

LEGISLATIVE ASSEMBLY

OF THE

FALKLAND ISLANDS



ORDER PAPER

08.30 AM

THURSDAY 30 OCTOBER 2014

AND FRIDAY 31 OCTOBER 2014

IN THE COURT AND ASSEMBLY CHAMBER

STANLEY

LEGISLATIVE ASSEMBLY

THURSDAY 30 OCTOBER 2014

IN THE LEGISLATIVE ASSEMBLY CHAMBER

TOWN HALL

ORDER PAPER

08.30

1. Prayers
2. Confirmation of the Record of Legislative Assembly held on 25 September 2014.
3. Papers to be laid on the Table by the Honourable Chief Executive
4. Order of the Day Bills:
 - Planning (Amendment) Bill 2014
 - Falkland Islands Tourist Board Bill 2014
 - Immigration (Amendment) Bill 2014
 - Criminal Procedure and Evidence Bill 2014
 - Crimes Bill 2014
5. Motion for Adjournment

FRIDAY 31 OCTOBER 2014

Remaining stages of the Order Paper

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 30 OCTOBER 2014

PAPERS LAID ON THE TABLE BY THE HONOURABLE CHIEF EXECUTIVE

Copies of Subsidiary Legislation published in the Falkland Islands Gazette since the last sitting of the Legislative Assembly and Laid on the Table pursuant to section 35 (1) of the Interpretation and General Clauses Ordinance 1977.

Children (Transitional Provisions) Order 2014

In accordance with Section 80 Clause (2) of the Constitution the report of the Public Accounts Committee in respect of Audit Reports

- Audit Report – Staff Travel and Subsistence
- Audit Report – PWD Quarry and Asphalt

SUBSIDIARY LEGISLATION

FAMILY LAW

Children (Transitional Provisions) Order 2014

S. R. & O. No: 12 of 2014

Made: 3 October 2014

Published: 13 October 2014

Coming into force: see paragraph 2

I make this order under section 102 of the Children Ordinance 2014 (No 7 of 2014) on the advice of Executive Council.

PART 1 INTRODUCTION

1. Title

This order is the Children (Transitional Provisions) Order 2014.

2. Commencement

This order comes into force on a date appointed by the Governor by a notice published in the *Gazette*.

3. Interpretation

In this order —

“1994 Ordinance” means the Children Ordinance 1994 (No 28 of 1994); and

“2014 Ordinance” means the Children Ordinance 2014.

4. Pending proceedings

The 2014 Ordinance will apply to proceedings that are pending when it comes into force and steps taken in those proceedings while the 1994 Ordinance was in force will be treated as having been made for the purposes of the equivalent provisions in the 2014 Ordinance.

5. Court orders made under old Ordinance

(1) Sub-paragraph (2) applies to a court order if —

(a) it was made under the 1994 Ordinance; and

(b) it still has effect when the 2014 Ordinance comes into force.

(2) A court order to which this sub-paragraph applies —

(a) continues to have effect as if it had been made under the corresponding provision in the 2014 Ordinance; but

(b) still expires when it originally would have done (unless it is varied, revoked or replaced before then).

6. Parental responsibility agreements entered into under 1994 Ordinance

(1) A parental responsibility agreement that was valid under the 1994 Ordinance remains valid when the 2014 Ordinance comes into force as if it had been entered into (and approved by the court) under the 2014 Ordinance.

(2) A parental responsibility agreement may be approved by the court under the 2014 Ordinance even if it had been made while the 1994 Ordinance was still in force.

7. Appointments of guardians under 1994 Ordinance (or deemed to have been)

(1) An appointment of a guardian of a child will be treated as if it had been made under the new Ordinance if —

(a) it was made under the 1994 Ordinance (or deemed to have been by paragraph 10 of Schedule 4 of the 1994 Ordinance); and

(b) it has taken effect before the 2014 Ordinance comes into force.

(2) An appointment of a person to be the guardian of a child will take effect in accordance with the new Ordinance if —

(a) it was made under the old Ordinance (or deemed to have been by paragraph 10 of Schedule 4 of the old Ordinance); but

(b) it has not taken effect when the new Ordinance comes into force.

(3) If a disposition by will and testament or devise of the custody and tuition of a child was made before the old Ordinance came into force on 1 January 1995, it will be treated for the purposes of the Wills Act 1837 (as it applies in the Falkland Islands) and the 2014 Ordinance as if it were an appointment by will of a guardian of a child.

Made 3rd October 2014

C. Roberts C.V.O.,
Governor.

EXPLANATORY NOTE
(not part of the regulations)

Section 102 of the Children Ordinance 2014 (No. 7 of 2014) allows the Governor to make provisions dealing with the transition from the Children Ordinance 1994 (No 28 of 1994) to the Children Ordinance 2014.

This order provides for things that were done under the 1994 Ordinance (or treated as if they had been) to continue to have effect under the 2014 Ordinance.

However, when it comes into force, the 2014 Ordinance will start to apply to proceedings that were already underway.

Public Accounts Committee

Shackleton House PO Box 420 Stanley Falkland Islands FIQQ1ZZ

Tel +500 22905 Email: pacsecretary@horizon.co.fk Website: www.pac.org.fk

Ref: PAC/14/07/03

3rd October 2014

Mrs C Prior
Clerk to the Legislative Assembly
Gilbert House
Stanley

Dear Claudette

Audit Report – Staff Travel & Subsistence

The Public Accounts Committee examined the above report at its meeting held on the 10th July 2014 and made the following comments to bring to your attention:

Members expressed concerns that some claims had been higher even though evidence suggested otherwise and the greatest concern was the payment of mileage rates to an officer who had hired a car at FIG expense; surely this is a double payment? Members would like assurance that the policy on making claims is made clear to officers from the start of their employment and procedures are kept up to date and rates reviewed annually?

Members also felt that clarity was needed on what could be claimed for and who could authorise claims. It was also felt that to make things easier FIG should now be able to have SCB debit cards for use by their corporate members which would make reconciliation of bank statements easier and quicker.

There were no further comments on this report.

Yours sincerely

Leeann Harris
Secretary

cc: Acting CIA
Financial Secretary
Director of HR

Public Accounts Committee

Shackleton House PO Box 420 Stanley Falkland Islands FIQQ1ZZ

Tel +500 22905 Email: pacsecretary@horizon.co.fk Website: www.pac.org.fk

Ref: PAC/14/07/04

3rd October 2014

Mrs C Prior
Clerk to the Legislative Assembly
Gilbert House
Stanley

Dear Claudette

Audit Report – PWD Quarry & Asphalt

The Public Accounts Committee examined the above report at its meeting held on the 10th July 2014 and made the following comments to bring to your attention:

Members noted the concerns of the Internal Auditor that the asphalt plant at Megabid is beyond its design life and is currently supported by constant repair. It is also highly polluting when in use. It was also concerning that although that adequate controls and the use of PPE which is supplied and the wearing of which is actively encouraged this should be taken very seriously and PPE should be essential at all times, by not doing so FIG was leaving itself open to risk of a negligent claim. Members understood that the sizing and type of plant to replace the asphalt plant are both a factor of the use to which it will be put, and that is unclear and will remain so until the long term capital programme projections are agreed, but felt this should be sorted soon or the plant will be unable to cope with any capital programme works.

There were no further comments on this report.

Yours sincerely

Secretary

cc: Acting CIA
Financial Secretary
Director of Public Works

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 30 OCTOBER 2014

Order of the Day: Bills

- **Planning (Amendment) Bill 2014**

Proposed: The Hon. Michael Poole

Seconded: The Hon. Jan Cheek

- **Falkland Islands Tourist Board Bill 2014**

Proposed: The Hon. Michael Poole

Seconded: The Hon. Mike Summers OBE

- **Immigration (Amendment) Bill 2014**

Proposed: The Hon. Mike Summers OBE

Seconded: The Hon. Dr Barry Elsby

- **Criminal Procedure and Evidence Bill 2014**

Proposed: The Hon. Roger Edwards

Seconded: The Hon. Mike Summers OBE

- **Crimes Bill 2014**

Proposed: The Hon. Roger Edwards

Seconded: The Hon. Mike Summers OBE

LEGISLATIVE ASSEMBLY

PROCEDURE FOR TAKING GOVERNMENT BILLS WHICH HAVE BEEN PUBLISHED IN
THE GAZETTE

- DEPUTY CLERK “Orders of the Day – Bills”
- DEPUTY CLERK ***Title of the Bill***, this Bill has been gazetted and we
therefore go to the second reading
- THE
HONOURABLE
MICHAEL POOLE “Mr Speaker, this Bill etc.....(explanation) I beg to
move the second reading of the Bill”
- THE
HONOURABLE
JAN CHEEK “I second the motion”.
- MR SPEAKER “Does any Honourable Member wish to speak on the
Bill?”
- “There is no debate”
- Is there any objection to dealing with this Bill by the
short procedure?
- No Objection
- Does any Member wish to propose any amendments
to the wording of the Bill?
- No Amendments
- “I declare that the Bill will be read for a third time
and do Pass”
- DEPUTY CLERK ***Title of the Bill***

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MR SPEAKER The Motion is that the Bill be read a second time – any objection to the Motion?

