamation pursuant to subsection (1) or by any later proclamation pursuant to this subsection made while a proclamation pursuant to subsection (1) remains in force, and if reserve members of the Force remain mustered pursuant to subsection (2), require any British subject over the minimum age and under the maximum age and who is ordinarily resident in the Falkland Islands to serve as an emergency reserve member of the Force.
- (4) A proclamation made pursuant to any provision of this section may be rescinded or varied by any subsequent proclamation made under this subsection.
- (5) A proclamation pursuant to any provision of this section shall have effect from the moment its making is made publicly known and notwithstanding that it has not yet been published in the Gazette, but any such proclamation shall be published in the Gazette as soon as, in all the circumstances of the case, it may reasonably be so published.

(6) Nothing in a proclamation to which subsection (3) applies shall have effect in relation to a person who is in an occupation which by order made under section 55(1) has been declared to be a reserved occupation or who is exempted under section 55(2).

(7) It shall be the duty of every person to whom a proclamation under any provision of this section calling him out for active service or mustering him applies to report to the Commanding Officer for active service (whole- or part-time as the Commanding Officer may determine) as a member of the Force and thereafter to do such things and perform such duties as a member of the Force as he is required to carry out.

## **55 Reserved occupations and exemptions**

(1) The Governor may by order under his hand exempt persons in occupations specified in that order (in this Ordinance called "reserved occupations") from any obligation they would otherwise have to serve as emergency reserve members of the Force.

(2) The Governor may by writing under his hand exempt any person, not being a person in a reserved occupation, from any obligation he would otherwise have to serve as an emergency reserve member of the Force, either unconditionally or subject to such conditions (including conditions requiring him to perform work necessary for the good of the public to be performed) as the Governor thinks fit.

(3) A person who without reasonable excuse neglects to comply with any condition of any exemption granted to him pursuant to subsection (2) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the maximum of level 6 on the standard scale or to both such imprisonment and fine.

## **56 Supplementary to section 54**

(1) A person to whom section 54(7) applies is subject to military law and may be dealt with in any manner authorized by section 40(1) (which applies, with modifications, certain provisions of the Army Act 1955).

(2) A police officer may arrest without warrant any person whom he has reasonable cause to believe has failed without reasonable excuse to report to the Commanding Officer for active service as required by section 54(7) and shall convey any person so arrested into the presence of the Commanding Officer or other officer of the Force and release him into his custody to be dealt with in accordance with military law.

(3) Subsection (2) has effect without prejudice to section 190A of the Army Act 1955 in its application under any provision of this Ordinance.

## *Emergency powers*

## **57 Commanding Officer to place Force at disposition of Commander British Forces**

(1) This section and section 58 shall be in operation so long only as a proclamation made under section 54(1) is for the time being in force.

(2) So long as this section is in operation, the Commanding Officer shall place the Force at the disposition of the Commander British Forces and the Force shall carry out such tasks and do such things as the Commander British Forces requires.

## **58 Billeting and requisitioning for needs of the Force**

(1) At any time this section is in force and in the opinion of the Governor the public interest render the same necessary he may by order declare that, so long as that order remains in force sections 154 to 173 of the Army Act 1955 shall apply in the Falkland Islands in relation to the needs of the Force subject to such exceptions and subject to such modifications as he considers necessary.

(2) An order under subsection (1) unless earlier revoked shall expire one month after it is made but may from time to time be extended by further order under this subsection for not longer than one month from the date of any such further order.

## **PART V GENERAL**

### *Social clubs*

## **59 Defence Force Club**

*The Falkland Islands Defence Force Club (Special Provisions) Ordinance 2002 makes additional provision in relation to the defence force club]*

(1) There shall continue to be a Falkland Islands Defence Force Club ("the Club").

(2) The Commanding Officer shall ex officio be the Chairman of the Club.

(3) All members of the Force shall be members of the Club, subject to payment of any annual subscription required by the rules of the Club. Such other persons as the Committee of the Club may determine shall be members of the Club except that no person who has been or is deemed to have been dishonourably discharged from the Force shall be a member of the Club.

(4) The Committee of the Club shall consist of the Chairman and such other members of the Club as are elected by the members at an Annual General Meeting.

