



FALKLAND ISLANDS

Fish Farming Ordinance 2006

(ORDINANCE No. 20 OF 2006)

ARRANGEMENT OF PROVISIONS

Section

Introductory

1. Short title and commencement
2. Interpretation

Licences

3. Issue of fish farming licences
4. Applications for licences
5. Determination of applications
6. Duration of licence
7. Conditions of licence
8. Variation of licence
9. Action in case of breach of condition etc
10. Action where licence is cancelled
11. Appeal against cancellation of licence
12. Action by Crown where licence is cancelled
13. Assignment etc
14. Effect of termination etc of licence

Sub-licences

15. Sub-licences

Registration etc

- 16. Map of licensed areas
- 17. Register of licences etc

Royalties

- 18. Royalties

Regulations

- 19. Regulations

Enforcement

- 20. Enforcement: general
- 21. Offences
- 22. Injunctions

Amendments

- 23. . . .

SCHEDULE: Powers of entry and search



FALKLAND ISLANDS

Fish Farming Ordinance 2006

AN ORDINANCE To provide for the licensing and regulation of fish farming; and for connected purposes. ⁱ

[S. 3(2)(a)/Ord. 14/15/w.e.f. 24/12/15.]

[DATE OF COMMENCEMENT: 1 JANUARY 2016ⁱⁱ]

Introductory

1 Short title and commencement

(1) This Ordinance may be cited as the Fish Farming Ordinance 2006.

[S. 3(2)(b)/Ord. 14/15/w.e.f. 24/12/15.iii]

(2) This Ordinance shall come into force on a date or dates to be appointed by the Governor by Notice published in the Gazette, and different dates may be so appointed by one or more such Notices for different provisions and different purposes.

[Date of commencement: 1 January 2016.^{iv}]

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"application" means an application in writing;

"approved company" means a company which is incorporated in the Falkland Islands and the beneficial ownership of not less than the relevant proportion of the issued ordinary share capital of which is vested in persons enjoying Falkland Islands status; and for this purpose "the relevant proportion" is 25.1 per cent. or such other proportion as is prescribed;

"the Court" means the Supreme Court;

"the Director" means the Director of Fisheries holding office under section 4 of the Fisheries (Conservation and Management) Ordinance 2005;

"Falkland Islands status" has the meaning given by section 17(5) of the Constitution;

"fish farming" means the breeding, rearing or keeping of fish, whether or not for profit, with a view to their sale or transfer to marine waters or freshwater;

[S. 4(2)(b)/Ord. 14/15/w.e.f. 24/12/15.]

"fish" includes any kind of crustacean or mollusc;

"fisheries officer" has the same meaning as in the Fisheries (Conservation and Management) Ordinance 2005, but includes an examiner appointed under section 20(3);

"holder", in relation to a licence or sub-licence, means the person to whom the licence or sublicence is issued or, where a licence is assigned, the person to whom it is so assigned;

"inland waters" means waters which do not form part of the sea or of any creek, bay or estuary of any river as far as the tide flows;

"licence" means a fish farming licence issued under section 3;

[S. 4(2)(a)/Ord. 14/15/w.e.f. 24/12/15.]

"marine waters" means waters within the seaward limits of the territorial sea adjacent to the Falkland Islands, other than inland waters;

"notice" means a notice in writing;

"the Planning Officer" means the Planning Officer appointed under section 10 of the Planning Ordinance 1991;

"planning permission" has the same meaning as in that Ordinance;

"prescribed" means prescribed by regulations;

"qualifying company" means a company-

- (a) which is incorporated in the Falkland Islands, or
- (b) is a company the grant to which of a fish farming licence is authorised by the Governor pursuant to section 3;

[S. 4(2)(c)/Ord. 14/15/w.e.f. 24/12/15.]

"regulations" means regulations made by the Governor; and

"sub-licence" means an instrument issued under section 15(1).

Licences

3 Issue of fish farming licences

[S. 5(a)/Ord. 14/15/w.e.f. 24/12/15.]

(1) The Governor may, on an application for the purpose, issue to the applicant an instrument in writing (a "fish farming licence") authorising the holder of the licence-

- (a) to carry on within the marine waters or the freshwater specified in the licence fish farming of such a description as is so specified; and

[S. 5(c)/Ord. 14/15/w.e.f. 24/12/15.]

- (b) to construct or provide and to maintain within those waters for the purpose of fish farming such structures, plant, apparatus and equipment as are so specified.

[S. 5(b)/Ord. 14/15/w.e.f. 24/12/15.]

(2) Subject to subsection (3) so far as concerns paragraph (a) a licence may not be issued unless-

- (a) the person to whom it is issued is a qualifying company; and
- (b) planning permission is in force for such of the activities authorised by the licence as amount to development for the purpose of the Planning Ordinance 1991.