No Objection – the Bill will be read a second time.

Reads the short title of the Bill

Declares that the **Assembly is in Committee**

Clauses 1 and/to.....

MR SPEAKER I beg to move the Clauses 1 and/to....stand part of the Bill

DEPUTY CLERK “The Motion is that Clauses 1 and/to...stand part of the Bill. Is there any objection to the Motion?

No objection, Clauses 1 and/to....stand part of the Bill”

MR SPEAKER
CLERK Schedules (if any)

THE
HONOURABLE
MICHAEL POOLE I beg to move the Schedule(s) stand part of the Bill.

MR SPEAKER The Motion Is that Schedule(s) stand part of the Bill – any objection? No Objection, the schedule stands part of the Bill.

DEPUTY CLERK Declares that the **Assembly resumes.**

THE
HONOURABLE
MICHAEL POOLE “I beg to move the Bill be read a third time and do Pass”

MR SPEAKER “The Motion is that the Bill be read a third time and do Pass – any objection to the Motion?

No objection, the Bill will be read a third time and do
Pass”

DEPUTY CLERK Reads the short title of the Bill

Planning (Amendment) Bill 2014

(No of 2014)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – PRELIMINARY

1. Title and construction
2. Commencement

PART 2 – AMENDMENTS TO PLANNING ORDINANCE

3. Section 3 amended – Interpretation
4. Insertion of new section 3A
5. Section 4 amended – Planning and Building Committee
6. Section 5 amended – Composition of Planning and Building Committee, etc.
7. Section 9 amended – Attendance of public officers and other persons at meetings of the Committee
8. Repeal and replacement of section 10 – Appointment of the Planning Officer
9. Section 11 amended – Secretary of the Committee
10. Section 30 amended – Publicity for planning applications
11. Section 31 repealed – Representations and duty to take representations into account
12. Section 33 replaced – Assessment of environmental effects
13. Section 36 amended – Determination of applications
14. Section 39 amended – Applications for planning permission in respect of minerals
15. Section 40 amended – Conditional grant of planning permission
16. Section 47 replaced – Appeals against planning decisions
17. Insertion of new section 47A
18. Section 48 amended – Appeal in default of planning decision
19. Section 72 amended – Application for variation or discharge of conditions and appeals
20. Section 77 amended – Appeals against waste land notices
21. Section 88 amended – Grant or modification of planning permission on appeals against enforcement notices
22. Section 94 amended – Appeal against relevant buildings enforcement notice
23. Section 104 amended – Validity of development plans and certain orders, decisions and directions
24. Section 109 repealed – Appeals to Supreme Court against decisions under s. 61
25. Section 111 repealed – Oral representations
26. Section 122 repealed – Signification of notices, permissions and consents, etc.
27. Schedule A1 repealed

PART 3 – AMENDMENTS TO GENERAL DEVELOPMENT ORDER

28. Purpose of this Part
29. Paragraph 6 amended – Outline planning applications
30. Paragraph 8 amended – Application made under planning condition

31. Paragraph 9 replaced – Written notice of decision or determination relating to a planning permission
32. Paragraph 14 amended – Established use certificates
33. Schedule 2 amended
34. Schedule 3 repealed

PART 4 – AMENDMENTS TO THE PLANNING (GENERAL) REGULATIONS

35. Purpose of this Part
36. Regulation 2 amended
37. Regulation 4 amended

PLANNING (AMENDMENT) BILL 2014

(No: of 2014)

(assented to: 2014)

(commencement: on publication)

(published: 2014)

A BILL

for

AN ORDINANCE

To amend the Planning Ordinance (Title 55.3) to provide for regulations that confer power on the Planning Officer to determine specified applications for planning permission, to provide for developers to take mitigating steps as conditions of planning permission, to make consequential amendments to the General Development Order (Title 55.3.1) and the Planning (General) Regulations (Title 55.3.3), and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands—

PART 1 PRELIMINARY

1. Title and construction

- (1) This Ordinance is the Planning (Amendment) Ordinance 2014.
- (2) Part 2 of this Ordinance amends the Planning Ordinance.
- (3) Part 3 amends the General Development Order.
- (4) Part 4 amends the Planning (General) Regulations.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

PART 2 AMENDMENTS TO PLANNING ORDINANCE

3. Section 3 amended – Interpretation

Section 3 is amended by —

- (a) omitting the definition of “established use certificate”;
- (b) omitting the definition of “minerals” and replacing it with the following —

““mineral” means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological

process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water; and includes every mineral and substance in or under land of a kind ordinarily worked for removal by underground or surface working”; and

(c) inserting the following definition immediately after the definition of “planning decision”—

““Planning Officer” means the incumbent of the post created by section 10, and includes the person formally acting in that capacity during the temporary absence from duty of the incumbent;”.

4. Insertion of new section 3A

The following section is inserted immediately after section 3 —

“3A. Meaning of “determine”

(1) In this Ordinance and any subsidiary legislation made under it, “determine” must be construed in accordance with the following rules —

(a) when used in relation to applications for planning permission submitted by an applicant other than the Crown and that are to be considered by the Committee, “determine” means the right to —

(i) grant planning permission; and

(ii) refuse planning permission,

at the Committee’s discretion, after taking into account the views of the Planning Officer as required by section 4(2);

(b) when used in relation to applications for planning permission that are submitted by the Crown and are to be considered by the Committee, “determine” means, in either case after taking into account the views of the Planning Officer as required by section 4(2) —

(i) the right to grant planning permission; and

(ii) the duty, where the Committee is of the view that planning permission should be refused, to refer the application to the Governor with written reasons for its recommendation that planning permission be refused,

but does not confer on the Committee power to refuse planning permission;

(c) when used in relation to an application for planning permission for exploration for or winning and working minerals, regardless of the identity of the applicant, “determine” means —

(i) with respect to the Committee, the right (after taking into account the views of the Planning Officer as required by section 4(2)) to make recommendations (including reasons) to the Governor as to whether the application should be granted or refused,

following which it must refer the application to the Governor who has the power to grant or refuse;

(ii) with respect to the Governor, the right, on receipt of an application referred to the Governor by the Committee under sub-subparagraph (i), to either grant or refuse planning permission;

(d) when used in relation to the Planning Officer in respect of any application, “determine” means —

(i) the right to grant planning permission; and

(ii) the duty, where the Planning Officer is of the view that planning permission should be refused, to refer the application to the Committee with written reasons for the Planning Officer’s view that planning permission be refused,

but does not confer on the Planning Officer power to refuse planning permission;

(e) when used in relation to applications for planning permission submitted by the Crown and that are to be considered by the Committee on referral from the Planning Officer as referred to in paragraph (d), “determine” means —

(i) the right to grant planning permission contrary to the recommendation of the Planning Officer; and

(ii) the duty, where the Committee is of the view that planning permission should be refused (for the reasons given by the Planning Officer, or for other reasons as well or in the alternative), to refer the application to the Governor with written reasons for its recommendation that planning permission be refused,

but does not confer on the Committee power to refuse planning permission;

(f) when used in relation to any application to be considered by the Governor, “determine” means full power to either grant or refuse planning permission,

and in all cases it is required that only material considerations, as set out in section 34, that are applicable be taken into account.

(2) In this Ordinance, in each case where any of the words “approve”, “consider” or “decide” is used with respect to action to be taken by the Governor, the Committee, or the Planning Officer, in relation to an application for planning permission, that word must be construed as a synonym for “determine” and must be construed in accordance with the relevant provision of subsection (1).”.

5. Section 4 amended – Planning and Building Committee

Section 4 is amended by omitting subsection (1) and replacing it with the following —

“(1) This section creates for the purposes of this Ordinance a Planning and Building Committee which, subject to any regulations made under section 36(1) conferring power on

the Planning Officer to deal with applications for planning permission, is the authority responsible for the administration of this Ordinance.”.

6. Section 5 amended – Composition of Planning and Building Committee, etc.

Section 5 is amended by —

(a) repealing subsection (5) and replacing it with the following —

“(5) If a member of the Committee has a direct or indirect financial or other personal interest in a matter being considered by the Committee, that member —

(a) must, subject to subsection (6), declare that interest;

(b) must not take part in the Committee’s consideration of that matter; and

(c) if so required by the Chairperson or other person presiding at the meeting, must not attend the meeting or that portion of it during which the Committee considers the matter in which the member has, in accordance with paragraph (a), declared an interest,

but the provisions of this subsection do not affect the member’s rights under subsection (6A).”; and

(b) inserting the following after subsection (6) —

“(6A) Despite subsection (5), a member to whom that subsection refers may —

(a) exercise rights under other provisions of this Ordinance to make oral representations to the Committee as an applicant or member of the public; and

(b) assert the right to be present at a Committee meeting for the purpose referred to in paragraph (a), and this right must prevail over a requirement of the Chairperson or other person presiding at the meeting under paragraph (c) of subsection (5); but only for so long as is necessary for the purpose .”.