(5) The Committee of the Club may from time to time make, amend or revoke rules for the management or maintenance by annual subscription or otherwise of the Club. No such rules or amendment or revocation of any such rules shall have effect until they have been approved-

- (a) by the members in a general meeting; and
- (b) by the Governor,

and until any other rules have been so approved the rules in force immediately preceding the commencement of this Ordinance shall continue to have effect.

(6) Notwithstanding any other written law of the Falkland Islands a member of the Force under the age of eighteen years may enter and remain in any bar of the Club while other members are permitted to enter and remain therein, but he shall not be supplied therein with any intoxicating liquor.

### *Courts of inquiry*

#### **60 Convening of courts of inquiry**

(1) The Governor may at any time convene a court of inquiry composed as he may determine to inquire into any matter relative to the Force or any unit or component of the Force or to any officer or other member of the Force. Any court of inquiry so convened shall report the facts it finds and conclusions it reaches in writing to the Governor.

(2) A report of a court of inquiry shall not be published without the consent in writing of the Governor.

(3) A court of inquiry shall have the same powers to summon and examine witnesses as a commission of inquiry appointed under the Commissions of Inquiry Ordinance has and sections 6 to 17 of that Ordinance shall apply as if the court of inquiry were a commission of inquiry appointed under that Ordinance.

### *Offences*

#### **61 Assault on member of Force**

(1) A person commits an offence who assaults or resists or aids or abets another in assaulting or resisting a member of the Force in the discharge of his duty.

(2) If the member of the Force the subject of the alleged offence under subsection (1) was not in uniform at the material time it shall be a defence for the person charged to prove-

(a) that he did not know that that member of the Force was in fact a member of the Force;  
or

(b) if he did know it, that he had no reasonable cause to believe that that member was acting in the discharge of his duty as a member of the Force.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding the maximum of level 4 on the standard scale.

#### **62 Serious public offences**

(1) A person commits an offence who by threats or otherwise wilfully prevents or endeavours to prevent another person from becoming or serving as a member of the Force.

(2) A person commits an offence who by words or actions induces or incites or attempts to induce or incite disaffection or disloyalty to the Crown among members of the Force or in any

member of the Force or to persuade or induce any member of the Force not to do his duty as a member of the Force.

(3) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding the maximum of level 5 on the standard scale or to both such imprisonment and fine.

### **63 General penalty**

A person convicted of an offence under any provision of this Ordinance or of regulations made under this Ordinance in respect of which no penalty is specifically provided by that or any other provision of this Ordinance or those regulations, as the case may be, is liable to a fine not exceeding the maximum of level 2 on the standard scale.

## *Regulations*

### **64 Regulations**

(1) The Governor, with the advice of the Commander British Forces, may make regulations as to-

- (a) the administration and discipline of the Force;
- (b) the appointment, promotion, transfer, leave, reduction, discharge from service of officers;
- (c) the enrolment, transfer, leave, promotion, reduction, discharge, and dismissal of warrant officers, non-commissioned officers and men, and the disbandment of any unit;
- (d) the composition and proceedings of courts of inquiry;
- (e) the exemption of officers and members from carrying out the full course of training for any year;
- (f) the issue and care of arms, uniforms and appointments;
- (g) drill, training, the provision and use of targets, butts and shooting ranges;
- (h) fixing standards of efficiency;
- (i) the payment of capitation grants, and the amount thereof.

(2) Any regulations made under subsection (1) or continued in force under section 65(2) may be revoked or amended by regulations made under subsection (1).

## *Repeal and savings*

### **65 Repeal and savings**

(1) The Defence Force Ordinance 1954 is repealed.

(2) Notwithstanding subsection (1) all rules, regulations and standing orders made under that Ordinance or under the Defence Force Ordinance (1950 Laws, Cap. 19) and which were in force immediately prior to the commencement of this Ordinance shall continue in force with such modifications as are required to bring them into conformity with this Ordinance until they are revoked or replaced under the relevant provisions of this Ordinance, or where appropriate, as amended under those provisions.

