

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Children Bill 2014 – proposed replacement of Children Ordinance 1994
Paper No: 28/14
Date: 26th February 2014
Report of: Director of Health and Social Services
 Crown Counsel (Child Protection)/Legislative Drafter

1.0 Purpose

- 1.1 This paper specifically addresses the recommendation in the Lucy Faithfull Foundation report that the Children Ordinance should be reviewed and revised to make it more fit for purpose. This was originally addressed in ExCo paper 224/13 and considered by the Executive Council on 25 September 2013.

2.0 Recommendation

- 2.1 It is recommended that Executive Council approves —
- (a) the publication of the Children Bill in the *Gazette* in the form of the draft attached to this report as Annex B; and
 - (b) the presentation of the Bill to Legislative Assembly in March 2014.
- 2.2 Executive Council is also asked to note that a programme of training and awareness-raising will take place in relation to the proposed new legislation.

3.0 Additional Budgetary Implications

	2013/14	Annual Recurring
Operating Budget	£ 17,500	£ 70,000

4.0 Background

- 4.1 In accordance with the action plan set out in ExCo paper 224/13, the Attorney General's chambers arranged for a child protection lawyer with relevant experience to be seconded for 6 months from September 2013 to:

- (1) assist with the current case load;

- (2) revise the Children Ordinance 1994;
 - (3) engage with the Falkland Islands Safeguarding Children Board (FISCB) and to review the Children & Young People Safeguarding Procedures 2012; and
 - (4) develop a more proactive and productive family court users' group.
- 4.2 Currently, the law relating to children in the Falkland Islands is contained in the Children Ordinance that was passed in 1994. The existing Ordinance does correspond to some extent with UK law, as set out in the Children Act 1989. However, it now requires updating to build on the foundations of the Children Ordinance (1994) and to meet the changing challenges to children and families.
- 4.3 Following a thorough review of current arrangements and consultation with stakeholders (including via the FISCB), it is proposed that the existing (1994) Children Ordinance should be replaced with a new Ordinance, incorporating amendments that reflect the key issues raised by the Lucy Faithfull Foundation report about how the Falkland Islands keeps its children safe.
- 4.4 In the UK, the law has significantly moved on in other respects, for example:
- There have been updates in legislation recognising in vitro fertilisation and same-sex relationships.
 - Special guardianship has been introduced as an alternative to fostering or adoption.
 - The Adoption Act 1976 has also been replaced by the Adoption and Children Act 2002.
- 4.5 Some of these changes (most notably, the introduction of special guardianship and the reform of the adoption legislation) have been ruled out at this stage as being too complex for the incremental approach that is being recommended.
- 4.6 To put the proposals into context, there have been two substantial sets of care proceedings over the last 12-18 months. Whilst the child protection issues have been relatively straightforward and the age of the children in need of protection should have meant that the proceedings were quickly dealt with, the existing legislation, practice and procedures have been unable to address these child protection issues in an effective and timely manner. Both sets of proceedings have carried on for over 52 weeks. It is widely recognised that delay in making decisions and putting in place alternative arrangements to care for a child has detrimental consequences upon the child's emotional welfare and outcomes. In recognition of this research, the average length of UK care proceedings is now 26 weeks. Excessive length in concluding public law

proceedings also has significant cost implications as a result of the extensive use of experts and barristers.

4.7 It has been difficult to calculate the total cost of these proceedings due to the wide range of services involved in the cases but the estimated total is £435,000:

- Court Service – £170,000 to cover counsel’s fees & Skype
- Attorney General’s Chambers – £104,000 to cover counsel’s fees and some expert costs
- Central services – £116,000 was spent on various visiting specialists/training/sampling and foster carers in connection with the case (and the figure so far for this financial year is an additional £45,000)

4.8 The proposed new legislation is based upon early identification and intervention which are at the heart of reducing timescales for concluding public law proceedings in the UK. This approach can also reduce the need for proceedings, with all the unintended negative impact of adversarial processes upon children, parents and carers, wider family and community. This approach can also significantly reduce the potential future costs to the Falkland Islands Government.

5.0 Key proposals

5.1 The purpose of this section is not to identify every single difference between the existing (1994) Children Ordinance and the proposed new Ordinance set out in the draft Bill attached to this paper as Annex B and for which Executive Council’s approval is being sought. Instead, the purpose of this section is to highlight the key areas in which the most significant changes are being proposed and to set out the justification for those changes.

Key proposals

5.2 There are four key proposals:

- To enable unmarried birth fathers to have parental responsibility automatically if their name is registered on the child’s birth certificate
- To introduce duties on FIG towards children in need of support and accommodation
- To introduce regulation for private fostering arrangements
- To place the Falkland Islands Safeguarding Children Board (FISCB) on a statutory basis

To enable unmarried birthfathers to have parental responsibility automatically if their name is registered on the child's birth certificate

- 5.3 This reflects the way in which this community chooses to live; as in other parts of the world, couples are not necessarily getting married but are successfully raising children in a family unit. Over the last 10 years, 33% of births registered have been to unmarried parents. If an unmarried father wishes to gain parental responsibility for his child, he must apply to the court and pay a court fee of £110, whether or not it is with the mother's agreement. This represents a barrier to the legal parental responsibility of fathers. It is inequitable and causes unnecessary complexity in any subsequent private or public law proceedings.
- 5.4 In recognition of this fact, UK law was amended in 2002 to provide for an unmarried birth father to automatically acquire legal parental responsibility for his child if he is registered as the father on the child's birth certificate after 1 December 2003.
- 5.5 The impact of registering the birth father's name on the birth certificate is to provide him with equal parental rights and responsibilities to the child. It augments the identity of the child and provides additional security, sense of belonging and emotional permanence for the child.
- 5.6 It is recommended that a similar amendment is made in the (1994) Children Ordinance as well and that it should be brought into force after a lead in period of 1 year.

To introduce duties on FIG towards children in need of support and accommodation

- 5.7 In the UK, Part 3 of the Children Act 1989 deals specifically with support for children and families and provides for a comprehensive set of duties on local authorities to assess the needs of children whose welfare, development or safety may be compromised and to provide early support for families in need, allowing preventive intervention at an early stage in order to prevent family breakdown.
- 5.8 There are no similar provisions in the existing Children Ordinance. The absence of statutory provision means that there is, currently, no legal framework within which FIG can provide early help for families to prevent an escalation of concerns that can lead to costly legal proceedings.
- 5.9 The impact is that there are no early planned interventions and support to address emerging problems and potentially unmet needs, particularly for the more vulnerable sectors of the community, such as:
- children in families where they provide a caring role (young carers)
 - children with disabilities (and members of families in which someone has a disability);

- children with special educational needs;
 - children who live in families where one or more parents/carers suffer from mental health problems;
 - children who witness domestic violence (and members of families in which there is domestic violence);
 - children who live in families involved in criminal activity; and
 - children who live in families where there are problems with substance misuse.
- 5.10 Research shows that children living in families beset by these problems are more likely to suffer harm and poor long-term outcomes. Under the Children Ordinance 1994, the children born into these families have not been highlighted as potentially having additional needs and this has been exacerbated by the lack of a comprehensive data base.
- 5.11 Without an early help strategy, it has been difficult for professionals to identify when the threshold for assessment and potential intervention is reached and what plan of intervention is appropriate to support and provide help to address any of those assessed needs and risks. Without this approach there is a risk that children are left at risk of harm. There is no legal authority for professionals to be proactive and prevent needs escalating into risks and problems into crises.
- 5.12 The provision of a legal framework for early intervention will enable there to be a proper record of help provided and a chronology of involvement which professionals can then audit and determine whether the intervention has had a positive and long term impact on the capacity of parents to provide consistent and safe care.
- 5.13 It will also address an early assessment of the parents/family dynamics and the child's needs to identify any parenting gap and whether the necessary changes can be achieved and sustained by the parents within the child's timeframe or whether additional support or an alternative care arrangement is required to protect the child and optimise their outcomes.
- 5.14 The introduction of children in need services as part of a revised Children Ordinance will open the door to early help and preventative work, which will have the multiple benefits of:
- (1) addressing needs before they develop into risks and problems before they develop into crises requiring state intervention;
 - (2) creating a detailed knowledge base on which to review the effectiveness of intervention and to plan a course of action if the preventative work has failed; and
 - (3) enabling professionals to act quickly to secure better outcomes for the child (rather than starting from scratch or starting again which has led to significant delays and the instructions of experts).

5.15 The Bill seeks to place duties upon FIG to provide accommodation to children who are assessed as being unable to live safely with their birth family. Whilst this is not a frequent requirement, under the existing legislation, it remains wholly unregulated which has led to emergency or unplanned moves.¹

5.16 Even after a child is in the care of the Crown, there are no mechanisms to support the smooth transition from childhood to adulthood because the (1994) Children Ordinance has no 'leaving care' obligations. Failure to provide support to these young people can have significant impact upon their capabilities as parents and lead to a cycle of neglect and maltreatment. The proposed changes put in place requirements for FIG to provide the necessary support and will also dovetail into the Vulnerable Persons Strategy.

To introduce regulation for private fostering arrangements

5.17 If a child is living with friends of the family by private arrangement (which has been the case in the two lengthy sets of care proceedings referred to above), there is currently no requirement to undertake even the most basic check as to the suitability of the arrangement to meet the child's needs. The Bill seeks to address this by introducing provisions to regulate private fostering to a limited extent.

To place the FISCB on a statutory basis

5.18 The draft Bill also includes provisions that would place the FISCB onto a statutory basis which would formalise the existing arrangements of the FISCB and ensure that all agencies understand the need and are committed to working together to improve outcomes for children including case review, audit and quality assurance. Under the new provisions, agencies and professionals will have increased accountability to the FISCB if good practice is not maintained in accordance with the policy document of Working Together 2013.

Summary of key policy questions for Executive Council

5.19 The following are the key policy questions for Executive Council:

- (1) Should an unmarried father automatically acquire parental responsibility for his child if he is registered as the father on the child's birth certificate (and should there be a lead in period of 1 year for this)?
- (2) Should FIG accept the proposed new duties to undertake an assessment and to provide support for children in need and their families (to avoid or reduce child protection risks and the need for court proceedings)?

¹ As an example, in one recent case, the social workers involved had to move out of their own accommodation in order to provide emergency accommodation for a vulnerable family unable to remain in their family home.

- (3) Should limited regulation of private fostering arrangements be introduced?
- (4) Should the FISCB be put onto a statutory basis?

6.0 Draft Bill

- 6.1 A Bill has been drafted for a new Children Ordinance to replace the existing (1994) Ordinance and incorporating the key proposals set out in section 5 and a number of more technical changes. The draft Bill is attached to this paper as Annex A.
- 6.2 An Explanatory Memorandum on the draft Bill has been produced and is attached to this paper as Annex C. This explains the provisions of the draft Bill in some detail.

7.0 Consultation, training and awareness-raising

- 7.1 The draft Bill reflects the recommendations made by the Lucy Faithfull Foundation and also results from a lengthy period of reflection by and consultation amongst the professionals involved in child protection including at the FISCB meetings; as part of a working group consultation and on an individual interview basis with crown counsel (child protection).
- 7.2 For that reason and to maintain momentum, it is proposed that there is no need for a period of public consultation on the draft Bill (although it would be published in the *Gazette* in the normal way). What is proposed instead is that there should be a programme of training on and awareness-raising about the new Ordinance.

8.0 Financial Implications

- 8.1 It is hoped that the implementation of the Bill will result in much improved services for children and whilst funds will need to be set aside to support the work of the social work team particularly with regard to the sections of the Bill to support children in need, in the long term there could be a significant reduction in requests for additional funds to FIG given the significant monies spent on the legal proceeding (see paragraph 4.7). The financial implications of this Bill have been discussed between the Crown Counsel, Social Work Team Leader and the Director of Health. At this stage it is difficult to be precise about what will be required but it is suggested that the following be budgeted for. This has been reflected in the budget submission for 2014/2015 where more accurate vote lines are created. These are:
 - (i) Child protection £45,000 (existing funding) (£95,000 already approved in 2013/14)
 - (ii) Fostering payments £50,000 (not a specific line in 2013/14 but incorporated in the Child Protection vote but funded). It is required

because of the proposed new legislation and the increased demand following recent safeguarding events.

- (iii) Children in need £50,000 – this is a new line because of the duty on the Crown to identify children in need and safeguard their welfare and to reduce the steps to reduce the need for child protection.
- (iv) Respite expenses £20,000 – again this is a new line to meet the requirements of the legislation which requires the Crown to promote the welfare of children with disabilities.

8.2 The budget for 2013/14 for children in need and child protection and fostering was largely subsumed within one vote. This did not accurately reflect the nature of the work or the funding required. The net cost of the Bill in 2014/15 is £70,000. This excludes the cost of emergency housing which is already funded. It is estimated that a further £17,500 will be required in the coming year to meet the needs of this Bill particularly in regard to supporting children in need. This figure could include help with nursery costs, clothing and heating.

8.3 Any sums required in excess of those detailed above, to ensure FIG can meet the new obligations outlined in the Bill, would require subsequent approval at the appropriate time.

9.0 Legal Implications

9.1 The legal implications of this paper are largely set out elsewhere.

9.2 It should, however, be mentioned – for completeness – that the draft Bill does not contain provisions corresponding to those in UK legislation about civil partners and the automatic acquisition of parental responsibility by the same-sex partner of a child's mother. There is a risk that, if challenged, these omissions might be found contrary to the prohibition on discrimination in section 16 of the Constitution. However, the risk of successful challenge is not considered significant and this is an issue that would have to be considered in a wider context than just in relation to the draft Bill.

9.3 There are a number of places in which the draft Bill creates powers for the Governor (who would – normally – have to act on the advice of Executive Council) to make subsidiary legislation, in particular about the detailed implementation of the new provisions in Part 3/Schedule 2 about support for children and families and Part 6/Schedule 4 about fostering. It is not proposed to make any subsidiary legislation immediately, at least partly to allow the implementation of the new provisions to be monitored. A provision has been included in the draft Bill (clause 97) which would allow corresponding legislation in the UK to be used as a source of guidance in the meantime – this parallels provisions about rules of court that have been carried over from the existing Children Ordinance to the draft Bill

9.4 The Constitution is also referred to in the Convention on the Rights of the Child Report from the Falkland Islands Government dated July 2013 which

reflects the current issues that the Children bill seeks to address; attached at Annex C.

10.0 Human Resources Implications

- 10.1 The human resource implications are primarily training ones and this is being addressed. However, FIG will need to consider how to maintain the training input that new staff will require so that all staff are aware of the Bill and the supporting procedures.
- 10.2 Additional social work support may be required to undertake the early help assessments and to support families on the brink of crises. This will be reviewed once the full impact of the Bill has been assessed and the current full complement of social workers are in post.

ExCo paper 28/14 (Children Bill): Supplementary note

At a late stage of drafting the Children Bill, a very specific issue about the compatibility of provisions in the Bill with the Constitution was identified:

- Paragraphs 4 and 5 of Schedule 3 to the Bill deal with the ability of a court to include requirements for medical and psychiatric examinations and treatment in supervision orders. There are corresponding provisions in the existing Children Ordinance.
- These provisions allow the court to impose requirements for children to be examined or treated in the UK in cases where the examination or treatment is necessary but cannot be carried out in the Falkland Islands.
- However, this has to be read in conjunction with section 8 of the Constitution which protects freedom of movement.
- Section 8 distinguishes between two categories of people:
 - The first category is made up of those who belong to the Falkland Islands (ie who have Falkland Islands Status (FIS)) and those who have a permanent right to remain in the Falkland Islands (PRR).
 - The second category is made up of those who do not have either FIS or PRR.
- Those who have FIS or PRR have specific rights to enter, remain in and leave the Falkland Islands, as well as the right to move freely throughout the Falkland Islands and to reside in any part of the Islands.
- Those who do not have FIS or PRR do not have specific rights to enter, remain in and leave the Falkland Islands. However, while they are lawfully present in the Falkland Islands, they have the right to move freely throughout the Islands and reside in any part of them.
- Section 8 is not unqualified but it is considered that it does, to some extent, limit the scope for children to be sent away from the Islands for examination and/or treatment:
 - In relation to children who have FIS or PRR, it is considered that the qualifications in section 8 would only allow a child to be sent away from the Falkland Islands against its will for psychiatric treatment that is necessary in the interests of the child or to protect the public and which cannot be provided in the Islands – this is an exception that applies to everyone under section 8(3)(h) of the Constitution.
 - Children who do not have FIS or PRR but who are lawfully present here (for example, as dependents on a work permit or residence permit) have more limited rights under section 8. However, it is considered

that sending a child away for examination and/or treatment against its will could infringe the child's section 8 rights in certain circumstances.

These are not new issues arising from the version of the Constitution that came into force on 1 January 2009: section 6 of the 1985 version of the Constitution was very similar to section 8 – although it did not contain an exception equivalent to section 8(3)(h). However, these issues do not appear to have been addressed in the existing Children Ordinance.

Amended provisions (which are considered to be compliant with section 8) have now been drafted to replace paragraphs 4 and 5 of Schedule 3.

These still allow the court to include requirements for examinations and/or treatment outside the Falkland Islands in supervision orders, but only if the examination and/or treatment cannot be carried out in the Falkland Islands and, even then, only in three situations:

- The first is if the child has consented and the child has sufficient understanding to give that consent – this is because the child's rights under section 8 are the child's to waive.
- The second is if psychiatric treatment is necessary in the interests of the child or to protect the public – this reflects an exception in section 8 itself.
- The third only applies to children who do not have FIS or PRR and is if the court is satisfied that the child's section 8 rights are not infringed.

Although there is no explicit reference to the section 8 rights of children who do have FIS or PRR, that is because the third exception does not apply to them in the first place: children with FIS or PRR can only be sent away for treatment under a supervision order if they consent or if the exception for psychiatric treatment applies.

This does potentially leave a gap where the court considers that the examination and/or treatment is necessary for the protection of the child but the child does not have sufficient understanding to give or withhold consent. Cases in which that arises could not be resolved through the supervision order process, but alternative remedies might still be available through the use of care order or wardship proceedings.

Although the section 8 rights of the child belong to the child and not to the parents, the parents would have an opportunity to make representations to the court before a supervision order is made or a requirement for examination and/or treatment is included in a supervision order.

The possibility of introducing an additional specific qualification to section 8 to deal with medical and psychiatric examinations and medical treatment (as well as the existing one for psychiatric treatment that was introduced in 2008) might well have to be looked at when the Constitution is next reviewed. However, in the meantime, the Children Bill has to be considered within the current Constitution.

The opportunity has also been taken when redrafting paragraphs 4 and 5 to allow for examinations and/or treatment outside the Islands to be carried out somewhere other than the UK – this is mainly intended to allow for examinations and/or treatment to be carried out in Chile.

The draft Bill now incorporates the new versions of paragraphs 4 and 5 of Schedule 3 and a number of minor corrections identified during a peer review process.

Additional text has been included in the Explanatory Memorandum in an effort to provide information to those reading the Bill.

Children Bill 2014

(No: of 2014)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – INTRODUCTORY (including CA, Pt 1 and s 105)

1. Title
2. Commencement
3. Interpretation (CA, s 105)

Welfare of the child

4. Welfare of the child (CA, s1)

Parental responsibility

5. Parental responsibility for children (CA, s2)
6. Meaning of “parental responsibility” (CA, s3)
7. Acquisition of parental responsibility by father (CA, s4)
8. Acquisition of parental responsibility by step-parent (CA, s4A)
9. Appointment of guardians (CA, s5)
10. Guardians: revocation and disclaimer (CA, s6)

Welfare reports

11. Welfare reports (CA, s7)

PART 2 – ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS (CA, Pt 2)

General

12. Residence, contact and other orders with respect to children (CA, s8)
13. Restrictions on making section 12 orders (CA, s9)
14. Power of court to make section 12 orders (CA, s10)
15. General principles and supplementary provisions (CA, s11)
16. Residence orders and parental responsibility (CA, s12)
17. Change of child’s name or removal from jurisdiction (CA, s13)
18. Enforcement of residence orders (CA, s14)

Financial relief

19. Orders for financial relief with respect to children (CA, s15)

Family assistance orders

20. Family assistance orders (CA, s16)
21. Risk assessments (CA, s16A)

PART 3 – SUPPORT FROM CROWN FOR CHILDREN AND FAMILIES (CA, Pt 3)

Provision of services for children and their families

22. Provision of services for children in need, their families and others (CA, s17)

Provision of accommodation for children

23. Provision of accommodation for children: general (CA, s20)
24. Provision of accommodation for children in police protection or detention or on remand, etc (CA, s21)

Duties of Crown in relation to children looked after by it

25. General duty of Crown in relation to children looked after by it (CA, s22)
26. Provision of accommodation for children in care (CA, s 22A)
27. Maintenance of looked after children (CA, s 22B)
28. Ways in which looked after children are to be accommodated and maintained (CA, s22C)
29. Review of child's case before making alternative arrangements for accommodation (CA, s 22D)
30. Regulations as to children looked after by Crown (CA, s22F)
31. General duty of Crown to secure sufficient accommodation for looked after children (CA, s 22G)

Visiting

32. Duty of Crown to ensure visits to, and contact with, looked after children and others (CA, s23ZA)
33. Independent visitors for children looked after by Crown (CA, s23ZB)

Advice and assistance for certain children and young persons

34. Relevant children (CA, s23A)
35. Additional functions of Crown in respect of relevant children (CA, s23B)
36. Continuing functions in respect of former relevant children (CA, s 23C)
37. Further assistance to pursue education or training (CA, s23CA)

Personal advisers and pathway plans

38. Personal advisers (CA, s23D)
39. Pathway plans (CA, s23E)
40. Persons qualifying for advice and assistance (CA, s24)
41. Advice and assistance (CA, s24A)
42. Employment, education and training (CA, s24B)
43. Representations: sections 34 to 42 (CA, s24D)

Review etc

44. Review of cases and inquiries into representations (CA, s26)
45. Advocacy services (CA, s26A)

Charges for services

46. Recoupment of cost of providing services etc (CA, s29)

Miscellaneous

47. Miscellaneous (CA, s30)

PART 4 – CARE AND SUPERVISION (CA, Pt 4)

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48. Care and supervision (CA, s31)
49. Care orders: care plans (CA, s31A)
50. Period within which application for order under this Part must be disposed of (CA, s32)

Care orders

51. Effect of care order (CA, s33)
52. Parental contact etc with children in care (CA, s34)

Supervision orders

53. Supervision orders (CA, s35)
54. Education supervision orders (CA, s36)

Powers of court

55. Powers of court in certain family proceedings (CA, s37)
56. Interim orders (CA, s38)
57. Power to include exclusion requirement in interim care order (CA, s38A)
58. Undertakings relating to interim care orders (CA, s38B)
59. Discharge and variation etc. of care orders and supervision orders (CA, s39)
60. Orders pending appeals in cases about care or supervision orders (CA, s40)

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64. Orders for emergency protection of children (CA, s44)
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66. Undertakings relating to emergency protection orders (CA, s 44B)
67. Duration of emergency protection orders and other supplemental provisions (CA, s45)
68. Removal and accommodation of children by police in cases of emergency (CA, s46)
69. Crown’s duty to investigate (CA, s47)
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PART 6 –FOSTERING (CA, Pt 9)

74. Privately fostered children (CA, s66)
75. Welfare of privately fostered children (CA, s67)
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Schedule 4 Additional provisions about powers of arrest attached to exclusion requirements (Family Law Act 1996, ss47(7) and (12) and 48 and Sch 5)

Schedule 5 Fostering (CA, Schs 7 & 8)

Schedule 6 Modifications to UK legislation (as it applies in Falkland Islands)

CHILDREN BILL 2014

(No: of 2014)

(assented to: 2014)
(commencement: see section 2)
(published: 2014)

A BILL

for

AN ORDINANCE

To repeal and replace the Children Ordinance 1994 (No 28 of 1994)

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 INTRODUCTORY (including CA, Pt1 and s105)

1. Title

This Ordinance is the Children Ordinance 2014.

2. Commencement

(1) This Ordinance comes into force on a day appointed by the Governor by notice published in the *Gazette*.

(2) The Governor may appoint different days for different provisions or purposes (or both).

3. Interpretation (CA, s105)

(1) In this Ordinance —

"care order" means an order under section 48(1)(a) and any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Ordinance and (except where express provision to the contrary is made) includes an interim care order made under section 56(1);

"child" means, subject to paragraph 15(1) of Schedule 1, a person under the age of 18;

"child assessment order" has the meaning given by section 63;

"child in the care of the Crown" means a child who is in the care of the Crown by virtue of a care order;

"child of the family", in relation to the parties of a marriage, means —

(a) a child of both of those parties;

(b) any other child, not being a child who is placed with those parties as foster parents by the Crown, who has been treated by both of those parties as a child of their family;

"contact order" has the meaning given by section 12(1);

"court", in so far as is consistent with the context, means —

(a) the Supreme Court;

(b) the Magistrate's Court; and

(c) subject to section 84 and any order having effect under it, the Summary Court;

"court of summary jurisdiction" means the Magistrate's Court and the Summary Court;

"a family assistance order" means an order under section 20;

“education supervision order” has the meaning given by section 54(1);

“emergency protection order” means an order under section 64;

“family proceedings” has the meaning given by section 12(3);

“functions” includes powers and duties;

“guardian” means a guardian appointed under section 9;

"parental responsibility" has the meaning given by section 6;

“pathway plan” has the meaning given by section 39(1);

"prohibited steps order" has the meaning given by section 12(1);

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage);

“residence order” has the meaning given by section 12(1);

"section 12 order" has the meaning given by section 12(2);

“section 49 plan” has the meaning given by section 49(5);

“service”, in relation to any provision made under Part 3, includes any facility;

"specific issue order" has the meaning given by section 12(1);

"supervised child" and "supervisor", in relation to a supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision the child is (or is to be) by virtue of the order;

"supervision order" means an order under section 48(1)(b) of this Ordinance and (except in relation to a provision of this Ordinance as to which express provision to the contrary is made) includes an interim supervision order under section 56(1);

"upbringing", in relation to any child, includes the care of the child but not the child's maintenance; and

"voluntary organisation" means a body (other than the Crown or a public body) whose activities are not carried on for profit.

(2) References in this Ordinance to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of the child's birth must be read with section 2 of the Family Law Reform Ordinance (No 15 of 2004), which extends the meaning of such references.

(3) References in this Ordinance to —

- (a) a person with whom a child lives, or is to live, as the result of a residence order; or
- (b) a person in whose favour a residence order is in force,

are to be construed as references to the person named in the order as the person with whom the child is to live.

(4) References in this Ordinance to a child being looked after by the Crown have the same meaning as they have (by virtue of section 25) in Part 3.

(5) References in this Ordinance to children who are in need are to be construed in accordance with section 22(11).

(6) Any notice or other document required under this Ordinance to be served on any person may be served on that person by —

- (a) being delivered personally to the person; or
- (b) being sent by post to the person in a registered letter at the person's proper address.

(7) Any such notice or other document required to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm.

- (8) For the purposes of subsection (6) of this section, the proper address of a person —
- (a) in the case of a secretary or clerk of a body corporate, is that of the registered or principal office of that body;
 - (b) in the case of a partner of a firm, is that of the principal office of the firm; and
 - (c) in any other case, is the last known address of the person to be served.

Welfare of the child

4. Welfare of the child (CA, s1)

- (1) When a court determines any question with respect to —
- (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,
- the child's welfare must be the court's paramount consideration.
- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court must have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
- (3) In the circumstances mentioned in subsection (4), a court must have regard in particular to —
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding);
 - (b) the child's physical, emotional and educational needs;
 - (c) the likely effect on the child of any change in the child's circumstances;
 - (d) the child's age, sex, background and any characteristics of the child's which the court considers relevant;
 - (e) any harm which the child has suffered or is at risk of suffering;
 - (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
 - (g) the range of powers available to the court under this Ordinance in the proceedings in question.
- (4) The circumstances are that —

(a) the court is considering whether to make, vary or discharge a section 12 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge an order under Part 4.

(5) Where a court is considering whether or not to make one or more orders under this Ordinance with respect to a child, it must not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

Parental responsibility

5. Parental responsibility for children (CA, s2)

(1) Where a child's father and mother were married to each other at the time of the child's birth, they each have parental responsibility for the child.

(2) Where a child's father and mother were not married to each other at the time of the child's birth (which must, in accordance with section 3(2) be read with section 2 of the Family Law Reform Ordinance) —

(a) the mother has parental responsibility for the child;

(b) the father will have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the provisions of this Ordinance.

(3) More than one person may have parental responsibility for the same child at the same time.

(4) A person who has parental responsibility for a child at any time does not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(5) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part affects the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(6) The fact that a person has parental responsibility for a child does not entitle that person to act in any way which would be incompatible with any order made with respect to the child under this Ordinance.

(7) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on behalf of the person with parental responsibility.

(8) The person with whom any such arrangement is made may be a person who already has parental responsibility for the child concerned.

(9) The making of any such arrangement does not affect any liability of the person making it which may arise from any failure to meet any part of that person's parental responsibility for the child concerned.

6. Meaning of "parental responsibility" (CA, s3)

(1) In this Ordinance, "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property.

(2) It also includes the rights, powers and duties which a guardian of the child's estate (appointed to act generally before the Children Ordinance 1994 came into force on 1 January 1995) would have had in relation to the child and the child's property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in the guardian's own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(4) The fact that a person has, or does not have, parental responsibility for a child does not affect —

(a) any obligation which that person may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which, in the event of the child's death, that person (or any other person) may have in relation to the child's property.

(5) A person who —

(a) does not have parental responsibility for a particular child; but

(b) has care of the child,

may (subject to the provisions of this Ordinance) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

7. Acquisition of parental responsibility by father (CA, s4)

(1) Where a child's father and mother were not married to each other at the time of the child's birth (which must, in accordance with section 3(2) be read with section 2 of the Family Law Reform Ordinance), the father will acquire parental responsibility for the child if —

(a) he becomes registered as the child's father under section 6 of the Registration Ordinance (Title 62.2);

(b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or

- (c) the court, on his application, orders that he is to have parental responsibility for the child.
- (2) A parental responsibility agreement will be of no effect until it has been approved by an order of a court made under this subsection on the application of either the father or the mother.
- (3) The approval by a court of a parental responsibility agreement may be subject to such amendments to the agreement as are specified in the order of the court and the parental responsibility agreement will have effect subject to any amendments so specified.
- (4) An order under subsection (1)(c) or a parental responsibility agreement may only be brought to an end by an order of the court made on the application —
 - (a) of any person who has parental responsibility for the child; or
 - (b) with the leave of the court, of the child.
- (5) The court may only grant leave under subsection (4)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

8. Acquisition of parental responsibility by step-parent (CA, s4A)

- (1) Where a child's parent ("parent A") who has parental responsibility for the child is married to a person who is not the child's parent ("the step-parent") —
 - (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or
 - (b) the court may, on the application of the step-parent, order that the step-parent is to have parental responsibility for the child.
- (2) An agreement under subsection (1)(a) is also a "parental responsibility agreement", and section 7(2) and 7(3) apply in relation to such agreements as they do in relation to parental responsibility agreements under section 7.
- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application —
 - (a) of any person who has parental responsibility for the child; or
 - (b) with the leave of the court, of the child.
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

9. Appointment of guardians (CA, s5)

(1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if —

(a) the child has no parent with parental responsibility for the child; or

(b) a residence order has been made with respect to the child in favour of a parent or guardian of the child who has died while the order was in force.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that the order should be made even though no application has been made for it.

