



FALKLAND ISLANDS

Falkland Islands Status Ordinance 1998

(ORDINANCE No. 12 OF 1998)

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FALKLAND ISLANDS

Falkland Islands Status Ordinance 1998

AN ORDINANCE To make provision for the grant to qualified persons of Falkland Islands status.

[DATE OF COMMENCEMENT: 15TH AUGUST 1998]

1 Short title and commencement

This Ordinance may be cited as the Falkland Islands Status Ordinance 1998 and shall come into operation on the first day of the month following its first publication in the Gazette.

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

2 Interpretation

In this Ordinance-

"Falkland Islands status" has the same meaning as it has in section 22(5) of the Constitution;

[S. 4(2)/Ord. 8/2010/w.e.f. 4/8/2010.]

"the former Constitution" means Schedule 1 to the Falkland Islands Constitution Order 1985 (SI 1985/444), as amended by the Falkland Islands Constitution (Amendment) Order 1997 (SI 1997/864) and the Falkland Islands Constitution (Amendment) (No. 2) Order 1997 (SI 1997/2974);

[S. 4(3)/Ord. 8/2010/w.e.f. 4/8/2010.]

"the new Constitution" means Schedule 1 to the Falkland Islands Constitution Order 2008 (SI 2008/2846);

[S. 4(3)/Ord. 8/2010/w.e.f. 4/8/2010.]

"permanent residence permit" has the same meaning as in section 2(1) of the Immigration Ordinance 1999;

[S. 5/Ord. 16/2022/w.e.f. 01/05/2023]

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

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

[S. 4(4)/Ord. 8/10/w.e.f. 4/8/10.] [S. 5/Ord. 16/2022/w.e.f. 01/05/2023]

"year" means a consecutive period of twelve months.

3 Applications for the grant of Falkland Islands status

(1) A person may apply for Falkland Islands status by delivering an application in the prescribed form to the Principal Immigration Officer.

(2) The Principal Immigration Officer if the applicant, on perusal of his application, does not appear to be a qualified person may-

- (a) by notice in writing to the applicant, require the applicant to furnish him with such further written information as is specified in that notice, being information intended to demonstrate whether or not the applicant is a qualified person;
- (b) by notice in writing to the applicant reject the application because the applicant does not appear to the Principal Immigration Officer to be a qualified person.

[S. 5(2)/Ord. 8/10/w.e.f. 4/8/10.] [S. 6/Ord. 16/2022/w.e.f. 01/05/2023]

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

[S. 6/Ord. 16/2022/w.e.f. 01/05/2023]

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

[S. 6/Ord. 16/2022/w.e.f. 01/05/2023]

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

- (a) has been physically present in the Falkland Islands for the whole of the first 180 days of the first of the seven years;
- (b) has not been absent from the Falkland Islands for more than 90 days in aggregate in any one of the seven years; and
- (c) has not been absent from the Falkland Islands for more than 630 days in aggregate during the seven years.

[S. 6/Ord. 16/2022/w.e.f. 01/05/2023]

(4) ...

[S. 6/Ord. 16/2022/w.e.f. 01/05/2023]

(5) An application which has not been rejected by the Principal Immigration Officer under subsection (2) will be considered as soon as reasonably practicable in accordance with section 4.

[S. 5(3)/Ord. 8/10/w.e.f. 4/8/10.]

(6) Before an application made by virtue of paragraph (b)(i) of the definition of qualified person may be considered in accordance with section 4-

- (a) the Principal Immigration Officer must cause a notice of the application to be published in the Gazette and in a newspaper circulating in the Falkland Islands;
- (b) the notice must state that any person who intends to object to the grant of the application may do so in writing to the Principal Immigration Officer within 21 days of the publication of the notice; and
- (c) the 21 day notice period must have expired.

[S. 5(3)/Ord. 8/10/w.e.f. 4/8/10.]

4 Consideration of applications for Falkland Islands status

(1) The Governor shall during the months of January, April, July and October in each year cause the Executive Council to consider and advise him upon any applications for Falkland Islands status forwarded to him by the Principal Immigration Officer for decision and remaining undetermined and after such consideration the Governor shall determine any such application by granting or refusing it but the Governor shall not refuse an application unless he has-

- (a) notified the applicant in writing of his intention to refuse the application and of the ground or grounds on which he intends to refuse it;
- (b) given the applicant a reasonable opportunity to make representations in relation to the intended refusal of the application on that ground or those grounds;
- (c) caused any such representations to be considered by the Executive Council.

[S. 2/Ord. 24/06/w.e.f. 1/1/07.]

(1A) An application made by virtue of paragraph (b)(ii) of the definition of qualified person must be considered at the first available meeting of Executive Council, and subsection (1) does not apply to the extent that the application would otherwise be considered by Executive Council at a later meeting.

[S. 6/Ord. 8/10/w.e.f. 4/8/10.]

(2) Nothing in subsection (1) shall be deemed to require the Governor to disclose to the applicant either directly or indirectly the identity of any objector to the grant of Falkland Islands status or any other matter or document which it is contrary to the public interest to disclose to the applicant and it is sufficient for the Governor in any such case to disclose to the applicant in any notice under that subsection as much as it is possible in all the circumstances, in accordance with the public interest, for him to disclose to enable the applicant to make adequate representations against the refusal of his application.