7. Section 9 amended – Attendance of public officers and other persons at meetings of the Committee

Section 9 is amended by inserting immediately after subsection (1) the following —

“(1A) A member of the public is entitled, upon notifying the Chairperson or other person presiding at the meeting to this effect, to —

(a) attend meetings of the Committee for the sole purpose of exercising the right, provided for in section 31A, to make oral representations; and

(b) prevail over any objection to such attendance, but only insofar as is required for the making of those representations,

and so is not entitled to be present at the meeting before the time at which oral representations will be accommodated, and must leave immediately after making those representations if required to do so.

(1B) The Chairperson or other person presiding at a meeting of the Committee must allow a member of the public to attend the meeting in accordance with subsection (1A).”.

8. Repeal and replacement of section 10 – Appointment of the Planning Officer

Section 10 is repealed and replaced by the following —

“10. Appointment of the Planning Officer

(1) This section creates the post of Planning Officer, which is a public office the incumbent of which must appointed by the Chief Executive.

(2) The functions of the Planning Officer include —

(a) advising the Committee as required by this Ordinance;

(b) making decisions on planning applications or referring applications to the Committee or the Governor, as required by this Ordinance or any subsidiary legislation made under it;

(c) attending meetings as required by this Ordinance;

(d) instituting surveys, and —

(i) preparing or modifying plans or memoranda;

(ii) preparing, modifying or submitting proposals; or

(iii) approving the design or external appearance of buildings,

as required by this Ordinance;

(e) publishing documents as required by this Ordinance;

(f) giving notification as required by this Ordinance;

(g) giving views as required by this Ordinance;

(h) keeping and updating registers as required by this Ordinance;

(i) liaising with applicants as required by this Ordinance;

(j) issuing certificates, giving consent, or receiving claims for compensation, as required by this Ordinance;

(k) making representations as required by this Ordinance;

- (l) demanding and receiving notices as required by this Ordinance;
- (m) entering land or being present at such place, as authorised in accordance with this Ordinance; and
- (n) performing such other function reasonably consistent with the foregoing functions as may be instructed in writing by the Governor.”.

9. Section 11 amended – Secretary of the Committee

Section 11(2) is amended by —

(a) omitting the full stop at the end of paragraph (c) and replacing it with a semi-colon;
and

(b) inserting immediately after paragraph (c) the following —

“(d) to perform such other functions as may be conferred on the secretary by any subsidiary legislation made under this Ordinance.”.

10. Section 30 amended – Publicity for planning applications

Section 30 of the principal Ordinance is repealed and replaced by the following section —

“30. Publicity for planning applications

(1) At least 10 days before an application is considered for the first time, the Planning Officer must ensure that —

(a) every person who occupies land that falls within the parameters set out in subsection (4) is notified about the application; and

(b) such notice is in writing in such form as may be prescribed.

(2) Subsection (1) applies equally to applications that are to be determined by the Committee as it applies to applications that are to be determined by the Planning Officer in exercise of power conferred on the Planning Officer by regulations made under section 36(2).

(3) Until notification of it has been given in accordance with this section, an application for planning permission must not be determined by either the Committee or the Planning Officer.

(4) The parameters referred to in subsection (1) are that, in relation to the land which is the subject of the application, any part of the land in question is within —

(a) 100 metres, in the case of an application relating to land in Stanley; or

(b) 1 kilometre, in the case of an application relating to land in Camp.

(5) The Planning Officer is not obliged to provide, or to ensure the provision of, notification of an application for planning permission to an occupier of land if that land does not fall within the parameters set out in subsection (4).

(6) The Planning Officer must ensure that one of the prescribed methods of service is adhered to when notice is being served in accordance with this section.

(7) The Planning Officer must, in advance of each meeting of the Committee or the making of a determination by the Planning Officer in accordance with regulations made under section 36(2), ensure adequate publicity regarding the applications for planning permission that will, as the case may be, be considered by—

(a) the Committee for the first time at that meeting; or

(b) the Planning Officer in accordance with regulations made under section 36(2),

and such publicity must be in accordance with such stipulations as may be prescribed subject to subsection (8).

(8) Despite subsection (7), the adequate publicity must commence no later than 10 days in advance of each meeting of the Committee, or of the date on which the Planning Officer will make a decision on the application, as the case may be.

11. Section 31 repealed – Representations and duty to take representations into account

Section 31 of the principal Ordinance is repealed and replaced by the following sections —

“31. Written representations

(1) Any person may make representations in writing to the Planning Officer in relation to any application for planning permission.

(2) Where a person intends to make written representations in relation to an application for planning permission that is to be determined by the Planning Officer in accordance with regulations made under section 36(2), the person must make those written representations in accordance with the procedure, prescribed in those regulations, for doing so.

(3) Subsection (4) or (5) applies whenever —

(a) one or more written representations are made in relation to an application before it has been determined; and

(b) the application will not be determined by the Planning Officer.

(4) If the application is to be determined by the Committee, the Planning Officer must ensure that the representations are brought to the attention of the Committee.

(5) If the application is to be determined by the Governor, the Planning Officer must ensure that the representations are brought to the attention of both the Committee and the Governor.

31A. Oral representations

(1) This section does not apply to any application for planning permission that is to be determined by the Planning Officer in accordance with regulations made under section 36(2).

(2) Despite subsection (1), this section will apply to any such application as from the point at which it is referred to the Committee in accordance with section 3A(1)(d) (and any other relevant provision of regulations made under section 36(2)) with a recommendation that it be refused.

(3) Before the Committee considers an application, the following will have the right to make oral representations to the Committee or to have oral representations made to the Committee on their behalf —

(a) the applicant; and

(b) members of the public who have made written representations to the Planning Officer.

(4) If the Governor is to consider an application, the same persons will also have the right to make oral representations to Executive Council before it advises the Governor in relation to the application.

(5) The Committee and Executive Council must each adopt and publish arrangements for oral representations to be made to them under this section.

31B. Duty to take representations into account

(1) Each of the persons listed in subsection (2) must, when determining or otherwise dealing with an application for planning permission, take into account the representations made in accordance with the relevant provisions.

(2) The persons referred to in subsection (2) are —

(a) the Planning Officer, who must take into account representations made in accordance with subsections (1) and (2) of section 31;

(b) the Committee, which must take into account representations made in accordance with sections 31 and 31A;

(c) Executive Council (when advising the Governor in relation to an application), which must take into account representations made in accordance with sections 31 and 31A; and

(d) the Governor, who must take into account representations made in accordance with sections 31 and 31A.

(3) For the purposes of determining any application for planning permission, subsection (2) does not allow the taking into account of any consideration that is not a material consideration under section 34.”.

12. Section 33 replaced – Assessment of environmental effects

Section 33 is repealed and replaced with the following —

“33. Environmental Impact Assessments

(1) The Governor may make regulations imposing a requirement for the conduct of environmental impact assessments —

- (a) at any stage of the consideration of an application for planning permission relating to any type of development referred to in this Ordinance; or
- (b) in relation to any development which, by virtue of an order made under section 28 of this Ordinance, is the subject of general planning permission and is thereby excluded from the requirement to be the subject of an application for planning permission.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

- (a) impose the requirement for the conduct of an environmental impact assessment in relation to any type of development specified in section 26 of this Ordinance while, expressly or by implication, excluding other types of development from the requirement;
- (b) prescribe more or less extensive environmental impact assessments for different classes of development, or in relation to specific applications or specific proposed developments, as the case may be;
- (c) impose on an applicant or a proposed developer, as the case may be, fees for the conduct of any environmental impact assessment or any part of it;
- (d) make such other reasonable provision in respect of environmental impact assessments that the Governor considers appropriate; or
- (e) categorise developments based on their proposed scale or extent, and stipulate, depending on the specified category into which a particular development is classified, that the commencement of certain developments —
 - (i) must be preceded by planning permission that resulted from an application process that at some stage included an environmental impact assessment carried out on such scale or to such extent as may be specified in the regulations;
 - (ii) must be contingent on the factors set out in subsection (3); or
 - (iii) is free to take place without there having to be any screening or any environmental impact assessment carried out.

(3) The factors mentioned in subsection (2)(e)(ii) are —

- (a) the written result of a screening process, administered by such person or authority as may be specified in the regulations, for the possible imposition of a requirement that an environmental impact assessment be carried out; and
- (b) if such a requirement is imposed —
 - (i) the determination of an application for planning permission which includes consideration of an environmental impact statement submitted either along with or after the application for planning permission; and

(ii) compliance with any determination made and directive given to the prospective developer by the appropriate authority consequent on the results of such assessment conducted in accordance with subsection (2)(e)(i).

(4) The provisions of Parts 6A and 7 of this Ordinance apply to the enforcement of the provisions of regulations made under this section.”.

13. Section 36 amended – Determination of applications

Section 36 is amended —

(a) in subsection (1), by omitting “37 to 39” and replacing it with “37 and 38”;

(b) by repealing subsection (4) and replacing it with the following subsection —

“(4) The Planning Officer must ensure that notice of the decision on an application for planning permission is given to every person who made representations in relation to it under either section 31(1) or 31A.”; and

(c) by inserting immediately after subsection (4) the following —

“(5) Subsection (4) applies whether the decision was made by the Governor, the Committee or the Planning Officer.”.