(3) A parent who has parental responsibility for a child may appoint another individual to be the child's guardian in the event of the parent's death.

(4) A guardian of a child ("the original guardian") may appoint another individual to take the original guardian's place as the child's guardian in the event of the original guardian's death.

(5) An appointment under subsection (3) or (4) will not have effect unless it is made in writing, is dated and is signed by the person making the appointment or —

(a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 1837 (as it applies in the Falkland Islands); or

(b) in any other case, is signed at the direction of the person making the appointment, in that person's presence and in the presence of two witnesses who each attest the signature.

(6) A person appointed as a child's guardian under this section will have parental responsibility for the child concerned.

(7) Where —

(a) on the death of any person making an appointment under subsection (3) or (4), the child concerned has no parent with parental responsibility for the child; or

(b) immediately before the death of any person making such an appointment, a residence order in that person's favour was in force with respect to the child,

the appointment will take effect on the death of that person.

(8) Where, on the death of any person making an appointment under subsection (3) or (4) —

(a) the child concerned has a parent with parental responsibility for the child; and

(b) subsection (7)(b) does not apply,

the appointment will take effect when the child no longer has a parent who has parental responsibility for the child.

(9) Subsections (1) and (7) do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.

(10) Nothing in this section prevents an appointment under subsection (3) or (4) being made by two or more persons acting jointly.

(11) Subject to any provision made by rules of court, a court must not exercise the Supreme Court's inherent jurisdiction to appoint a guardian of the estate of any child.

(12) Where rules of court are made under subsection (11) they may prescribe the circumstances in which, and conditions subject to which, an appointment of such a guardian may be made.

(13) A guardian of a child may only be appointed in accordance with the provisions of this section.

10. Guardians: revocation and disclaimer (CA, s6)

(1) An appointment under section 9(3) or (4) revokes an earlier appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) An appointment under section 9(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed —

(a) by the person making the appointment; or

(b) at the direction of the person making the appointment, in the presence of that person and in the presence of two witnesses who each attest the signature.

(3) An appointment under section 9(3) or (4) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it —

(a) destroys the instrument by which it was made; or

(b) has some other person destroy that instrument in the presence of the person who made it.

(4) An appointment under section 9(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person appointed is the spouse of the person who made the appointment and either —

- (a) a decree of a court in the Falkland Islands dissolves or annuls the marriage, or
- (b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in the Falkland Islands by virtue of Part 5 of the Matrimonial Causes Ordinance (Title 38(2).5),

unless a contrary intention appears by the appointment.

(5) For the avoidance of doubt, an appointment under section 9(3) or (4) made in a will or codicil is revoked if the will or codicil is revoked.

(6) A person who is appointed as a guardian under section 9(3) or (4) may disclaim the appointment by an instrument in writing signed by that person and made within a reasonable time of that person first knowing that the appointment has taken effect.

(7) Where regulations are made by the Governor prescribing the manner in which such disclaimers must be recorded, no such disclaimer will have effect unless it is recorded in the prescribed manner.

(8) Any appointment of a guardian under section 9 may be brought to an end at any time by order of the court —

- (a) on the application of any person who has parental responsibility for the child;
- (b) on the application of the child concerned, with leave of the court; or
- (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

Welfare reports

11. Welfare reports (CA, s7)

(1) A court considering any question with respect to a child under this Ordinance may ask the Crown to arrange for —

- (a) a public officer; or
- (b) such other person as the Crown considers appropriate,

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The Chief Justice may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section.

- (3) The report may be made in writing, or orally, as the court requires.
- (4) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of —
- (a) any statement contained in the report; and
 - (b) any evidence given in respect of the matters referred to in the report,
- in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.
- (5) It is the duty of the Crown to comply with any request for a report under this section.

PART 2
ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS (CA, Pt 2)

General

12. Residence, contact and other orders with respect to children (CA, s8)

(1) In this Ordinance —

“a contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

“a prohibited steps order” means an order that no step which could be taken by a parent in meeting the parent’s parental responsibility for a child, and which is of a kind specified in the order, may be taken by any person without the consent of the court;

“a residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and

“a specific issue order” means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) In this Ordinance “a section 12 order” means any of the orders mentioned in subsection (1) and any order varying or discharging such an order.

(3) In this Ordinance "family proceedings" means any proceedings —

- (a) in the inherent jurisdiction of the Supreme Court in relation to children;
- (b) under any of the following enactments —

- (i) Parts 1, 2 and 4 of this Ordinance;
- (ii) the Matrimonial Causes Ordinance (Title 38(2).5);
- (iii) the Matrimonial Proceedings (Summary Jurisdiction) Ordinance (Title 38(2).6);
- (iv) the Matrimonial Proceedings (Domestic Violence) Ordinance (No 7 of 1994);
- (v) the Adoption Act 1976 (as it applies in the Falkland Islands);
- (vi) any other enactment specified by Ordinance for the purposes of this definition (or the corresponding definition in the Children Ordinance 1994)

13. Restrictions on making section 12 orders (CA, s9)

- (1) A court must not make a section 12 order, other than a residence order, with respect to a child who is in the care of the Crown.
- (2) The Crown must not make an application for a residence order or a contact order and a court must not make such an order in favour of the Crown.
- (3) A person who is, or was at any time within the last six months, a foster parent who was looking after a child on behalf of the Crown may not apply for leave to apply for a section 12 order with respect to that child unless —
 - (a) that person has the consent of the Crown;
 - (b) that person is a relative of the child; or
 - (c) the child has lived with that person for at least 1 year preceding the application.
- (4) A court must not exercise its powers to make a specific issue order or prohibited steps order —
 - (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
 - (b) in any way which is denied to the Supreme Court (by section 91) in the exercise of its inherent jurisdiction with respect to children.
- (5) A court must not make a specific issue order, contact order or prohibited steps order that will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.
- (6) A court must not make any section 12 order, other than one varying or discharging such an order, with respect to a child who has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.

14. Power of court to make section 12 orders (CA, s10)

(1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 12 order with respect to the child if —

(a) an application for the order has been made by a person who —

(i) is entitled to apply for a section 12 order with respect to the child; or

(ii) has obtained the leave of the court to make the application; or

(b) the court considers that the order should be made even though no such application has been made.

(2) The court may also make a section 12 order with respect to any child on the application of a person who —

(a) is entitled to apply for a section 12 order with respect to the child; or

(b) has obtained the leave of the court to make the application.

(3) This section is subject to the restrictions imposed by section 13.

(4) The following persons are entitled to apply to the court for any section 12 order with respect to a child —

(a) any parent or guardian of the child;

(b) any person who has parental responsibility for the child by virtue of section 8;

(c) any person in whose favour a residence order is in force with respect to the child.

(5) The following persons are entitled to apply for a residence order or a contact order with respect to a child —

(a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;

(b) any person with whom the child has lived for a period of at least 3 years;

(c) any person who —

(i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;

(ii) in any case where the child is in the care of the Crown, has the consent of the Crown;
or

(iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.

(6) A foster parent who is, or has been, looking after a child on behalf of the Crown is entitled to apply for a residence order with respect to a child if the child has lived with that foster parent for a period of at least 1 year immediately preceding the application.

(7) A relative of a child is entitled to apply for a residence order with respect to the child if the child has lived with the relative for a period of at least 1 year immediately preceding the application.

(8) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for the variation or discharge of a section 12 order is entitled to do so if —

(a) the order was made on that person's application; or

(b) in the case of a contact order, that person is named in the order.

(9) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such section 12 order as may be prescribed in relation to that category of person.

(10) Where the person applying for leave to make an application for a section 12 order is the child concerned, the court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application for the section 12 order.

(11) Where the person applying for leave to make an application for a section 12 order is not the child concerned, the court must, in deciding whether or not to grant leave, have particular regard to —

(a) the nature of the proposed application for the section 12 order;

(b) the applicant's connection with the child;

(c) any risk there might be of that proposed application disrupting the child's life to such an extent that the child would be harmed by it; and

(d) where the child is being looked after by the Crown —

(i) the Crown's plans for the child's future; and

(ii) the wishes and feelings of the child's parents.

(12) The period of 3 years mentioned in subsection (5)(b) need not be continuous but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application.

15. General principles and supplementary provisions (CA, s11)

(1) In proceedings in which any question of making a section 12 order, or any other question with respect to such an order, arises, the court must (in the light of any rules made by virtue of subsection (2)) —

(a) draw up a timetable with a view to determining the question without delay; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

(2) Rules of court may —

(a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and

(b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.

(3) Where a court has power to make a section 12 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(5) Where —

(a) a residence order has been made with respect to a child; and

(b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for the child,

the residence order will cease to have effect if the parents live together for a continuous period of more than 6 months.

(6) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, the child's other parent will cease to have effect if the parents live together for a continuous period of more than 6 months.

(7) A section 12 order may —

- (a) contain directions about how it is to be carried into effect;
- (b) impose conditions which must be complied with by any person —
 - (i) in whose favour the order is made;
 - (ii) who is a parent of the child concerned;
 - (iii) who is not a parent of the child but who has parental responsibility for the child; or
 - (iv) with whom the child is living,

and to whom the conditions are expressed to apply;

(c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;

(d) make such incidental, supplemental or consequential provision as the court thinks fit.

16. Residence orders and parental responsibility (CA, s12)

(1) Where the court makes a residence order in favour of the father of a child it must, if the father would not otherwise have parental responsibility for the child, also make an order under section 7(1)(c) giving him that responsibility.

(2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person has parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child as a result of subsection (2), that person does not have the right —

(a) to consent, or refuse to consent, to the making of an application with respect to the child under section 18 of the Adoption Act 1976 (as it applies in the Falkland Islands);

(b) to agree, or refuse to agree, to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 (as it applies in the Falkland Islands), with respect to the child; or

(c) to appoint a guardian for the child.

(4) Where subsection (1) requires the court to make an order under section 7(1)(c) in respect of the father of a child, the court must not bring that order to an end at any time while the residence order concerned remains in force.

17. Change of child's name or removal from jurisdiction (CA, s13)

(1) Where a residence order is in force with respect to a child, no person may —

- (a) cause the child to be known by a new surname; or
- (b) remove the child from the Falkland Islands;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than 2 months, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified purposes.

18. Enforcement of residence orders (CA, s14)

(1) Where —

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by that order,

the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) is complied with, enforce the order under section 63(3) of the Magistrates' Courts Act 1980 (as it applies in the Falkland Islands) as if it were an order requiring the other person to produce the child to the person enforcing the order.

(2) The requirement is that a copy of the residence order has been served on the other person.

(3) Subsection (1) is without prejudice to any other remedy open to the person in whose favour the residence order is in force.

Financial relief

19. Orders for financial relief with respect to children (CA, s15)

(1) Schedule 1 makes provision in relation to financial relief for children.

(2) The powers of a magistrates' court under section 60 of the Magistrates' Courts Act 1980 (as it applies in the Falkland Islands) to revoke, revive or vary an order for the periodical payment of money and the power of the clerk of a magistrates' court to vary such an order do not apply in relation to an order made under Schedule 1.

Family assistance orders

20. Family assistance orders (CA, s16)

(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring the

Crown to make a suitable person (who need not be a public officer) available to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this section (“a family assistance order”) are —

(a) any parent or guardian of the child;

(b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;

(c) the child.

(3) A court must not make a family assistance order unless it has obtained the consent of every person to be named in the order other than the child.

(4) A family assistance order may direct —

(a) the person named in the order; or

(b) such of the persons named in the order as may be specified in the order,

to take such steps as may be so specified with a view to enabling the person made available by the Crown to be kept informed of the address of any person named in the order and to be allowed to visit any such person.

(5) If the court makes a family assistance order with respect to a child and the order is to be in force at the same time as a contact order made with respect to the child, the family assistance order may direct the person made available by the Crown to give advice and assistance as regards establishing, improving and maintaining contact (to such) of the persons named in the order as may be specified in the order.

(6) Unless it specifies a shorter period, a family assistance order will have effect for a period of 12 months beginning with the day on which it is made.

(7) If the court makes a family assistance order with respect to a child and the order is to be in force at the same time as a section 12 order made with respect to the child, the family assistance order may direct the person made available by the Crown to report to the court on such matters relating to the section 12 order as the court may require (including the question whether the section 12 order ought to be varied or discharged).

21. Risk assessments (CA, s16A)

(1) This section applies to the following functions of public officers or persons made available by the Crown —

(a) any function in connection with family proceedings in which the court has power to make an order under this Part with respect to a child or in which a question with respect to such an order arises;

(b) any function in connection with an order made by the court in such proceedings.

(2) If, in carrying out any function to which this section applies, a public officer or a person made available by the Crown is given cause to suspect that the child concerned is at risk of harm, the officer or person must —

(a) make a risk assessment in relation to the child, and

(b) provide the risk assessment to the court.

(3) A risk assessment, in relation to a child who is at risk of suffering harm of a particular sort, is an assessment of the risk of that harm being suffered by the child.

PART 3 **SUPPORT FROM CROWN FOR CHILDREN AND FAMILIES (CA, Pt 3)**

Provision of services for children and their families

22. Provision of services for children in need, their families and others (CA, s17)

(1) It is the general duty of the Crown (in addition to the other duties imposed on it by this Part) —

(a) to safeguard and promote the welfare of children in the Falkland Islands who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, the Crown has the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by the Crown in the exercise of functions conferred on it by this section may be provided for the family of a particular child in need or for any member of the child's family, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) The Governor may by order amend any provision of Part 1 of Schedule 2 or add any further duty or power to those for the time being mentioned there.

(5) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on it by this section, the Crown must, so far as is reasonably practicable and consistent with the child's welfare —

(a) ascertain the child's wishes and feelings regarding the provision of those services; and

(b) give due consideration (having regard to the child's age and understanding) to such wishes and feelings of the child as it has been able to ascertain.

(6) The Crown —

(a) must facilitate the provision by others (including in particular voluntary organisations) of services which the Crown has power to provide by virtue of this section, or section 23, 41 or 42; and

(b) may make such arrangements as it sees fit for any person to act on its behalf in the provision of any such service.

(7) The services provided by the Crown in the exercise of functions conferred on it by this section may include providing accommodation and giving assistance in kind or, in exceptional circumstances, in cash.

(8) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(9) Before giving any assistance or imposing any conditions, the Crown must have regard to the means of the child concerned and of each of the child's parents.

(10) A person is not liable to make any repayment of assistance or of its value at any time when that person is receiving welfare assistance, rent rebate, working credit, childcare credit or similar payments from the Falkland Islands Government.

(11) For the purposes of this Part a child will be taken to be in need if —

(a) the child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for the child of services by the Crown under this Part;

(b) the child's health or development is likely to be significantly impaired, or further impaired, without the provision for the child of such services; or

(c) the child is disabled,

and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom the child has been living.

(12) For the purposes of this Part, a child is disabled if the child is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part —

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

Provision of accommodation for children

23. Provision of accommodation for children: general (CA, s20)

(1) The Crown must provide accommodation for any child in need within the Falkland Islands who appears to it to require accommodation as a result of —

(a) there being no person who has parental responsibility for the child;

(b) the child being lost or having been abandoned; or

(c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.

(2) The Crown must provide accommodation for any child in need within the Falkland Islands who has reached the age of 16 and whose welfare it considers is likely to be seriously prejudiced if it does not provide the child with accommodation.

(3) The Crown may provide accommodation for any child within the Falkland Islands (even though a person who has parental responsibility for the child is able to provide the child with accommodation) if it considers that to do so would safeguard or promote the child’s welfare.

(4) The Crown may provide accommodation for any person who has reached the age of 16 but is under 21 if it considers that to do so would safeguard or promote the person’s welfare.

(5) Before providing accommodation under this section, the Crown must, so far as is reasonably practicable and consistent with the child’s welfare —

(a) ascertain the child’s wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to the child’s age and understanding) to such wishes and feelings of the child as it has been able to ascertain.

(6) The Crown may not provide accommodation under this section for any child if any person who —

(a) has parental responsibility for the child; and

(b) is willing and able to —

- (i) provide accommodation for the child; or
- (ii) arrange for accommodation to be provided for the child,

objects.

(7) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the Crown under this section.

(8) Subsections (6) and (7) do not apply while any person —

- (a) in whose favour a residence order is in force with respect to the child; or
- (b) who has care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the Crown.

(9) Where there is more than one such person as is mentioned in subsection (8), all of them must agree.

(10) Subsections (6) and (7) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

24. Provision of accommodation for children in police protection or detention or on remand, etc (CA, s21)

The Crown must make provision for the reception and accommodation of children who are —

- (a) removed or kept away from home under Part 5; or
- (b) detained under section 153 of the Criminal Justice Ordinance (Title 24.1).

Duties of Crown in relation to children looked after by it

25. General duty of Crown in relation to children looked after by it (CA, s22)

(1) In this Ordinance, any reference to a child who is looked after by the Crown is a reference to a child who is —

- (a) in its care; or
- (b) provided with accommodation by the Crown in the exercise of any functions (in particular those under this Ordinance) which are social services functions, apart from functions under sections 22, 35 and 42.

(2) In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.

(3) It is the duty of the Crown looking after any child —

(a) to safeguard and promote the child’s welfare; and

(b) to make such use of services available for children cared for by their own parents as appears to the Crown reasonable in the child’s case.

(4) The duty of the Crown under subsection (3)(a) to safeguard and promote the welfare of a child looked after by it includes in particular a duty to promote the child’s educational achievement.

(5) Before making any decision with respect to a child whom it is looking after, or proposing to look after, the Crown must, so far as is reasonably practicable, ascertain the wishes and feelings of —

(a) the child;

(b) the child’s parents;

(c) any person who is not a parent of the child but who has parental responsibility for the child; and

(d) any other person whose wishes and feelings the Crown considers to be relevant,

regarding the matter to be decided.

(6) In making any such decision the Crown must give due consideration —

(a) having regard to the child’s age and understanding, to such wishes and feelings of the child as it has been able to ascertain;

(b) to such wishes and feelings of any person mentioned in subsection (5)(b) to (d) as it has been able to ascertain; and

(c) to the child’s religious persuasion, racial origin and cultural and linguistic background.

(7) If it appears to the Crown that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this section, it may do so.

26. Provision of accommodation for children in care (CA, s 22A)

When a child is in the care of the Crown, it is the Crown’s duty to provide the child with accommodation.

27. Maintenance of looked after children (CA, s 22B)

It is the duty of the Crown to maintain a child it is looking after in other respects apart from the provision of accommodation.

28. Ways in which looked after children are to be accommodated and maintained (CA, s22C)

(1) This section applies where the Crown is looking after a child.

(2) The Crown must make arrangements for the child to live with a person who falls within subsection (3) (but subject to subsection (4)).

(3) A person falls within this subsection if —

(a) that person is a parent of the child;

(b) that person is not a parent of the child but has parental responsibility for the child; or

(c) in a case where the child is in the care of the Crown and there was a residence order in force with respect to the child immediately before the care order was made, that person was a person in whose favour the residence order was made.

(4) Subsection (2) does not require the Crown to make arrangements of the kind mentioned in that subsection if doing so —

(a) would not be consistent with the child's welfare; or

(b) would not be reasonably practicable.

(5) If the Crown is unable to make arrangements under subsection (2), it must place the child in the placement which is, in its opinion, the most appropriate placement available.

(6) In subsection (5) “placement” means —

(a) placement with an individual who is a relative, friend or other person connected with the child and who is approved as a foster parent by the Crown;

(b) placement with a foster parent approved by the Crown who is not a relative, friend or other person connected with the child;

(c) subject to section 29, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.

(7) In determining the most appropriate placement for a child, the Crown must, subject to the other provisions of this Part (in particular, to its duties under section 25) —

(a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection; and

(b) comply, so far as is reasonably practicable in all the circumstances of the child's case, with the requirements of subsection (8).

(8) The Crown must ensure that the placement is such that —

(a) it allows the child to live near the child's home;

(b) it does not disrupt the child's education or training;

(c) if the child has a sibling for whom the Crown is also providing accommodation, it enables the child and the sibling to live together;

(d) if the child is disabled, the accommodation provided is suitable to the child's particular needs.

(9) The Crown may determine —

(a) the terms of any arrangements it makes under subsection (2) in relation to the child (including terms as to payment); and

(b) the terms on which it places the child with a foster parent (including terms as to payment).

(10) The Governor may make regulations for, and in connection with, the purposes of this section.

29. Review of child's case before making alternative arrangements for accommodation (CA, s 22D)

(1) Where the Crown is providing accommodation for a child other than by arrangements under section 28(6)(c), it must not make such arrangements for the child unless it has decided to do so in consequence of a review of the child's case carried out in accordance with regulations made under section 44.

(2) Subsection (1) does not prevent the Crown making arrangements for a child under section 28(6)(c) if it is satisfied that in order to safeguard the child's welfare it is necessary —

(a) to make such arrangements; and

(b) to do so as a matter of urgency.

30. Regulations as to children looked after by Crown (CA, s22F)

Part 2 of Schedule 2 has effect for the purposes of making further provision as to children looked after by the Crown and in particular as to the regulations which may be made under section 28(10).

31. General duty of Crown to secure sufficient accommodation for looked after children (CA, s 22G)

(1) It is the general duty of the Crown to take steps that secure, so far as reasonably practicable, the outcome that the Crown is able to provide the children mentioned in subsection (2) with accommodation that meets the needs of those children.

(2) The children referred to in subsection (1) are those —

(a) that the Crown is looking after, and

(b) in respect of whom the Crown is unable to make arrangements under section 28(2).

(3) In taking steps to secure the outcome in subsection (1), the Crown must have regard to the benefit of a range of accommodation capable of meeting different needs that is, in its opinion, sufficient to secure that outcome.

Visiting

32. Duty of Crown to ensure visits to, and contact with, looked after children and others (CA, s23ZA)

(1) This section applies to —

(a) a child looked after by the Crown;

(b) a child who was looked after by the Crown but who has ceased to be looked after by the Crown as a result of prescribed circumstances.

(2) It is the duty of the Crown —

(a) to ensure that a person to whom this section applies is visited by a representative of the Crown (“a representative”);

(b) to arrange for appropriate advice, support and assistance to be available to a person to whom this section applies who seeks it from the Crown.

(3) The duties imposed by subsection (2) —

(a) are to be discharged in accordance with any regulations made for the purposes of this section by the Governor;

(b) are subject to any requirement imposed by or under an enactment applicable to the place in which the person to whom this section applies is accommodated.

(4) Regulations under this section for the purposes of subsection (3)(a) may make provision about —

(a) the frequency of visits;

(b) circumstances in which a person to whom this section applies must be visited by a representative; and

(c) the functions of a representative.

(5) In choosing a representative the Crown must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.

33. Independent visitors for children looked after by Crown (CA, s23ZB)

(1) Where the Crown is looking after a child it must appoint an independent person to be the child's visitor if —

(a) the child falls within a description prescribed in regulations made by the Governor; or

(b) in any other case, it appears to the Crown that it would be in the child's interests to do so.

(2) A person appointed under this section must visit, befriend and advise the child.

(3) A person appointed under this section is entitled to recover from the Crown any reasonable expenses incurred by that person for the purposes of that person's functions under this section.

(4) A person's appointment as a visitor in pursuance of this section comes to an end if —

(a) the child ceases to be looked after by the Crown;

(b) the person resigns the appointment by giving notice in writing to the Crown; or

(c) the Crown gives the person notice in writing that it has terminated the appointment.

(5) The ending of such an appointment does not affect any duty under this section to make a further appointment.

(6) Where the Crown proposes to appoint a visitor for a child under this section, the appointment must not be made if —

(a) the child objects to it; and

(b) the Crown is satisfied that the child has sufficient understanding to make an informed decision.

(7) Where a visitor has been appointed for a child under this section, the Crown must terminate the appointment if —

(a) the child objects to its continuing; and

(b) the Crown is satisfied that the child has sufficient understanding to make an informed decision.

(8) If the Crown gives effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the Crown does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.

(9) The Governor may make regulations as to the circumstances in which a person is to be regarded for the purposes of this section as independent of the Crown.

Advice and assistance for certain children and young persons

34. Relevant children (CA, s23A)

(1) The Crown has the functions set out in section 35 in respect of a relevant child.

(2) In subsection (1) “relevant child” means (subject to subsection (3)) a child who —

(a) is not being looked after by the Crown;

(b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 23 of Schedule 2; and

(c) is aged 16 or 17.

(3) The Governor may prescribe by order —

(a) additional categories of relevant children; and

(b) categories of children who are not to be relevant children despite falling within subsection (2).

35. Additional functions of Crown in respect of relevant children (CA, s23B)

(1) It is the duty of the Crown to take reasonable steps to keep in touch with a relevant child.

(2) It is the duty of the Crown to appoint a personal adviser for each relevant child (if it has not already done so under paragraph 24 of Schedule 2).

- (3) It is the duty of the Crown, in relation to any relevant child who does not already have a pathway plan prepared for the purposes of paragraph 23 of Schedule 2 —
- (a) to carry out an assessment of the relevant child’s needs with a view to determining what advice, assistance and support it would be appropriate for the Crown to provide the relevant child under this Part; and
 - (b) to prepare a pathway plan for the relevant child.
- (4) The Crown may carry out such an assessment at the same time as any assessment of the relevant child’s needs is made under any other enactment.
- (5) The Governor may by regulations make provision as to assessments for the purposes of subsection (3).
- (6) The regulations may in particular make provision about —
- (a) who is to be consulted in relation to an assessment;
 - (b) the way in which an assessment is to be carried out, by whom and when;
 - (c) the recording of the results of an assessment;
 - (d) the considerations to which the Crown is to have regard in carrying out an assessment.
- (7) The Crown must keep the pathway plan under regular review.
- (8) The Crown must safeguard and promote the relevant child’s welfare and, unless the Crown is satisfied that the relevant child’s welfare does not require it, support the relevant child by —
- (a) maintaining the relevant child;
 - (b) providing the relevant child with or maintaining the relevant child in suitable accommodation; and
 - (c) providing support of such other descriptions as may be prescribed.
- (9) Support under subsection (8) may be in cash.
- (10) The Governor may by regulations make provision about the meaning of “suitable accommodation” and in particular about the suitability of landlords or other providers of accommodation.
- (11) If the Crown has lost touch with a relevant child, despite taking reasonable steps to keep in touch, it must without delay —

- (a) consider how to re-establish contact; and
- (b) take reasonable steps to do so,

and while the child is still a relevant child must continue to take such steps until it succeeds.

(12) Subsections (8) to (10) of section 22 apply in relation to support given under this section as they apply in relation to assistance given under that section.

(13) Subsections (5) and (6) of section 25 apply in relation to any decision by the Crown for the purposes of this section as they apply in relation to the decisions referred to in that section.

36. Continuing functions in respect of former relevant children (CA, s 23C)

(1) The Crown has the duties provided for in this section towards —

- (a) a person who has been a relevant child for the purposes of section 34 (and would be one if the person were under 18); and
- (b) a person who was being looked after by the Crown when the person attained the age of 18, and immediately before ceasing to be looked after was an eligible child,

and in this section such a person is referred to as a “former relevant child”.

(2) It is the duty of the Crown to take reasonable steps —

- (a) to keep in touch with a former relevant child; and
- (b) if it loses touch with a former relevant child, to re-establish contact.

(3) It is the duty of the Crown —

- (a) to continue the appointment of a personal adviser for a former relevant child; and
- (b) to continue to keep the former relevant child’s pathway plan under regular review.

(4) It is the duty of the Crown to give a former relevant child —

- (a) assistance of the kind referred to in section 42(1), to the extent that the former relevant child’s welfare requires it;
- (b) assistance of the kind referred to in section 42(2), to the extent that the former relevant child’s welfare and educational or training needs require it;
- (c) other assistance, to the extent that the former relevant child’s welfare requires it.

(5) The assistance given under subsection (4)(c) may be in kind or, in exceptional circumstances, in cash.

(6) It is the duty of the Crown to pay the relevant amount to a former relevant child who pursues higher education in accordance with a pathway plan prepared for that person.

(7) The Governor may by regulations —

(a) prescribe the relevant amount for the purposes of subsection (6);

(b) prescribe the meaning of “higher education” for those purposes;

(c) make provision as to the payment of the relevant amount;

(d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by the Crown from a former relevant child to whom a payment has been made.

(8) The duty set out in subsection (6) is without prejudice to that set out in subsection (4)(b).

(9) Subject to subsection (10), the duties set out in subsections (2), (3) and (4) subsist until the former relevant child reaches the age of 21.

(10) If the former relevant child’s pathway plan sets out a programme of education or training which extends beyond the former relevant child’s 21st birthday —

(a) the duty set out in subsection (4)(b) continues to subsist for so long as the former relevant child continues to pursue that programme; and

(b) the duties set out in subsections (2) and (3) continue to subsist concurrently with that duty.

(11) For the purposes of subsection (10)(a) any interruption in a former relevant child’s pursuance of a programme of education or training must be disregarded if the Crown is satisfied that the former relevant child will resume it as soon as is reasonably practicable.

(12) Section 42(5) applies in relation to a person being given assistance under subsection (4)(b) or who is in receipt of a payment under subsection (6) as it applies in relation to a person to whom section 42(3)(b) applies.

(13) Subsections (8) to (10) of section 22 apply in relation to assistance given under this section as they apply in relation to assistance given under that section.

37. Further assistance to pursue education or training (CA, s23CA)

(1) This section applies to a person if —

(a) the person is under the age of 25 or of such lesser age as the Governor may prescribe by order;

(b) the person is a former relevant child (within the meaning of section 36) towards whom the duties imposed by subsections (2), (3) and (4) of that section no longer subsist; and

(c) the person has informed the Crown that the person is pursuing, or wishes to pursue, a programme of education or training.