(3) A grant of Falkland Islands status shall not take effect unless the Governor otherwise determines having regard to the circumstances of the particular applicant (for example because of the infirmity of mind or body of the applicant) until the applicant has at a Falkland Islands status ceremony held in accordance with section 4A made the Falkland Islands status pledge and a certificate of Falkland Islands status has been delivered to him thereat.

[S. 3/Ord. 24/06/w.e.f. 1/1/07.]

4A Falkland Islands status ceremony and Falkland Islands status pledge

(1) A Falkland Islands status ceremony shall be held within approximately one month after any grant of Falkland Islands status and shall be presided over by the Governor or such person as he may delegate for the purpose.

(2) Subject to subsection (3), every person who after the commencement of this section has been granted Falkland Islands status but has not yet made the Falkland Islands status pledge before the person presiding at a Falkland Islands status ceremony shall be invited to attend every such ceremony until he has made such a pledge.

(3) Subsection (2) does not apply to a person in respect of whom a grant of Falkland Islands status has taken effect by virtue of a determination made by the Governor under section 4(3).

(4) The Falkland Islands status pledge shall be made by the person concerned reading aloud and thereafter signing in the presence and hearing of the person presiding at a Falkland Islands status ceremony a pledge in the following form –

"I, pledge my loyalty to the Falkland Islands and will respect its rights and freedoms. I will uphold its democratic values. I will obey its laws and fulfil my duties and obligations under its Constitution."

(5) If a person to whom subsection (2) applies fails within twelve months after the grant to him of Falkland Islands status to make the Falkland Islands status pledge in accordance with subsection (4), the Governor may give notice in writing to him that he intends to annul that grant unless the person concerned within six months after the service of that notice makes that pledge at a Falkland Islands status ceremony.

(6) If a person upon whom a notice has been given in accordance with subsection (5) fails within six months thereafter to make the Falkland Islands status pledge in accordance with that notice, the Governor may annul the grant to that person of Falkland Islands status.

[S. 4/Ord. 24/06/w.e.f. 1/1/07.]

4B Register of persons who have been granted Falkland Islands status and persons who have made the Falkland Islands status pledge

The Principal Immigration Officer shall maintain a register of persons who have been granted Falkland Islands status under this Ordinance and persons who have made the Falkland Islands status pledge and that register shall be open to inspection during normal office hours on payment of such fee as may be prescribed by regulations under section 7.

[S. 4/Ord. 24/06/w.e.f. 1/1/07.]

5 Revocation of Falkland Islands status

(1) Subject to subsection (4), the Governor acting in accordance with the advice of the Executive Council, after giving notice in writing of his intention to consider so doing, may revoke the grant under this Ordinance of Falkland Islands status to any person.

(2) A notice under subsection (1) shall state the ground or grounds upon which the revocation of the grant of status is to be considered and give to the person on whom it is served a reasonable opportunity of making representations in writing to the Governor in relation to the proposed revocation on that ground or those grounds.

(3) A grant of Falkland Islands status may only be revoked on one or more of the following grounds:

- (a) that the person concerned in or in connection with his application for Falkland Islands status did anything which, if proved, would constitute an offence under section 8(1);
- (b) that since the grant to the person concerned of Falkland Islands status, the person has been convicted by a court in any country of an offence which the person has been sentenced to immediate imprisonment or deprivation of liberty of 12 months or more;
- (c) that the person concerned has been absent from the Falkland Islands for a period of at least two years, other than for educational or medical reasons or as a member of Her Majesty's armed forces, or that for any other reason that person appears no longer to be ordinarily resident in the Falkland Islands;
- (d) that the person is no longer a British citizen, a British overseas territories citizen or a British Overseas citizen.

[S. 7/Ord. 16/2022/w.e.f. 01/05/2023]

(4) The Governor may not revoke the grant to any person of Falkland Islands status-

- (a) until the Executive Council has considered any representations in writing made by the person concerned in relation to the proposed revocation;
- (b) except by notice in writing given to the applicant specifying the ground or grounds on which the grant has been revoked (which must have been stated in a notice given to that person under subsection (1)).

6 Finality of decisions

(1) No appeal lies at the instance of any person to any tribunal, court, or authority against any decision of the Governor under section 4, section 5 or subsection (2) of this section.

(2) An appeal lies to the Governor at the instance of the applicant from any decision of the Principal Immigration Officer under section 3, and the Governor may allow or disallow such an appeal. If the Governor allows such an appeal he may give such consequential directions to the Principal Immigration Officer as may be necessary, with which the Principal Immigration Officer shall comply.

7 Regulations

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

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

[S. 3(a)-(c)/Ord. 6/07/w.e.f. 31/5/07.] [S. 8/Ord. 16/2022/w.e.f. 01/05/2023]

7A Forms

(1) The Principal Immigration Officer may specify an application form to be used under this Ordinance, and may issue directions for its use.

(2) The Principal Immigration Officer must publish any specified form online and make paper copies freely available to the public.

[S. 9/Ord. 16/2022/w.e.f. 01/05/2023]

8 Offences

(1) A person commits an offence who-

- (a) in or in connection with an application for, or the proposed revocation of, Falkland Islands status makes any statement knowing it to be false or carelessly as to its truth or falsehood;
- (b) furnishes any document in connection with an application for, or the proposed revocation of, Falkland Islands status, knowing that document to contain a false or misleading statement or careless as to the truth, falsehood or misleading nature of any statement contained in that document.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 7 on the standard scale or to imprisonment for a term not exceeding six months.