**SCHEDULE 1**  
**PROCEDURE FOR ENLISTMENT**

1. The recruiting officer shall warn the person to be enlisted that if he makes any false answer to the questions to be read out to him he will be liable to be punished as provided by this Ordinance.
2. He shall then read, or cause to be read, to that person the questions set out in the attestation paper and satisfy himself that he understands each of those questions and that his answers thereto have been duly recorded in the attestation paper.
3. He shall then ask that person to make and sign the declaration set out in the attestation paper as to the truth of the answers and shall administer to him the oath of allegiance set out in Schedule 2 to this Ordinance:

Provided that-

- (a) if the recruiting officer is, for any reason, not satisfied that the answers to the questions set out in the attestation paper are true, he may defer the administration of the Oath of allegiance to some later time;
- (b) if the person desiring to enlist is to be required to submit himself for medical examination under section 14(1) of this Ordinance, the recruiting officer shall defer administration of the oath of allegiance until such time as the Commanding Officer is, as a result of such medical examination, satisfied that that person is reasonably medically fit for useful service as an active member of the Force.



**SCHEDULE 3**  
**APPLICATION OF PROVISIONS OF THE ARMY ACT 1955**

**PART I**  
*Modifications of provisions of the Army Act 1955*

1. The modifications specified in the subsequent paragraphs of this Part of this Schedule are hereby declared to have effect in relation to the Force and any member of the Force-
  - (a) if and only if the provision or provisions of the Army Act 1955 to which they relate would not, otherwise than by virtue of section 40(1) of this Ordinance, apply to the Force or that member of the Force; and
  - (b) without prejudice to the generality of subparagraph (a) above, do not apply when those provisions or that provision of the said Act apply or applies in relation to the Force or that member of the Force under or by virtue of section 207(2), section 208A or section 209 of that Act.
2. In every subsequent paragraph of this Schedule (unless the contrary is expressly stated in the relevant paragraph)-
  - (a) a reference to "the Act" is a reference to the Army Act 1955;
  - (b) a reference to a section is a reference to the section of that number of the said Act; and
  - (c) a reference to a subsection of a section is a reference to the subsection of that number of the relevant section of the Act.
3. Except where the contrary is expressly stated in any subsequent paragraph of this Schedule, a reference to the "United Kingdom" in any section of the Act is to be replaced by a reference to the Falkland Islands.
4. In section 24, construe-
  - (a) the references to "Her Majesty's forces" in subsection (2)(c) as if they included a reference to the Force;
  - (b) the reference in subsection (4) to section 33(2) as if it were a reference to that section as modified by paragraph 7 of this Schedule.
5. Construe section 25(1)(e) as if the reference therein to "reasonable steps to rejoin Her Majesty's service" included reasonable steps (in the case of a member of the Force) to rejoin the Force.
6. Construe section 26(1) as if the reference therein to "Her Majesty's Forces" included a reference to the Force.
7. In section 33(2), insert after the words "the regular forces" the words "or of the Force" and insert after the words "of those forces" the words "or of the Force."

8. Section 36(2) shall apply to standing orders made under section 45 of this Ordinance as if the Force were a formation or unit or body of Her Majesty's forces.

9. In section 70(2), for the words "of England" and "in England" substitute the words "of the Falkland Islands" and "in the Falkland Islands" respectively.

10. In section 70(3), for the words "in England and Wales" and "of England and Wales" substitute the words "in the Falkland Islands" and "of the Falkland Islands" respectively.

11. In section 101, for the words "United Kingdom" do not substitute the words "the Falkland Islands."

## **PART II**

### ***Disciplinary provisions of the Army Act 1955 applying when relevant member of the Force is not on active service and is not serving outside the Falkland Islands***

The following provisions of the Army Act 1955 are declared to apply by virtue of section 41(1) of this Ordinance:

- (a) sections 24 and 25 (and for the purposes of those sections, "enemy" has the same meaning as it has under section 225(1) of that Act);
- (b) sections 26, 29, 29A and 31 to 35 (and for the purposes of section 31(1)(a) "enemy" has the same meaning as it has under paragraph (a) above);
- (c) section 42, sections 44 to 46, section 50, section 55, section 60, section 62, section 63A, section 65, section 68, section 68A and section 69 (and for the purposes of section 60 "enemy" has the same meaning as it has under paragraph (a) above); and
- (d) sections 74 and 75, sections 131 and 132 and sections 193 to 197.