(2) It is the duty of the Crown to appoint a personal adviser for a person to whom this section applies.

(3) It is the duty of the Crown —

(a) to carry out an assessment of the needs of a person to whom this section applies with a view to determining what assistance (if any) it would be appropriate for them to provide to the person under this section; and

(b) to prepare a pathway plan for the person.

(4) It is the duty of the Crown to give assistance of a kind referred to subsection (5) to a person to whom this section applies to the extent that the child's educational or training needs require it.

(5) The kinds of assistance are —

(a) contributing to expenses incurred by the person in living near the place where the person is, or will be, receiving education or training; or

(b) making a grant to enable the person to meet expenses connected with the person's education and training.

(6) If a person to whom this section applies pursues a programme of education or training in accordance with the pathway plan prepared for the person, the duties of the Crown under this section (and under any provision applicable to the pathway plan prepared under this section for that person) subsist for as long as the person continues to pursue that programme.

(7) For the purposes of subsection (6), the Crown may disregard any interruption in the person's pursuance of a programme of education or training if they are satisfied that the person will resume it as soon as is reasonably practicable.

(8) Subsections (8) to (10) of section 22 apply to assistance given to a person under this section as they apply to assistance given to or in respect of a child under that section, but with the omission in subsection (9) of the words "and of each of the child's parents".

(9) Subsection (5) of section 42 applies to a person to whom this section applies as it applies to a person to whom subsection (3) of that section applies.

(10) Nothing in this section affects the duty imposed by subsection (6) of section 36 to the extent that it subsists in relation to a person to whom this section applies; but the duty to make a payment under that subsection may be taken into account in the assessment of the person's needs under subsection (3)(a).

Personal advisers and pathway plans

38. Personal advisers (CA, s23D)

(1) The Governor may by regulations require the Crown to appoint a personal adviser for children or young persons of a prescribed description who have reached the age of 16 but not the age of 25 who are not —

- (a) children who are relevant children for the purposes of section 34;
- (b) the young persons referred to in section 36; or
- (c) the children referred to in paragraph 24 of Schedule 2; or
- (d) persons to whom section 37 applies.

(2) Personal advisers appointed under or by virtue of this Part have (in addition to any other functions) such functions as the Governor may by subsidiary legislation prescribe.

39. Pathway plans (CA, s23E)

(1) In this Part, a reference to a “pathway plan” is to a plan setting out —

- (a) in the case of a plan prepared under paragraph 23 of Schedule 2 —
 - (i) the advice, assistance and support which the Crown intends to provide a child under this Part, both while it is looking after the child and later; and
 - (ii) when it might cease to look after the child; and
- (b) in the case of a plan prepared under section 35, the advice, assistance and support which the Crown intends to provide under this Part,

and dealing with such other matters (if any) as may be prescribed by Governor in subsidiary legislation.

(2) The Crown may carry out an assessment under section 35(3) or 37(3) of a person's needs at the same time as any other assessment of the person's needs is made.

(3) The Governor may by regulations make provision as to assessments for the purposes of section 35(3) or 37.

- (4) Regulations under subsection (3) may in particular make provision about —
- (a) who is to be consulted in relation to an assessment;
 - (b) the way in which an assessment is to be carried out, by whom and when;
 - (c) the recording of the results of an assessment;
 - (d) the considerations to which the Crown is to have regard in carrying out an assessment.
- (5) The Crown must keep each pathway plan prepared by it under section 35 or 37 under review.
- (6) The Governor may by regulations make provision about pathway plans and their review.

40. Persons qualifying for advice and assistance (CA, s24)

- (1) In this Part “a person qualifying for advice and assistance” means a person who —
- (a) is under 21; and
 - (b) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered by the Crown.
- (2) In the case of a person qualifying for advice and assistance by virtue of subsection (1), it is the duty of the Crown to take such steps as it thinks appropriate to contact the person at such times as it thinks appropriate with a view to discharging their functions under sections 41 and 42.

41. Advice and assistance (CA, s24A)

- (1) The Crown must consider whether a person qualifying for advice and assistance by virtue of section 40 needs help of a kind which it can give under this section or section 42
- (2) If a person qualifying for advice and assistance does need help of such a kind, the Crown must advise and befriend the person.
- (3) Where as a result of this section the Crown is under a duty to advise and befriend a person, it may also give the person assistance.
- (4) The assistance may be in kind and, in exceptional circumstances, assistance may be given —
- (a) by providing accommodation, if in the circumstances assistance may not be given in respect of the accommodation under section 42, or
 - (b) in cash.
- (5) Subsections (8) to (10) of section 22 apply in relation to assistance given under this section or section 42 as they apply in relation to assistance given under that section.

42. Employment, education and training (CA, s24B)

(1) The Crown may give assistance to any person who qualifies for advice and assistance by virtue of section 40 by contributing to expenses incurred by the person in living near the place where the person is, or will be, employed or seeking employment.

(2) The Crown may give assistance to a person to whom subsection (3) applies by —

(a) contributing to expenses incurred by the person in question in living near the place where the person is, or will be, receiving education or training; or

(b) making a grant to enable the person to meet expenses connected with the person's education or training.

(3) This subsection applies to any person who —

(a) is under 24; and

(b) qualifies for advice and assistance by virtue of section 40, or would have done so if the person were under 21.

(4) Where the Crown is assisting a person under subsection (2) it may disregard any interruption in the person's attendance on the course if the person resumes it as soon as is reasonably practicable.

(5) Where the Crown is satisfied that a person to whom subsection (3) applies who is in full-time further or higher education needs accommodation during a vacation because the person's term-time accommodation is not available to the person then, it must give the person assistance by —

(a) providing the person with suitable accommodation during the vacation; or

(b) paying the person enough to enable the person to secure such accommodation personally.

(6) The Governor may by regulations prescribe the meaning of "full-time", "further education", "higher education" and "vacation" for the purposes of subsection (5).

43. Representations: sections 34 to 42 (CA, s24D)

(1) The Crown must establish a procedure for considering representations (including complaints) made to it by —

(a) a relevant child for the purposes of section 34 or a young person falling within section 36;

(b) a person qualifying for advice and assistance by virtue of section 40; or

(c) a person falling within section 42(1),

about the discharge of their functions under this Part in relation to that person.

(2) Regulations may be made by the Governor imposing time limits on the making of representations under subsection (1).

(3) In considering representations under subsection (1), the Crown must comply with regulations (if any) made by the Governor for the purposes of this subsection.

Review, etc

44. Review of cases and inquiries into representations (CA, s26)

(1) The Governor may make regulations requiring the case of each child who is being looked after by the Crown to be reviewed in accordance with the provisions of the regulations.

(2) The regulations may, in particular, make provision —

(a) as to the manner in which each case is to be reviewed;

(b) as to the considerations to which the Crown is to have regard in reviewing each case;

(c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;

(d) requiring the Crown, before conducting any review, to seek the views of —

(i) the child;

(ii) the child's parents;

(iii) any person who is not a parent of the child but who has parental responsibility for the child; and

(iv) any other person whose views the Crown considers to be relevant,

including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;

(e) requiring the Crown, in the case of a child who is in its care —

(i) to keep the section 49 plan for the child under review and, if they are of the opinion that some change is required, to revise the plan, or make a new plan, accordingly,

(ii) to consider, whether an application should be made to discharge the care order;

(f) requiring the Crown, in the case of a child in accommodation provided by the Crown —

- (i) if there is no plan for the future care of the child, to prepare one,
 - (ii) if there is such a plan for the child, to keep it under review and, if the Crown is of the opinion that some change is required, to revise the plan or make a new plan, accordingly,
 - (iii) to consider, whether the accommodation accords with the requirements of this Part;
- (g) requiring the Crown to inform the child, so far as is reasonably practicable, of any steps the child may take under this Ordinance;
- (h) requiring the Crown to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;
- (i) requiring the Crown to notify details of the result of the review and of any decision taken by it in consequence of the review to —
- (i) the child;
 - (ii) the child's parents;
 - (iii) any person who is not a parent of the child but who has parental responsibility for the child; and
 - (iv) any other person whom they consider ought to be notified;
- (j) requiring the Crown to monitor the arrangements which it has made with a view to ensuring that it complies with the regulations;
- (k) for the Crown to appoint a person in respect of each case to carry out in the prescribed manner the functions mentioned in subsection (3) and any prescribed function.
- (3) The functions referred to in subsection (2)(k) are —
- (a) participating in the review of the case in question,
 - (b) monitoring the performance of the Crown's functions in respect of the review.
- (4) The Crown must establish a procedure for considering any representations (including any complaint) made to it by —
- (a) any child who is being looked after by the Crown or who is not being looked after by the Crown but is in need;

- (b) a parent of the child;
- (c) any person who is not a parent of the child but who has parental responsibility for the child;
- (d) a foster parent looking after a child on behalf of the Crown;
- (e) such other person as the Crown considers has a sufficient interest in the child's welfare to warrant the person's representations being considered by it,

about the discharge by the Crown of any of its qualifying functions in relation to the child.

(5) The following are qualifying functions for the purposes of subsection (4) —

- (a) functions under this Part,
- (b) such functions under Part 4 or 5 as are specified by the Governor in regulations.

(6) The procedure must provide that at least one person who is not an elected Member of the Legislative Assembly or a public officer takes part in —

- (a) the consideration; and
- (b) any discussions which are held by the Crown about the action (if any) to be taken in relation to the child in the light of the consideration,

but this subsection is subject to subsection (9).

(7) Regulations may be made by the Governor imposing time limits on the making of representations under this section.

(8) In carrying out any consideration of representations under this section the Crown must comply with any regulations made by the Governor for the purpose of regulating the procedure to be followed.

(9) Regulations under subsection (8) may provide that subsection (6) does not apply in relation to any consideration or discussion which takes place as part of a procedure for which provision is made by the regulations for the purpose of resolving informally the matters raised in the representations.

(10) The Governor may make regulations requiring the Crown to monitor the arrangements that it has made with a view to ensuring that it complies with any regulations made for the purposes of subsection (8).

(11) Where any representation has been considered under the procedure established by the Crown under this section, the Crown must —

- (a) have due regard to the findings of those considering the representation; and
- (b) take such steps as are reasonably practicable to notify (in writing) —
 - (i) the person making the representation;
 - (ii) the child (if the Crown consider that the child has sufficient understanding); and
 - (iii) such other persons (if any) as appear to the Crown to be likely to be affected,

of the Crown's decision in the matter and its reasons for taking that decision and of any action which it has taken, or proposes to take.

(12) The Crown must give such publicity to its procedure for considering representations under this section as it considers appropriate.

45. Advocacy services (CA, s26A)

(1) The Crown must make arrangements for the provision of assistance to —

- (a) persons who make or intend to make representations under section 43; and
- (b) children who make or intend to make representations under section 44.

(2) The assistance provided under the arrangements is to include assistance by way of representation.

(3) The arrangements —

- (a) must secure that a person may not provide assistance if the person is one who is prevented from doing so by regulations made by the Governor; and
- (b) must comply with any other provision made by the regulations in relation to the arrangements.

(4) The Governor may make regulations requiring the Crown to monitor the steps that it has taken with a view to ensuring that it complies with regulations made for the purposes of subsection (3).

(5) The Crown must give such publicity to its arrangements for the provision of assistance under this section as it considers appropriate.

Charges for services

46. Recoupment of cost of providing services etc (CA, s29)

(1) Where the Crown provides any service under section 22, other than advice, guidance or counselling, it may recover from a person specified in subsection (4) such charge for the service as it considers reasonable.

(2) Where the Crown is satisfied that that person's means are insufficient for it to be reasonably practicable for that person to pay the charge, it may not require the person to pay more than the person can reasonably be expected to pay.

(3) A person is not liable to pay any charge under subsection (1) for a service provided under section 22 at any time when that person is receiving welfare assistance, rent rebate, working credit, childcare credit or similar payments from the Falkland Islands Government.

(4) The persons are —

(a) where the service is provided for a child under 16, each of the child's parents;

(b) where it is provided for a child who has reached the age of 16, the child personally; and

(c) where it is provided for a member of the child's family, that member.

(5) Any charge under subsection (1) may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

(6) Part 3 of Schedule 2 makes provision in connection with contributions towards the maintenance of children who are being looked after by the Crown.

Miscellaneous

47. Miscellaneous (CA, s30)

(1) Nothing in this Part affects any duty imposed on the Crown by or under any other enactment.

(2) The Governor may make regulations for determining, as respects any functions specified in the regulations, whether a child who is being looked after by the Crown is to be treated, for purposes so specified, as a child of parents of sufficient resources or as a child of parents without resources.

PART 4
CARE AND SUPERVISION (CA Pt 4)

General

48. Care and supervision (CA, s31)

- (1) On the application of the Crown, the court may make an order —
 - (a) placing the child with respect to whom the application is made in the care of the Crown;
or
 - (b) putting the child under the supervision of the Crown.
- (2) A court may only make a care order or supervision order if it is satisfied —
 - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
 - (b) that the harm, or likelihood of harm, is attributable to —
 - (i) the care given to the child or likely to be given to the child if the order were not made not being what it would be reasonable to expect a parent to give to the child; or
 - (ii) the child's being beyond parental control.
- (3) A care order or supervision order must not be made with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married).
- (4) A care order must not be made with respect to a child until the court has considered a section 49 plan.
- (5) An application under this section may be made on its own or in any other family proceedings.
- (6) The court may —
 - (a) on an application for a care order, make a supervision order;
 - (b) on an application for a supervision order, make a care order.
- (7) An application may only be made under this section by or with the consent of the Attorney General.
- (8) In this section—

“harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;

“development” means physical, intellectual, emotional, social or behavioural development;

“health” means physical or mental health; and

“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.

(9) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, the child’s health or development is to be compared with that which could reasonably be expected of a similar child.

(10) In this Ordinance —

“care order” —

(a) means (subject to section 3(1)) an order under subsection (1)(a); and

(b) except where express provision to the contrary is made, includes an interim care order made under section 56; and

“supervision order” —

(a) means an order under subsection (1)(b); and

(b) except where express provision to the contrary is made, includes an interim supervision order made under section 56.

49. Care orders: care plans (CA, s31A)

(1) Where an application is made on which a care order might be made with respect to a child, the Crown must, within such time as the court may direct, prepare a plan (“a care plan”) for the future care of the child.

(2) While the application is pending, the Crown —

(a) must keep any care plan prepared by it under review; and

(b) if it is of the opinion some change is required, revise the plan, or make a new plan, accordingly.

(3) A care plan must give any prescribed information and do so in the prescribed manner.

(4) In section 48(4) and this section, references to a care order do not include an interim care order.

(5) A plan prepared (or treated as prepared) under this section is referred to in this Ordinance as a “section 49 plan”.

50. Period within which application for order under this Part must be disposed of (CA, s32)

(1) A court hearing an application for an order under this Part must (in the light of any rules made by virtue of subsection (2)) —

(a) draw up a timetable with a view to disposing of the application without delay; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

(2) Rules of court may —

(a) specify periods within which specified steps must be taken in relation to such proceedings; and

(b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

Care orders

51. Effect of care order (CA, s33)

(1) Where a care order is made with respect to a child it is the duty of the Crown to receive the child into its care and to keep the child in its care while the order remains in force.

(2) While a care order is in force with respect to a child, the Crown —

(a) has parental responsibility for the child; and

(b) has the power (subject to the following provisions of this section) to determine the extent to which —

(i) a parent or guardian of the child; or

(ii) a person who by virtue of section 8 has parental responsibility for the child,

may meet the parental responsibility for the child.

(3) The Crown may not exercise the power in subsection (2)(b) unless it is satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare.

(4) Nothing in subsection (2)(b) prevents a person mentioned in that provision who has care of the child from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.

(5) While a care order is in force with respect to a child, the Crown —

(a) must not cause the child to be brought up in any religious persuasion other than that in which the child would have been brought up if the order had not been made;

(b) does not have the right —

(i) to agree or refuse to agree to the making of an adoption order, or an order under section 55 of the Adoption Act 1976 (as it applies in the Falkland Islands), with respect to the child;

(ii) to appoint a guardian for the child.

(6) While a care order is in force with respect to a child, no person may —

(a) cause the child to be known by a new surname; or

(b) remove the child from the Falkland Islands,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(7) Subsection (6)(b) does not —

(a) prevent the removal of such a child by the Crown, for a period of less than 3 months;

(b) apply to arrangements for such a child to live outside the Falkland Islands (which are governed by paragraph 21 of Schedule 2).

(8) The power in subsection (2)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a person mentioned in that provision has in relation to the child and the child's property by virtue of any other enactment.

52. Parental contact etc with children in care (CA, s34)

(1) Where a child is in the care of the Crown, the Crown must (subject to the provisions of this section) allow the child reasonable contact with —

(a) the child's parents;

(b) any guardian of the child;

(c) any person who by virtue of section 8 has parental responsibility for the child;

(d) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and

(e) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the Crown or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by —

(a) any person mentioned in paragraphs (a) to (e) of subsection (1); or

(b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the Crown or the child, the court may make an order authorising the Crown to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (e) of subsection (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Crown, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) The Crown may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if —

(a) the Crown is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) the refusal —

(i) is decided upon as a matter of urgency; and

(ii) does not last for more than 7 days.

(7) An order under this section may impose such conditions as the court considers appropriate.

(8) The Governor may by regulations make provision as to —

(a) the steps to be taken by the Crown if it exercises its powers under subsection (6);

(b) the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the Crown and the person in relation to whom the order is made;

(c) notification by the Crown of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.

(9) The court may vary or discharge any order made under this section on the application of the Crown, the child concerned or the person named in the order.

(10) An order under this section may be made either at the same time as the care order itself or later.

(11) Before making a care order with respect to any child the court must —

(a) consider the arrangements which the Crown has made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

Supervision orders

53. Supervision orders (CA, s35)

(1) While a supervision order is in force it is the duty of the supervisor —

(a) to advise, assist and befriend the supervised child;

(b) to take such steps as are reasonably necessary to give effect to the order; and

(c) where —

(i) the order is not wholly complied with; or

(ii) the supervisor considers that the order may no longer be necessary,

to consider whether or not to apply to the court for its variation or discharge.

(2) Parts 1 and 2 of Schedule 3 make further provision with respect to supervision orders.

54. Education supervision orders (CA, s36)

(1) On the application of the Crown, the court may make an order putting the child with respect to whom the application is made under the supervision of the Crown.

(2) In this Ordinance, “an education supervision order” means an order under subsection (1).

(3) A court may only make an education supervision order if it is satisfied that the child concerned is of compulsory school age and is not being properly educated.

(4) For the purposes of this section, a child is being properly educated only if the child is receiving efficient education suitable to —

- (a) the child's age, ability and aptitude; and
- (b) any special educational needs the child may have.

(5) Where a child is —

- (a) the subject of a school attendance order which is in force under section 25 of the Education Ordinance (Title 29.1) and which has not been complied with;
- (b) not attending regularly within the meaning of section 26 of the Education Ordinance, a school at which the child is a registered pupil, or
- (c) not diligently pursuing within the meaning of section 28 of the Education Ordinance a course of education provided in respect of that child by the Camp Education Service;

then, unless it is proved that the child is being properly educated, it is to be assumed that the child is not.

(6) An education supervision order may not be made with respect to a child who is in the care of the Crown.

(7) Part 3 of Schedule 3 makes further provision with respect to education supervision orders.

Powers of court

55. Powers of court in certain family proceedings (CA, s37)

(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to the child, the court may direct the Crown to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this section the Crown must, when undertaking the investigation, consider whether it should —

- (a) apply for a care order or for a supervision order with respect to the child;
- (b) provide services or assistance for the child or the child's family; or
- (c) take any other action with respect to the child.

(3) Where the Crown undertakes an investigation under this section, and decides not to apply for a care order or supervision order with respect to the child concerned, it must inform the court of —

(a) its reasons for so deciding;

(b) any service or assistance which the Crown has provided, or intends to provide, for the child and the child's family; and

(c) any other action which the Crown has taken, or proposes to take, with respect to the child.

(4) The information must be given to the court before the end of the period of 8 weeks beginning with the date of the direction, unless the court otherwise directs.

(5) If, on the conclusion of any investigation or review under this section, the Crown decide not to apply for a care order or supervision order with respect to the child —

(a) it must consider whether it would be appropriate to review the case at a later date; and

(b) if it decides that it would be, it must determine the date on which that review is to begin.

56. Interim orders (CA, s38)

(1) Where —

(a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or

(b) the court gives a direction under section 55(1),

the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court must not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 48(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence order with respect to the child concerned, it must also make an interim supervision order with respect to the child unless satisfied that the child's welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order made under or by virtue of this section will have effect for such period as may be specified in the order, but will in any event cease to have effect on whichever of the following events first occurs —

(a) the expiry of the period of 8 weeks beginning with the date on which the order is made;

(b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;

(c) in a case which falls within subsection (1)(a), the disposal of the application;

(d) in a case which falls within subsection (1)(b), the disposal of an application for a care order or supervision order made by the Crown with respect to the child;

(e) in a case which falls within subsection (1)(b) and in which —

(i) the court has given a direction under section 55(4), but

(ii) no application for a care order or supervision order has been made with respect to the child,

the expiry of the period fixed by that direction.

(5) In subsection (4)(b), “the relevant period” means —

(a) the period of 4 weeks beginning with the date on which the order in question is made; or

(b) the period of 8 weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in paragraph (a).

(6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision, the child may refuse to submit to the examination or other assessment.

(7) A direction under subsection (6) may be to the effect that there is to be —

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court directs otherwise.

(8) A direction under subsection (6) may be —

(a) given when the interim order is made or at any time while it is in force; and

(b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

(9) Paragraphs 4 and 5 of Schedule 3 do not apply in relation to an interim supervision order.

(10) Where a court makes an order under or by virtue of this section it must, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue that party's case against the order in full.

57. Power to include exclusion requirement in interim care order (CA, s38A)

(1) Where —

(a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 48(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and

(b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the interim care order.

(2) The conditions are —

(a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and

(b) that another person living in the dwelling-house (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give the child, and

(ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a dwelling-house in which the relevant person is living with the child,

(b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and

(c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.

(5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.

(8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a police officer may arrest without warrant any person whom the officer has reasonable cause to believe to be in breach of the requirement.

(9) Schedule 4 has effect in relation to a person arrested under subsection (8) of this section.

(10) If, while an interim care order containing an exclusion requirement is in force, the Crown has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order will cease to have effect in so far as it imposes the exclusion requirement.

58. Undertakings relating to interim care orders (CA, s38B)

(1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1) —

(a) will be enforceable as if it were an order of the court, and

(b) will cease to have effect if, while it is in force, the Crown has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers that a court has apart from this section.

(5) In this section, “exclusion requirement” and “relevant person” have the same meaning as in section 57.

59. Discharge and variation etc. of care orders and supervision orders (CA, s39)

(1) A care order may be discharged by the court on the application of —

(a) any person who has parental responsibility for the child;

(b) the child; or

(c) the Crown.

(2) A supervision order may be varied or discharged by the court on the application of —

(a) any person who has parental responsibility for the child;

(b) the child; or

(c) the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(5) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

(6) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(7) When a court is considering whether to substitute one order for another under subsection (6) any provision of this Ordinance which would otherwise require section 48(2) to be satisfied at the time when the proposed order is substituted or made must be disregarded.

60. Orders pending appeals in cases about care or supervision orders (CA, s40)

(1) Where —

(a) a court dismisses an application for a care order; and

(b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

the court may make a care order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(2) Where —

(a) a court dismisses an application for a care order, or an application for a supervision order; and

(b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(3) Where a court grants an application to discharge a care order or supervision order, it may order that —

(a) its decision is not to have effect; or

(b) the care order, or supervision order, is to continue to have effect but subject to such directions as the court sees fit to include in the order.

(4) An order made under this section will only have effect for such period, not exceeding the appeal period, as may be specified in the order.

(5) Where —

(a) an appeal is made against any decision of a court under this section; or

(b) any application is made to the appellate court in connection with a proposed appeal against that decision,

the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

(6) In this section “the appeal period” means —

(a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal; and

(b) otherwise, the period during which an appeal may be made against the decision.

Children’s guardians (formerly known as guardians ad litem)

61. Representation of child (CA, s41)

(1) For the purpose of any specified proceedings, the court must appoint a suitable person to be children’s guardian for the child concerned unless satisfied that it is not necessary to do so in order to safeguard the child’s interests.

(2) The children’s guardian —

- (a) must be appointed in accordance with any rules of court that have been made; and
- (b) will be under a duty to safeguard the interests of the child in the manner prescribed by such rules.

(3) Where —

- (a) the child concerned is not represented by a legal practitioner; and
- (b) any of the conditions mentioned in subsection (4) is satisfied,

the court may appoint a legal practitioner to represent the child.

(4) The conditions are that —

- (a) no children’s guardian has been appointed for the child;
- (b) the child has sufficient understanding to instruct a legal practitioner and wishes to do so;
- (c) it appears to the court that it would be in the child’s best interests for the child to be represented by a legal practitioner.

(5) Any legal practitioner appointed under or by virtue of this section must be appointed, and must represent the child, in accordance with any rules of court that have been made.

(6) In this section “specified proceedings” means any proceedings —

- (a) on an application for a care order or supervision order;
- (b) in which the court has given a direction under section 55(1) and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) on an application under section 59(6);
- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;
- (g) under Part 5;
- (h) on an appeal against —

(i) the making of, or refusal to make, a care order, supervision order or any order under section 52;

(ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order;

(iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);

(iv) the refusal of an application under section 59(6); or

(v) the making of, or refusal to make, an order under Part 5;

(i) on an application for the making or an order declaring the child free for adoption (within the meaning of section 18 of the Adoption Act 1976 (as it applies in the Falkland Islands)); or

(j) which are specified for the time being, for the purposes of this section, by rules of court.

(7) The proceedings which may be specified under subsection (6)(j) include (for example) proceedings for the making, varying or discharging of a section 12 order.

(8) Rules of court may make provision as to —

(a) the assistance which any children's guardian may be required by the court to give to it;

(b) the consideration to be given by any children's guardian, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;

(c) the participation of children's guardians in reviews, of a kind specified in the rules, which are conducted by the court.

(9) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of —

(a) any statement contained in a report made by a children's guardian who is appointed under this section for the purpose of the proceedings in question; and

(b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

62. Right of children’s guardian to have access to Crown records (CA, s42)

(1) Where a children’s guardian has been appointed under section 61, the children’s guardian has the right at all reasonable times to examine and take copies of —

(a) any records of, or held by, the Crown which were compiled in connection with the making, or proposed making, by any person of any application under this Ordinance with respect to the child concerned; and

(b) any records of, or held by, the Crown which were compiled in connection with any functions which are social services functions, so far as those records relate to that child.

(2) Where a children’s guardian takes a copy of any record which the children’s guardian is entitled to examine under this section, that copy or any part of it is admissible as evidence of any matter referred to in any —

(a) report which the children’s guardian makes to the court in the proceedings in question; or

(b) evidence which the children’s guardian gives in those proceedings.

(3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

**PART 5
PROTECTION OF CHILDREN (CA, Pt 5)**

63. Child assessment orders (CA, s43)

(1) An application under this section may only be made by or with the consent of the Attorney General.

(2) On an application for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that —

(a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;

(b) an assessment of the state of the child’s health or development, or of the way in which the child has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and

(c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

(3) In this Ordinance “a child assessment order” means an order under this section.

- (4) A court may treat an application under this section as an application for an emergency protection order.
- (5) A court must not make a child assessment order if it is satisfied —
- (a) that there are grounds for making an emergency protection order with respect to the child; and
 - (b) that it ought to make such an order rather than a child assessment order.
- (6) A child assessment order must —
- (a) specify the date by which the assessment is to begin; and
 - (b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.
- (7) Where a child assessment order is in force with respect to a child it is the duty of any person who is in a position to produce the child —
- (a) to produce the child to such person as may be named in the order; and
 - (b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.
- (8) A child assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.
- (9) Regardless of subsection (8), if the child is of sufficient understanding to make an informed decision, the child may refuse to submit to a medical or psychiatric examination or other assessment.
- (10) The child may only be kept away from home —
- (a) in accordance with directions specified in the order;
 - (b) if it is necessary for the purposes of the assessment; and
 - (c) for such period or periods as may be specified in the order.
- (11) Where the child is to be kept away from home, the order must contain such directions as the court thinks fit with regard to the contact that the child must be allowed to have with other persons while away from home.
- (12) Any person making an application for a child assessment order must take such steps as are reasonably practicable to ensure that notice of the application is given to —

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for the child;
- (c) any other person caring for the child;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 52; and
- (f) the child,

before the hearing of the application.

(13) Rules of court may make provision as to the circumstances in which —

- (a) any of the persons mentioned in subsection (12); or
- (b) such other person as may be specified in the rules,

may apply to the court for a child assessment order to be varied or discharged.

64. Orders for emergency protection of children (CA, s44)

(1) An application under this section may only be made by a public officer authorised in that behalf by the Attorney General to make it.

(2) Where a person authorised to make an application under this section applies to the court for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that —

- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if —
 - (i) the child is not removed to accommodation provided by or on behalf of the Crown; or
 - (ii) the child does not remain in the place in which the child is then being accommodated; or
- (b) both of the following conditions are met —
 - (i) enquiries are being made with respect to the child under section 69(1)(b); and
 - (ii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

(3) In this section, “a person authorised to seek access” means a person authorised by the Crown to act on its behalf in connection with the enquiries.

(4) Any person —

(a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (2)(b); and

(b) purporting to be a person authorised to do so,

must, on being asked to do so, produce some duly authenticated document as evidence that the person is a person authorised to seek access.

(5) While an order under this section (“an emergency protection order”) is in force it —

(a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant;

(b) authorises —

(i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and the child being kept there; or

(ii) the prevention of the child’s removal from any hospital, or other place, in which the child was being accommodated immediately before the making of the order; and

(c) gives the applicant parental responsibility for the child.

(6) Where an emergency protection order is in force with respect to a child, the applicant —

(a) may only exercise the power given by virtue of subsection (5)(b) in order to safeguard the welfare of the child;

(b) must take, and must only take, such action in meeting the applicant’s parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and

(c) must comply with the requirements of any regulations made by the Governor for the purposes of this subsection as well as, and in so far as they are not inconsistent with, any directions given by the court under subsection (7) of this section.

(7) Where the court makes an emergency protection order, it may give such directions (if any) as it considers appropriate with respect to —

(a) the contact which is, or is not, to be allowed between the child and any named person;

(b) the medical or psychiatric examination or other assessment of the child.

(8) Where any direction is given under subsection (7)(b), the child may, if the child is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.