14. Section 39 amended – Applications for planning permission in respect of minerals

Section 39 is amended by repealing subsection (1) and replacing it with the following —

“(1) Subject to subsection (3), neither the Committee nor the Planning Officer has power to either grant or refuse an application for planning permission for exploration for or winning and working of minerals, and must —

(a) in the case of the Committee, refer to the Governor for determination the application along with its written recommendation and reasons for either grant or refusal; or

(b) in the case of the Planning Officer, refer the application and the Planning Officer’s written recommendation for either grant or refusal (with reasons) to the Committee, which must in turn act in accordance with paragraph (a),

but section 43 applies if the Governor grants an application by the Crown for planning permission subject to conditions.”.

15. Section 40 amended – Conditional grant of planning permission

Section 40 of the principal Ordinance is amended —

(a) in subsection (1), by —

(i) omitting the full stop at the end of paragraph (d) and replacing it with a semi-colon;

(ii) inserting immediately after subparagraph (d) the following —

“(e) requiring the successful applicant to take or (where appropriate) facilitate the taking of steps, and specifying the steps so required, to —

(i) provide or deliver infrastructure required for or as a result of the development for which permission is granted; or

(ii) avoid or mitigate the potential negative social or economic impacts of the development,

but conditions may only be imposed under paragraph (d) or (e) in accordance with regulations made under this section setting out details regarding those conditions.”; and

(b) by inserting immediately after subsection (1) the following —

“(1A) For the purposes of this section, “infrastructure” includes transport, utilities, social housing, education and public open space.

(1B) The Government may commit to making a financial contribution to any steps to be taken by a successful applicant in accordance with paragraph (d) or (e) of subsection (1).”.

16. Section 47 replaced – Appeals against planning decisions

Section 47 is repealed and replaced by the following —

“47. Appeals against planning decisions

(1) An applicant may appeal to the Governor under section 47A where —

(a) the conditions of either of subsections (2) and (3) are met; and

(b) the Crown is not the applicant..

(2) Subsection (1) applies whenever —

(a) the Committee determines an application —

(i) for planning permission;

(ii) for a consent, agreement or approval required by a condition imposed on a grant of planning permission; or

(iii) for an approval required under a development order;

(b) that permission, consent, agreement or approval is either —

(i) refused by the Committee; or

- (ii) granted by it subject to conditions; and
 - (c) the applicant is aggrieved by that decision.
- (3) Subsection (1) also applies whenever —
 - (a) the Planning Officer determines an application for —
 - (i) planning permission;
 - (ii) a consent, agreement or approval required by a condition imposed on a grant of planning permission; or
 - (iii) an approval required under a development order;
 - (b) that permission, consent, agreement or approval is granted subject to conditions; and
 - (c) the applicant is aggrieved by that decision.
- (4) If an application is referred to and determined by the Governor instead of being determined by the Committee, no appeal lies against the decision of the Governor in relation to the application.”.

17. Insertion of new section 47A

The principal Ordinance is amended by inserting immediately after section 47 the following —

“47A. Appeals against planning decisions: procedure

- (1) An appeal to the Governor under this section can be commenced only by the appellant submitting notice of appeal to such person and in such manner as may be prescribed by regulations.
- (2) Where Executive Council is required to advise the Governor in relation to the appeal, the following will, before Executive Council advises the Governor, have the right to make written and oral representations to Executive Council or to have oral representations made to it on their behalf —
 - (a) the Planning Officer;
 - (b) the applicant; and
 - (c) members of the public who had made written representations to Executive Council.
- (3) Executive Council must adopt and publish arrangements for written and oral representations to be made to it under this section.
- (4) When advising the Governor in relation to an appeal, Executive Council must take into account all of the representations made to it under this section, insofar as those representations are material in accordance with section 34.

- (5) If an appeal is made under this section, the Governor —
- (a) must take into account all of the representations that have been made in relation to the application and the appeal, insofar as those representations are material in accordance with section 34;
 - (b) may deal with the application as if it had been made to the Governor in the first instance; and
 - (c) may —
 - (i) allow the appeal in full;
 - (ii) dismiss it entirely; or
 - (iii) reverse or vary one or more parts of the decision made by the Committee, regardless of the extent to which the appeal relates to that part of the decision (or those parts of it).
- (6) The Planning Officer must ensure that notice of the decision on an application for planning permission is given to every person who made representations under either or both of the following —
- (a) section (2); or
 - (b) subsection 31(1).
- (7) The decision of the Governor in relation to an appeal is final.
- (8) In all other respects, planning permission granted by the Governor on appeal is to be treated for the purposes of this Ordinance as if it had been granted by the Committee.”.

18. Section 48 amended – Appeal in default of planning decision

Section 48 is repealed and replaced by the following—

“48. Appeal in default of planning decision

- (1) Subject to subsections (3) and (4), the provisions of section 47 will apply in relation to an application referred to in subsection (2) as if —
- (a) the permission or approval to which the application relates had been refused by the Committee or the Planning Officer (depending on which of them considered the application); and
 - (b) notification of the decision had been received by the applicant at the end of the period of two months, or at the end of the extended period, as the case may be.
- (2) Subsection (1) applies to an application as is mentioned in section 47, where such an application is considered by —

- (a) the Committee; or
- (b) the Planning Officer in accordance with regulations made under section 36(2).

(3) Subsection (1) does not apply where, within two months of the submission of the application or within such extended period as the applicant and the Planning Officer may at any time agree upon in writing, the Committee or the Planning Officer (as the case may be) gives notice to the applicant either —

- (a) of the decision on the application; or
- (b) that the application has been referred to the Governor in accordance with the preceding provisions of this Ordinance.

(4) Where an applicant has, within the period of two months or such extended period referred to in subsection (3), been notified that the application has been referred to the Governor, the notice has the effect of extending the period for a further period of two months from the date of the notification; but the Planning Officer and the applicant may in writing agree to a longer extended period.

(5) If the Governor does not, within the extended period provided for in subsection (4), notify his decision on the application —

- (a) the application shall be deemed to have been refused by the Committee or the Planning Officer (depending on which of them considered the application), notwithstanding any lack of power on the part of either to refuse the application; and
- (b) subsection (1) shall then apply with all necessary modifications.”.

19. Section 72 amended – Application for variation or discharge of conditions and appeals

Section 72(3) is repealed and replaced by the following —

“(3) Sections 47 and 47A apply in relation to decisions of the Committee that relate to relevant buildings.”.

20. Section 77 amended – Appeals against waste land notices

Section 77(3) is repealed and replaced by the following subsection —

“(3) The following provisions apply to appeals under this section in the same way (apart from necessary modifications) as they do to appeals under section 85 —

- (a) section 85(3) to (5);
- (b) section 86; and
- (c) section 87.”.

21. Section 88 amended – Grant or modification of planning permission on appeals against enforcement notices

Section 88(10) is amended by replacing “Fishing right” with “For”.

22. Section 94 amended – Appeal against relevant buildings enforcement notice

Section 94 is amended by omitting —

(a) in subsection (4), by omitting —

(i) “81” and replacing it with “85”; and

(ii) “subsection (5) of that section” and replacing it with “section 86(1)”; and

(b) in subsection (5)(b), by omitting “81” and replacing it with “85”.

23. Section 104 amended – Validity of development plans and certain orders, decisions and directions

Section 104 is amended —

(a) by omitting subsection (4)(e) and replacing it with the following —

“(e) a decision whether or not a certificate of lawfulness should be issued under section 91M or 91N”; and

(b) in subsection (5), by —

(i) omitting from paragraph (b) the punctuation mark and word “; and” and replacing them with a full stop; and

(ii) omitting paragraph (c).

24. Section 109 repealed – Appeals to Supreme Court against decision under s. 61

Section 109 is repealed.

25. Section 111 repealed – Oral representations

Section 111 is repealed.

26. Section 122 replaced – Signification of notices, permissions and consents, etc.

Section 122 is repealed and replaced by the following —

“122. Presumption of validity for documents issued under Ordinance

(1) A document issued, made or given by the Planning Officer will be presumed to be valid if either —

(a) it is signed by the Planning Officer; or

(b) both of the following requirements are satisfied —

(i) it is signed by someone acting on behalf of the Planning Officer;

- (ii) it states that it has been signed by authority of the Planning Officer.
- (2) A document issued, made or given by the Committee will be presumed to be valid if both of the following requirements are satisfied —
 - (a) it is signed by —
 - (i) the Planning Officer; or
 - (ii) the Secretary to the Committee; and
 - (b) it states that it has been signed by authority of the Committee.
- (3) A document issued, made or given by the Governor will be presumed to be validly issued, made or given if either —
 - (a) it is signed by the Governor; or
 - (b) both of the following requirements are satisfied —
 - (i) it is signed by the Chief Executive, the Attorney General or the Clerk of Assembly; and
 - (ii) it states that it has been signed at the direction of the Governor.
- (4) This section applies to every document issued, made or given under this Ordinance or any subsidiary legislation made under it.
- (5) For the purposes of this section, “document” includes a permission, consent, notice, authorisation, order, determination or certificate.”.