(3) The Governor may, if he is satisfied that there is sufficient reason to do so, issue a licence notwithstanding that the applicant is not a qualifying company.

4 Applications for licences

(1) An application for a licence shall be made to the Director and shall include or be accompanied by-

- (a) a map showing the marine waters or freshwater in respect of which the licence is sought;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (b) particulars of the fish farming proposed to be carried on in those waters;
- (c) particulars of any other activities, being activities connected with that fish farming, which are proposed to be carried in those waters, or in any other waters or on any land in the vicinity of those waters;
- (d) particulars of any structure, plant, apparatus or equipment to be constructed, provided or maintained within those waters for the purpose of the fish farming;
- (e) the periods, expiring not later than 5 years (or such shorter period as may be prescribed) after the date on which the licence comes into force,-
 - (i) within which the fish farming is to commence, and
 - (ii) within which the construction or provision of any structure, plant, apparatus or equipment referred to in paragraph (d) is to be completed;
- (f) particulars of the sources of finance for those activities and works;
- (g) the applicant's business plan, that is-

- (i) an overview of the fish farming business to be carried on by the applicant;
- (ii) the marketing and sales strategy of the business;
- (iii) the proposed management and staffing of the business; and
- (iv) financial forecasts of the income and expenditure of the business in the period of 5 years (or such shorter period as may be prescribed) beginning with the date on which the licence (if issued) comes into force;
- (h) particulars of the beneficial owners of, and their respective interests in, the applicant;
- (i) particulars of any planning permissions in force, and planning applications made, relating to the matters referred to in paragraphs (b), (c) and (d); and
- (j) such other information as may be prescribed.

(2) The Director may require the applicant to provide such information additional to that required by subsection (1) as he may specify.

(3) Any information provided in the application or under subsection (2) shall, if the Director so requires, be in such form or verified in such manner as he may specify.

(4) The application shall be accompanied by the prescribed fee and shall be forwarded by the Director, together with-

- (a) any additional information provided pursuant to subsection (2), and
- (b) the Director's recommendation in relation to the application, to the Governor for consideration.

5 Determination of applications

The Governor shall have regard in particular to the following matters in deciding whether an application for a licence should be granted-

- (a) the benefits to the Falklands Islands which the fish farming the subject of the application will generate;
- (b) the effects which-
 - (i) the fish farming the subject of the application,
 - (ii) any activities connected with it, and
 - (iii) any structures, plant, apparatus or equipment to be constructed, provided or maintained within marine waters or freshwater for the purpose of the fish farming, will have on the marine environment;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (c) any obligations under an international agreement relating to the sea or the marine environment to which the United Kingdom is a party and which extends to the Falkland Islands;
- (d) whether the applicant appears to be capable of-

- (i) commencing the fish farming the subject of the application, and
- (ii) completing any structures, plant, apparatus or equipment to be constructed, provided or maintained within marine waters or freshwater for the purpose of the fish farming, within the periods specified under section 4(1)(e);

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (e) whether the applicant appears to be capable of complying with-
 - (i) the terms and conditions to which the licence, if issued, will be subject,
 - (ii) the conditions of any relevant planning permission, and
 - (iii) any other obligations imposed by law and affecting the fish farming the subject of the application; and
- (f) such other matters as may be prescribed.

6 Duration of licence

- (1) A licence shall come into force on such day as is specified in it, not being earlier than the day on which it is issued or later than one year after that day.
- (2) Subject to sections 9 and 13(3) and to regulations under section 18(5)(f), the licence shall remain in force for such period, from the day on which it comes into force, as is specified in it.

7 Conditions of licence

- (1) A licence shall contain conditions that-
 - (a) the fish farming the subject of the licence shall commence, and
 - (b) the construction or provision of any structure, plant, apparatus or equipment which is required or permitted by the licence to be constructed or provided shall be completed, within such periods as are specified for the purpose in the licence, none of which shall expire later than the end of 5 years, or such shorter period as may be prescribed, after the date on which the licence comes into force.
- (2) Subject to subsection (3), the licence shall contain such other conditions as the Governor thinks fit.
- (3) The Governor may not impose a condition under subsection (2) without the consent of the applicant for the licence, except a condition appearing to the Governor to be calculated-
 - (a) to mitigate the effects referred to in section 5(b);
 - (b) to secure compliance with an obligation referred to in section 5(c); or
 - (c) to secure the health of fish or to prevent or control diseases of fish.
- (4) In imposing any obligation under subsection (2) the Governor shall have regard in particular to-
 - (a) the matters specified in section 5(a), (b) and (c), and

- (b) any relevant EU legislation (within the meaning of section 3 of the Fishery Products Ordinance 2006, in relation to Part 3 of that Ordinance).