(9) A direction under subsection (7)(a) may impose conditions and one under subsection (7)(b) may be to the effect that there is to be —

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court directs otherwise.

(10) A direction under subsection (7) may be —

(a) given when the emergency protection order is made or at any time while it is in force; and

(b) varied at any time on the application of the applicant, the Attorney General or any public officer authorised by the Attorney General or on the application of any person mentioned in subsection (13) of this section.

(11) Where an emergency protection order is in force with respect to a child and —

(a) the applicant has exercised the power given by subsection (5)(b)(i) but it appears to the applicant that it is safe for the child to be returned; or

(b) the applicant has exercised the power given by subsection (5)(b)(ii) but it appears to the applicant that it is safe for the child to be allowed to be removed from the place in question,

the applicant must return the child or (as the case may be) allow the child to be removed.

(12) Where the applicant is required by subsection (11) to return the child the applicant must —

(a) return the child to the care of the person from whose care the child was removed; or

(b) if that is not reasonably practicable, return the child to the care of —

(i) a parent of the child;

(ii) any person who is not a parent of the child but who has parental responsibility for the child; or

(iii) such other person as the applicant (with the agreement of the court) considers appropriate.

(13) Where the applicant has been required by subsection (11) to return the child, or to allow the child to be removed, the applicant may again exercise the applicant's powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to the applicant that a change in the circumstances of the case makes it necessary for the applicant to do so.

(14) Where an emergency protection order has been made with respect to a child, the applicant must, subject to any direction given under subsection (7), allow the child reasonable contact with —

(a) the child's parents;

(b) any person who is not a parent of the child but who has parental responsibility for the child;

(c) any person with whom the child was living immediately before the making of the order;

(d) any person in whose favour a contact order is in force with respect to the child;

(e) any person who is allowed to have contact with the child by virtue of an order under section 52; and

(f) any person acting on behalf of any of those persons.

(15) Wherever it is reasonably practicable to do so, an emergency protection order must name the child; and where it does not name the child it must describe the child as clearly as possible.

(16) A person is guilty of an offence if that person intentionally obstructs any person exercising the power under subsection (5)(b) to remove, or prevent the removal of, a child.

(17) A person guilty of an offence under subsection (16) is liable on conviction to a fine not exceeding level 3 on the standard scale.

65. Power to include exclusion requirement in emergency protection order (CA, s44A)

(1) Where —

(a) on being satisfied as mentioned in section 64(2)(a) or (b), the court makes an emergency protection order with respect to a child, and

(b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the emergency protection order.

(2) The conditions are —

(a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then —

(i) in the case of an order made on the ground mentioned in section 64(2)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 64(2)(a)(i) or does not remain as mentioned in section 64(2)(a)(ii), or

(ii) in the case of an order made on the ground mentioned in paragraph (b) of section 64(2), the enquiries referred to in that paragraph will cease to be frustrated, and

(b) that another person living in the dwelling-house (whether a parent of the child or some other person) —

(i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give the child, and

(ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following —

(a) a provision requiring the relevant person to leave a dwelling-house in which the relevant person is living with the child,

(b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and

(c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.

(5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.

(8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a police officer may arrest without warrant any person whom the officer has reasonable cause to believe to be in breach of the requirement.

(9) Schedule 4 has effect in relation to a person arrested under subsection (8) of this section.

(10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order will cease to have effect in so far as it imposes the exclusion requirement.

66. Undertakings relating to emergency protection orders (CA, s 44B)

(1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1) —

(a) is enforceable as if it were an order of the court, and

(b) will cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers that a court has apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 65.

67. Duration of emergency protection orders and other supplemental provisions (CA, s45)

(1) An emergency protection order will have effect for such period, not exceeding 8 days, as may be specified in the order.

(2) Where —

(a) the court making an emergency protection order would, but for this subsection, specify a period of 8 days as the period for which the order is to have effect; but

(b) the last of those 8 days is a Sunday or a public holiday,

the court may specify a period which ends at noon on the first later day which is not a Sunday or public holiday.

(3) Where an emergency protection order is made on an application under section 68(7), the period of 8 days mentioned in subsection (1) will begin with the first day on which the child was taken into police protection under section 68.

(4) Any person who —

(a) has parental responsibility for a child as the result of an emergency protection order; and

(b) is entitled to apply for a care order with respect to the child,

may apply to the court for the period during which the emergency protection order is to have effect to be extended.

(5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding 7 days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.

(6) An emergency protection order may only be extended once.

(7) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for, or with respect to, an emergency protection order may take account of —

(a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or

(b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(8) Any of the following may apply to the court for an emergency protection order to be discharged —

(a) the child;

(b) a parent of the child;

(c) any person who is not a parent of the child but who has parental responsibility for the child; or

(d) any person with whom the child was living immediately before the making of the order.

(9) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency

protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(10) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

(11) No appeal may be made against —

- (a) the making of, or refusal to make, an emergency protection order;
- (b) the extension of, or refusal to extend, the period during which such an order is to have effect;
- (c) the discharge of, or refusal to discharge, such an order; or
- (d) the giving of, or refusal to give, any direction in connection with such an order.

(12) Subsection (8) does not apply —

- (a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged —
 - (i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and
 - (ii) was present at that hearing; or
- (b) to any emergency protection order the effective period of which has been extended under subsection (5).

(13) A court making an emergency protection order may direct that the applicant may, in exercising any powers which the applicant has by virtue of the order, be accompanied by a medical practitioner, nurse or health visitor, if the applicant so chooses.

68. Removal and accommodation of children by police in cases of emergency (CA, s46)

(1) Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, the officer may —

- (a) remove the child to suitable accommodation and keep the child there; or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which the child is then being accommodated is prevented.

(2) For the purposes of this Ordinance, a child with respect to whom a police officer has exercised the officer's powers under this section is referred to as having been taken into police protection.

(3) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned must —

(a) inform the Attorney General of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;

(b) give details to Attorney General of the place at which the child is being accommodated;

(c) inform the child (if the child appears capable of understanding) —

(i) of the steps that have been taken with respect to the child under this section and of the reasons for taking them; and

(ii) of the further steps that may be taken with respect to the child under this section;

(d) take such steps as are reasonably practicable to discover the wishes and feelings of the child; and

(e) secure that the case is inquired into by the Chief Police Officer or another police officer not below the rank of inspector.

(4) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned must take such steps as are reasonably practicable to inform —

(a) the child's parents;

(b) every person who is not a parent of the child but who has parental responsibility for the child; and

(c) any other person with whom the child was living immediately before being taken into police protection,

of the steps that the officer has taken under this section with respect to the child, the reasons for taking them and the further steps that may be taken with respect to the child under this section.

(5) On completing any inquiry under subsection (3)(e), the officer conducting it must release the child from police protection unless that officer considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.

(6) No child may be kept in police protection for more than 72 hours.

(7) While a child is being kept in police protection, the Attorney General or any other public officer with the consent of the Attorney General may apply on behalf of the Crown for an emergency protection order to be made under section 64 with respect to the child.

(8) While a child is being kept in police protection —

(a) no police officer has parental responsibility for the child; but

(b) the officer conducting the enquiry under subsection (3)(e) must do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the length of the period during which the child will be so protected).

(9) Where a child has been taken into police protection, the officer conducting the enquiry under subsection (3)(e) must allow —

(a) the child's parents;

(b) any person who is not a parent of the child but who has parental responsibility for the child;

(c) any person with whom the child was living immediately before the child was taken into police protection;

(d) any person in whose favour a contact order is in force with respect to the child;

(e) any person who is allowed to have contact with the child by virtue of an order under section 52; and

(f) any person acting on behalf of any of those persons,

to have such contact (if any) with the child as, in the opinion of the officer, is both reasonable and in the child's best interests.

69. Crown's duty to investigate (CA, s47)

(1) Where the Crown —

(a) is informed that a child —

(i) is the subject of an emergency protection order; or

(ii) is in police protection;

(b) has reasonable cause to suspect that a child who lives, or is found, in the Falkland Islands is suffering, or is likely to suffer, significant harm,

the Crown must make, or cause to be made, such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.

(2) Where the Crown has obtained an emergency protection order with respect to a child, it must make, or cause to be made, such enquiries as it considers necessary to enable it to decide what action it should take to safeguard or promote the child's welfare.

(3) The enquiries must, in particular, be directed towards establishing —

(a) whether the Crown should make any application to the court, or exercise any of its other powers under this Ordinance;

(b) whether, in the case of a child —

(i) with respect to whom an emergency protection order has been made; and

(ii) who is not in accommodation provided by or on behalf of the Crown,

it would be in the child's best interests (while an emergency protection order remains in force) for the child to be in such accommodation; and

(c) whether, in the case of a child who has been taken into police protection, it would be in the child's best interests for an application to be made under section 64.

(4) Where enquiries are being made under subsection (1) with respect to a child, the Crown must (with a view to enabling it to determine what action, if any, to take with respect to the child) take such steps as are reasonably practicable —

(a) to obtain access to the child; or

(b) to ensure that access to the child is obtained, on its behalf, by a person authorised by it for the purpose,

unless it is satisfied that it already has sufficient information with respect to the child.

(5) For the purposes of making a determination under this section as to the action to be taken with respect to a child, the Crown must, so far as is reasonably practicable and consistent with the child's welfare —

(a) ascertain the child's wishes and feelings regarding the action to be taken with respect to the child; and

(b) give due consideration (having regard to the child's age and understanding) to such wishes and feelings of the child as it has been able to ascertain.

(6) Where, in the course of enquiries made under this section —

- (a) any public officer; or
- (b) any person authorised by the Crown to act on its behalf in connection with those enquiries —
 - (i) is refused access to the child concerned; or
 - (ii) is denied information as to the child's whereabouts,

the Crown must apply for an emergency protection order, a child assessment order, a care order or a supervision order with respect to the child unless it is satisfied that the child's welfare can be satisfactorily safeguarded without the Crown doing so.

(7) If, on the conclusion of any enquiries or review made under this section, the Crown decides not to apply for an emergency protection order, a child assessment order, a care order or a supervision order it must —

- (a) consider whether it would be appropriate to review the case at a later date; and
- (b) if it decides that it would be, determine the date on which that review is to begin.

(8) Where, as a result of complying with this section, the Crown concludes that it should take action to safeguard or promote the child's welfare it must take that action (so far as it is both within its power and reasonably practicable for it to do so).

70. Powers to assist in discovery of children who may be in need of emergency protection (CA, s 48)

(1) Where it appears to a court making an emergency protection order that adequate information as to the child's whereabouts —

- (a) is not available to the applicant for the order; but
- (b) is available to another person,

it may include in the order a provision requiring that other person to disclose, if asked to do so by the applicant, any information that the other person may have as to the child's whereabouts.

(2) A person is not excused from complying with such a requirement on the ground that complying might incriminate that person or that person's spouse of an offence; but a statement or admission made in complying will not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(3) An emergency protection order may authorise the applicant to enter premises specified by the order and search for the child with respect to whom the order is made.

(4) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising the applicant to search for that other child on those premises.

(5) Where —

(a) an order has been made under subsection (4);

(b) the child concerned has been found on the premises; and

(c) the applicant is satisfied that the grounds for making an emergency protection order exist with respect to that child,

the order will have effect as if it were an emergency protection order.

(6) Where an order has been made under subsection (4), the applicant must notify the court of its effect.

(7) A person is guilty of an offence if that person intentionally obstructs any person exercising the power of entry and search under subsection (3) or (4).

(8) A person guilty of an offence under subsection (7) is liable on conviction to a fine not exceeding level 3 on the standard scale.

(9) Where, on an application made by any person for a warrant under this section, it appears to the court —

(a) that a person attempting to exercise powers under an emergency protection order has been prevented from doing so by being refused entry to the premises concerned or access to the child concerned; or

(b) that any such person is likely to be so prevented from exercising any such powers,

it may issue a warrant authorising any police officer to assist the person mentioned in paragraph (a) or (b) in the exercise of those powers using reasonable force if necessary.

(10) Every warrant issued under this section must be addressed to, and executed by, a police officer who may be accompanied by the person applying for the warrant if —

(a) that person so desires; and

(b) the court by whom the warrant is issued does not direct otherwise.

(11) A court granting an application for a warrant under this section may direct that the police officer concerned may, in executing the warrant, be accompanied by a medical practitioner, nurse or health visitor, if the officer so chooses.

(12) An application for a warrant under this section must be made in the manner and form prescribed by rules of court.

(13) Wherever it is reasonably practicable to do so, an order under subsection (4), an application for a warrant under this section and any such warrant must name the child; and where it does not name the child it must describe the child as clearly as possible.

71. Abduction of children in care etc (CA, s49)

(1) A person is guilty of an offence if, knowingly and without lawful authority or reasonable excuse, that person —

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person.

(2) This section applies in relation to a child who is —

- (a) in care;
- (b) the subject of an emergency protection order; or
- (c) in police protection,

and in this section “the responsible person” means any person who for the time being has care of the child by virtue of the care order, the emergency protection order, or section 68 as the case may be.

(3) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

72. Recovery of abducted children etc (CA, s50)

(1) Where it appears to the court that there is reason to believe that a child to whom this section applies —

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or

(c) is missing,

the court may make an order under this section (“a recovery order”).

(2) This section applies to the same children to whom section 71 applies and in this section “the responsible person” has the same meaning as in section 71.

(3) A recovery order —

(a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;

(b) authorises the removal of the child by any authorised person;

(c) requires any person who has information as to the child’s whereabouts to disclose that information, if asked to do so, to a police officer or an officer of the court;

(d) authorises a police officer to enter any premises specified in the order and search for the child using reasonable force if necessary.

(4) The court may make a recovery order only on the application of —

(a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or

(b) where the child is in police protection, the officer conducting enquiries under section 68(3)(e).

(5) A recovery order must name the child and —

(a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or

(b) where the child is in police protection, the officer conducting enquiries under section 68(3)(e).

(6) Premises may only be specified under subsection (3)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.

(7) In this section, “an authorised person” means —

(a) any person specified by the court;

(b) any police officer;

(c) any person who is authorised —

(i) after the recovery order is made; and

(ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order,

to exercise any power under a recovery order; and

(8) Where a person is authorised as mentioned in subsection (7)(c) —

(a) the authorisation must identify the recovery order; and

(b) any person claiming to be so authorised must, if asked to do so, produce some duly authenticated document showing that the person is so authorised.

(9) A person is guilty of an offence if that person intentionally obstructs an authorised person exercising the power under subsection (3)(b) to remove a child.

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

(11) A person is not excused from complying with any request made under subsection (3)(c) on the ground that complying with it might incriminate that person or that person's spouse of an offence; but a statement or admission made in complying will not be admissible in evidence against either of them in proceedings for an offence other than perjury.

(12) Where a child is made the subject of a recovery order whilst being looked after by the Crown, any reasonable expenses incurred by an authorised person in giving effect to the order are recoverable from the Crown.

73. Rules of court (CA, s52)

(1) Without prejudice to section 85 or any other power to make such rules, rules of court may be made with respect to the procedure to be followed in connection with proceedings under this Part.

(2) The rules may, in particular make provision —

(a) as to the form in which any application is to be made or direction is to be given;

(b) prescribing the persons who are to be notified of —

(i) the making, or extension, of an emergency protection order; or

(ii) the making of an application under section 67(4) or (8) or 68(7); and

(c) as to the content of any such notification and the manner in which, and person by whom, it is to be given.

(3) Until such time as rules of court to which subsection (1) of this section relates are first made, the rules of court for the time being in force in England to which section 52(1) of the Children Act 1989 relates ("the corresponding rules of court") have effect as if they had been made under subsection (1) of this section, but subject to such modifications as may be necessary to substitute references to courts and authorities in the Falkland Islands for references to courts and authorities in England.

(4) The power to make rules of court for the purposes mentioned in subsection (1) of this section includes power by such rules to adopt, subject to such modifications and adaptations as may be specified in those rules, the corresponding rules of court.

PART 6 FOSTERING (CA, Pt 9)

74. Privately fostered children (CA, s66)

(1) In this Part —

(a) “a privately fostered child” means a child who is under the age of 16 and who is cared for, and provided with accommodation in their own home by, someone other than —

(i) a parent of the child;

(ii) a person who is not a parent of the child but who has parental responsibility for the child; or

(iii) a relative of the child; and

(b) “to foster a child privately” means to look after the child in circumstances in which the child is a privately fostered child as defined by this section.

(2) A child is not privately fostered child if the person caring for and accommodating the child —

(a) has done so for a period a period of less than 28 days; and

(b) does not intend to do so for any longer period.

(3) Subsection (1) is subject to the exceptions made by paragraphs 6 to 10 of Schedule 5

(4) In the case of a child who is disabled, subsection (1)(a) has effect as if for “16” there were substituted “18”.

(5) The Governor may by regulations make provision as to the circumstances in which a person who provides accommodation to a child is, or is not, to be treated as providing the child with accommodation in the person's own home.

(6) Schedule 5 has effect for the purposes of supplementing the provision made by this Part.

75. Welfare of privately fostered children (CA, s67)

(1) It is the duty of the Crown to satisfy itself that the welfare of children who are or are proposed to be privately fostered within the Falkland Islands is being or will be satisfactorily safeguarded and promoted and to secure that such advice is given to those concerned with them as appears to the Crown to be needed.

(2) The Governor may make regulations —

(a) requiring every child who is privately fostered within the Falkland Islands to be visited by a public officer —

(i) in prescribed circumstances; and

(ii) on specified occasions or within specified periods; and

(b) imposing requirements which are to be met by the Crown, or public officer, in carrying out functions under this section.

(3) Regulations under subsection (2)(b) may impose requirements as to the action to be taken by the Crown for the purposes of discharging its duty under subsection (1) where it has received notification of a proposal that a child be privately fostered.

(4) Where any person who is authorised by the Crown to visit for the purpose has reasonable cause to believe that —

(a) any privately fostered child is being accommodated in premises within the Falkland Island; or

(b) it is proposed to accommodate any such child in any such premises,

that person may at any reasonable time inspect those premises and any children there.

(5) Any person exercising the power under subsection (4) must, if so required, produce some duly authenticated document showing the person's authority to do so.

(6) Where the Crown is not satisfied that the welfare of any child who is or is proposed to be privately fostered within the Falkland Islands is being or will be satisfactorily safeguarded or promoted it must —

(a) unless it considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by —

(i) a parent of the child;

(ii) any person who is not a parent of the child but who has parental responsibility for the child ; or

(iii) a relative of the child; and

(b) consider the extent to which (if at all) it should exercise any of its functions under this Ordinance with respect to the child.

(7) The Governor may make regulations requiring the Crown to monitor the way in which it discharges its functions under this Part (and the regulations may in particular require the Crown to appoint an officer for that purpose).

76. Persons disqualified from being private foster parents (CA, s68)

(1) If a person is disqualified from doing so by regulations made by the Governor for the purposes of this section, that person must not foster a child privately unless the person has disclosed the fact to the Crown and obtained its written consent.

(2) The regulations may, in particular, provide for a person to be so disqualified where —

(a) an order of a kind specified in the regulations has been made at any time with respect to the person;

(b) an order of a kind so specified has been made at any time with respect to any child who has been in the person's care;

(c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;

(d) the person has been convicted of any offence of a kind so specified, or discharged absolutely or conditionally for any such offence;

(e) a prohibition has been imposed on the person at any time under section 77 or under any other specified enactment;

(f) the person's rights and powers with respect to a child have at any time been vested in the Crown under a specified enactment.

(3) A conviction in respect of which a probation order was made but which would not otherwise be treated as a conviction is to be treated as a conviction for the purposes of subsection (2)(d).

(4) Unless the person has disclosed the fact to the Crown and obtained its written consent, a person must not foster a child privately if —

(a) the person lives in the same household as a person who is prevented from fostering a child by subsection (1); or

(b) the person lives in a household at which any such person is employed.

(5) Where the Crown refuses to give its consent under this section, it must inform the applicant by a written notice which states —

(a) the reason for the refusal;

(b) the applicant's right under paragraph 14 of Schedule 5 to appeal against the refusal; and

(c) the time within which the applicant may do so.

(6) In this section, "enactment" also includes legislation having effect, at any time, in any part of the United Kingdom.

77. Power to prohibit private fostering (CA, s69)

(1) This section applies where a person —

(a) proposes to foster a child privately; or

(b) is fostering a child privately.

(2) Where the Crown is of the opinion that —

(a) the person is not a suitable person to foster a child;

(b) the premises in which the child will be, or is being, accommodated are not suitable; or

(c) it would be prejudicial to the welfare of the child for the child to be, or continue to be accommodated by that person in those premises,

the Crown may impose a prohibition on the person under subsection (3).

(3) A prohibition imposed on any person under this subsection may prohibit that person from fostering privately —

(a) any child in any premises within the Falkland Islands;

(b) any child in premises specified in the prohibition; or

(c) a child identified in the prohibition, in premises specified in the prohibition.

(4) If the Crown has imposed a prohibition on any person under subsection (3), it may, if it thinks fit, cancel the prohibition —

- (a) of its own motion; or
- (b) on an application made by that person,

if it is satisfied that the prohibition is no longer justified.

(5) Where the Crown imposes a requirement on any person under paragraph 11 of Schedule 5, it may also impose a prohibition on the person under subsection (3).

(6) Any prohibition imposed by virtue of subsection (5) will not have effect unless —

- (a) the time specified for compliance with the requirement has expired; and
- (b) the requirement has not been complied with.

(7) A prohibition imposed under this section must be imposed by notice in writing addressed to the person on whom it is imposed and informing the person of —

- (a) the reason for imposing the prohibition;
- (b) the person's right under paragraph 14 of Schedule 5 to appeal against the prohibition; and
- (c) the time within which the person may do so.

78. Offences (CA, s70)

(1) A person is guilty of an offence if —

- (a) being required, under any provision made by or under this Part, to give any notice or information —
 - (i) the person fails without reasonable excuse to give the notice within the time specified in that provision;
 - (ii) the person fails without reasonable excuse to give the information within a reasonable time; or
 - (iii) the person makes, or causes or procures another person to make, any statement in the notice or information which the person knows to be false or misleading in a material particular;

(b) the person refuses to allow a privately fostered child to be visited by a duly authorised public officer;

(c) the person intentionally obstructs another in the exercise of the power conferred by section 75(4);

(d) the person contravenes section 76;

(e) the person fails without reasonable excuse to comply with any requirement imposed by the Crown under this Part;

(f) the person accommodates a privately fostered child in any premises in contravention of a prohibition imposed by the Crown under this Part;

(g) the person knowingly causes to be published, or publishes, an advertisement which the person knows contravenes paragraph 15 of Schedule 5.

(2) Where a person contravenes section 76(4), the person is not be guilty of an offence under this section if the person proves that the person did not know, and had no reasonable ground for believing, that any person to whom section 76(1) applied was living or employed in the premises in question.

(3) A person guilty of an offence under subsection (1)(a) is liable on conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under subsection (1)(b), (c) or (g) is liable on conviction to a fine not exceeding level 3 on the standard scale.

(5) A person guilty of an offence under subsection (1)(d) or (f) is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

(6) A person guilty of an offence under subsection (1)(e) is liable on conviction to a fine not exceeding level 4 on the standard scale.

(7) If any person who is required, under any provision of this Part, to give a notice fails to give the notice within the time specified in that provision, proceedings for the offence may be brought at any time within six months from the date when evidence of the offence came to the knowledge of the Crown.

(8) Subsection (7) is not affected by anything in section 51 (Time for commencement of criminal proceedings) of the Administration of Justice Ordinance (Title 22.1).

PART 7
SAFEGUARDING CHILDREN BOARD (CA 2004, ss 13 to 14B)

79. Safeguarding Children Board (CA 2004, s13)

(1) The Crown is under a duty to ensure that there continues to be a Safeguarding Children Board for the Falkland Islands.

(2) The Board must include the following or their representatives —

(a) the elected members of the Legislative Assembly with portfolio responsibility for health, social services and education matters;

(b) the senior officers in the Falkland Islands Government with responsibility for health, social services and education;

(c) the Chief Medical Officer; and

(d) the Chief Police Officer.

(3) The Board must also include representatives from the departments within the Falkland Islands Government that deal with —

(a) nursing;

(b) social services; and

(c) probation services.

(4) The Board must include (as an observer) the Governor (acting with discretion) or a representative of the Governor (acting with discretion).

(5) The Board must include (as an adviser) the Attorney General or a representative of the Attorney General.

(6) The Board may also include representatives (as members or observers) from —

(a) the Ministry of Defence;

(b) one or more organisations with a role relating to the welfare of families of those serving in the armed forces;

(c) one or more other organisations with a role relating to the welfare of children or families.

80. Functions and procedure of Safeguarding Children Board (CA 2004, s14)

(1) The objective of the Safeguarding Children Board is —

(a) to co-ordinate what is done by (and on behalf of) the Crown under its various functions (both statutory and non-statutory) for the purposes of safeguarding and promoting the welfare of children in Falkland Islands; and

(b) to ensure the effectiveness of what is done by (or on behalf of) the Crown for those purposes.

(2) The Board is to have such functions in relation to its objective as the Governor may by regulations prescribe (which may in particular include functions of review or investigation).

(3) The Governor may by regulations make provision as to the procedures to be followed by the Board.

81. Safeguarding Children Board: annual reports (CA 2004, s14A)

(1) At least once in every 12 month period, the Safeguarding Children Board must prepare and publish a report about safeguarding and promoting the welfare of children in the Falkland Islands.

(2) The Board must submit copies of the report to the Governor and the Legislative Assembly.

82. Supply of information requested by Safeguarding Children Board (CA 2004, s14B)

(1) If the Safeguarding Children Board requests a person or body to supply information specified in the request to —

(a) the Board, or

(b) another person or body specified in the request,

the request must be complied with if the first and second conditions are met and either the third or the fourth condition is met.

(2) The first condition is that the request is made for the purpose of enabling or assisting the Board to perform its functions.

(3) The second condition is that the request is made to a person or body whose functions or activities are considered by the Board to be such that the person or body is likely to have information relevant to the exercise of a function by the Board.

(4) The third condition is that the information relates to —

(a) the person or body to whom the request is made,

(b) a function or activity of that person or body, or

(c) a person in respect of whom a function is exercisable, or an activity is engaged in, by that person or body.

- (5) The fourth condition is that the information —
- (a) is information requested by the Board from a person or body to whom information was supplied in compliance with another request under this section, and
 - (b) is the same as, or is derived from, information so supplied.
- (6) The information may be used by the Board, or other person or body to whom it is supplied under subsection (1), only for the purpose of enabling or assisting the Board to perform its functions.

PART 8
MISCELLANEOUS AND GENERAL (including CA, Pt 12)

Effect and duration of orders etc

83. Effect and duration of orders etc (CA, s91)

- (1) The making of a residence order with respect to a child who is the subject of a care order discharges the care order.
- (2) The making of a care order with respect to a child who is the subject of any section 12 order discharges that order.
- (3) The making of a care order with respect to a child who is the subject of a supervision order discharges that other order.
- (4) The making of a care order with respect to a child who is a ward of court brings that wardship to an end.
- (5) The making of a care order with respect to a child who is the subject of a school attendance order made under section 25 of the Education Ordinance discharges the school attendance order.
- (6) Where an emergency protection order is made with respect to a child who is in care, the care order has effect subject to the emergency protection order.
- (7) Any order made under section 7(1)(c), 8(1)(b) or 9(1) continues in force until the child reaches the age of 18, unless it is brought to an end earlier.
- (8) Any —
- (a) agreement under section 7(1)(b) or 8(1)(a); or
 - (b) appointment under section 9(3) or (4),

continues in force until the child reaches the age of 18, unless it is brought to an end earlier.

(9) An order under Schedule 1 has effect as specified in that Schedule.

(10) A section 12 order other than a residence order, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 16, unless it is to have effect beyond that age by virtue of section 13(5).

(11) Where a section 12 order has effect with respect to a child who has reached the age of 16, if it would otherwise still be in force, it ceases to have effect when the child reaches the age of 18.

(12) Any care order, other than an interim care order, continues in force until the child reaches the age of 18, unless it is brought to an end earlier.

(13) Any order made under any other provision of this Ordinance in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.

(14) On disposing of any application for an order under this Ordinance, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Ordinance of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(15) Where an application (“the previous application”) has been made for —

- (a) the discharge of a care order;
- (b) the discharge of a supervision order;
- (c) the discharge of an education supervision order;
- (d) the substitution of a supervision order for a care order; or
- (e) a child assessment order,

no further application of a kind mentioned in paragraphs (a) to (e) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(16) Subsection (15) does not apply to applications made in relation to interim orders.

(17) Where —

- (a) a person has made an application for an order under section 52;
- (b) the application has been refused; and
- (c) a period of less than 6 months has elapsed since the refusal,

that person may not make a further application for such an order with respect to the same child, unless that person has obtained the leave of the court.

Jurisdiction and procedure etc

84. Jurisdiction of courts (CA, s92)

(1) The name “family proceedings court” will continue to be used to describe a court of summary jurisdiction when it is hearing (or otherwise dealing with) family proceedings.

(2) Proceedings under this Ordinance are to be treated as family proceedings in relation to the Summary Court.

(3) Subsection (2) is subject to the provisions of section 65(1) and (2) (proceedings which may be treated as not being family proceedings) of the Magistrates’ Courts Act 1980 (as it applies in the Falkland Islands), as modified by this Ordinance.

(4) The Summary Court is not competent to entertain any application, or make any order, involving the administration or application of —

(a) any property belonging to or held in trust for a child; or

(b) the income of any such property.

(5) The powers of the Summary Court under section 63(2) of the Magistrates’ Court Act 1980 (as it applies in the Falkland Islands) to suspend or rescind orders do not apply in relation to any order made under this Ordinance.

(6) The Chief Justice has and may exercise powers in relation to the Falkland Islands that are equivalent to those that the Lord Chancellor has in relation to England under Part 1 of Schedule 11 to the Children Act 1989.

85. Rules of court (CA, s93)

(1) The Chief Justice may make rules of court to make such provision for giving effect to —

(a) this Ordinance;

(b) subsidiary legislation made under this Ordinance; or

(c) any amendment or modification made by this Ordinance to any other enactment,

as appears to the Chief Justice to be necessary or expedient.

(2) The rules may, in particular, make provision —

(a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);

- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
- (c) for children to be separately represented in relevant proceedings;
- (d) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
- (e) applying (with or without modification) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint made to a court of summary jurisdiction to relevant proceedings in such a court brought otherwise than on a complaint;
- (f) with respect to preliminary hearings;
- (g) for the service outside the Falkland Islands, in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a court of summary jurisdiction;
- (h) for the exercise by courts of summary jurisdiction, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question is or resides outside the Falkland Islands);
- (i) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;
- (j) authorising a single justice to discharge the functions of the Summary Court with respect to such relevant proceedings as may be prescribed;
- (k) authorising the Summary Court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.