27. Schedule A1 repealed
Schedule A1 is repealed.

PART 3
AMENDMENTS TO GENERAL DEVELOPMENT ORDER

28. Purpose of this Part

This Part amends the General Development Order.

29. Paragraph 6 amended – Outline planning applications

Paragraph 6(2) is repealed and replaced by the following —

“(2) Where an application for planning permission has been properly made, the Planning Officer, the Committee or the Governor (whichever of them has, in the circumstances, power to do so) may grant outline planning permission, which is planning permission that is subject to one or more conditions specifying matters reserved for subsequent approval (“reserved matters”).”.

30. Paragraph 8 amended – Application made under planning condition

Paragraph 8 is amended by—

- (a) renumbering the existing text as subparagraph (1); and
- (b) inserting immediately after subparagraph (1) as renumbered, the following —

“(2) Subparagraph (1) does not apply if the Planning Officer has already —

- (a) given consent, agreement or approval in accordance with regulations made under section 36; and
- (b) notified the applicant accordingly.”.

31. Paragraph 9 replaced – Written notice of decision or determination relating to a planning permission

Paragraph 9 is repealed and replaced by the following —

“9. Written notice of decision or determination relating to a planning permission

When the Committee gives notice of a decision or determination on an application for planning permission or for approval of reserved matters, and permission or approval is granted subject to conditions or the application is refused, the notice must —

- (a) state clearly, precisely and in full the Committee’s reasons for the refusal or for any condition imposed;
- (b) where the Governor has given a direction restricting the grant of permission for the development for which the application is made, give details of the direction;
- (c) include a statement to the effect that, if the applicant is aggrieved by the decision, the applicant may appeal to the Governor under section 47 of the Ordinance within 28 days of receipt of the notice or such longer period as the Governor may allow.”.

32. Paragraph 14 amended – Established use certificates

Paragraph 14 is amended by omitting the words “established use certificate” from each place where they appear (including the heading) and replacing them in each case with the words “certificate of lawfulness”; and making, where appropriate, the necessary grammatical amendment to the preceding indefinite article.

33. Schedule 2 amended

Schedule 2 is amended in respect of Class G(4) by replacing “Cable & Wireless Plc or their authorized contractor” with “a telecommunication utility licensed under section 3(2) of the Telecommunications Ordinance (Title 70.1) (or a contractor authorised by a telecommunications utility)”.

34. Schedule 3 repealed

Schedule 3 is repealed.

PART 4
AMENDMENTS TO THE PLANNING (GENERAL) REGULATIONS

35. Purpose of this Part

This Part amends the Planning (General) Regulations.

36. Regulation 2 amended

Regulation 2 is amended —

- (a) by omitting the definition of “Building By-laws”; and
- (b) in the definition of “combined application”, by omitting the words “Building-By-laws” and replacing them with “Building Regulations (S.R. & O. No. 26 of 1999);”.

37. Regulation 4 amended

Regulation 4 is amended by omitting “Building By-laws” from each place where it appears and replacing it in each case with “Building Regulations”.

EXPLANATORY NOTE
(not part of the Bill)

This Bill would make a number of amendments to planning legislation.

The purposes of the proposed amendments are as follows:

- to make improved provision for delegation of certain decisions from the Planning and Building Committee to the Planning Officer;
- to provide for applicants and members of the public to have speaking rights in relation to applications and appeals;
- to update the powers of the Governor (who would normally have to act on the advice of Executive Council) to make regulations about the assessment of environmental effects;
- to include an enabling power allowing for the possibility of regulations to be made requiring developer contributions to be made;
- to provide for applications for planning permission in respect of minerals to be dealt with in the first instance by the Planning and Building Committee;
- to update (and “future proof”) a reference to Cable & Wireless Plc in the General Development Order so that it refers to a telecommunications utility generally rather than by name;
- to make consequential amendments that were overlooked when planning legislation was amended in the past (but which have now been identified); and

- to correct other minor errors that have now been identified.

The Bill is divided into 4 parts:

- Part 1 contains introductory provisions.
- Part 2 would amend the Planning Ordinance (Title 55.3).
- Part 3 would amend the General Development Order (Title 55.3.1).
- Part 4 would amend the Planning (General) Regulations (Title 55.3.3).

Part 2 would amend the Planning Ordinance.

Clause 3 would make two amendments to section 2, which defines key terms used elsewhere in the Planning Ordinance:

- The new definition of “Planning Officer” is needed in connection with proposal to empower the Planning Officer to determine planning applications either instead of or prior to the Planning and Building Committee, and to allow anyone acting for the Planning Officer to exercise this power.
- The definition of “minerals” has been omitted and replaced by a definition of “mineral” found in the Constitution, supplemented by the substance of the aforementioned omitted definition. The existing definition of “minerals” in the Planning Ordinance is being replaced out of an abundance of caution so as to make it absolutely certain that the mechanisms provided for in the Planning Ordinance may be used to regulate hydrocarbon planning issues while simultaneously ensuring that none of the meaning captured in the omitted definition is lost.
- The definition of “established use certificate” should be removed as a consequential amendment to changes that were made to the Planning Ordinance in 2005 – the provisions for issuing established use certificates was replaced by new provisions (in sections 91M and 91N) for issuing certificates of lawfulness.

Clause 4 would insert a new section, i.e. section 3A, into the Ordinance. This section aims to clarify the various meanings of “determine” in the Ordinance, depending on who and the circumstances it is used in relation to.

Clause 5 would amend section 4. On account of the proposal to authorise the Planning Officer to determine planning applications in some cases independent of the Planning and Building Committee, this amendment is needed to qualify the designation of the Planning and Building Committee as the sole authority responsible for the administration of the Ordinance.

Clause 6 would amend section 5. Members of the Committee who have interests in applications (either as the applicant or in some other way) would still be prevented from taking part in the decision-making process. However, the amendment would allow them to exercise public speaking rights in the same way as other applicants or members of the public.

Clause 7 would amend section 9 to allow members of the public to attend meetings of the Planning and Building Committee for the purpose of exercising public speaking rights.

Clause 8 would replace the existing version of section 10 with a new version:

- The new section 10, like the existing version, creates the post of Planning Officer.
- However, the new version expressly provides that appointments to the post of Planning Officer are, consistent with section 84(1) of the Constitution, to be made by the Chief Executive in exercise of power conferred by that same section of the Constitution on the Governor, rather than being made by the Governor directly.
- The new section 10 also proposes to set out, for ease of reference, a list of the functions that attach to the post of Planning Officer under the Ordinance.

Clause 9 would amend section 11 to make provision for the Secretary of the Committee to, by way of subsidiary legislation, be mandated to perform additional functions.

Clause 10 would replace the existing version of section 30 with a new version:

- Section 30 needed to be amended to allow the Planning Officer to determine applications for planning permission in certain circumstances.
- Also, the current requirement for applications to be posted on the public notice board would be replaced with a requirement for “adequate publicity” and it is recognised that some things are done on behalf of the Planning Officer rather than by the Planning Officer personally.
- Finally, the new version of section 30 is also intended to be more up to date and easier to read.

Clause 11 would repeal the existing version of section 31 and replace it with a new version as well as with a two new sections, i.e. sections 31A and 31B.

- Currently, under section 31, representations can be made in writing and have to be taken into account when decisions are made. The new section 31 would make similar provision, but would also provide for such written representations to be transmitted, as appropriate to the manner in which the application is to be determined, to the Committee or to both the Committee and the Governor; in either case, when the planning application will not be determined by the Planning Officer.
- The new section 31A provides for oral representations to be made in addition to written representations. These provisions are expressly said to be inapplicable to any application that will be determined by the Planning Officer. It also provides for the oral representations to be made either personally by, or by a representative of, the person who made the written representations.

- The new section 31B mandates the person determining the application to take into account all representations made, provided that these representations raise material considerations within the meaning of section 34.

Clause 12 would replace the existing version of section 33 with a new version:

- Section 33 gives the Governor (who would normally have to act on the advice of Executive Council) power to make regulations about environmental impact assessment (EIA) for planning applications.
- The current version of section 33 refers to an out of date version of the EU Directive on EIA and provides that the power can be used to implement that Directive.
- The new version would remove any reference to the EU legislation on EIA and would give complete freedom in how EIA is taken forward in the Falkland Islands. (*Clause 26* would repeal Schedule A1, which currently sets out the out of date version of the EU Directive referred to in the current version of section 33.)

Clause 13 would amend section 36 so as to mandate that notices of decisions made on applications for planning permission be given to everyone who made representations in respect of that application. It proposes to specifically provide that this obligation exists regardless of who determines the application.

Clause 14 would amend section 39 to expressly provide that applications for planning permission for exploration for or winning and working of minerals cannot be granted or refused by either the Planning Officer or the Committee, but must instead be referred to the Governor for determination.