[S. 3(2)(c)/Ord. 14/15/w.e.f. 24/12/15.]

(5) A condition of a licence may require the holder to pay to the Director such charges as may be prescribed, or specified in or determined in accordance with the licence, towards the expense of-

- (a) ensuring that the conditions of the licence have been or are being complied with;
- (b) otherwise checking the manner in which the fish farming the subject of the licence has been or is being carried on; and
- (c) monitoring the effect of the fish farming the subject of the licence.

(6) In subsections (3) and (4) "relevant EU legislation" has the meaning given by section 3 of the Fishery Products Ordinance 2006 in relation to Part 3 of that Ordinance.

[S. 3(2)(c)/Ord. 14/15/w.e.f. 24/12/15.]

8 Variation of licence

(1) The Governor may, on the application of the holder of a licence, vary the licence by amending-

- (a) the marine waters or freshwater specified in it;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (b) the descriptions of fish farming so specified; or
- (c) the structures, plant, apparatus or equipment so specified;

or by varying or cancelling any condition contained in it.

(2) Sections 3(2)(a) and (b), 4 and 5 apply, with any necessary modifications, to a licence as varied under subsection (1) or an application under that subsection as they apply to a licence or an application for a licence, as the case may be.

(3) Subject to subsection (4), the Governor may by notice to the holder of the licence-

- (a) impose such further conditions as he thinks fit, or
- (b) vary or cancel any condition contained in the licence.

(4) Section 7(3), (4) and (5) apply to the imposition or variation of a condition under subsection

(3) as they apply to the imposition of a condition under section 7(2).

(5) A condition imposed under subsection (3)(a) shall be deemed for all purposes to be contained in the licence.

(6) Before imposing or varying a condition under subsection (3) without the holder's consent,

the Governor shall give the holder notice of his proposal to do so-

- (a) giving his reasons for the proposal; and

- (b) stating that, within 28 days after the date of service of the notice, the holder may make representations or objections in writing to him with respect to the proposal.

(7) The Governor-

- (a) shall not make a decision on the proposal before the period specified in the notice under subsection (6) expires; and
- (b) shall before making such a decision consider any representations or objections duly made in accordance with the notice.

9 Action in case of breach of condition etc

(1) Where the Governor is satisfied that a condition contained in a licence has not been complied with, he may by notice to the holder-

- (a) require it, within such time as is specified in the notice or such longer period as he may allow, to carry out such works or to take such other steps as appear to him to be necessary to comply with the condition and are so specified; or
- (b) cancel the licence, either-
 - (i) as to the whole of the marine waters or freshwater to which it relates, or

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (ii) as to such part of those waters as is specified in the notice,

Provided that, subject to subsection (2), if the breach of condition is capable of remedy, the Governor shall not cancel the licence unless a notice served under paragraph (a) of this subsection has not been complied with within the time specified by such notice or such greater time as the Governor may allow.

(2) Where the Governor is satisfied that the holder of a licence has ceased to be a qualifying company, he shall by notice to the holder cancel the licence.

(3) Subject to subsection (4), before giving a notice under subsection (1) or (2) the Governor shall give the holder notice of his proposal to do so-

- (a) giving his reasons for the proposal; and
- (b) stating that, within 21 days after the date of service of the notice, the holder may make representations or objections with respect to the proposal in writing to him.

(4) Subsection (3) does not apply to a notice under subsection (1)(a) which contains a statement that the Governor is satisfied that the failure to comply with the condition has caused, or poses an imminent risk of, serious damage to the marine environment.

(5) Where a notice under subsection (1)(a) contains a statement of the kind mentioned in subsection (4), the Director-

- (a) may himself carry out any works or take other steps which are specified in the notice and appear to him to be necessary to remedy or mitigate, or to remove or reduce the risk of, serious damage to the marine environment, and

- (b) whether or not the notice is withdrawn or cancelled, may recover from the holder of the licence any expenses reasonably incurred by him in so doing.

(6) Where the Governor gives a notice under subsection (3)-

- (a) he shall not make a decision on the proposal before the period specified in the notice under subsection (3) expires;
- (b) he shall before making such a decision consider any representations or objections duly made in accordance with the notice; and
- (c) after considering any such representations or objections, he may-
 - (i) serve the notice under subsection (1) or (2) in accordance with the proposal (with or without modifications, in the case of a proposal to serve a notice under subsection (1));
 - (ii) withdraw the proposal; or
 - (iii) in the case of a proposal to serve a notice under subsection (1)(b), instead give to the holder of the licence a notice under subsection (1)(a).