(3) In subsection (2) —

“notice of proceedings” means a summons or such other notice of proceedings as is required; and
“given”, in relation to a summons, means “served”;

“prescribed” means prescribed by the rules; and

“relevant proceedings” means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.

(4) This section and any other power in this Ordinance to make rules of court are not to be taken as in any way limiting any other power of the Chief Justice to make rules of court.

(5) Until such time as the Chief Justice first makes rules of court under the powers conferred by the foregoing provisions of this section, and to the extent that the Chief Justice does not make inconsistent provision by any such rules of court, the rules of court made under section 93 of the Children Act 1989 and for the time being in force in England have effect as if they had been made by the Chief Justice under the foregoing provisions of this section and so that the provisions of those rules which apply to or have effect in relation to proceedings —

(a) at first instance in the High Court or the Family Division of that Court, apply to and in relation to corresponding proceedings in the Supreme Court under this Ordinance;

(b) in a county court, apply to or in relation to corresponding proceedings in the Magistrate's Court;

(c) in a magistrates' court, apply to or in relation to corresponding proceedings in the Summary Court;

and in each case, with such amendments and modifications only as are necessary in the circumstances.

86. Appeals (CA, s94)

(1) An appeal lies to the Supreme Court against —

(a) the making by the Magistrate's Court or by the Summary Court of any order under this Ordinance; or

(b) any refusal by the Magistrate's Court or by the Summary Court to make such an order.

(2) Where, in relation to any proceedings under this Ordinance, the Summary Court declines jurisdiction because it considers that the case can more conveniently be dealt with by the Magistrate's Court or by the Supreme Court, no appeal lies against that decision of the Summary Court.

(3) Subsection (1) does not apply in relation to an interim order for periodical payments made under Schedule 1.

(4) On an appeal under this section, the Supreme Court may make such order as may be necessary to give effect to its determination of the appeal.

(5) Where an order is made under subsection (4), the Supreme Court may also make such incidental or consequential order as appears to it to be just.

(6) Where an appeal under this section relates to an order for the making of periodical payments, the Supreme Court may order that its determination of the appeal is to have effect from such date as it thinks fit to specify in the order.

(7) The date so specified must not be earlier than the earliest date on which the court from which the appeal is brought could have ordered the periodical payments to commence.

(8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the Supreme Court reduces the amount of those payments or discharges the order —

(a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the Supreme Court thinks fit; and

(b) if any arrears are due under the order for periodical payments, it may remit payment of the whole, or part, of those arrears.

(9) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by the court from which appeal was brought) is to, for the purposes —

(a) of the enforcement of the order; and

(b) of any power to vary, revive or discharge orders,

be treated as if it were an order of the court from which the appeal was brought and not an order of the Supreme Court.

87. Attendance of child at hearing under Part 4 or 5 (CA, s95)

(1) In any proceedings in which a court is hearing an application for an order under Part 4 or 5, or is considering whether to make any such order, the court may order the child concerned to attend such stage or stages of the proceedings as may be specified in the order.

(2) The power conferred by subsection (1) is to be exercised in accordance with rules of court.

(3) Subsections (4) to (6) apply where —

(a) an order under subsection (1) has not been complied with; or

(b) the court has reasonable cause to believe that it will not be complied with.

(4) The court may make an order authorising a police officer, or such person as may be specified in the order —

(a) to take charge of the child and to bring the child to the court; and

(b) to enter and search any premises specified in the order if the police officer or the person specified in the order has reasonable cause to believe that the child may be found on the premises.

- (5) The court may order any person who is in a position to do so to bring the child to the court.
- (6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order that person to disclose the information to the court.

88. Evidence given by, or with respect to, children (CA, s96)

(1) Subsection (2) applies where a child who is called as a witness in any civil proceedings does not, in the opinion of the court, understand the nature of an oath.

(2) The child's evidence may be heard by the court if, in its opinion —

- (a) the child understands that it is the child's duty to speak the truth; and
- (b) the child has sufficient understanding to justify the child's evidence being heard.

(3) The Governor may, with the concurrence of the Chief Justice, by order make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.

(4) An order under subsection (3) may only be made with respect to —

- (a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and
- (b) evidence in connection with the upbringing, maintenance or welfare of a child.

(5) An order under subsection (3) —

- (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;
- (b) may make different provision for different purposes and in relation to different descriptions of court; and
- (c) may make such modifications, amendments and repeals in any enactment relating to evidence (other than in this Ordinance) as the Governor considers necessary or expedient in consequence of the provision made by the order.

(6) In this section —

“civil proceedings” means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties, and references to “the court” are to be construed accordingly;

“prescribed” means prescribed by an order under subsection (3).

89. Privacy for children involved in certain proceedings (CA, s97)

(1) Subsection (2) applies if rules of court that apply in England provide for a magistrate's court in England to sit in private in proceedings in which any powers under the Children Act 1989 or the Adoption and Children Act 2002 may be exercised by the court with respect to any child.

(2) If this subsection applies, the rules of court also apply in the Falkland Islands as if they provide for the Magistrate's Court or the Summary Court to sit in private in corresponding or equivalent proceedings in which any powers under this Ordinance or the Adoption Act 1976 (as it applies in the Falkland Islands) may be exercised by the court with respect to any child.

(3) No person may publish to the public at large or any section of the public any material which is intended, or likely, to identify —

(a) any child as being involved in any proceedings before a court which any power under this Ordinance or the Adoption Act 1976 (as it applies in the Falkland Islands) may be exercised by the court with respect to that or any other child; or

(b) an address as being that of a child involved in any such proceedings.

(4) In any proceedings for an offence under this section it is a defence for the accused to prove that the accused did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(5) The court or the Governor may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.

(6) For the purposes of this section

“publish” includes —

(a) broadcast by radio, television or cable television;

(b) distribute or circulate; and

(c) cause to be published; and

“material” includes —

(a) any picture or representation;

(b) an audio, video or audio-visual recording.

(7) Any person who contravenes this section is guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the standard scale.

(8) Subsection (2) is without prejudice to any other power of a court of summary jurisdiction to sit in private.

90. Self-incrimination (CA, s98)

(1) In any proceedings in which a court is hearing an application for an order under Part 4 or 5, a person is not excused from —

(a) giving evidence on any matter; or

(b) answering any question put to that person in the course of that person giving evidence,

on the ground that doing so might incriminate that person or that person's spouse of an offence.

(2) A statement or admission made in such proceedings is not admissible in evidence against the person making it or that person's spouse in proceedings for an offence other than perjury.

91. Restrictions on use of wardship jurisdiction (CA, s100)

(1) A court does not have and must not exercise the Supreme Court's inherent jurisdiction with respect to children or any other power (other than any power conferred on it by this Ordinance) —

(a) so as to place a ward of court in the care of the Crown (as distinct from the court) or under the supervision of the Crown (as distinct from the court) or of a public officer in that capacity;

(b) so as to require a child to be accommodated by or on behalf of the Crown;

(c) so as to make a child who is the subject of a care order a ward of court;

(d) for the purpose of conferring upon the Crown power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) An application for any exercise of the Supreme Court's inherent jurisdiction with respect to children must not be made by the Crown unless the Crown has obtained the leave of the court.

(3) The court may only grant leave if it is satisfied that —

(a) the result which the Crown wishes to achieve could not be achieved through the making of any order of a kind to which subsection (4) applies; and

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child the child is likely to suffer significant harm.

(4) This subsection applies to any order —

- (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
- (b) which the Crown is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

Search warrants

92. Power of police officer to assist in exercise of certain powers to search for children or inspect premises (CA, s102)

(1) Where, on an application made by any person for a warrant under this section, it appears to the court —

(a) that a person attempting to exercise powers under any enactment mentioned in subsection (6) has been prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned; or

(b) that any such person is likely to be so prevented from exercising any such powers,

it may issue a warrant authorising any police officer to assist that person in the exercise of those powers, using reasonable force if necessary.

(2) Every warrant issued under this section must be addressed to, and executed by, a police officer who may be accompanied by the person applying for the warrant if —

(a) that person so desires; and

(b) the court by whom the warrant is issued does not direct otherwise.

(3) A court granting an application for a warrant under this section may direct that the police officer concerned may, in executing the warrant, be accompanied by a medical practitioner, nurse or health visitor, if the officer so chooses.

(4) An application for a warrant under this section must be made in the manner and form prescribed by rules of court.

(5) Where —

(a) an application for a warrant under this section relates to a particular child; and

(b) it is reasonably practicable to do so,

the application and any warrant granted on the application must name the child; and where it does not name the child it must describe the child as clearly as possible.

(6) The enactments are —

(a) section 75; and

(b) paragraph 7(1)(b) and (2)(b) of Schedule 3.

General

93. Offences by bodies corporate (CA, s103)

(1) This section applies where any offence against this Ordinance is committed by a body corporate.

(2) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person (as well as the body corporate) has committed the offence and is liable to be proceeded against and punished accordingly.

94. Consent by persons over 16 to surgical, medical and dental treatment

(1) The consent of a child who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to the child's person, is as effective as it would be if the child were of full age.

(2) Where a child has by virtue of this section given an effective consent to any treatment it is not necessary to obtain any consent for it from the child's parent or guardian or any other person who has parental responsibility for the child.

(3) In this section "surgical, medical or dental treatment" includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

(4) Nothing in this section is to be construed as making ineffective any consent which would have been effective if this section or section 45 of the 1994 Ordinance had not been enacted.

(5) Without prejudice to the foregoing, this section states the law of the Falkland Islands as it is to be treated as having been at all times since 1st January 1970.

95. Time at which a person attains a particular age

(1) The time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of that person's birth.

(2) This section applies only when the relevant anniversary falls on a date after 1 January 1995 and, in relation to any enactment, deed, will or other instrument, has effect subject to any provision in it.

96. Persons under full age may be described as children instead of as infants or minors

(1) A person who is not of full age may be described in any instrument or enactment as a child instead of being described as an infant or as a minor.

(2) In every instrument made in every enactment passed after 1 January 1995, the expression "child", refers to a person who is not of full age (that is to say a person who has not attained the age of 18 years).

(3) Subsection (2) does not apply if, in the context in which the expression "child" appears —

- (a) it describes a relationship between two persons; or
- (b) the contrary intention appears in some other way.

**PART 9
SUBSIDIARY LEGISLATION**

97. Prescribed matters and subsidiary legislation

(1) Subsection (2) applies where something is to be done under a provision of this Ordinance in a prescribed way but the way in which it is to be done has not been prescribed.

(2) Where this subsection applies, that thing will be treated as having been done in the prescribed way if it is done in a way that is reasonable in all of the circumstances.

(3) Subsection (4) applies to the extent that —

- (a) a provision of this Ordinance gives a power for subsidiary legislation to be made;
- (b) subsidiary legislation has not yet been made under that power; and
- (c) there is no inconsistent provision (in this Ordinance or elsewhere).

(4) To the extent this subsection applies —

- (a) statutory instruments made under corresponding provisions in the Children Act 1989 and for the time being in force in England may, subject to such amendments and modifications as are necessary in the circumstances, be used as guidance; and
- (b) due regard must be had to them for that purpose.

98. Power for Governor to make consequential amendments by order

(1) The Governor may by order make provision consequential on this Ordinance (or one or more of its provisions).

(2) An order made under subsection (1) may do one or more of the following things —

- (a) amend or repeal written laws of the Falkland Islands;
- (b) provide for United Kingdom legislation to apply in the Falkland Islands (with or without modifications);
- (c) modify the application in the Falkland Islands of United Kingdom legislation that already applies in the Falkland Islands;
- (d) provide that specific provisions of United Kingdom legislation no longer apply in the Falkland Islands.

99. Power for Governor to make transitional and saving provision by order

The Governor may by order make transitional or saving provision (or both) in connection with this Ordinance (or one or more of its provisions).

PART 10

MODIFICATIONS OF UK LEGISLATION (AS IT APPLIES IN FALKLAND ISLANDS)

100. Modifications of UK legislation

Schedule 6 contains modifications to UK legislation that applies in the Falkland Islands.

PART 11

REPEAL

101. Repeal

The Children Ordinance 1994 (No 28 of 1994) is repealed.

SCHEDULE 1

FINANCIAL PROVISION FOR CHILDREN (CA. Sch 1)

1. Orders for financial relief against parents (CA, Sch 1, para 1)

(1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may —

- (a) in the case of an application to the Supreme Court or to the Magistrate's Court, make one or more of the orders mentioned in sub-paragraph (2);
- (b) in the case of an application to the Summary Court, make one or both of the orders mentioned in paragraphs (a) and (c) of that sub-paragraph.

(2) The orders referred to in sub-paragraph (1) are —

- (a) an order requiring either or both parents of a child —

(i) to make to the applicant for the benefit of the child; or

(ii) to make to the child,

such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both parents of a child —

(i) to secure to the applicant for the benefit of the child; or

(ii) to secure to the child,

such periodical payments, for such term, as may be so specified;

(c) an order requiring either or both parents of a child —

(i) to pay to the applicant for the benefit of the child; or

(ii) to pay to the child,

such lump sum as may be so specified;

(d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property —

(i) to which either parent is entitled (either in possession or reversion); and

(ii) which is specified in the order;

(e) an order requiring either or both parents of a child —

(i) to transfer to the applicant for the benefit of the child; or

(ii) to transfer to the child,

such property to which the parent is, or the parents are, entitled (either in possession or in reversion) as may be specified in the order.

(3) The powers conferred by this paragraph may be exercised at any time.

(4) An order under sub-paragraph (2)(a) or (b) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(5) Where a court makes an order under this paragraph —

(i) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child if the child has not attained the age of 18;

(ii) it may not make more than one order under sub-paragraph (2)(d) or (e) against the same person in respect of the same child.

(6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.

(7) Where a child is a ward of court, the court may exercise any of its powers under this Schedule even though no application has been made to it.

2. Orders for financial relief for persons over 18 (CA, Sch 1, para 2)

(1) If, on an application by a person who has reached the age of 18, it appears to the court —

(a) that the applicant is, will be or (if an order were made under this paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order under this paragraph,

the court may make one or more of the orders mentioned in sub-paragraph (2).

(2) The orders are —

(a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An application may not be made under this paragraph by any person if, immediately before the person he reached the age of 16, a periodical payments order was in force with respect to that person.

(4) An order must not be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

(5) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(6) In sub-paragraph (3) "periodical payments order" means an order under —

(a) this Schedule;

(b) section 26 or 30 of the Matrimonial Causes Ordinance (Title 38(2).5);

(c) section 4(1)(g) of the Matrimonial Proceedings (Summary Jurisdiction) Ordinance (Title 38(2).6),

for the making or securing of periodical payments.

(7) The powers conferred by this paragraph may be exercised at any time.

(8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

3. Duration of orders for financial relief (CA, Sch 1, para 3)

(1) The term to be specified in an order for periodical payments made under paragraph 1(2)(a) or (b) in favour of a child may begin with the date of the making of an application in question or any later date but —

(a) must not in the first instance extend beyond the child's 17th birthday unless the court thinks it right in the circumstances of the case to specify a later date; and

(b) must not in any event extend beyond the child's 18th birthday.

(2) Paragraph (b) of sub-paragraph (1) does not apply in the case of a child if it appears to the court that —

(a) the child is, or will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for periodical payments made under paragraph 1(2)(a) or (b) requiring periodical payments will, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(4) Where an order is made under paragraph 1(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order will cease to have effect if —

(a) any parent making or securing the payment; and

(b) any parent to whom the payments are made or secured,

live together for a period of more than six months.

4. Matters to which the court is to have regard in making orders for financial relief (CA, Sch 1, para 4)

(1) In deciding whether to exercise its powers under paragraph 1 or 2, and if so in what manner, the court must have regard to all the circumstances, including —

- (a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;
- (f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court must in addition have regard to —

- (a) whether that person had assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which that person assumed that responsibility and the period during which that person met that responsibility;
- (b) whether that person did so knowing that the child was not that person's child;
- (c) the liability of any other person to maintain the child.

(3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it must record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.

(4) The persons mentioned in sub-paragraph (1) are —

- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
- (b) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;
- (c) the applicant for the order;
- (d) any other person in whose favour the court proposes to make the order.

5. Provisions relating to lump sums (CA, Sch 1, para 5)

(1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purpose of enabling any liability or expenses —

- (a) incurred in connection with the birth of the child or in maintaining the child; and
- (b) reasonably incurred before the making of the order,

to be met.

(2) The amount of any sum required to be paid by an order made by the Summary Court under paragraph 1 or 2 must not exceed £1,000 or such larger amount as the Governor may from time to time fix for the purposes of this sub-paragraph.

(3) The power of the court under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments by a parent also includes power to make an order under that provision for the payment of a lump sum by that parent.

(4) The amount of a lump sum which a parent may be required to pay by virtue of sub-paragraph (3) must not, in the case of an order made by the Summary Court, exceed the maximum amount that may at the time of the order be required to be paid under sub-paragraph (2), but the Summary Court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Ordinance.

(5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) Where the order provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, has power to vary that order by varying —

- (a) the number of instalments payable;
- (b) the amount of any instalment;
- (c) the date on which any instalment becomes payable.

6. Variation etc of orders for periodical payments (CA, Sch 1, para 6)

(1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court must have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under paragraph 1 or 2 for the making or securing of periodical payments includes power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where on an application under paragraph 1 or 2 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under the order, the court may provide that the payments so varied are to be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child.

(5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child attains the age of 16, or at any time after that date but before the date on which the child reaches the age of 18, the child may apply to the court which made the order for an order for its revival.

(6) If on such an application it appears to the court that —

(a) the child is, will be or (if an order were made under this sub-paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(b) there are special circumstances which justify the making of an order under this sub-paragraph,

the court has power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) An order which is revived by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.

(8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

7. Variations of orders for periodical payments etc made by the Summary Court (CA, Sch 1, para 6A)

(1) Subject to sub-paragraphs (7) and (8), the power of the Summary Court —

(a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or

(b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

includes power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands).

(2) In any case where —

(a) the Summary Court has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments;

(b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (as it applies in the Falkland Islands)

any person entitled to make application under this Schedule for the variation of the order (in this paragraph referred to as "the applicant") may apply to the clerk to the Summary Court for the order to be varied as mentioned in sub-paragraph (3).

(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after giving written notice (by post or otherwise) or the application to any interested party and allowing that party, within the period of 21 days beginning with the date of the giving of the notice, an opportunity to make written representations, may vary the order to provide that payments under the order are to be made to the clerk.

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if the clerk considers it inappropriate to exercise the power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands).

(6) Subsection (4) of section 59 of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands) applies for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that section.

(7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands), the court must have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under paragraph (c) of (d) of subsection (3) of section 59 of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands), the court must, unless on representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) None of the powers of the court, or of the clerk to the Summary Court, conferred by this paragraph may be exercised in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands)).

(10) In sub-paragraphs (3) and (4) "interested party", in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made.

8. Variation of orders for secured periodical payments after death of parent (CA, Sch 1, para 7)

(1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation of a discharge of the order include the personal representatives of the deceased parent.

(2) An application for the variation of an order must not, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that parent is first taken out.

(3) The personal representatives of a deceased person against whom a secured periodical payments order was made will not be liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.

(4) Sub-paragraph (3) does not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.

(5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) include the changed circumstances resulting from death of the parent.

(6) In considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust property is to be left out of account and a grant limited to real estate or to personal estate is to be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(7) In this paragraph "secured periodical payments order" means an order for secured periodical payments under paragraph 1(2)(b).

9. Financial relief under other enactments (CA, Sch 1, para 8)

This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order ("the financial relief order") made under any enactment other than this Ordinance and requiring a person to contribute to the child's maintenance.

(2) Where this paragraph applies, the court may, on the application of —

(a) any person required by the financial relief order to contribute to the child's maintenance;
or

(b) any person in whose favour a residence order with respect to the child is in force,

make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is payable under that order.

10. Interim Orders (CA, Sch 1, para 9)

(1) Where an application is made under paragraph 1 or 2 the court may, at any time before it disposes of the application, make an interim order —

(a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit;

(b) giving any direction that the court thinks fit.

(2) An interim order made under this paragraph may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1 or 2.

(3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified or the purposes of this paragraph in the interim order.

(4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

11. Alteration of maintenance agreements (CA, Sch 1, para 10)

(1) In this paragraph and in paragraph 12 "maintenance agreement" means any agreement in writing made with respect to a child, whether before or after the commencement of this Ordinance, which —

(a) is or was made between the father and mother of the child;

(b) contains provision with respect to the making or securing of payments, or the disposition of use of any property, for the maintenance or education of the child,

and any such provisions are in this paragraph, and paragraph 12, referred to as "financial arrangements".

(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in the Falkland Islands, then, either party may apply to the court for an order under this paragraph.

(3) If the court to which the application is made is satisfied either —

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to the child,

then the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.

(4) If the maintenance agreement is altered by an order under this paragraph, the agreement will have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.

(5) Where a court decides to make an order under this paragraph altering the maintenance agreement —

(a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or

(b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or (as the case may be) the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court must apply the provisions of the sub-paragraphs (1) and (2) of paragraph 3 as if the order were an order under paragraph 1(2)(a) or (b).

(6) The Summary Court must not entertain an application under sub-paragraph (2) unless both parties are resident in the Falkland Islands, and does not have power to make any order on such an application except —

(a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;

(b) in a case where the agreement contains provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(7) Nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

12. Alteration of maintenance agreements following death of party (CA, Sch 1, para 11)

(1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in the Falkland Islands, the surviving party or the personal representatives of the deceased party may apply to the Supreme Court or to the Magistrate's Court for an order under paragraph 11.

(2) If a maintenance agreement is altered by a court on an application under this paragraph the agreement will have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

(3) An application under this paragraph must not, except with the leave of the Supreme Court or the Magistrate's Court be made after the end of the period of six months beginning with the day on which representation in regard to the estate of the deceased is first taken out.

(4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property is to be left out of account and a grant limited to real estate or to personal estate is to be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(5) The Magistrate's Court has the same jurisdiction as the Supreme Court to entertain an application under this paragraph or an application for leave to make an application under this paragraph.

(6) The provisions of this paragraph will not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by a surviving party after that period.

(7) Sub-paragraph (6) does not prejudice any power to recover any part of the estate so distributed by virtue of the making of an order in pursuance of this paragraph.

13. Enforcement of orders for maintenance (CA, Sch 1, para 12)

An order for the payment of money made by the Magistrate's Court or the Summary Court under this Ordinance shall be enforceable as (or as if it were) a magistrates' court maintenance order

within the meaning of section 150(1) of the Magistrates' Court Act 1980 (as it applies in the Falkland Islands).

14. Financial provision for child resident in country outside the Falkland Islands (CA, Sch 1, para 14)

(1) Where one parent of a child lives in the Falkland Islands and the child lives outside the Falkland Islands with —

- (a) another parent of the child;
- (b) a guardian of the child; or
- (c) a person in whose favour a residence order is in force with respect to the child,

the court has power, on an application by any of the persons mentioned in paragraphs (a) to (c) to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in the Falkland Islands.

(2) Any reference in this Ordinance to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) includes a reference to the powers which the court has by virtue of sub-paragraph (1) or as the case may be to an order made by virtue of sub-paragraph (1).

15. Contribution by Crown to child's maintenance (CA, Sch 1, para 15)

(1) Where a child lives, or is to live, with a person as the result of a residence order, the Crown may make contributions to that person towards the cost of the accommodation and maintenance of the child.

(2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife of a parent of the child.

15. Interpretation (CA, Sch 1, para 16)

(1) In this Schedule "child" includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has attained the age of 18, that person.

(2) In this Schedule, except in paragraph 2, "parent" includes any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family; and for this purpose any reference to either parent or to both parents is to be construed as references to any parent of the child and to all of the child's parents.

SCHEDULE 2
CROWN SUPPORT FOR CHILDREN AND FAMILIES (CA, Sch 2)

Part 1
Provision of services for families (CA, Sch 2, Pt 1)

1. Identification of children in need and provision of information (CA, Sch 2, para 1)

(1) The Crown must take reasonable steps to identify the extent to which there are children in need within the Falkland Islands.

(2) The Crown must —

(a) publish information —

(i) about services provided by it under sections 22, 23, 35, 37 and 42; and

(ii) where it considers it appropriate, about the provision by others (including, in particular, voluntary organisations) of services which it has power to provide under those sections; and

(b) take such steps as are reasonably practicable to ensure that those who might benefit from the services receive the information relevant to them.

2. Maintenance of a register of disabled children (CA, Sch 2, para 2)

(1) The Crown must open and maintain a register of disabled children within the Falkland Islands.

(2) The register may be kept by means of a computer.

3. Assessment of children's needs (CA, Sch 2, para 3)

Where it appears to the Crown that a child within the Falkland Islands is in need, it may assess the child's needs for the purposes of this Ordinance at the same time as any assessment of the child's needs is made under any other enactment.

4. Prevention of neglect and abuse (CA, Sch 2, para 4)

The Crown must take reasonable steps, through the provision of services under Part 3 of this Ordinance, to prevent children within the Falkland Islands suffering ill-treatment or neglect.

5. Provision of accommodation in order to protect child (CA, Sch 2, para 5)

(1) Where —

(a) it appears to the Crown that a child who is living on particular premises is suffering, or is likely to suffer, ill treatment at the hands of another person who is living on those premises; and

(b) that other person proposes to move from the premises,

the Crown may assist that other person to obtain alternative accommodation.

(2) Assistance given under this paragraph may be in cash.

(3) Subsections (8) to (10) of section 22 apply in relation to assistance given under this paragraph as they apply in relation to assistance given under that section.

6. Provision for disabled children (CA, Sch 2, para 6)

(1) The Crown must provide services designed —

(a) to minimise the effect on disabled children within the Falkland Islands of their disabilities;

(b) to give such children the opportunity to lead lives which are as normal as possible; and

(c) to assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring.

(2) The duty imposed by sub-paragraph (1)(c) is to be performed in accordance with regulations made by the Governor.

7. Provision to reduce need for care proceedings etc (CA, Sch 2, para 7)

The Crown must take reasonable steps designed —

(a) to reduce the need to bring —

(i) proceedings for care or supervision orders with respect to children within the Falkland Islands;

(ii) criminal proceedings against such children;

(iii) any family or other proceedings with respect to such children which might lead to them being placed in the care of the Crown; or

(iv) proceedings under the inherent jurisdiction of the Supreme Court with respect to children; and

(b) to encourage children within the Falkland Islands not to commit criminal offences.

8. Provision for children living with their families (CA, Sch 2, para 8)

The Crown must make such provision as it considers appropriate for the following services to be available with respect to children in need within the Falkland Islands while they are living with their families —

(a) advice, guidance and counselling;

- (b) occupational, social, cultural or recreational activities;
- (c) home help (which may include laundry facilities);
- (d) facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Ordinance or of any similar service;
- (e) assistance to enable the child concerned and his family to have a holiday.

9. Maintenance of the family home (CA, Sch 2, para 10)

The Crown must take such steps as are reasonably practicable, where any child within the Falkland Islands who is in need and whom it is not looking after is living apart from the child's family —

- (a) to enable the child to live with the child's family; or
- (b) to promote contact between the child and the child's family,

if, in its opinion, it is necessary to do so in order to safeguard or promote the child's welfare.

10. Duty to consider racial groups to which children in need belong (CA, Sch 2, para 11)

The Crown must, in making any arrangements designed to encourage persons to act as foster parents on behalf of the Crown, have regard to the different racial groups to which children within the Falkland Islands who are in need belong.

Part 2

Children looked after by the Crown (CA, Sch 2, Pt 2)

11. Regulations as to conditions under which child in care is allowed to live with parent, etc (CA, Sch 2, para 12A)

Regulations under section 28 may, in particular, impose requirements on the Crown as to —

- (a) the making of any decision by the Crown to allow a child in its care to live with any person falling within section 28(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);
- (b) the supervision or medical examination of the child concerned;
- (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom the child has been allowed to live;
- (d) the records to be kept by the Crown.

12. Regulations as to placements of a kind specified in section 28(6)(c) (CA, Sch 2, para 12B)

Regulations under section 28 as to placements of the kind specified in section 28(6)(c) may, in particular, make provision as to —

- (a) the persons to be notified of any proposed arrangements;
- (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
- (c) the persons to be notified of any proposed changes in arrangements;
- (d) the records to be kept by the Crown;
- (e) the supervision by the Crown of any arrangements made.

13. Avoidance of disruption in education (CA, Sch 2, para 12D)

(1) Regulations under section 28 may, in particular, impose requirements which the Crown must comply with before making any decision concerning a child's placement if the child is in the fourth key stage.

(2) A child is “in the fourth key stage” during the period beginning at the same time as the academic year in which the majority of pupils in the child’s class attain the age of 15 and ending at the same time as the academic year in which the majority of pupils in the child’s class cease to be of compulsory education age.

(3) “Academic year” and “compulsory education age” have the same meaning in subsection (2) as they do in the Education Ordinance (see sections 17 and 57 of that Ordinance).

14. Regulations as to placing of children with foster parents (CA, Sch 2, para 12E)

Regulations under section 28 may, in particular, make provision —

- (a) with regard to the welfare of children placed with foster parents looking after children on behalf of the Crown;
- (b) as to the arrangements to be made by the Crown in connection with the health and education of such children;
- (c) as to the records to be kept by the Crown;
- (d) for securing that where possible the foster parent with whom a child is to be placed is —
 - (i) of the same religious persuasion as the child; or
 - (ii) gives an undertaking that the child will be brought up in that religious persuasion;

(e) for securing the children placed with foster parents, and the premises in which they are accommodated, will be supervised and inspected by the Crown and that the children will be removed from those premises if their welfare appears to require it.

15. Regulations as to placing of children with foster parents: review procedure (CA, Sch 2, para 12F)

(1) Regulations under section 28 may, in particular, also make provision —

(a) for securing that a child is not placed with a foster parent unless that person is for the time being approved as a foster parent by the Crown;

(b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply for a review of that determination by a panel.

(2) A determination is a qualifying determination if —

(a) it relates to the issue of whether a person should be approved, or should continue to be approved, by the Crown as a foster parent; and

(b) it is of a prescribed description.

(3) Regulations made by virtue of sub-paragraph (1)(b) may include provision as to —

(a) the duties and powers of a panel;

(b) the administration and procedures of a panel;

(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for appointment);

(d) the payment of fees to members of a panel;

(e) the duties of any person in connection with a review conducted under the regulations;

(f) the monitoring of any such reviews.