Clause 15 would amend section 40 to make it possible, subject to regulations that may be made in this regard, for a condition to be imposed on the grant of planning permission requiring the developer to commit to taking steps (financial or otherwise) to mitigate the likely negative impacts of the proposed development. Provision is also made for the Government, in its discretion, to make a financial contribution to the developer's effort to take the necessary steps. This provision approaches the issue of 'developer contributions' from another angle; one that removes the possibility of the impression being created that the developer is being required, under the guise of making a 'developer contribution', to essentially purchase planning permission.

Clauses 16 and 17 would replace the existing version of section 47 (which deals with appeals to the Governor against decisions of the Planning and Building Committee) with a new version of section 47 and a new section, i.e. section 47A (to be inserted after section 47):

- The new version of section 47 would deal with the right of applicants to appeal to the Governor and new section 47A would deal with the procedure.
- Under the new section 47A, applicants and members of the public will have the right to make written and oral representations to Executive Council before it advises the Governor on how to deal with the appeal. However, members of the public will only have the right to make

oral representations if they have made written representations first. Executive Council will have to make and publish arrangements about how oral representations are to be made.

- The new section 47A would also impose duties on Executive Council and the Governor to take the written and oral representations into account. However, it would make it clear that decisions can still only be based on material considerations.

Clause 18 would amend section 48 to make it clearer and easier to follow.

Clause 19 would amend section 72 to update the cross-reference in that section to the appeal process in the new version of section 47 and new section 47A – that process also applies to planning applications involving relevant buildings (ones that have been designated as having historical and/or architectural significance).

Clause 20 would correct cross-referencing errors in section 77. The appeals process in section 47 does not apply to appeals against waste land notices – instead, a separate appeals process for enforcement action applies. It is not proposed to change this but the opportunity is being taken to correct section 77.

Clause 21 would correct a minor error in section 88.

Clause 22 would correct cross-referencing errors in section 94. The appeals process in section 47 does not apply to appeals against a relevant building enforcement notice – instead, a separate appeals process for enforcement action applies. It is not proposed to change this but the opportunity is being taken to correct section 94.

Clause 23 would amend section 104 to make a consequential amendment that was overlooked in 2005 but has now been identified: a provision about established use certificates should have been replaced with a provision about certificates of lawfulness.

Clause 24 would repeal section 109. This was a consequential repeal that was overlooked in 2005 but has now been identified: section 61, to which section 109 relates, was repealed in 2005. This made section 109 obsolete and therefore that section too ought to have been expressly repealed at that time. Despite the obviously implied repeal of section 109, the opportunity is now being taken to remove section 109 from the Ordinance once and for all.

Clause 25 would repeal section 111, which currently prohibits oral representations from being made to the Planning and Building Committee and Executive Council.

Clause 26 would replace the existing version of section 122 with a new version. The new version of section 122 not only reflects the proposal to empower the Planning Officer to determine planning applications in certain circumstances, but it is also intended to clarify the provision and make it easier to follow.

Clause 27 would repeal Schedule A1, which sets out an out of date version of the EU Directive on environmental impact assessment and is no longer needed. (See *clause 12*.)

Part 3 would amend the General Development Order (which is divided into paragraphs and sub-paragraphs, rather than articles and paragraphs).

Clauses 29 to 30 would amend paragraphs 6 to 8 to reflect the proposal to empower the Planning Officer to determine planning applications in certain circumstances.

Clause 31 would replace the existing version of paragraph 9:

- The new version would reflect the proposal to empower the Planning Officer to determine applications for planning permission in certain circumstances
- It would also replace the existing requirement for a notice about the right of appeal to be given to applicants in a specific form with a more general requirement for them to be provided with information about the right of appeal. The existing form is set out in Schedule 3 and it would be superseded by the introduction of a right to make oral representations to Executive Council – Schedule 3 would be revoked by *clause 34*.

Clause 32 would amend paragraph 14 to replace the references to “established use certificate” with references to “certificate of lawfulness”:

- This would facilitate the retention of procedural provisions applicable to the existing regime for “established use certificates” and make them available to support the issuing of “certificates of lawfulness” until a modified procedure (if considered appropriate) is designed and prescribed.
- In this regard it should be noted that section 91O(1) of the Ordinance provides that “[a]n application for a certificate under section 91M or 91N **[essentially, a certificate of lawfulness]** shall be made in such manner as may be prescribed by a development order ...”; (emphasis added)
- Despite this provision, it does not appear that such provisions have yet been made, whether by means of the General Development Order or any other development order. Accordingly, were paragraph 14 to be repealed without more, the issuing of “certificates of lawfulness” would be devoid of necessary procedural provisions.

Clause 33 would amend Schedule 2, which deals with permitted development rights. In Part 1, Class G(4) deals with permitted development rights for various telecommunications works. However, these rights are currently given to Cable & Wireless Plc and its contractors and telecommunications services in the Falkland Islands are now provided by Sure South Atlantic Ltd. To deal with this (and in order to “future proof” against further possible changes), the rights would no longer be restricted to a named company.

Clause 34 would revoke Schedule 3 (see note on *clause 31*).

Part 4 would amend the Planning (General) Regulations.

Clauses 36 and 37 would make consequential amendments to regulations 2 and 4 that were overlooked in 1999 but have now been identified: references to the former Building By-laws are replaced with references to the Building Regulations (SR&O No 26 of 1999).

Falkland Islands Tourist Board Bill 2014

(No: of 2014)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 INTRODUCTION

1. Title
2. Commencement
3. Interpretation

PART 2 ESTABLISHMENT AND FUNCTIONS OF FITB

4. Transition of existing company to new body corporate
5. Functions and objects of Falkland Islands Tourist Board
6. Further provisions about FITB

PART 3 FITB GOVERNING BOARD

7. Governing Board
8. Membership of Governing Board
9. Powers and functions of Governing Board
10. Further provisions about Governing Board

PART 4 CHIEF EXECUTIVE AND OTHER STAFF OF FITB

11. FITB Chief Executive
12. Other staff of FITB
13. Secretary
14. Financial Controller

PART 5 FINANCIAL PROVISIONS

15. Annual budget and business plan
16. FITB finances
17. Subvention requests
18. Accounts
19. Audit
20. Annual report and financial statements

PART 6
GENERAL PROVISIONS

21. Exclusion of personal liability
22. Confidentiality
23. Regulations
24. Amendment of Schedules
25. Transitional and savings provisions

SCHEDULES

FALKLAND ISLANDS TOURIST BOARD BILL 2014

(No: of 2014)

(assented to: 2014)
(commencement: in accordance with section 2)
(published: 2014)

A BILL

for

AN ORDINANCE

To dissolve and establish the Falkland Islands Tourist Board (a company limited by guarantee) as a new body corporate; to provide for its objects and functions, management, operations and to transfer to it the assets and liabilities of the existing company and to provide for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands

PART 1 INTRODUCTION

1. Title

This Ordinance is the Falkland Islands Tourist Board Ordinance 2014.

2. Commencement

This Ordinance comes into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Interpretation

In this Ordinance —

“Company” means the Falkland Islands Tourist Board, a company incorporated in the Falkland Islands under the provisions of the Companies and Private Partnerships Ordinance and registered in the Companies Registry under registered number 12617;

“FITB” means the Falkland Islands Tourist Board, a body corporate established under section 4(1);

“Falkland Island Tourism Strategy” means the document approved by Executive Council for the time being

“Financial Controller” means the person appointed as Financial Controller under section 14;

“Governing Board” means the FITB governing board created under section 7;

“Chief Executive” means the person appointed as Chief Executive Officer of FITB under section 11;

“operative date” means the date fixed by the Governor under section 4(4); and

“Secretary” means the person appointed as Secretary under section 13.

PART 2

ESTABLISHMENT AND FUNCTIONS OF FITB

4. Transition of existing company to new body corporate

(1) The Company will, on the operative date be dissolved and established under this Ordinance as a new body corporate.

(2) FITB will, subject to the provisions of this Ordinance, do or perform all such acts or things as corporate bodies may, by law, do or perform and will have a common seal and be capable of suing and being sued in its own name.

(3) All rights, obligations, assets and liabilities which have accrued to the Company will, upon the operative date, pass and accrue to FITB and will be dealt with in terms of this Ordinance.

(4) The Governor may by Order published in the *Gazette*, fix a date to be the operative date for purposes of this section.

5. Functions and objects of Falkland Islands Tourist Board

(1) The objective of FITB is to facilitate and create a profitable and sustainable tourism industry.

(2) To achieve the objective referred to under subsection (1), FITB will carry out the following functions —

(a) coordinate, in consultation with all interested parties, the Falkland Islands Tourism Strategy;

(b) develop and implement appropriate programmes for achieving the Falkland Islands Tourism Strategy, and improve tourism within the Falkland Islands generally;

(c) carry out, at appropriate intervals and in consultation with all relevant parties, a review of the Falkland Islands Tourism Strategy;

(d) advise on all matters relating to tourism, including planning and formulating strategies for the promotion and marketing of the tourism industry;

(e) provide tourist information;

(f) commission and undertake activities that will improve tourism operations and public amenities for tourists; and

(g) promote all interests related to tourism and promote new investments in the tourism sector.