(4) The Crown may make an arrangement with an organisation under which independent review functions are performed by the organisation on the Crown's behalf.

(5) If the Crown makes such an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the Crown.

(6) The arrangement may include provision for payments to be made to the organisation by the Crown.

“independent review function” means a function conferred or imposed on a national authority by regulations made by virtue of sub-paragraph (1)(b);

“organisation” includes a public body and a private or voluntary organisation.

16. Regulations as to placing of children with foster parents: discharge of functions on behalf of Crown (CA, Sch 2, para 12G)

Regulations under section 28 may, in particular, also make provision as to the circumstances in which the Crown may make arrangements for duties imposed on it by the regulations to be discharged on its behalf.

17. Promotion and maintenance of contact between child and family (CA, Sch 2, para 15)

(1) Where a child is being looked after by the Crown, the Crown must, unless it is not reasonably practicable or consistent with the child’s welfare, endeavour to promote contact between the child and —

- (a) the child’s parents;
- (b) any person who is not a parent of the child but who has parental responsibility for the child; and
- (c) any relative, friend or other person connected with the child.

(2) Where a child is being looked after by the Crown —

- (a) the Crown must take such steps as are reasonably practicable to secure that —
 - (i) the child’s parents; and
 - (ii) any person who is not a parent of the child but who has parental responsibility for the child,

are kept informed of where the child is being accommodated; and

- (b) every such person must secure that the Crown kept informed of the person’s address.

(3) Nothing in this paragraph requires the Crown to inform any person of the whereabouts of a child if —

- (a) the child is in the care of the Crown; and
- (b) the Crown has reasonable cause to believe that informing the person would prejudice the child’s welfare.

(4) Any person who fails (without reasonable excuse) to comply with sub-paragraph (2)(b) is guilty of an offence and liable on conviction to a fine not exceeding level 2 on the standard scale.

(5) It is a defence in any proceedings under sub-paragraph (4) to prove that the defendant was residing at the same address as another person who was the child's parent or had parental responsibility for the child and had reasonable cause to believe that the other person had informed the Crown that both of them were residing at that address.

18. Visits to or by children: expenses (CA, Sch 2, para 16)

(1) This paragraph applies where —

- (a) a child is being looked after by the Crown; and
- (b) the conditions mentioned in sub-paragraph (3) are satisfied.

(2) The Crown may —

(a) make payments to —

- (i) a parent of the child;
- (ii) any person who is not a parent of the child's but who has parental responsibility for the child; or
- (iii) any relative, friend or other person connected with the child,

in respect of travelling, subsistence or other expenses incurred by that person in visiting the child; or

(b) make payments to the child, or to any person on the child's behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in the child visiting —

- (i) a parent of the child;
- (ii) any person who is not a parent of the child but who has parental responsibility for the child; or
- (iii) any relative, friend or other person connected with the child.

(3) The conditions are that —

(a) it appears to the Crown that the visit in question could not otherwise be made without undue financial hardship; and

(b) the circumstances warrant the making of the payments.

19. Appointment of visitor for child who is not being visited (CA, Sch 2, para 17)

(1) Where it appears to the Crown in relation to any child that it is looking after that —

(a) communication between the child and —

(i) a parent of the child, or

(ii) any person who is not a parent of the child but who has parental responsibility for the child,

has been infrequent; or

(b) the child has not visited or been visited by (or lived with) any such person during the preceding twelve months,

and that it would be in the child's best interests for an independent person to be appointed to be the child's visitor for the purposes of this paragraph, the Crown must appoint such a visitor.

(2) A person so appointed —

(a) has the duty of visiting, advising and befriending the child; and

(b) is entitled to recover from the Crown any reasonable expenses incurred by the person for the purposes of the person's functions under this paragraph.

(3) A person's appointment as a visitor in pursuance of this paragraph will be determined if —

(a) the person gives notice in writing to the Crown that the person resigns the appointment;
or

(b) the Crown gives the person notice in writing that it has terminated the appointment.

(4) The determination of such an appointment does not prejudice any duty under this paragraph to make a further appointment.

(5) Where the Crown proposes to appoint a visitor for a child under this paragraph, the appointment must not be made if —

(a) the child objects to it; and

(b) the Crown is satisfied that the child has sufficient understanding to make an informed decision.

(6) Where a visitor has been appointed for a child under this paragraph, the Crown must determine the appointment if —

(a) the child objects to its continuing; and

(b) the Crown is satisfied that the child has sufficient understanding to make an informed decision.

(7) The Governor may make regulations as to the circumstances in which a person appointed as a visitor under this paragraph is to be regarded as independent of the Crown.

20. Power to guarantee apprenticeship deeds etc (CA, Sch 2, para 18)

(1) While a child is being looked after by the Crown, or is a person qualifying for advice and assistance, the Crown may undertake any obligation by way of guarantee under any deed of apprenticeship or articles of clerkship which the child or person enters into.

(2) Where the Crown has undertaken any such obligation under any deed or articles it may at any time (whether or not it are still looking after the person concerned) undertake the like obligation under any supplemental deed or articles.

21. Arrangements to assist children to live abroad (CA, Sch 2, para 19)

(1) The Crown may only arrange for, or assist in arranging for, any child in its care to live outside the Falkland Islands with the approval of the court.

(2) The Crown may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by it to live outside the Falkland Islands.

(3) The court must not give its approval under sub-paragraph (1) unless it is satisfied that —

(a) living outside the Falkland Islands would be in the child's best interests;

(b) suitable arrangements have been, or will be, made for the child's reception and welfare in the country in which the child will live;

(c) the child has consented to living in that country; and

(d) every person who has parental responsibility for the child has consented to the child living in that country.

(4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian or other suitable person.

(5) Where a person whose consent is required by sub-paragraph (3)(d) fails to give consent, the court may disregard that provision and give its approval if it is satisfied that that person —

(a) cannot be found;

(b) is incapable of consenting; or

(c) is withholding consent unreasonably.

(6) Section 56 of the Adoption Act 1976 (as it applies in the Falkland Islands) does not apply in the case of any child who is to live outside the Falkland Islands with the approval of the court given under this paragraph.

(7) Where a court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.

(8) In sub-paragraph (7) “the appeal period” means —

(a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal; and

(b) otherwise, the period during which an appeal may be made against the decision.

(9) This paragraph does not apply to the Crown placing a child for adoption with prospective adopters.

22. Preparation for ceasing to be looked after (CA, Sch 2, para 19A)

It is the duty of the Crown when looking after a child to advise, assist and befriend the child with a view to promoting child’s welfare when it has ceased to look after the child.

23. Preparation for ceasing to be looked after: additional functions in relation to eligible children (CA, Sch 2, para 19B)

(1) The Crown has the following additional functions in relation to an eligible child whom it is looking after.

(2) In sub-paragraph (1) “eligible child” means, subject to sub-paragraph (3), a child who —

(a) is aged 16 or 17; and

(b) has been looked after by the Crown for a period of at least 13 weeks, or periods amounting in all to a period of at least 13 weeks, which began after the child reached the age of 14 and ended after the child reached the age of 16.

(3) The Governor may prescribe —

(a) additional categories of eligible children; and

(b) categories of children who are not to be eligible children despite falling within sub-paragraph (2).

(4) For each eligible child, the Crown must carry out an assessment of the eligible child’s needs with a view to determining what advice, assistance and support it would be appropriate for the Crown to provide the eligible child under this Ordinance —

- (a) while it is still looking after the eligible child; and
- (b) after it ceases to look after the eligible child,

and must then prepare a pathway plan for the eligible child.

- (5) The Crown must keep the pathway plan under regular review.
- (6) Any such review may be carried out at the same time as a review of the child's case carried out by virtue of section 44.
- (7) The Governor may by regulations make provision as to assessments for the purposes of sub-paragraph (4).
- (8) The regulations may in particular provide for the matters set out in section 35(6).

24. Preparation for ceasing to be looked after: appointment of personal advisers for eligible children (CA, Sch 2, para 19C)

The Crown must arrange for each child whom it is looking after who is an eligible child for the purposes of paragraph 23 to have a personal adviser.

25. Death of children being looked after by Crown (CA, Sch 2, para 20)

- (1) If a child who is being looked after by the Crown dies, the Crown —
 - (a) must, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of the child but who has parental responsibility for the child;
 - (b) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated; and
 - (c) may, if the conditions mentioned in sub-paragraph (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.
- (2) The conditions are that —
 - (a) it appears to the Crown that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
 - (b) that the circumstances warrant the making of the payments.
- (3) Sub-paragraph (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.

(4) Where the Crown has exercised its power under sub-paragraph (1)(b) with respect to a child who was under 16 when the child died, it may recover from any parent of the child any expenses incurred by it.

(5) Any sums so recoverable shall, without prejudice to any other method of recovery, be recoverable summarily as a civil debt.

(6) Nothing in this paragraph affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

Part 3

Contributions towards maintenance of children looked after by Crown (CA, Sch 2, Pt 3)

26. Liability to contribute (CA, Sch 2, para 21)

(1) Where the Crown is looking after a child (other than in the cases mentioned in sub-paragraph (7)) it must consider whether it should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").

(2) The Crown may only recover contributions from a contributor if it considers it reasonable to do so.

(3) The persons liable to contribute are —

(a) where the child is under 16, each of the child's parents;

(b) where the child has reached the age of 16, the child.

(4) A parent is not liable to contribute during any period when that person is receiving welfare assistance, rent rebate, working credit, childcare credit or similar payments from the Falkland Islands Government.

(5) A person is not liable to contribute towards the maintenance of a child in the care of the Crown in respect of any period during which the child is allowed by the Crown to live with a parent of the child.

(6) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with this Part of this Schedule.

(7) The cases are where the child is looked after by the Crown under —

(a) section 24;

(b) an interim care order;

(c) section 39 of the Criminal Justice Ordinance (Title 24.1).

27. Agreed contributions (CA, Sch 2, para 22)

(1) Contributions towards a child's maintenance may only be recovered if the Crown has served a notice ("a contribution notice") on the contributor specifying —

- (a) the weekly sum which it considers that the contributor should contribute; and
- (b) arrangements for payment.

(2) The contribution notice must be in writing and dated.

(3) Arrangements for payment must, in particular, include —

- (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice);
- (b) the date on which liability under the notice will end (if the child has not before that date ceased to be looked after by the Crown); and
- (c) the date on which the first payment is to be made.

(4) The Crown may specify in a contribution notice a weekly sum which is a standard contribution determined by it for all children looked after by the Crown.

(5) The Crown may not specify in a contribution notice a weekly sum greater than that which it considers —

- (a) it would normally be prepared to pay if it had placed a similar child with foster parents approved by the Crown; and
- (b) it is reasonably practicable for the contributor to pay (having regard to the contributor's means).

(6) The Crown may at any time withdraw a contribution notice (without prejudice to its power to serve another).

(7) Where the Crown and the contributor agree —

- (a) the sum which the contributor is to contribute; and
- (b) arrangements for payment,

(whether as specified in the contribution notice or otherwise) and the contributor notifies the Crown in writing that the contributor so agrees, the Crown may recover summarily as a civil debt any contribution which is overdue and unpaid.

(8) A contributor may, by serving a notice in writing on the Crown, withdraw agreement in relation to any period of liability falling after the date of service of the notice.

(9) Sub-paragraph (7) is without prejudice to any other method of recovery.

28. Contribution orders (CA, Sch 2, para 23)

(1) Where a contributor has been served with a contribution notice and has —

(a) failed to reach any agreement with the Crown as mentioned in paragraph 27(7) within the period of one month beginning with the day on which the contribution notice was served; or

(b) served a notice under paragraph 27(8) withdrawing his agreement,

the Crown may apply to the court for an order under this paragraph.

(2) On such an application the court may make an order (“a contribution order”) requiring the contributor to contribute a weekly sum towards the child’s maintenance in accordance with arrangements for payment specified by the court.

(3) A contribution order —

(a) must not specify a weekly sum greater than that specified in the contribution notice; and

(b) must be made with due regard to the contributor’s means.

(4) A contribution order will not —

(a) take effect before the date specified in the contribution notice; or

(b) have effect while the contributor is not liable to contribute (by virtue of paragraph 26); or

(c) remain in force after the child has ceased to be looked after by the Crown.

(5) The Crown may not apply to the court under sub-paragraph (1) in relation to a contribution notice which it has withdrawn.

(6) Where —

(a) a contribution order is in force;

(b) the Crown serves another contribution notice; and

(c) the contributor and the Crown reach an agreement under paragraph 27(7) in respect of that other contribution notice,

the effect of the agreement will be to discharge the order from the date on which it is agreed that the agreement is to take effect.

(7) Where an agreement is reached under sub-paragraph (6) the Crown must notify the court —

- (a) of the agreement; and
- (b) of the date on which it took effect.

(8) A contribution order may be varied or revoked on the application of the contributor or the Crown.

(9) In proceedings for the variation of a contribution order, the Crown must specify —

- (a) the weekly sum which, having regard to paragraph 28, it proposes that the contributor should contribute under the order as varied; and
- (b) the proposed arrangements for payment.

(10) Where a contribution order is varied, the order —

- (a) must not specify a weekly sum greater than that specified by the Crown in the proceedings for variation; and
- (b) must be made with due regard to the contributor's means.

(11) An appeal lies in accordance with rules of court from any order made under this paragraph.

29. Enforcement of contribution orders etc (CA, Sch 2, para 24)

(1) A contribution order made by a court is enforceable in the same way as a maintenance order under the Maintenance Orders Ordinance (Title 38(2).1).

(2) In any proceedings under this paragraph, a document which purports to be —

- (a) a copy of an order made by a court under or by virtue of paragraph 28; and
- (b) certified as a true copy by an officer of the court,

is evidence of the order.

(3) In any proceedings under this paragraph, a certificate which —

- (a) purports to be signed by a public officer; and
- (b) states that any sum due to the Crown under the order is overdue and unpaid,

is evidence that the sum is overdue and unpaid.

30. Regulations (CA, Sch 2, para 25)

The Governor may make regulations —

- (a) as to the considerations which the Crown must take into account in deciding —
 - (i) whether it is reasonable to recover contributions; and
 - (ii) what the arrangements for payment should be;
- (b) as to the procedures the Crown must follow in reaching agreements with contributors (under paragraphs 27 and 28).

**SCHEDULE 3
SUPERVISION ORDERS (CA. Sch 3)**

**Part 1
General (CA, Sch 3, Pt 1)**

1. Meaning of "responsible person" (CA, Sch 3, para 1)

In this Schedule, "the responsible person", in relation to a supervised child, means —

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

2. Power of supervisor to give directions to supervised child (CA, Sch 3, para 2)

(1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require the child to do all or any of the following things —

- (a) to live at a place or places specified in the directions for a period or periods so specified;
- (b) to present to a person or persons specified in the directions at a place or places and on a day or days so specified;
- (c) to participate in activities specified in the directions on a day or days so specified.

(2) It is for the supervisor to decide whether, and to what extent, the supervisor exercises the power to give directions and to decide the form of any directions which the supervisor gives.

(3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

3. Imposition of obligations on responsible persons (CA, Sch 3, para 3)

(1) With the consent of any responsible person, a supervision order may include a requirement —

(a) that the responsible person must take all reasonable steps to ensure that the supervised child complies with any directions given by the supervisor under paragraph 2;

(b) that the responsible person takes all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;

(c) that the responsible person complies with any directions given by the supervisor requiring the responsible person to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is to attend with the responsible person.

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of that person's address, if it differs from the child's.

4. Psychiatric and medical examinations (CA, Sch 3, para 4)

(1) A supervision order may require the supervised child —

(a) to submit to a medical or psychiatric examination; or

(b) to submit to any such examination from time to time as directed by the supervisor.

(2) Any such examination is required to be conducted —

(a) by, or under the direction of such medical practitioner as may be specified in the order;

(b) as a non-resident patient, at a place specified in the order (which, subject to sub-paragraph (4), may be outside the Falkland Islands); or

(c) as a resident patient, at —

(i) a hospital or other medical centre —

(aa) in the Falkland Islands; or

(bb) subject to sub-paragraph (4), outside the Falkland Islands; or

(ii) in the case of a psychiatric examination —

(aa) a hospital in the Falkland Islands;

(bb) any place in the Falkland Islands designated as an approved medical centre for the purposes of the Mental Health Ordinance (No 7 of 2010); or

(cc) subject to sub-paragraph (4), a hospital or mental health facility outside the Falkland Islands,

(3) A requirement of the kind mentioned in sub-paragraph (2)(c) must not be included unless the court is satisfied, on the evidence of a medical practitioner, that —

(a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment; and

(b) a period as a resident patient is necessary if the examination is to be carried out properly.

(4) A requirement for an examination outside the Falkland Islands must not be included in a supervision order unless —

(a) the court is satisfied that the requisite examination is not ordinarily and sufficiently available in the Falkland Islands;

(b) either —

(i) in the case of a child who belongs to the Falkland Islands or who has a permanent right to remain in the Falkland Islands, the circumstances set out in sub-paragraph (5) apply; or

(ii) in the case of a child who does not belong to the Falkland Islands or have a permanent right to remain in the Falkland Islands but who is lawfully present in the Falkland Islands, the circumstances set out in sub-paragraph (6) apply.

(5) The circumstances that must apply in relation to a child who belongs to the Falkland Islands or who has a permanent right to remain in the Falkland Islands are that the court is satisfied that both of the following conditions are met —

(a) the child consents to going outside the Falkland Islands for examination; and

(b) the child has sufficient understanding to give that consent;

(6) The circumstances that must apply in relation to a child who does not belong to the Falkland Islands or have a permanent right to remain in the Falkland Islands but who is lawfully present in the Falkland Islands are either or both of the following —

(a) the court is satisfied both of the following conditions are met —

- (i) the child consents to going outside the Falkland Islands for examination; and
- (ii) the child has sufficient understanding to give that consent; or

(b) the court is satisfied that the requirement will not affect the child's rights under section 8 of the Constitution.

5. Psychiatric and medical treatment (CA, Sch 3, para 5)

(1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a Government medical officer or some other medical practitioner approved by the Governor for the purpose (provided that a person who is approved for the purposes of section 12 of the Mental Health Act 1983 in the United Kingdom is to be deemed to have been approved by the Governor for the purpose), that the mental condition of the supervised child —

(a) is such as requires, and may be susceptible to, treatment, but

(b) is not such as to warrant the child's detention in pursuance of a hospital treatment order under Part 3 of the Mental Health Ordinance,

the court may include in the order a requirement that the supervised child must, for the period specified in the order, submit to such treatment as is specified in the order.

(2) The treatment specified in accordance with sub-paragraph (1) must be —

(a) by, or under the direction of, such medical practitioner as may be specified in the order;

(b) as a non-resident patient, at such place as may be so specified order (which, subject to sub-paragraph (6), may be outside the Falkland Islands); or

(c) as a resident patient —

(i) a hospital in the Falkland Islands;

(ii) any place in the Falkland Islands designated as an approved medical centre for the purposes of the Mental Health Ordinance; or

(iii) subject to sub-paragraph (6), a hospital or mental health facility outside the Falkland Islands.

(3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child must, for the period specified in the order, submit to such treatment as is specified in the order.

(4) The treatment specified in accordance with sub-paragraph (3) must be —

- (a) by, or under the direction of, such medical practitioner as may be specified in the order;
- (b) as a non-resident patient, at such place as may be specified in the order (which, subject to sub-paragraph (6), may be outside the Falkland Islands), or
- (c) as a resident patient, at a hospital or other medical centre —
 - (i) in the Falkland Islands; or
 - (ii) subject to sub-paragraph (6), outside the Falkland Islands.

(5) A court must not include a requirement under this paragraph in a supervision order unless it is satisfied —

- (a) where the child has sufficient understanding to make an informed decision, that the child consents to its inclusion;
- (b) that satisfactory arrangements have been, or can be, made for the treatment.

(6) A requirement for treatment to be given outside the Falkland Islands must not be included in a supervision order unless the court is satisfied —

- (a) the court is satisfied that the requisite examination is not ordinarily and sufficiently available in the Falkland Islands;
- (b) either —
 - (i) in the case of a child who belongs to the Falkland Islands or who has a permanent right to remain in the Falkland Islands, the circumstances set out in sub-paragraph (7) apply; or
 - (ii) in the case of a child who does not belong to the Falkland Islands or have a permanent right to remain in the Falkland Islands but who is lawfully present in the Falkland Islands, the circumstances set out in sub-paragraph (8) apply.

(7) The circumstances that must apply in relation to a child who belongs to the Falkland Islands or who has a permanent right to remain in the Falkland Islands are either or both of the following —

- (a) the court is satisfied that both of the following conditions are met —
 - (i) the child consents to going outside the Falkland Islands for examination; and
 - (ii) the child has sufficient understanding to give that consent; or

(b) in the case of psychiatric treatment, the court is satisfied that it is necessary either —

(i) in the interests of the child; or

(ii) to protect the public.

(8) The circumstances that must apply in relation to a child who does not belong to the Falkland Islands or have a permanent right to remain in the Falkland Islands but who is lawfully present in the Falkland Islands are one or more of the following —

(a) the court is satisfied both of the following conditions are met —

(i) the child consents to going outside the Falkland Islands for examination; and

(ii) the child has sufficient understanding to give that consent;

(b) in the case of psychiatric treatment, the court is satisfied that it is necessary either —

(i) in the interests of the child; or

(ii) to protect the public; or

(c) the court is satisfied that the requirement will not affect the child's rights under section 8 of the Constitution.

(9) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement contained in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that —

(a) the treatment should be continued beyond the period specified in the order;

(b) the supervised child needs different treatment;

(c) that the child is not susceptible to treatment; or

(d) that the child does not require further treatment,

the practitioner must make a report in writing to the supervisor.

(10) On receiving a report under this paragraph the supervisor must refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

Part 2
Miscellaneous (CA, Sch 3, Pt 2)

6. Life of supervision order (CA, Sch 3, para 6)

(1) Subject to sub-paragraph (2) and section 83, a supervision order will cease to have effect at the end of the period of one year beginning with the date on which it was made.

(2) Where a supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as the court may specify.

(3) A supervision order must not be extended so as to run beyond the end of the period of three years beginning with the date on which the order was made.

7. Information to be given to supervisor etc (CA, Sch 3, para 8)

(1) A supervision order may require the supervised child —

(a) to keep the supervisor informed of any change in the child's address; and

(b) to allow the supervisor to visit the child at the place where the child is living.

(2) The responsible person in relation to any child with respect to whom a supervision order is made must —

(a) if asked by the supervisor, inform the supervisor of the child's address (if it is known to the responsible person); and

(b) if the responsible person is living with the child, allow the supervisor reasonable contact with the child.

8. Effect of supervision order on earlier orders (CA, Sch 3, para 10)

The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which —

(a) was made with respect to the child; and

(b) would otherwise continue in force.

Part 3
Education supervision orders (CA, Sch 3, Pt 3)

9. Effect of orders (CA, Sch 3, para 12)

(1) Where an education supervision order is in force with respect to a child, it is the duty of the supervisor —

(a) to advise, assist and befriend, and give directions to —

- (i) the supervised child; and
- (ii) the child's parents,

in such a way as will, in the opinion of the supervisor, secure that the child is properly educated;

(b) where any such directions given to —

- (i) the supervised child; or
- (ii) a parent of the child,

have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under this Ordinance.

(2) Before giving any directions under sub-paragraph (1) the supervisor must, so far as is reasonably practicable, ascertain the wishes and feelings of —

- (a) the child; and
- (b) the child's parents,

including, in particular, their wishes as to the place at which the child should be educated.

(3) When settling the terms of any such directions, the supervisor must give due consideration —

- (a) having regard to the child's age and understanding, to such wishes and feelings of the child's as the supervisor has been able to ascertain; and
- (b) to such wishes and feelings of the child's parents as the supervisor has been able to ascertain.

(4) Directions may be given under this paragraph at any time while the education supervision order is in force.

10. Effect of orders: further provisions (CA, Sch 3, para 13)

(1) Where an education supervision order is in force with respect to a child, the duties of the child's parents under section 19 and section 26 or 28 of the Education Ordinance (Title 29.1) (duties to secure sufficient education of children and to secure regular attendance of registered pupils or to ensure diligent pursuit of a course of education provided by the Camp Education Service) shall be superseded by their duty to comply with any directions in force under the education supervision order.

(2) Where an education supervision order is made with respect to a child —

(a) any school attendance order —

(i) made under section 25 of the Education Ordinance with respect to the child; and

(ii) in force immediately before the making of the education supervision order,

ceases to have effect; and

(b) while the education supervision order remains in force, section 25 of that Ordinance (school attendance orders) does not apply with respect to the child.

11. Effect where child also subject to supervision order (CA, Sch 3, para 14)

(1) This paragraph applies where an education supervision order and a supervision order are in force at the same time with respect to the same child.

(2) Any failure to comply with a direction given by the supervisor under the education supervision order is to be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction or instruction given under the other order.

12. Duration of orders (CA, Sch 3, para 15)

(1) An education supervision order will have effect for a period of one year, beginning with the date on which it is made.

(2) An education supervision order will not expire if, before it would otherwise have expired, the court has (on the application of the authority in whose favour the order was made) extended the period during which it is in force.

(3) Such an application may not be made earlier than three months before the date on which the order would otherwise expire.

(4) The period during which an education supervision order is in force may be extended under sub-paragraph (2) on more than one occasion.

(5) No one extension may be for a period of more than three years.

(6) An education supervision order will cease to have effect on —

(a) the child's ceasing to be of compulsory school age; or

(b) the making of a care order with respect to the child;

and sub-paragraphs (1) to (4) are subject to this sub-paragraph.

13. Information to be given to supervisor etc (CA, Sch 3, para 16)

(1) An education supervision order may require the child —

- (a) to keep the supervisor informed of any change in the child's address; and
- (b) to allow the supervisor to visit the child at the place where the child is living.

(2) A person who is the parent of a child with respect to whom an education supervision order has been made must —

- (a) if asked by the supervisor, inform the supervisor of the child's address (if it is known to the parent); and
- (b) if the parent is living with the child, allow the supervisor reasonable contact with the child.

14. Discharge of orders (CA, Sch 3, para 17)

(1) The court may discharge any education supervision order on the application of —

- (a) the child concerned;
- (b) a parent of the child; or
- (c) the Crown.

(2) On discharging an education supervision order, the court may direct the Crown to investigate the circumstances of the child.

15. Offences (CA, Sch 3, para 18)

(1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order, the parent is guilty of an offence.

(2) It is a defence for any person charged with such an offence to prove that —

- (a) the person took all reasonable steps to ensure that the direction was complied with;
- (b) the direction was unreasonable; or
- (c) the person had complied with —
 - (i) a requirement included in a supervision order made with respect to the child; or
 - (ii) directions given under such a requirement,

and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this paragraph.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

16. Interpretation (CA, Sch 3, para 21)

In this Part of this Schedule “parent” has the same meaning as in the Education Ordinance.

SCHEDULE 4

ADDITIONAL PROVISIONS ABOUT POWERS OF ARREST ATTACHED TO EXCLUSION REQUIREMENTS (Family Law Act 1996, ss47(7) and (12) and 48 and Sch 5)

1. Requirement to bring person before court (Family Law Act 1996, s47(7))

(1) If a power of arrest is attached to an exclusion requirement imposed under section 57 or 65 and the person on whom the requirement was imposed is arrested under that power —

(a) that person must be brought before a court within the period of 24 hours beginning at the time of the person’s arrest; and

(b) if the matter is not then disposed of forthwith, the court before whom the person is brought may remand the person.

(2) In reckoning for the purposes of sub-paragraph (1) any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

2. Remand in custody or on bail (Family Law Act 1996, Sch 5, para 2)

(1) Where a court has power to remand a person under paragraph 1(1)(b), the court may —

(a) remand the person in custody, that is to say, commit the person to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or

(b) remand the person on bail —

(i) by taking from the person a recognisance (with or without sureties) conditioned as provided in sub-paragraph (3), or

(ii) by fixing the amount of the recognisances with a view to their being taken subsequently in accordance with paragraph 4 and in the meantime committing the person to custody in accordance with paragraph (a).

(2) Where a person is brought before the court after remand, the court may further remand that person.

(3) Where a person is remanded on bail under sub-paragraph (1), the court may direct that the person’s recognisance be conditioned for the person’s appearance —

(a) before that court at the end of the period of remand, or

(b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(4) Where a recognisance is conditioned for a person's appearance in accordance with sub-paragraph (1)(b), the fixing of any time for the person next to appear is deemed to be a remand; but nothing in this sub-paragraph or sub-paragraph (3) deprives the court of power at any subsequent hearing to remand the person afresh.

(5) Subject to paragraph 3, the court must not remand a person under this paragraph for a period exceeding 8 clear days, except that —

(a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and

(b) if the court adjourns a case under paragraph 6, the court may remand him for the period of the adjournment.

(6) Where the court has power under this paragraph to remand a person in custody it may, if the remand is for a period not exceeding 3 clear days, commit the person to the custody of a police officer.

3. Further remand (Family Law Act 1996, Sch 5, para 3)

(1) If the court is satisfied that any person who has been remanded under paragraph 2 is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which the person was remanded, the court may, in the person's absence, remand the person for a further time; and paragraph 2(5) will not apply.

(2) Notwithstanding anything in paragraph 2(1), the power of the court under sub-paragraph (1) to remand a person on bail for a further time may be exercised by enlarging the person's recognisance and those of any sureties for the person to a later time.

(3) Where a person remanded on bail under paragraph 2 is bound to appear before the court at any time and the court has no power to remand that person under sub-paragraph (1), the court may in the person's absence enlarge the person's recognisance and those of any sureties for the person to a later time; and the enlargement of the person's recognizance will be deemed to be a further remand.

4. Postponement of taking of recognisance (Family Law Act 1996, Sch 5, para 4)

Where under paragraph 2(1)(b)(ii) the court fixes the amount in which the principal and the principal's sureties, if any, are to be bound, the recognisance may thereafter be taken by such person as may be prescribed by rules of court, and the same consequences shall follow as if it had been entered into before the court.

5. Bail subject to conditions (Family Law Act 1996, s47(12))

If a person remanded under this section is granted bail, the person may be required by the court to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

6. Remand for medical examination and report (Family Law Act 1996, s48)

(1) If the court has reason to consider that a medical report will be required, any power to remand a person under paragraph 1(1)(b) may be exercised for the purpose of enabling a medical examination and report to be made.

(2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the court remands the accused in custody.

(3) If the court so remands the accused, the adjournment must not be for more than 3 weeks at a time.

(4) If there is reason to suspect that a person who has been arrested under a power of arrest attached to an exclusion requirement imposed under section 57 or 65 is suffering from mental disorder within the meaning of the Mental Health Ordinance (No 7 of 2010), the court has the same power to make an order under section 48 of that Ordinance (remand to hospital for report on accused's mental condition) as it does under that section in the case of an accused person within the meaning of that section.

SCHEDULE 5 FOSTERING (CA, Schs 7 & 8)

Part 1

Foster Parents: Limits on Number of Foster Children (CA, Sch 7)

1. Fostering (CA, Sch 7, para 1)

For the purposes of this Schedule, a person fosters a child if —

- (a) the person fosters the child on behalf of the Crown;
- (b) the person fosters the child privately.

2. The usual fostering limit (CA, Sch 7, para 2)

Subject to what follows, a person may not foster more than three children ("the usual fostering limit").

3. Siblings (CA, Sch 7, para 3)

A person may exceed the usual fostering limit if the children concerned are all siblings with respect to each other.

4. Exemption by Crown (CA, Sch 7, para 4)

(1) A person may exceed the usual fostering limit if the person is exempted from it by the Crown.

(2) In considering whether to exempt a person, the Crown must have regard, in particular, to —

- (a) the number of children whom the person proposes to foster;
- (b) the arrangements which the person proposes for the care and accommodation of the fostered children;
- (c) the intended and likely relationship between the person and the fostered children;
- (d) the period of time for which he proposes to foster the children; and
- (e) whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.

(3) Where the Crown exempts a person, it must inform the person by notice in writing —

- (a) that the person is so exempted;
- (b) of the children, described by name, whom the person may foster; and
- (c) of any condition to which the exemption is subject.

(4) The Crown may at any time by notice in writing —

- (a) vary or cancel an exemption; or
- (b) impose, vary or cancel a condition to which the exemption is subject,

and, in considering whether to do so, it must have regard in particular to the considerations mentioned in sub-paragraph (2).

(5) The Governor may make regulations amplifying or modifying the provisions of this paragraph in order to provide for cases where children need to be placed with foster parents as a matter of urgency.

5. Complaints etc (CA, Sch 7, para 6)

(1) The Crown must establish a procedure for considering any representations (including any complaint) made to it about the discharge of its functions under paragraph 4 by a person exempted or seeking to be exempted under that paragraph.

(2) In carrying out any consideration of representations under sub-paragraph (1), the Crown must comply with any regulations made by the Governor for the purposes of this paragraph.

Part 2
Privately Fostered Children (CA, Sch 8)

6. Exceptions: children looked after by Crown (CA, Sch 8, para 1)

A child is not a privately fostered child while the child is being looked after by the Crown.

7. Exceptions: children looked after in same premises as other family members (CA, Sch 8, para 2(1)(a))

A child is not a privately fostered child while the child is in the care of any person in premises in which any —

- (a) parent of the child;
- (b) person who is not a parent of the child but who has parental responsibility for the child;
- (c) person who is a relative of the child and who has assumed responsibility for the child's care,

is for the time being living.

8. Exceptions: children looked after in school, hospital or other institution (CA, Sch 8, para 2(1)(d) to (g))

(1) A child is not a privately fostered child while he is in the care of any person —

- (a) in any school in which the child is receiving full-time education;
- (b) in a hospital;
- (c) in any home or institution not specified in this paragraph but provided, equipped or maintained by (or on behalf of) the Crown.

(2) Sub-paragraphs (1) does not apply where the person caring for the child is doing so in a personal capacity and not in the course of carrying out the person's duties in relation to the establishment mentioned in the paragraph in question.

9. Exceptions: children subject to Mental Health Ordinance (CA, Sch 8, para 4)

A child is not a privately fostered child while the child is liable to be detained, or subject to guardianship, under the Mental Health Ordinance (No 7 of 2010).

10. Exceptions: children in care of prospective adopter (CA, Sch 8, para 5)

A child is not a privately fostered child while the child is placed in the care of a person who proposes to adopt the child under the Adoption Act 1976 (as it applies in the Falkland Islands).

11. Power of Crown to impose requirements (CA, Sch 8, para 6)

(1) Where a person is fostering any child privately, or proposes to foster any child privately, the Crown may impose on that person requirements as to —

- (a) the number, age and sex of the children who may be privately fostered by that person;
- (b) the standard of the accommodation and equipment to be provided for them;
- (c) the arrangements to be made with respect to their health and safety; and
- (d) particular arrangements which must be made with respect to the provision of care for them,

and it is the person's duty to comply with any such requirement before the end of such period as the Crown may specify unless, in the case of a proposal, the proposal is not carried out.

(2) A requirement may be limited to a particular child, or class of child.

(3) A requirement (other than one imposed under sub-paragraph (1)(a)) may be limited by the Crown so as to apply only when the number of children fostered by the person exceeds a specified number.

(4) A requirement is to be imposed by notice in writing addressed to the person on whom it is imposed and informing that person of —

- (a) the reason for imposing the requirement;
- (b) the person's right under paragraph 14 to appeal against it; and
- (c) the time within which the person may do so.

(5) The Crown may at any time vary any requirement, impose any additional requirement or remove any requirement.

(6) In this Schedule, "requirement", in relation to any person, means a requirement imposed on that person under this paragraph.

12. Regulations requiring notification of fostering etc (CA, Sch 8, para 7)

(1) The Governor may by regulations make provision as to —

- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately; and
- (b) the manner and form in which such notification is to be given.

(2) The regulations may, in particular —

(a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the Crown;

(b) require any person who is —

(i) a parent of a child; or

(ii) a person who is not a parent of a child but who has parental responsibility for the child,

and who knows that it is proposed that the child should be fostered privately, to notify the appropriate authority;

(c) require any parent of a privately fostered child, or person who is not a parent of such a child but who has parental responsibility for the child, to notify the appropriate authority of any change in that person's address;

(d) require any person who proposes to foster a child privately, to notify the appropriate authority of the person's proposal;

(e) require any person who is fostering a child privately, or proposes to do so, to notify the appropriate authority of —

(i) any offence of which the person has been convicted;

(ii) any disqualification imposed on the person under section 76; or

(iii) any prohibition imposed on the person under section 77;

(f) require any person who is fostering a child privately, to notify the appropriate authority of any change in the person's address;

(g) require any person who is fostering a child privately to notify the appropriate authority in writing of any person who begins, or ceases, to be part of the person's household;

(h) require any person who has been fostering a child privately, but has ceased to do so, to notify the appropriate authority (indicating, where the child has died, that that is the reason).

13. Notification of fostering etc: requirement for publicity (CA, Sch 8, para 7A)

The Crown must promote public awareness in the Falkland Islands of requirements as to notification for which provision is made under paragraph 12.

14. Appeals (CA, Sch 8, para 8)

(1) A person aggrieved by —

- (a) a requirement imposed under paragraph 11;
- (b) a refusal of consent under section 76;
- (c) a prohibition imposed under section 77;
- (d) a refusal to cancel such a prohibition;
- (e) a refusal to make an exemption under paragraph 4;
- (f) a condition imposed in such an exemption; or
- (g) a variation or cancellation of such an exemption,

may appeal to the court.

(2) The appeal must be made within 14 days from the date on which the person appealing is notified of the requirement, refusal, prohibition, condition, variation or cancellation.

(3) Where the appeal is against —

- (a) a requirement imposed under paragraph 11;
- (b) a condition of an exemption imposed under paragraph 4; or
- (c) a variation or cancellation of such an exemption,

the requirement, condition, variation or cancellation does not have effect while the appeal is pending.

(4) Where it allows an appeal against a requirement or prohibition, the court may, instead of cancelling the requirement or prohibition —

- (a) vary the requirement, or allow more time for compliance with it; or
- (b) if an absolute prohibition has been imposed, substitute for it a prohibition on using the premises after such time as the court may specify unless such specified requirements as the Crown had power to impose under paragraph 11 are complied with.

(5) Any requirement or prohibition specified or substituted by a court under this paragraph is to be deemed for the purposes of Part 6 and this Schedule (other than this paragraph) to have been imposed by the Crown under paragraph 11 or (as the case may be) section 77.

(6) Where it allows an appeal against a refusal to make an exemption, a condition imposed in such an exemption or a variation or cancellation of such an exemption, the court may —

- (a) make an exemption;
- (b) impose a condition; or
- (c) vary the exemption.

(7) Any exemption made or varied under sub-paragraph (6), or any condition imposed under that sub-paragraph, is to be deemed for the purposes of Part 1 of this Schedule (but not for the purposes of this paragraph) to have been made, varied or imposed under paragraph 4.

15. Prohibition of advertisements relating to fostering (CA, Sch 8, para 10)

No advertisement indicating that a person will undertake, or will arrange for, a child to be privately fostered may be published, unless it states that person’s name and address.

16. Avoidance of insurances on lives of privately fostered children (CA, Sch 8, para 11)

A person who fosters a child privately and for reward is to be deemed for the purposes of the Life Assurance Act 1774 (as it applies to the Falkland Islands) to have no interest in the life of the child.

SCHEDULE 6

MODIFICATIONS TO UK LEGISLATION (AS IT APPLIES IN FALKLAND ISLANDS)

1. The modifications set out in the right hand column of this Schedule continue to apply to the UK legislation (as it applies in the Falkland Islands) listed in the left hand column —

The Wills Act 1837	In the definition of “will” in section 1 (interpretation), “and also to a disposition by will and testament or devise of the custody and tuition of any child” is replaced with “and also to an appointment by will of a guardian of a child”.
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The Children and Young Persons Act 1933	In section 1(2)(a) (cruelty to persons under sixteen), “, or the legal guardian of a child or young person,” is inserted after “young person”.
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2. The modifications set out in the right hand column of this Schedule apply to the UK legislation (as it applies in the Falkland Islands) listed in the left hand column (instead of the modifications to that legislation made by the Children Ordinance 1994 (No 28 of 1994) —

The Children and Young Persons Act 1969	In section 5(2) (restrictions on criminal proceedings for offences by young persons) “section 1 of this Act” is replaced with “Part 5 of the Children Ordinance (No XX
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of 2014)".

The Magistrates' Courts Act 1980

In subsection (2) of section 59 (in its application to the Falkland Islands, periodical payment through the Clerk to the Summary Court), "the Guardianship of Minors Acts 1971 and 1973" is replaced "(or having effect as if made under) Schedule 1 to the Children Ordinance (No XX of 2014)".

OBJECTS AND REASONS

This Bill would repeal the existing Children Ordinance (No 28 of 1994) and replace it with new legislation about children and their well-being.

A detailed explanation of the provisions of the Bill is set out in an Explanatory Memorandum [which is published with it in the *Gazette*].

Children Bill 2014

(No: of 2014)

EXPLANATORY MEMORANDUM

The Children Bill would replace the existing Children Ordinance (No 28 of 1994) which was passed in 1994 and came into force on 1 January 1995.

This Explanatory Memorandum is intended to assist readers of the Bill by providing a detailed explanation of its provisions and the key changes between the existing legislation and the proposed new legislation.

The Bill has 101 clauses and 6 Schedules.

The Bill is divided into 11 Parts, as follows:

- Part 1 (Introduction), which contains:
 - the standard opening provisions about the title of the Bill, commencement and interpretation (definitions of key terms used elsewhere in the Bill);
 - the fundamental principle that the welfare of the child must be paramount; and
 - provisions about parental responsibility, guardianship and welfare reports.
- Part 2 (Orders with respect to Children in family proceedings), which deals with residence and custody and orders for financial support of children.
- Part 3 (Support from Crown for children and families), which is new and which deals with the provision of support (including accommodation and funding) by the Crown for:
 - children in need and their families;
 - children in the care of the Crown; and
 - young adults who have been in the care of the Crown as children.
- Part 4 (Care and supervision), which deals with proceedings about children being taken into care or brought under supervision.
- Part 5 (Protection of children), which deals with child assessments and emergency protection of children.
- Part 6 (Fostering), which is new and which would introduce limited regulation of fostering.

- Part 7 (Safeguarding Children Board), which is new and which would provide a statutory basis for the Safeguarding Children Board (which currently operates on a non-statutory basis).
- Part 8 (Miscellaneous and general), which deals with various matters:
 - continuing modifications to UK law that applies in relation to criminal care and supervision orders;
 - the effect and duration of orders;
 - jurisdiction of the courts;
 - appeals;
 - rules of court;
 - evidence by or about children;
 - privacy for children;
 - self-incrimination;
 - police powers in certain cases;
 - offences by bodies corporate;
 - consent by over 16s to medical and surgical treatment;
 - when a person reaches a particular age; and
 - use of the word “child” instead of “infant” or “minor” for under 18s.
- Part 9 (Subsidiary legislation), which deals with the position until subsidiary legislation is made under powers contained in the Ordinance and would give the Governor (who would normally have to act on the advice of Executive Council) the power to make consequential amendments to other legislation and transitional and saving provisions by order.
- Part 10 (Modifications of UK legislation (as it applies in Falkland Islands)), which introduces Schedule 6, which (in turn) makes modifications to the way in which certain pieces of UK legislation applies in the Falkland Islands.
- Part 11 (Repeal), which would repeal the existing Children Ordinance when it is replaced by the new Ordinance.

The Schedules to the Bill are as follows:

- Schedule 1 (Financial relief for children), which deals with orders that can be made in family proceedings.
- Schedule 2 (Crown support for families and children), which is new and which would make further provision in relation to Part 2 (Support from Crown for families and children).
- Schedule 3 (Supervision orders), which makes further provision about supervision orders.
- Schedule 4 (Further provision about arrests for breach of exclusion requirement), which is new and which would make further provision in relation to arrests under the proposed new powers under *clauses 57 and 65*.
- Schedule 5 (Fostering), which is new and which would make further provision in relation to Part 6 (Fostering).
- Schedule 6 (Modifications of UK legislation), which would repeat 4 existing modifications to UK legislation (as it applies in the Falkland Islands).

To a large extent, the provisions of the Bill are based on (or adapted from) corresponding provisions in the UK's Children Act 1989, which is already the case to some extent for the existing Children Ordinance. The provisions in Part 7 are adapted from corresponding provisions in the UK's Children Act 2004 and the provisions of Schedule 4 are based on (or adapted from) provisions in the UK's Family Law Act 1996.

Because the Bill follows the UK legislation so closely, clause headings contain references to the corresponding provision from the UK legislation:

- In most cases, these are given in the form “(CA, Pt 1)”, “(CA, s1)” or “(CA, Sch 1)” or “(CA, Sch 1, para 1), which shows that the provision is based on (or adapted from) the corresponding Part, section, Schedule or paragraph in the UK's Children Act 1989.
- In Part 7, the references are given in the form “(CA 2004, s13)”, which shows that the provision is adapted from the corresponding section in the UK's Children Act 2004.
- In Schedule 4, the references are given in the form “(Family Law Act 1996, s47(7))” or “(Family Law Act 1996, Sch 5, para 2)”, which shows that the provision is based on (or adapted from) the corresponding subsection of paragraph in the UK's Family Law Act 1996.

Key changes from the existing Children Ordinance

The four key changes that the Bill would make from the existing Children Ordinance are as follows:

- Unmarried birth fathers would acquire parental responsibility automatically if their name is registered on the child's birth certificate – at present, an unmarried birth father must make an application to the court for parental responsibility, even if the child's birth mother agrees.
- The Falkland Islands Government would assume a new set of statutory duties to provide support (including accommodation and funding) for: children in need and their families; children in the care of the Crown; and young adults who have been in the care of the Crown.
- For the first time, private fostering arrangements would be regulated and a “usual fostering limit” on the number of children who can be fostered by the same person would be introduced.
- The Falkland Islands Safeguarding Children Board (FISCB) currently operates on a non-statutory basis and would be given a statutory framework within which to operate.

The Bill would also make a number of technical changes throughout to the existing Children Ordinance. To some extent, this reflects changes that have been made in the UK to the Children Act since the existing Children Ordinance was passed in 1994.

However, some of the provisions in the UK's legislation about children are still not included in the Bill. The most important of these are as follows:

- In the UK, provision has been made for special guardians to be appointed for some children. It is not proposed to introduce corresponding provisions in the Falkland Islands at this time.
- In the UK, the Adoption Act 1976 (which currently applies in the Falkland Islands in a modified form) has been replaced by the Children and Adoption Act 2004. It is not proposed to make changes to adoption law in the Falkland Islands at this time and the Adoption Act 1976 will continue to apply in its modified form.
- Provisions dealing with the regulation of children's homes, child minding and day care are not being introduced in the Falkland Islands at this time.
- There is also no requirement for separate supervisory function, as there is no separation between central and local government in the Falkland Islands.

Part 1 – Introduction

Under *clause 2*, the Ordinance would not come into force immediately, even if the Bill is passed. It would not come into force until a notice (or series of notices) is published in the *Gazette* to bring it into force (either all at once or in stages).

Clause 3 defines a number of words and phrases that are used elsewhere in the Bill. It also contains indexing references to other provisions in which words or phrases are defined.

Clause 4 restates the fundamental principle that the welfare of the child is the most important thing to be taken into account by a court when it makes a decision about the upbringing of that child or a decision about a child's property.

Clause 4 also sets out the factors that have to be taken into account by a court when it is considering whether or not to make an order under the Children Ordinance. These are the same in the Bill as they are in the existing Children Ordinance.

Clause 5 deals with who has parental responsibility for a child.

Clause 5(1) and 5(2) deal with the basic position:

- If a child's birth father and birth mother are married to one another when the child is born, both of them have parental responsibility for the child.
- If the child's birth father and birth mother are not married to one another, only the mother has parental responsibility for the child automatically.
- However, if a child's birth father and birth mother marry subsequently, the effect of the Family Law Reform Ordinance (No 15 of 2004) is that the birth father will acquire parental responsibility.

There is a provision in the existing Children Ordinance that abolished the old rule that a father was the natural guardian of his child. That provision is not carried over into the Bill but that does not revive the old rule.

The rest of *clause 5* deals with how parental responsibility can be exercised.

Clause 6 deals with what is meant by "parental responsibility" and the consequences of having (or not having) parental responsibility for a child.

Clause 7 deals with the ways in which a birth father can acquire parental responsibility for his child, even if he was not married to the child's birth mother when the child was born and he has not married her afterwards:

- Under the existing Children Ordinance, a birth father does not have parental responsibility for his child even if he is named as the father on the child's birth certificate. However, *clause 7(1)(a)* would change this and a person named as a child's

father on a child's birth certificate would automatically acquire parental responsibility for the child.

- As before, it would still be possible for a birth father to acquire parental responsibility for a child by entering into a parental responsibility agreement with the child's birth mother and having that agreement approved by the court.
- Also as before, it would also still be possible for a birth father to apply to the court for a parental responsibility order.

Clauses 7(4) and 7(5) deal with the circumstances in which a parental responsibility order or parental responsibility agreement can be brought to an end.

Clause 8 deals with the ways in which a step-parent can acquire parental responsibility for a step-child:

- As before, it would still be possible for a step-parent to acquire parental responsibility for a child by entering into a parental responsibility agreement with the child's birth parents and having that agreement approved by the court.
- Also as before, it would also still be possible for a step-parent to apply to the court for a parental responsibility order.

Clauses 8(3) and 8(4) deal with the circumstances in which a parental responsibility order or parental responsibility agreement can be brought to an end.

Clause 9 deals with the appointment of guardians to children: this can be done by written appointment, by will or by court order. It also deals with the circumstances in which a guardian can acquire parental responsibility for a child.

Clause 10 deals with the ways in which a person who has appointed a guardian can revoke that appointment or in which a person who has been appointed as a guardian can disclaim that appointment. It also provides that an appointment would be normally revoked automatically if the person appointed is the spouse of the person and a divorce or annulment takes place.

Clause 11 provides that a court may ask the Crown to arrange for welfare reports to be produced when it is dealing with issues relating to a child.

Part 2 – Orders with respect to children in family proceedings

Clause 12 lists the orders that can be made in family proceedings:

- contact orders
- prohibited steps orders

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- residence orders
- specific issue orders

These are referred to throughout the Ordinance as “section 12 orders”.

Clause 12 also defines “family proceedings” and these include:

- proceedings under the Children Ordinance
- matrimonial proceedings; and
- adoption proceedings

Clause 13 imposes various restrictions on the circumstances in which certain section 12 orders can be made.

Clause 14 deals with the circumstances in which the court can make section 12 orders.

Clause 15 sets out general principles about how section 12 orders must be dealt with, when they can be made, what they may contain and how they come to an end.

Clause 16 deals with the interaction between residence orders and parental responsibility. If a residence order is made in favour of someone who does not have responsibility, the court must also make a parental responsibility order in favour of that person, but there are limitations on parental responsibility acquired in this way.

Clause 17 imposes restrictions on the circumstances in which the name of a child who is the subject of a residence order can be changed or in which a child who is the subject of residence order can be taken out of the Falkland Islands.

Clause 18 provides for how a residence order can be enforced if it is not being complied with.

Clause 19 introduces *Schedule 1*, which deals with financial relief for children in family proceedings:

Paragraph 1 of Schedule 1 deals with the orders for financial relief that a court can make for the benefit of children.

Paragraph 2 of Schedule 1 deals with the orders for financial relief that a court can make for the benefit of persons who have reached the age of 18 – these orders can be made if the applicant is (or will be) undertaking education or training or if there are other special circumstances.

Paragraph 3 of Schedule 1 deals with the term for which orders for financial relief can be made and circumstances in which orders come to an end automatically.

Paragraph 4 of Schedule 1 sets out the criteria that a court must take into account when deciding whether to make an order for financial relief and, if so, what order to make.

Paragraph 5 of Schedule 1 makes further provision about the power that a court has to order lump sum payments.

Paragraph 6 of Schedule 1 deals with the powers that a court has to vary or discharge orders for periodical payments.

Paragraph 7 of Schedule 1 makes specific provision about the power of the Summary Court to vary orders for periodical payments.

Paragraph 8 of Schedule 1 deals with the variation or discharge of orders for secured periodical payments after the death of a parent.

Paragraph 9 of Schedule 1 deals with a situation in which an order has been made under other legislation and requires contributions to be made to the maintenance of a child and then a residence order is made in relation to that child.

Paragraph 10 of Schedule 1 allows a court to make interim orders.

Paragraph 11 of Schedule 1 would allow a court to vary or revoke a maintenance agreement in certain circumstances.

Paragraph 12 of Schedule 1 deals with alterations of a maintenance agreement following the death of one of the parties to it.

Paragraph 13 of Schedule 1 provides for the enforcement of orders made under *Schedule 1*.

Paragraph 14 of Schedule 1 deals with the situation in which one of a child's parents lives in the Falkland Islands and the other lives outside the Falkland Islands and provides that a court can make an order against the parent living in the Falkland Islands.

Paragraph 15 of Schedule 1 is new and would give the Crown a discretionary power to make contributions to the maintenance of a child who is living away from the child's parents.

Paragraph 16 of Schedule 1 deals with the interpretation of *Schedule 1*.

Clause 20 deals with family assistance orders and provides that, in certain circumstances, a court may order the Crown to arrange for suitable persons to advise, assist and befriend those involved in family proceedings. It also provides that the court can direct the person appointed to provide advice and assistance to improve and maintain contact under a contact order.

Clause 21 is new and provides that a person who has been appointed under a family assistance order must carry a risk assessment and provide it to the court, if the person who has been appointed has cause to believe that there is a risk of harm to a child.

Part 3 – Support from Crown for children and families

Part 3 is new and corresponds to Part 3 of the UK's Children Act 1989 – that was not implemented in the existing Children Ordinance.

Clause 3 deals with the provision of services for children in need, their families and others:

- *Clause 22(1)* imposes a general duty on the Crown to safeguard the welfare of children in need and, subject to that, to promote the upbringing of children in need by their own families.
- Definitions about this can be found in *clauses 22(11) and (12)*.
- *Clause 22(2)* introduces *Part 1 of Schedule 2*, which sets out specific duties and powers that the Crown has in order to further that general duty (and *clause 22(4)* would allow the Governor – normally, acting on the advice of Executive Council – to amend *Part 1 of Schedule 2*):

Paragraph 1 of Schedule 2 would place the Crown under positive duties to identify the extent to which children are in need, to publish information about the services it would be providing under *Part 3* and to take steps to ensure that those who might benefit from these services receive information about them.

Paragraph 2 of Schedule 2 would require the Crown to open and maintain a register of disabled children.

Paragraph 3 of Schedule 2 would allow for assessments to be combined.

Paragraph 4 of Schedule 2 would require the Crown to take reasonable steps to use the provision of services under *Part 3* to prevent children from suffering ill-treatment or neglect.

Paragraph 5 of Schedule 2 would give the Crown a discretionary power to assist with the provision of alternative accommodation for someone who is moving out of the child's home for the protection of that child – however, repayments could be recovered in certain circumstances under *clauses 22(8) to 22(10)*.

Paragraph 6 of Schedule 2 would place the Crown under a positive duty to provide services for disabled children.

Paragraph 7 of Schedule 2 would require the Crown to take reasonable steps to reduce the need for child protection measure to be taken and to encourage children not to commit criminal offences.

Paragraph 8 of Schedule 2 would require the Crown to provide a range of services for children in need.

Paragraph 9 of Schedule 2 would require the Crown to take steps to enable children in need to live with their families or have contact with them.

Paragraph 10 of Schedule 2 would require the Crown to have regard to the racial balance of the Falkland Islands when recruiting foster parents to look after children on behalf of the Crown.

- *Clause 22(3)* provides that services can be provided to a child's family or to individual members of a child's family in order to safeguard or promote the welfare of the child.
- *Clause 22(5)* provides for the wishes and feelings of the child to be ascertained and given due consideration.
- *Clause 22(6)* provides for the involvement of others (including voluntary organisations) in the provision of services.
- *Clause 22(7)* allows for the provision of accommodation, assistance in kind and (in exceptional circumstances) cash assistance.
- *Clauses 22(8) to 22(10)* provide that repayments can be recovered in certain circumstances and that the means of the family must be taken into account in relation to both the provision of assistance and the recovery of repayments.

Clause 23 deals with the provision of accommodation by the Crown to children and young adults in certain situations:

- *Clauses 23(1) and (2)* would impose a duty on the Crown to provide accommodation for children in certain situations.
- *Clauses 23(3) and (4)* would give the Crown a discretion to provide accommodation for children and young adults in certain situations.
- *Clause 23(5)* provide for the wishes and feelings of the child to be taken into account and given due consideration.
- *Clauses 23(6) to (10)* deal with restrictions on the duties and discretions in *clauses 23(1) to 23(4)*.

Clause 24 would impose a duty on the Crown to provide accommodation for children who have been removed from home or kept away from home under the provisions in *Part 5*, which deals with the protection of children. It would also impose a duty on the Crown to provide accommodation to those who have been detained following charge.

Clause 25 would impose general duties on the Crown in relation to every child who is in its care or who is being looked after by it for more than 24 hours in the course of social services functions:

Clauses 25(3) and (4) provide that these duties are to safeguard and promote the child's welfare (including its educational achievement) and to make use of the same range of services that would be available if the child were living in its own family.

Clauses 25(5) and (6) provide for the wishes and feelings of the child and others to be ascertained and given due consideration and also for the child's background to be given due consideration.

However, *clause 25(7)* allows the safety of the public to be taken into consideration as well.

Clauses 26 and 27 would impose specific duties on the Crown to provide every child it is looking after with accommodation and to maintain every child it is looking after in all other ways.

Clause 28 would require the Crown to make arrangements for a child it is looking after to live with someone and it sets out the criteria to be used when identifying with whom the child is to live. It would also allow the Crown to enter into the necessary arrangements.

Clause 29 provides for there to be a review to take place in most cases before a child is given accommodation with someone who is not closely connected with the child or with someone who is not an approved foster parent.

Clause 30 introduces *Part 2 of Schedule 2*, which contains further provisions about children being looked after by the Crown:

Paragraphs 11 to 16 of Schedule 2 deals with the requirements that could be imposed on the Crown in regulations made under *clause 30*. (Until regulations are made, *clause 97* allows corresponding regulations that apply in England to be used as guidance in the Falkland Islands – the same applies in other cases in which there is power to make regulations they have not yet been made.)

Paragraph 17 of Schedule 2 would require the Crown to promote contact between a child being looked after by the Crown and the people close to the child. It would also require information to be provided to and by a child's parents when the child is being looked after by the Crown. Failure to provide the information would be an offence, with a maximum penalty of a level 2 fine (currently, £500).

Paragraph 18 of Schedule 2 would give the Crown a discretionary power to make payments in certain circumstances towards the costs of visits to or by a child being looked after by the Crown.

Paragraph 19 of Schedule 2 would require the Crown in some circumstances to appoint someone to visit a child being looked after by the Crown.

Paragraph 20 of Schedule 2 would give the Crown the power to guarantee deeds of apprenticeship and articles of clerkship.

Under *paragraph 21 of Schedule 2*, the Crown would only be able to arrange for a child in its care to live outside the Falkland Islands with the approval of the court, which could only be given in certain circumstances. However, *paragraph 21(2) of Schedule 2* would allow the Crown to arrange for a child being looked after by the Crown with the approval of every person who has parental responsibility for the child.

Paragraph 22 of Schedule 2 would require the Crown to advise, assist and befriend the children it is looking after with a view to promoting their welfare when it no longer is looking them.

Paragraphs 23 and 24 of Schedule 2 applies in relation children aged 16 or 17 who have been looked after by the Crown. It requires the Crown to assess their needs, to prepare pathway plans for each of them, to keep those plans under regular review and to appoint a personal adviser for each of them.

Paragraph 25 of Schedule 2 deals with the situation in which a child dies while being looked after by the Crown.

Clause 31 would impose a general duty on the Crown to ensure that there is enough accommodation for the children it is required to accommodate and to have regard to the need for a range of accommodation covering different needs.

Clause 32 would impose a duty on the Crown to ensure that children who are being looked after the Crown (or, in certain circumstances, who were being looked after the Crown) are visited by a person with the necessary skills and experience and provided, if they want it, with appropriate advice, support and assistance.

Clause 33 would impose a duty on the Crown to appoint an independent person as a child's visitor if it would be in the child's interests to do that. It also makes provision for how arrangements of this sort are to be put in place and the circumstances in which they come to an end.