(3) FITB may also carry out the following functions —

- (a) make provision for the sale of merchandise promoting Falkland Islands tourism;
- (b) design, manage and implement appropriate marketing campaigns to promote Falkland Islands tourism; and
- (c) create partnerships and manage relationships with both national and international stakeholders relevant to the tourist industry.

6. Further provisions about FITB

(1) Further provisions relating to FITB are set out in Schedule 1.

(2) The Governor may amend Schedule 1 to include further provisions relating to the Chief Executive and FITB staff.

PART 3 FITB GOVERNING BOARD

7. Governing Board

FITB will have its overall management and affairs carried out by a Governing Board.

8. Membership of Governing Board

The Governing Board will comprise of the following —

- (a) a Chairperson who has experience and knowledge of the tourism industry, appointed by the Governor;
- (b) a Vice Chairperson who has experience and knowledge of the tourism industry, appointed by the Governor;
- (c) the Falkland Islands Government's Head of Policy;
- (d) one Member of the Legislative Assembly under whose portfolio tourism falls;
- (e) the Chief Executive of FITB (as a non-voting member); and
- (f) up to four members co-opted by the Governing Board representing a wide range of sectors within the tourism industry.

9. Powers and functions of Governing Board

The Governing Board in its overall management of FITB will determine policies for giving effect to the objectives of FITB and in particular —

- (a) advise on any changes or reviews to the Falkland Islands Tourism Strategy;
- (b) set performance targets and design programmes for FITB aimed at facilitating the continued growth and development of the tourism industry in the Falkland Islands;

- (c) review and agree on an annual basis, the budget and business plans for FITB;
- (d) adopt and keep under review documents on human resources and financial controls for FITB;
- (e) be responsible for financial oversight and monitoring of FITB activities generally; and
- (f) ensure that FITB exercises its powers in ways that are economical, efficient and effective.

10. Further provisions about Governing Board

Further provisions relating to the Governing Board, its members, and its procedures and meetings are set out in Schedule 2.

PART 4 CHIEF EXECUTIVE AND OTHER STAFF OF FITB

11. FITB Chief Executive

- (1) The Governing Board must appoint a person to be the Chief Executive of FITB, for such a period as may be specified in the instrument of appointment.
- (2) The person appointed as a Chief Executive under this section must have such experience and training as the Governing Board may determine.
- (3) The Governing Board must ensure that there is a fair, objective and transparent process for the appointment of the Chief Executive.
- (4) The Chief Executive is, subject to such directions on matters of policy as may be given by the Governing Board, responsible for the day to day management of the affairs of FITB.
- (5) The Chief Executive is accountable to the Governing Board.

12. Other staff of FITB

- (1) The Governing Board must appoint the senior staff of FITB and the Chief Executive must appoint such other staff as may be necessary for the proper discharge of the functions of FITB.
- (2) The senior staff of FITB means any employee of FITB who holds a position which is designated as such by the Governing Board.
- (3) The Governing Board must record and keep up to date, the terms and conditions of employment of staff of FITB.

13. Secretary

- (1) The Governing Board must appoint a person to be the Secretary of FITB, for such a period as may be specified in the person's instrument of appointment.
- (2) In addition to other duties and functions set out in this Ordinance the Secretary is responsible for the accurate and complete recording of the Governing Board's proceedings and decisions.
- (3) The Secretary is accountable to the Governing Board and to the Chief Executive.

14. Financial Controller

(1) The Governing Board must appoint a person to be the Financial Controller of FITB, for such period and on such terms as may be specified in the instrument of appointment.

(2) In addition to other duties and functions set out in this Ordinance the Financial Controller is responsible for —

- (a) ensuring good management of FITB finances; and
- (b) keeping proper financial records.

PART 5 FINANCIAL PROVISIONS

15. Annual budget and business plan

FITB must develop an annual budget and business plan with clear objectives and set performance targets aimed at ensuring delivery of the programmes referred to in section 5.

16. FITB finances

FITB will derive its income from —

- (a) subventions as may be appropriated by the Legislative Assembly for the purposes of FITB;
- (b) any income that FITB may receive from investments; and
- (c) any other income.

17. Subvention requests

(1) The Financial Secretary may invite FITB in advance of a financial year to submit a request for funds that FITB requires the Falkland Islands Government to provide so that FITB can carry out its activities for that financial year.

(2) The Financial Secretary may issue guidelines about subvention requests and the procedure for submissions of subvention requests.

(3) FITB must submit its request for funds to the Financial Secretary in accordance with guidelines issued by the Financial Secretary.

18. Accounts

(1) The Financial Controller must keep and maintain proper accounts and records of accounts in respect of every financial year relating to its assets, liabilities, income and expenditure, and must prepare, in each financial year, a statement of the accounts.

(2) The Governing Board must ensure that the Financial Controller keeps proper financial records and may prepare guidelines to assist in the keeping of financial records.

19. Audit

(1) The Governing Board must ensure that arrangements are in place for FITB's financial records and statements to be audited in respect of each financial year.

(2) To give effect to the audit requirements of section 80 of the Constitution the accounts of FITB in respect of each financial year must, within six months of the end of the financial year, be audited by a suitably qualified and experienced auditor.

(3) The auditor appointed under subsection (2) must report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on.

20. Annual report and financial statements

(1) The Governing Board must cause to be prepared an annual report and financial statements with the following information —

- (a) the financial statements of FITB audited in terms of section 19 of this Ordinance;
- (b) FITB's activities during the financial year;
- (c) the management and overall performance of FITB during the financial year;
- (d) the corporate governance and assurance mechanisms of FITB during the year; and
- (e) any other information that may be relevant.

(2) The Secretary must —

- (a) send copies of the annual report and financial statements to the Governor and to the Clerk of the Legislative Assembly; and
- (b) arrange for copies to be made available to the public.

(3) The Chief Executive must submit copies of the annual report and financial statement to be tabled in the Legislative Assembly in accordance with section 57 of the Finance and Audit Ordinance (Title 19.3).

PART 6 GENERAL PROVISIONS

21. Exclusion of personal liability

A member of the Governing Board, an employee of FITB and any authorised person acting on behalf of FITB is exempt from personal liability for anything the member or employee does under the provisions of this Ordinance provided it is done in good faith and without negligence.

22. Confidentiality

A member of the Governing Board and any employee of FITB must observe and preserve the confidentiality of all confidential matters relating to FITB.

23. Regulations

The Governor may make regulations that are necessary or convenient for the purposes of this Ordinance.

24. Amendment of Schedules

The Governor may by order published in the *Gazette* amend the Schedules to this Ordinance.

25. Transitional and savings provisions

(1) As from the operative date every agreement, whether in writing or not, and every deed, bond or other instrument to which the Company was a party to or which affected the Company, and whether or not of such a nature that the rights, liabilities and obligations under it could be assigned, will have effect as if FITB was a party to or affected by it instead of the Company.

(2) As from the operative date all employees of the Company will become the corresponding employees of FITB and will continue in office for the period for which, and be subject to the terms and conditions under which, they were appointed, as employees of the Company.

(3) For purposes of the Employment Protection Ordinance (Title 32.3) the employees of the Company who become corresponding employees of FITB are to be treated as being in continuous employment.

(4) All contracts made by the Company in so far as they remain unperformed or any money which is or may become due and payable or may become receivable have effect in favour of and against FITB on and after the operative date as if FITB had been a party to those contracts instead of the Company.

SCHEDULE 1 FITB, Staff, ETC.

1. FITB Seal

(1) FITB must have a seal the nature of which is to be determined by the Governing Board.

(2) The Secretary must keep the seal.

(3) The Chief Executive and the Chairperson (or Vice Chairperson or any other person authorised in that behalf by a resolution of the Governing Board) must authenticate the affixing of the seal.

2. FITB Staff

(1) The Governing Board must ensure good corporate governance of FITB.

(2) The Governing Board must prepare guidelines or manuals for staff including human resources, financial provisions, job descriptions and other matters relevant to the efficient operations of FITB.

SCHEDULE 2
FITB Governing Board

1. Tenure of office of members

- (1) A member of the Governing Board will hold office for such period as may be specified in the member's instrument of appointment.
- (2) The Governor must ensure that the periods for which members are appointed to the Governing Board are staggered in such a way that a quorum can be achieved at all times.

2. Suspension and removal of members

- (1) The Governor may, in writing, remove a member from the Governing Board.
- (2) A member may only be removed after a fair process appropriate to the circumstances.
- (3) The Governor may suspend a member while the process referred to under sub-paragraph (2) is underway.
- (4) A person co-opted to the Governing Board may only be removed from the Board by a decision of the other members of the Governing Board.

3. Resignations

A member (including co-opted members) may resign from office by giving 30 days notice in writing to the Governor.

4. Alternate co-opted members

- (1) The Governing Board must appoint a person as an alternate to a co-opted member.
- (2) A person appointed as an alternate to a co-opted member under sub-paragraph (1) must represent a sector of the tourism industry.