Clauses 34 and 35 would impose various duties on the Crown in relation to children aged 16 or 17 who have been looked after the Crown – although this category could be changed by order:

- These duties (which would apply until the child's 18th birthday) would be as follows:

- to take reasonable steps to keep in touch with the child (and to re-establish contact, if it is lost);
 - to appoint a personal adviser to the child;
 - unless a pathway plan under *clause 39* is already in place for the child, to carry out an assessment and prepare a pathway plan;
 - to keep the pathway plan under regular review;
 - unless the child does not need it, to provide maintenance, accommodation and other support for the child (which could be in cash).
- Under *clause 35(12)*, repayments can be recovered for these services in the same way as they can for services provided to children and families in need.
 - Under *clause 35(13)*, the child's wishes and feelings must be ascertained and given due consideration.

Clause 36 would impose continuing duties on the Crown in relation to young adults who were looked after by the Crown as children:

- These duties (which would apply until the young adult's 21st birthday, or longer if the young adult is on a programme of education or training under a pathway plan) would be as follows:
 - to take reasonable steps to keep in touch with the young adult (and to re-establish contact, if it is lost);
 - to continue the appointment of a personal adviser to the young adult;
 - to keep the young adult's pathway plan under regular review;
 - if the young adult needs it, to contribute towards living expenses incurred when working, studying or training and to provide other assistance in kind (or, in exceptional circumstances, in cash);
 - to pay towards the young adult's higher education, if that forms part of the pathway plan;
 - to assist with accommodation during vacations while undertaking education or training.
- Under *clause 36(13)*, repayments can be recovered for these services in the same way as they can for services provided to children and families in need.

Clause 37 would impose additional duties on the Crown in relation to young adults who were looked after by the Crown as children and remain in education or training:

- These duties (which would apply until the young adult's 24th birthday and throughout a programme of education or training) would be as follows:
 - to appoint a personal adviser if the Crown is informed that the young adult is pursuing or intending to pursue a programme of education or training;
 - to carry out an assessment of the young adult's needs;
 - if the young adult needs it, to contribute towards living expenses incurred in relation when studying or training and towards expenses connected with the education or training.
- Under *clause 37(8)*, repayments can be recovered for these services in the same way as they can for services provided to children and families in need.

Clause 38 would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations requiring the Crown to appoint personal advisers to children and young adults entitled to other forms of assistance under *Part 3 or Schedule 2*.

Clause 39 deals with pathway plans, which are plans setting out the advice, assistance and support to be provided by the Crown under *Part 3 or Schedule 2*.

Clauses 40, 41 and 42 would impose various duties on the Crown and give the Crown various discretionary powers in relation to children aged 16 or 17 and young adults who (in either case) had been looked after the Crown after reaching the age of 16:

- The duties (which would apply until the young adult's 21st birthday) would be as follows:
 - to take appropriate steps to contact the child or young adult at appropriate intervals;
 - if the child or young adult needs it, to advise and befriend the child or young adult;
- The discretionary powers would be as follows:
 - to contribute towards living expenses incurred when working, studying or training – this would apply until the young adult's 21st birthday;
 - to contribute towards living expenses incurred in relation when studying or training and towards expenses connected with the education or training and to make a grant towards expenses connected with education or training – this would apply until the young adult's 24th birthday;

- to assist with accommodation during vacations while undertaking education or training – this would apply until the young adult’s 24th birthday.
- o Under *clause 41(5)*, repayments can be recovered for these services in the same way as they can for services provided to children and families in need.

Clause 43 would require the Crown to establish a procedure for considering representations and complaints from children and young adults about the discharge of its functions in relation to children and young adults.

Clauses 44(1) to (4) would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations requiring the case of every child being looked after by the Crown to be reviewed. (Again and as in other cases, until regulations are made, *clause 97* allows corresponding regulations that apply in England to be used as guidance in the Falkland Islands.)

Clauses 44(5) to (13) would require the Crown to establish a procedure (in which an independent person must be involved) for reviewing representations about the discharge of its functions in relation to children in need and to give appropriate publicity about the existence of the procedure. Whenever representations are dealt with under this procedure, the Crown must have due regard to the findings and notify the affected parties.

Clause 45 would require the Crown to make arrangements to provide advocacy services for those wishing to make representations and to give appropriate publicity about the availability of this assistance.

Clause 46 would allow the Crown to recover charges for some of the services it provides in relation to children and families in need.

Clause 46 also introduces *Part 3 of Schedule 2*, which provides for the recovery of contributions towards the maintenance of children who are being looked after by the Crown:

Under *paragraph 26 of Schedule 2*, the Crown would have in certain cases to consider whether or not it is reasonable to recover contributions towards the maintenance of a child it is looking after and deals with who is liable and in what circumstances.

Paragraphs 27 and 28 of Schedule 2 would provide a mechanism for contributions to be agreed and for the court to make contribution orders in cases when agreement cannot be reached.

Paragraph 29 of Schedule 2 deals with the enforcement of contribution orders.

Paragraph 30 of Schedule 2 would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations about contributions.

Clause 47(1) provides that the duties on the Crown that would be imposed by *Part 3* are in addition to any other duties it has under other legislation,

Clause 47(2) would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations about the circumstances in which a child's parents are to be treated as if they do or do not have sufficient resources.

Part 4 – Care and supervision

Clause 48 deals with care orders (under which a child is placed in the care of the Crown) and supervision orders (under which a child is placed under the supervision of the Crown):

- It provides for the circumstances in which a care or supervision order could be made. It also provides that a supervision order can be made on an application for a care order (and vice versa).
- There would be a change from the existing Children Ordinance in that it would become a requirement for a care plan to be produced before a care order could be made.

Clause 49 is new and deals with the requirement for the Crown to produce a plan for the future care of a child whenever a court might make a care order for that child.

Clause 50 deals with the timetable for dealing with an application for a care or supervision order.

Clause 51 deals with the effect of a care order when it is made:

- The Crown comes under a duty to receive the child into its care and keep the child in its care.
- The Crown takes over parental responsibility for the child (but may decide to allow some or all of those who had parental responsibility before to exercise it).
- It also imposes limits on the ways in which the Crown may exercise parental responsibility.

Clause 52 provides that the Crown is under a positive duty to allow the child to have reasonable contact with the child's parents and (subject to court order) with others.

Clause 53 deals with the effect of a supervision order when it is made, which includes the duty of the supervisor to advise, assist and befriend the child and to take steps to give effect to the order.

Clause 53 also introduces *Parts 1 and 2 of Schedule 3*, which make further provision about supervision orders:

Paragraph 1 of Schedule 3 defines “responsible person” as those who have parental responsibility for a supervised child and anyone else with whom a supervised child is living

Paragraph 2 of Schedule 3 deals with the powers of a supervisor to give directions to a child who is being supervised.

Paragraph 3 of Schedule 3 imposes obligations on responsible persons.

Paragraphs 4 and 5 of Schedule 3 deal with psychiatric and medical examinations and treatment. These provisions have been changed from the corresponding provisions in the existing Children Ordinance:

- The changes are intended to bring these provisions into line with section 8 of the Constitution (which deals with freedom of movement) and, subject to that, to allow for the possibility of examinations and/or treatment that cannot be provided in the Falkland Islands being provided somewhere other than the United Kingdom (eg in Chile) in appropriate cases.
- The provisions would distinguish between: on the one hand, children who belong to the Falkland Islands (ie who have Falkland Islands Status (FIS)) or who have a permanent right to remain in the Falkland Islands (PRR); and, on the other, children who do not have FIS or PRR.
 - Everyone who has FIS or PRR has fundamental rights under section 8 of the Constitution that include specific rights to enter, remain in and leave the Islands, as well as the right to reside in the Islands. With one exception (see below), a child who has FIS or PRR could only be sent away from the Islands for examination and/or treatment under a supervision order if the court is satisfied that the child has consented to that and that they have sufficient understanding to give that consent.
 - Those who do not have FIS or PRR have more limited rights under section 8 of the Constitution, which include the right to reside in the Falkland Islands while they are legally present there but do not include the specific rights to enter, remain in and leave the Islands. A child in this category could be sent away from the Islands for examination and/or treatment even if the child has not consented, provided that the court is satisfied that the child’s more limited rights under section 8 are not infringed.
 - There is an exception under section 8(3)(h) of the Constitution that applies in all cases (whether or not a person has FIS or PRR) and allows a person who has a mental disorder to be removed from the Islands for treatment if it cannot be provided in the Islands and it is necessary in the person’s interests or to protect the public. That would allow the court to send a child away for psychiatric treatment (whether or not the child has FIS or PRR), but only if the treatment is necessary and cannot be provided in the Islands.

- The child's rights under section 8 belong to the child and not to the child's parents. However, since a requirement for examination and/or treatment outside the Islands would be imposed as part of a supervision order, the parents would be able to make representations to the court before the order is made.
- These provisions only relate to supervision orders. Other procedures (such as a care order or wardship) may be relevant in cases where a child does not have sufficient understanding to give or withhold consent.

Paragraph 6 of Schedule 3 limits the period for which supervision orders can be made to 1 year at a time and no more than 3 years in total.

Paragraph 7 of Schedule 3 deals with the information that supervised children and responsible persons can be required to give to supervisors.

Paragraph 8 of Schedule 3 provides that a supervision order supersedes existing care and supervision orders relating to the same child.

Clause 54 is new and would introduce education supervision orders to deal with situations in which a child of compulsory school age is not being properly educated.

Clause 54 also introduces *Part 3 of Schedule 3*, which is also new and makes further provision about education supervision orders.

Paragraph 9 of Schedule 3 would provide for the effect of an education supervision order, the principle purpose of which would be to ensure that the supervised child is properly educated. When giving directions to achieve that, the supervisor would have to ascertain the wishes and feelings of the child and the child's parents and give due consideration to those wishes and feelings.

Paragraph 10 of Schedule 3 would provide for the education supervision order to override the duty under the Education Ordinance and to supersede any existing school attendance order.

Paragraph 11 of Schedule 3 would deal with the situation in which a child is subject to a supervision order and an education supervision order and provides that, in this case, the supervision order would take precedence.

Paragraph 12 of Schedule 3 would limit the period for which education supervision orders can be made to 1 year at a time and no more than 3 years in total and also provides that an education supervision order would come to an end when the child reaches school leaving age or when a care order is made.

Paragraph 13 of Schedule 3 deals with the information that supervised children and responsible persons could be required to give to supervisors.

Paragraph 14 of Schedule 3 would give the court a power to discharge an education supervision order but, when doing so, to direct the Crown to investigate the child's circumstances.

Paragraph 15 of Schedule 3 would make it an offence for the parent of a child persistently to fail to comply with directions given under an education supervision order, subject to various defences. The maximum penalty for this offence would be a level 3 fine (currently, £1,000).

Paragraph 16 of Schedule 3 defines "parent" for the purposes of the provisions about education supervision orders.

Clause 55 deals with the powers of the court in certain family proceedings (which are defined in *clause 12* as proceedings under the Children Ordinance, matrimonial proceedings or adoption proceedings):

- If a question about the welfare of a child arises in family proceedings, the court may order the Crown to undertake an investigation and, when undertaking that investigation, the Crown must consider whether it needs to take other steps (which may include applying for a care or supervision order).
- If the Crown decides not to apply for a care or supervision order, it must inform the court why not and what it has done instead. It must also consider whether or not to keep the situation under review.

Clause 56 deals with interim orders and would allow the court (as at present) to make an interim order or series of interim orders if need be, for up to 8 weeks initially and for up to 4 weeks at a time after that.

Clause 56 also provides for the court to be able to give directions in relation to an interim order about whether or not medical or psychiatric examinations are to be carried out.

Clauses 57 and 58 are both new and would introduce a power for the court to include an exclusion requirement in an interim care order or to accept an exclusion undertaking instead of a requirement:

- These would exclude a person from a family home and/or the area around it in order to protect a child from a risk of significant harm in circumstances when there is someone else in the family home who can look after the child and who consents to the exclusion taking place.
- In the case of a requirement (but not in the case of an undertaking), the court can attach a power of arrest, allowing the excluded person to be arrested without warrant in the case of a breach.

- *Clause 57(9)* introduces *Schedule 4*, which is also new and makes further provision about the power of arrest:

Paragraph 1 of Schedule 4 would require a person arrested under this power to be brought before a court within 24 hours and would allow the court to remand the person if the matter cannot be dealt with at the time.

Paragraph 2 of Schedule 4 would give the court the power to remand the person in custody or on bail for up to 8 days at a time.

Paragraph 3 of Schedule 4 would allow remand hearings to take place in the absence of the person in certain circumstances.

Paragraph 4 of Schedule 4 deals with the postponement of recognisances.

Paragraph 5 of Schedule 4 would allow the court to impose bail conditions to prevent interference with witnesses or obstruction of the course of justice.

Paragraph 6 of Schedule 4 would allow the court to remand the person for a longer period for a medical examination and report to be made. It would also allow the court to remand the person to hospital for a report on the person's mental condition.

Clause 59 deals with the circumstances in which a care or supervision order could be discharged or varied. It also deals with the circumstances in which an exclusion requirement or undertaking could be discharged or varied (which is a new provision following on from *clauses 57 and 58*).

Clause 60 deals with orders pending appeals and would allow the court to make interim orders to apply during the period within which an appeal could be brought and while appeal proceedings are being conducted.

Clause 61 deals with the appointment of children's guardians to represent children in court proceedings of various types (listed in *clause 61(6)*) and also deals with the appointment of legal practitioners instead in certain circumstances. There would be a change from the existing Children Ordinance in that guardians ad litem would become children's guardians.

Clause 62 is new and would allow a children's guardian to have automatic access to Crown records that relate to the child.

Part 5 – Protection of children

Clause 63 deals with child assessment orders (under which the state of a child's welfare, development or treatment can be assessed if there is reasonable cause to suspect that the child is suffering harm or is likely to suffer harm):

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- It provides for the circumstances in which a child assessment order can be made. It also provides that an emergency protection order under *clause 64* can be made on an application for a child assessment order.
- A child can be kept away from home under a child assessment order in certain circumstances.

Clause 64 deals with emergency protection orders (under which a child can be removed from home while enquiries are made under *clause 69* if the enquiries are being frustrated and the child is at risk of likely to suffer significant harm if not removed):

- It provides for the circumstances in which an emergency protection order can be made and the other consequences of the order, which include the applicant taking over limited parental responsibility.
- It also provides for the circumstances in which a child would have to be returned home.
- Obstructing the carrying out of an emergency protection order would be a criminal offence, with a maximum penalty of a level 3 fine (currently, £1,000).

Clauses 65 and 66 are both new and would introduce a power for the court to include an exclusion requirement in an emergency protection order or to accept an exclusion undertaking instead of a requirement:

- These would exclude a person from a family home and/or the area around it in order to protect a child from a risk of significant harm in circumstances when there is someone else in the family home who can look after the child and who consents to the exclusion taking place.
- In the case of a requirement (but not in the case of an undertaking), the court can attach a power of arrest, allowing the excluded person to be arrested without warrant in the case of a breach. *Clause 65(9)* introduces *Schedule 4*, which is also new and makes further provision about the power of arrest:

Paragraph 1 of Schedule 4 would require a person arrested under this power to be brought before a court within 24 hours and would allow the court to remand the person if the matter cannot be dealt with at the time.

Paragraph 2 of Schedule 4 would give the court the power to remand the person in custody or on bail for up to 8 days at a time.

Paragraph 3 of Schedule 4 would allow remand hearings to take place in the absence of the person in certain circumstances.

Paragraph 4 of Schedule 4 deals with the postponement of recognisances.

Paragraph 5 of Schedule 4 would allow the court to impose bail conditions to prevent interference with witnesses or obstruction of the course of justice.

Paragraph 6 of Schedule 4 would allow the court to remand the person for a longer period for a medical examination and report to be made. It would also allow the court to remand the person to hospital for a report on the person's mental condition.

Clause 67 limits the length of time for which an emergency protection order can stay in force and contains other supplementary provisions about emergency protection orders

- It provides that an emergency protection order cannot last for more than 8 days in the first instance (or until the next working day after, if it would end on a Sunday or public holiday).
- It also provides that, if an emergency protection order is made after a child is taken into police protection under *clause 68*, the 8 days runs from the day on which the child was taken into police protection.
- An emergency protection order can be renewed for a further 7 days but it can only be renewed once.
- It provides that there is no appeal from a decision that a court makes about an emergency protection order, but it also sets out the circumstances in which an emergency protection order can be varied or discharged.

Clause 68 deals with the circumstances in which a child can be taken into police protection and the steps that have to be taken when a child is taken into police protection:

- A child cannot be kept in police protection for more than 72 hours and the effect of *clause 67(3)* is that time spent in police protection counts towards the time limit for which an emergency protection order can be made.
- When a child is taken into police protection, the Attorney General and various other parties must be notified.
- When a child is taken into police protection, inquiries must be conducted by the Chief Police Officer or another police officer with the rank of inspector or above.

Clause 69 is new and would impose a duty on the Crown to make enquiries whenever an emergency protection order is made, a child is taken into police protection or the Crown has reasonable cause to suspect that a child is suffering significant harm or likely to suffer it:

- If the Crown is granted an emergency protection order, it would have to make enquiries about whether further steps need to be taken and, if so, what steps need to be taken.

- While these enquiries are being made, the Crown would have to take steps to obtain access to the child to carry them out, unless it already has enough information.
- The Crown would be under a duty to ascertain the child's wishes and feelings and to give them due consideration.
- If the enquiry is obstructed, the Crown would normally be expected to apply for the necessary further order.
- After the enquiries are concluded, the Crown would either have to take the necessary action or consider whether and, if so, the situation needs to be reviewed.

Clause 70 is also new and would allow a court to include additional provisions in an emergency protection order requiring the disclosure of information about a child's whereabouts and allowing the entry and search of premises for other children:

- Self-incrimination would not be an excuse for not complying with a provision requiring disclosure but statements and admissions made when complying would not be admissible against the person who made them.
- *Clause 70(5)* would allow for the emergency protection order to be extended to cover other children found on the same premises in certain circumstances.
- Obstructing the exercise of the power of entry and search would be a criminal offence, with a maximum penalty of a level 3 fine (currently, £1,000).
- It would also allow the court to issue a warrant for the police to assist an entry and search.

Under *clause 71*, it would be a specific offence to abduct a child who is in care, subject to an emergency protection order or in police protection. The maximum penalty would be a level 5 fine (currently, £4,000).

Clause 72 would allow a court to make a recovery order in relation to a child who is in care, subject to an emergency protection order or in police protection if the child has been abducted, has run away or is missing:

- A recovery order allows various steps to be taken including: requiring the production of the child; authorising the removal of the child; a requirement for persons to disclose information about the whereabouts of the child, and giving a police officer a power of entry and search.
- Self-incrimination would not be an excuse for not complying with a provision requiring disclosure but statements and admissions made when complying would not be admissible against the person who made them.

- Obstructing the removal of a child would be a criminal offence, with a maximum penalty of a level 3 fine (currently, £1,000).

Clause 73 deals with rules of court and *clause 73(3)* provides that until rules of court are made in the Falkland Islands, the rules of court that apply in England continue to apply with the necessary modifications.

Part 6 –Fostering

Part 6 is new and would introduce regulation of arrangements in which children under 16 are fostered privately and a “usual fostering limit” on the number of children who can be fostered by the same person.

Clause 74 would define the scope of the provisions:

- A child under 16 (or a disabled child under 18) would be regarded as being privately fostered if the child is being looked after in their own home by someone who is not a parent or relative and who does not have parental responsibility for the child in some other way.
- However, a child would not be regarded as being privately fostered if the child is not being looked after for more than 28 days or if one of the other exceptions in Schedule 4.
- The Governor (who would, normally, have to act on the advice of Executive Council) would be able to make regulations defining when a person is (or is not) to be treated as providing accommodation in the person’s own home.

Clause 74 also introduces *Schedule 5* which would make additional provisions about fostering.

Paragraph 1 of Schedule 5 defines fostering for the purposes of Schedule 5.

Paragraph 2 of Schedule 5 would establish a “usual fostering limit”, under which no more than 3 children can be fostered by the same person.

Paragraph 3 of Schedule 5 would create an exception to this if all of the children are siblings of one another.

Paragraph 4 of Schedule 5 would allow the Crown to grant an exemption from the usual fostering limit. It sets out the criteria to be taken into account in relation to exemptions and would allow for conditions to be imposed on exemptions.

Paragraph 5 of Schedule 5 would require the Crown to establish a procedure for considering representations and complaints about decisions in relation to exemptions.

Paragraphs 6 to 10 of Schedule 5 would provide for exceptions to the scope of the private fostering provisions – these would include:

- children being looked after by the Crown;
- children being looked after in the same premises as other family members
- children being looked after in a school, hospital or other institution;
- children subject to the Mental Health Ordinance; and
- children in the care of prospective adopters.

Paragraph 11 of Schedule 5 would allow the Crown to impose requirements in relation to private fostering arrangements.

Paragraph 12 of Schedule 5 would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations requiring notifications to be given about private fostering.

Paragraph 13 of Schedule 5 would require the Crown to promote public awareness about these requirements.

Paragraph 14 of Schedule 5 would provide for appeals against various decisions taken by the Crown in relation to fostering.

Paragraph 15 of Schedule 5 would regulate advertisements about private fostering.

Paragraph 16 of Schedule 5 would void life insurance taken out by a fosterer on the life of a fostered child.

Clause 75 imposes a general duty on the Crown to ensure that the welfare of privately fostered children is being or will be adequately safeguarded and promoted and that the necessary advice is given to those concerned with privately fostered children.

Clauses 75(4) and 75(5) would allow a person authorised by the Crown to inspect premises where privately fostered children are (or are going to be) accommodated and *clause 75(6)* would require steps to be taken if the Crown is not satisfied about the welfare of a privately fostered child.

Clauses 75(2), 75(3) and 75(7) would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations about:

- visits by public officers to children who are being privately fostered,
- the steps to be taken by the Crown when it is notified that a child is to be fostered privately; and

- the monitoring by the Crown of how its functions under *Part 6* are being carried out.

Clause 76 would allow the Governor to make regulations disqualifying certain categories of persons from privately fostering children without prior notice and consent and also preventing a person from privately fostering a child in the same household in which someone who has been disqualified lives or works.

Clause 77 would give the Crown power to prohibit a person who is not suitable from privately fostering children or to prevent a person from privately fostering children or a particular child in unsuitable premises. *Paragraph 14 of Schedule 5* provides for a right of appeal against prohibitions.

Clause 78 deals with a number of offences in relation to private fostering:

- It would be an offence not to give notice or provide information when required to do so by or under *Part 6* – the maximum penalty for this offence would be a level 5 fine (currently, £4,000).
- It would be an offence not to allow a privately fostered child to be visited by an authorised public officer or to obstruct an inspection of premises where a child is being privately fostered – the maximum penalty for this offence would be a level 3 fine (currently, £1,000).
- It would be an offence to foster a child privately without prior consent when disqualified or in a household in which someone who is disqualified lives or works – the maximum penalty for this offence would be 6 months in prison and/or a level 5 fine (currently, £4,000).
- It would be an offence not to comply with a requirement imposed in relation to premises on which a child is privately fostered – the maximum penalty for this offence would be a level 4 fine (currently, £2,000).
- It would be an offence to foster a child privately in breach of a prohibition – the maximum penalty for this offence would be 6 months in prison and/or a level 5 fine (currently, £4,000).
- It would be an offence knowingly to publish an advertisement offering to foster children privately or offering to arrange for children to be fostered privately. – the maximum penalty for this offence would be a level 3 fine (currently, £1,000).

Clauses 78(7) and 78(8) would provide that, instead of the time limit that would otherwise apply under the Administration of Justice Ordinance (Title 22.1), a prosecution for failing to give notice under *Part 6* could be brought at any time within 6 months of the offence coming to the knowledge of the Crown.

Part 7 – Safeguarding Children Board

Part 7 is new and would provide a statutory basis for the Falkland Islands Safeguarding Children Board (FISCB), which currently operates on a non-statutory basis.

The FISCB currently comprises the following (or their representatives):

- Members of the Legislative Assembly – portfolio holders for Health and Social Services and Education
- Head of Governor’s Office (as an observer)
- Director of Health and Social Services
- Director of Education
- Chief Medical Officer
- Nursing representative
- Team Manager, Social Services
- Probation Officer
- Senior Police Officer(s)
- Representative from the Ministry of Defence
- Representative from SSAFA (formerly known as the Soldiers’, Seamen’s and Airmen’s Families Association)
- Lawyer from Attorney General’s Chambers (as an adviser)

Clause 79(1) would provide for the Crown to be under a duty to ensure that the Safeguarding Children Board continues in existence.

Clauses 79(2) to 79(6) would provide for the membership of the Board:

- The Board would have to include representatives from the Legislative Assembly; health, social services and education; the medical and nursing staff; social services and probation services; Government House, Attorney General’s Chambers; and Mount Pleasant.
- These provisions are inclusive and would not prevent other members or observers from being co-opted as required.

Clause 80 deals with the objectives, functions and procedure of the Safeguarding Children Board:

- Under *clause 80(1)*, the Board's objective would be to co-ordinate the Crown's various functions for safeguarding and promoting the welfare of children in the Falkland Islands and to ensure the effectiveness of what is done by the Crown for those purposes.
- *Clauses 80(2) and 80(3)* would allow the Governor (who would, normally, have to act on the advice of Executive Council) to make regulations about the functions of the Board and the procedure to be followed by it.

Clause 81 would require the Safeguarding Children Board to prepare and publish an annual report and to submit copies of it to the Governor and the Legislative Assembly.

Clause 82 would allow the Safeguarding Children Board to make mandatory requests for information in certain circumstances.

Part 8 – Miscellaneous and General

Clause 83 deals with the effect and duration of orders and agreements made under the Children Ordinance.

Clause 84 deals with the jurisdiction of courts.

Clauses 85(1) to 85(4) would give the Chief Justice specific power to make rules of court relating to proceedings under the Children Ordinance, in addition to the Chief Justice's other powers to make rules of court.

Clause 85(5) provides that until the Chief Justice makes rules of court, the rules of court that apply in England would continue to apply in the Falkland Islands with necessary amendments and modifications.

Clause 86(1) provides that an appeal lies to the Supreme Court against decisions made by the Magistrate's Court or the Summary Court.

However, *clauses 86(2) and 86(3)* provide that there is no appeal against a decision of the Summary Court to decline jurisdiction in favour of the Magistrate's Court or the Supreme Court.

Clauses 86(4) to (9) deal with the orders that the Supreme Court would be able to make when dealing with an appeal.

Clauses 87(1) and (2) would allow a court to order a child concerned in proceedings to attend some or all of the proceedings.

Clauses 87(3) to (6) deal with the powers of the court to ensure the attendance of a child.

Clause 88 deals with evidence given by or about children:

Clauses 88(1) and 88(2) would continue to allow a court to hear evidence from a child even if the child does not understand the nature of an oath.

Clauses 89(3) to (5) would continue to allow the Governor (with the agreement of the Chief Justice) to make order dealing with the admissibility of hearsay evidence in certain proceedings. The Children (Admissibility of Hearsay Evidence) Order (No 14 of 2012) was made under the corresponding provision in the existing Children Ordinance and this would continue to apply.

Clauses 89(1), 89(2) and 89(7) would continue to allow a court to sit in private in certain circumstances in proceedings under the Children Ordinance or the Adoption Act 1976 (as it applies in the Falkland Islands).

Clauses 89(3) to 89(6) would continue to make it an offence – with a maximum penalty of a level 4 fine (currently, £2,000) to publish material intended or likely to identify a child involved in proceedings under the Children Ordinance or the Adoption Act 1976 (as it applies in the Falkland Islands), unless an order has been made by the court of the Governor to allow publication. However, the new provisions would extend the definitions of “publish” and “material” to deal with developments in media in the Falkland Islands.

Clause 90 would continue to provide that the privilege against self-crimination does not apply in proceedings under *Parts 4 and 5*, but that statements or admissions made in those proceedings would only be admissible in evidence in a prosecution for perjury.

Clause 91 would continue to restrict the availability of the Supreme Court’s inherent jurisdiction in relation to children to cases in which the court has given leave, which it can only give where there is no other way of achieving the desired result and the child would otherwise be likely to suffer significant harm.

Clause 92 is new and would allow a court to issue a warrant for a police officer to enter and search premises in relation to the exercise of certain powers relating to privately fostered children and children covered by supervision orders.

Clause 93 would continue to provide for directors and other officers to be prosecuted in certain circumstances for offences committed by bodies corporate.

Clause 94 would continue to provide for children over the age of 16 to be able to consent to surgical, medical and dental treatment.

Clause 95 would continue to provide that a person attains a particular age at the start of the day on the anniversary of the person’s birth (but only in relation to birthdays on or after 1 January 1995). The corresponding provision in the existing Children Ordinance also abolished an old rule about this – that provision is not carried over into the Bill but that would not revive the old rule.

Clause 96 would continue to allow for those who have not yet reached the age of 18 to be referred to as “children” rather than as “infants” or “minors”.

Part 9 – Subsidiary legislation

Clause 97 is new and would deal with the situations in which something has not yet prescribed for the purposes of the Ordinance or subsidiary legislation about something has not yet been made. This clause has been adapted from existing provisions about rules of court and is needed because some of the new provisions needs to be supported by subsidiary legislation that it will not be feasible to put into place immediately.

The effect of *clauses 97(1) and 97(2)* would be that, if the way for something to be done were not yet prescribed, then it could be done in any reasonable way.

The effect of *clauses 97(3) and 97(4)* would be that, if subsidiary legislation were not yet prescribed, then the corresponding legislation for England can be used as a starting point instead.

Clauses 98 and 99 would allow the Governor to make consequential, transitional and saving provisions.

Part 10 – Modifications of UK legislation (as it applies in Falkland Islands)

Clause 100 and Schedule 6 would make 4 modifications to the UK legislation that applies in the Falkland Islands: two of these modifications are repeated from Part 4 of Schedule 3 to the existing Children Ordinance and the two are updated from it.

Sections 34(1) and 34(2) of the existing Children Ordinance abolished other powers under the Children and Young Persons Act 1976 (as it formerly applied in the Falkland Islands). The effect of section 26 of the Interpretation and General Clauses Ordinance (Title 65.2) is these provisions are not carried over into the Bill but that does not revive the provisions that had been abolished.

The same applies to the provisions in Part 3 of Schedule 3 to the existing Children Ordinance, which provided for a number of English Acts to cease to apply: these would be not revived either.

Part 11 – Repeal

Clause 101 would repeal the existing Children Ordinance.

The effect of sections 25 and 26 of the Interpretation and General Clauses Ordinance is that the repeal does not revive the provisions of Falkland Islands legislation repealed by Part 1 of Schedule 3 to the existing Children Ordinance or undo the amendments made by Part 2 of Schedule 3 to the existing Children Ordinance.

Schedules

An explanation about each of the Schedules has been given in the context of the provisions to which it relates.