5. Meeting of Board

- (1) Subject to the provisions of this Ordinance, the Board will regulate its own proceedings.
- (2) The Board must meet at least four times annually.
- (3) The quorum at any meeting of the Governing Board is a simple majority.
- (4) The Chairperson must preside at any meeting of the Governing Board and in the absence of the Chairperson, the Vice-Chairperson.
- (5) The Chief Executive has no right to vote on any matter that is put to the vote at a meeting of the Governing Board.
- (6) A decision of the Governing Board on any question must be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding has a casting vote in addition to that person's deliberative vote.

(7) The validity of anything done by the Governing Board will not be affected even if there are one or more vacancies on it.

6. Attendance of Board meetings

(1) The Financial Controller has the right to attend and speak at the meetings of the Governing Board but not to vote.

(2) The Governing Board may invite other persons to attend any of its meetings but these persons are not entitled to vote.

7. Remuneration of members

Members of the Governing Board may be —

- (a) remunerated for their services to FITB; and
- (b) reimbursed for expenses they incur in the course of their duties.

8. Code of Conduct

(1) The Governing Board is under a duty to adopt (and keep under review) a Code of Conduct for its members.

(2) The Code of Conduct must include provisions dealing with —

- (a) declarations of interests by members of the Governing Board; and
- (b) conflicts of interest and how they are to be dealt with.

OBJECTS AND REASONS

This Bill provides for the transition of the Falkland Islands Tourist Board (a company limited by guarantee) to a statutory corporation.

Part 1 deals with introductory matters.

Clause 2 provides for the Ordinance to come into force on a date to be appointed by the Governor by notice in the *Gazette*.

Clause 3 provides for definitions;

Part 3 deals with the dissolution of the Falkland Islands Tourist Board as a company incorporated under the Companies Act and the establishment of FITB as a body corporate and provides for its objectives and functions as well as other matters related to FITB and its staff contained in Schedule 1

Clause 4 provides that on the operative date (as will be set by the Governor by Order in the *Gazette*) the FITB (as a company) will be dissolved and be established as a body corporate maintaining the same name for practical purposes;

Clause 5 provides for the objectives and functions which FITB will discharge, mostly not different from what the current company is doing (as detailed in the Articles of Association) but expanded to take into account its new legal status;

Clause 6 provides for a Schedule which contains further provisions about FITB and its staff. It further allows for the Governor to be able to amend the Schedule to add to it any provisions as may be required relating to FITB and its staff. The current Schedule 1 provides in paragraph 1 for the FITB seal, specifies who may affix it and in paragraph 2 provides for the making of administrative controls (guidelines, manuals, etc.) for the governance of FITB staff;

Part 3 deals with the FITB Governing Board, its membership, functions as well as other matters related to the Governing Board set out in Schedule 2.

Clause 7 provides for the overall management and affairs of FITB to be exercised by a Governing Board;

Clause 8 provides for the membership of the Governing Board while *clause 9* provides for its powers and functions;

Clause 10 provides for a Schedule which contains further provisions about the Governing Board including tenure of members, their remuneration, suspension and removal, resignations, appointment of alternate co-opted members, meetings and attendance of meetings and provides for a Code of Conduct which the Governing Board must adopt and keep under review;

Part 4 deals with the Chief Executive and other FITB staff members.

Clause 11 provides for the appointment of the Chief Executive Officer who is responsible for the day to day management of FITB, the Chief Executive is appointed by the Governing Board and is accountable to the Governing Board;

Clause 12 provides for the appointment of senior staff of FITB by the Governing Board while other staff will be appointed by the Chief Executive. The Governing Board is required to set out (and keep updated) terms and conditions of employment of FITB staff;

Clause 13 provides for the appointment, duties and functions of a Secretary while *clause 14* provides for the appointment, duties and functions of a Financial Controller;

Part 5 deals with FITB finances and other provisions relating to financial matters.

Clause 15 provides for the requirement for FITB to have an annual budget and business plan in place;

Clause 16 provides for FITB finances and *clause 17* provides for the process by which funding from FIG is to be sought and further provides for the Financial Secretary to issue guidelines on how requests for funds are to be made;

Clause 18 provides for the keeping of accounts and the requirement for the Financial Controller to prepare financial statements. It further provides for the Governing Board to prepare guidelines to assist the Financial Controller in keeping financial records;

Clause 19 provides for the Governing Board to ensure that arrangements are in place for the auditing of FITB. The arrangements must comply with the requirements of section 80 of the Constitution;

Clause 20 provides for the preparation of an annual report and financial statements to be tabled before the Legislative Assembly in compliance with the Finance and Audit Ordinance;

Part 6 covers general provisions and *clause 21* provides for exclusion from personal liability, *clause 22* provides for confidentiality while *clause 23* provides for the Governor to make regulations as may be required; and

Clause 24 provides for the Governor to be able to amend the Schedules by order and *clause 25* provides for transitional and savings provisions dealing with agreements and contracts entered into by the Company to continue to be valid as if they were entered into by FITB (body corporate) and also provides for the employees of the Company to continue in office under FITB and to be deemed to be in continuous employment for purposes of the Employment Protection Ordinance.

Immigration (Amendment) Bill 2014

(No: of 2014)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of Immigration Ordinance
4. New section 18BB inserted - Grant of a permanent residence permit to persons falling under section 22(5)(a)(ii) of the Constitution
5. Amendment of section 18 – Permanent residence permits
6. Amendment of section 23 – Revocation of permanent residence permits granted under section 18 and section 18BB

IMMIGRATION (AMENDMENT) BILL 2014

(No: of 2014)

(assented to: 2014)
(commencement in accordance with section 2)
(published: 2014)

A BILL

for

AN ORDINANCE

To amend the Immigration Ordinance to allow certain persons to be granted permanent residence permits when they lose their Falkland Island status due to a change in their marital status.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Immigration (Amendment) Ordinance 2014.

2. Commencement

This Ordinance comes into force on a date appointed by the Governor by notice published in the *Gazette*.

3. Amendment of Immigration Ordinance

This Ordinance amends the Immigration Ordinance.

4. New section 18BB inserted — Grant of a permanent residence permit to persons falling under section 22(5)(a)(ii) of the Constitution

The Immigration Ordinance is amended by inserting the following new section after section 18AA —

“18BB. Grant of a permanent residence permit to persons falling under section 22(5)(a)(ii) of the Constitution

(1) The Principal Immigration Officer will grant, on application, a permanent residence permit to a person who has previously held a permanent residence permit and who falls under section 22(5)(a)(ii) of the Constitution who —

- (a) in the case of a spouse, ceases to live with the wife or the husband under a decree of a competent court or a deed of separation; or
- (b) in the case of a widow or widower, remarries; and
- (c) is, on the date of the application, ordinarily resident in the Falkland Islands.

(2) A permanent residence permit will be granted for the purposes of subsection (1) by the Principal Immigration Officer on determining that the person had previously held a permanent residence permit and falls under section 22(5)(a)(ii) of the Constitution.

(3) A permanent residence permit issued under this section is deemed to have effect from the date the person —

(a) ceases to live with the wife or the husband under a decree of a competent court or a deed of separation; or

(b) as a widow or widower, remarries.

(4) A permanent residence permit issued under this section has effect until it is revoked in accordance with section 23.”

5. Amendment of section 18 — Permanent residence permits

Section 18(4) is amended by inserting “or section 18BB” after section 18AA.

6. Amendment of section 23 — Revocation of permanent residence permits granted under section 18 and section 18BB

The heading to section 23 is amended by inserting “and section 18BB” after “section 18”.

OBJECTS AND REASONS

This Bill amends the Immigration Ordinance to allow persons who fall under section 22(5)(a)(ii) of the Constitution who lost their permanent residence permits when they acquired Falkland Island status by marriage to (re)apply for permanent residence permits (*in their own right*) when they lose that Falkland Islands status as a consequence of a change in their marital status.

Clause 2 provides that the Bill will come into force on publication;

Clause 4 inserts a new section 18BB into the Immigration Ordinance to provide that a person who has previously held a permanent residence permit which was revoked when they acquired Falkland Island status through marriage to apply to the Principal Immigration Officer for a ‘new’ permanent residence permit when they lose their Falkland Island status as a consequence of a change in their marital status. The applicant must be ordinarily resident in the Falkland Islands at the time that they make the application.

Clause 4 goes on to provide that the ‘new’ permanent residence permit will be deemed to have effect from the date when the change in their marital status occurs. This is to allow continuity in their eligibility to remain in the Falkland Islands so that there is no point when they are subject to Immigration control.

Clause 5 provides that the points system used to determine applications for permanent residence permits under section 18 does not apply to application under this new section;

Clause 6 amends section 23 to include the new section 18BB in the heading so that permanent residence permits issued under section 18BB are also included within that section.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 30 OCTOBER 2014

PROCEDURE FOR THE MOTION FOR ADJOURNMENT

CLERK	“Motion for Adjournment”
CHIEF EXECUTIVE	“Mr Speaker I beg to move that House stands adjourned sine die.” Honourable Members may speak to the Motion.
THE SPEAKER	“The House stands adjourned accordingly.” Mr Speaker then departs