(7) If the Governor is satisfied that the holder of the licence has failed to comply with a notice under subsection (1)(a), he may by notice to the holder cancel the licence, either-

- (a) as to the whole of the marine waters or freshwater to which it relates, or

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (b) as to such part of those waters as is specified in the notice under this subsection, with effect from such date, not being less than 3 months after the date on which the notice under this subsection is given, as is specified in it.

(8) Where a mortgage or charge of a licence is entered in the register kept under section 17, a copy of any notice under this section shall be given to the person registered as the mortgagee or chargee.

10 Action where licence is cancelled

(1) This section applies where the Governor gives-

- (a) a notice under section 9(1)(b), (2) or (7) cancelling a licence, or
- (b) a notice under section 9(3) of a proposal to cancel a licence, or
- (c) a notice pursuant to regulations under section 18(5)(f) cancelling or proposing to cancel such a licence.

(2) Subject to subsection (3), the holder of the licence may, before the expiry of the period of 3 months referred to in section 9(7), remove from the marine waters or freshwater to which the licence relates-

- (a) any fish kept in those waters pursuant to the licence, and
- (b) any structure, plant, apparatus or equipment constructed, provided or maintained within those waters for the purpose of the fish farming.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(3) A notice referred to in subsection (1) may contain a direction prohibiting within the marine waters or freshwater to which the licence relates any activity which is specified in the direction as appearing to the Governor to be likely to cause, or to pose an imminent risk of, serious damage to the marine environment; and nothing in subsection (2) permits the removal of any thing from those waters in contravention of such a direction.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(4) A direction under subsection (3) shall take effect as soon as the notice referred to in subsection (1) is served on the holder of the licence, and shall remain in force until-

- (a) the notice is withdrawn or is quashed under section 11;
- (b) the direction is cancelled by the Governor by a further notice to the holder of the licence; or
- (c) any action is taken under section 12.

11 Appeal against cancellation of licence

(1) Where the Governor gives-

- (a) a notice under section 9(1)(b), (2) or (7), or
- (b) a notice pursuant to regulations under section 18(5)(f), cancelling a licence, the notice shall not take effect until the expiration of 21 days beginning with the date on which it is served on the holder of the licence.

(2) Subsection (1) does not apply to a direction under section 10 contained in the notice.

(3) Before the expiration of the period mentioned in subsection (1)-

- (a) the holder of the licence, or
- (b) where a mortgage or charge of the licence is entered in the register kept under section 17,

the person registered as the mortgagee or chargee, may appeal to the Court against the notice, and in that case the notice shall not take effect until the appeal is dismissed or withdrawn.

(4) On an appeal under this section the Court may by order quash the notice if it is satisfied that the Governor in cancelling the licence-

- (a) erred in law; or
- (b) based his decision on any incorrect material fact; or
- (c) exercised his discretion in an unreasonable manner.

(5) Pending the determination of an appeal under this section the Court may give such directions and make such interim orders as it thinks just and appropriate.

12 Action by Crown where licence is cancelled

(1) Where a licence is cancelled, the Crown may-

(a) within 28 days after the cancellation takes effect, enter on or take possession of-

(i) the relevant marine waters or freshwater;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(ii) any structure, plant, apparatus or equipment which is in the relevant marine waters or freshwater or on that land or those premises and was before such cancellation wholly or mainly used for the purpose of the fish farming authorised by the licence; and

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(iii) any fish in the relevant marine waters or freshwater; and

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(b) carry on fish farming in the relevant marine waters or freshwater with a view to the issue of a fresh licence in relation to those waters.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(2) Where the Crown enters on or takes possession of any property under subsection (1)(a)(ii) or (iii), all relevant interests in the property shall thereupon vest in the Crown.

(3) The vesting of any property in the Crown under subsection (2) shall not affect any right to recover any debt the payment of which was secured on the property before such vesting took effect.

(4) In this section-

"former holder", in relation to a licence, means the person who was the holder of it immediately before its cancellation took effect;

"relevant interest" means an estate or interest which was vested in the former holder of the licence immediately before the notice in question was served on it, and any estate or interest deriving (whether mediately or immediately) from any such estate or interest;

"the relevant marine waters or freshwater" means-

(a) where the notice cancelling the licence related to the whole of the marine waters or freshwater to the licence relates, those waters;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(b) where that notice related to part only of those waters, that part of those waters.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

13 Assignment etc

(1) A licence may not be assigned-

(a) without the consent of the Governor, or

(b) to any person other than a qualifying company.

- (2) Nothing in subsection (1)(a) applies to-
- (a) a sub-licence under section 15,
 - (b) a mortgage or charge of a licence granted by the holder of the licence to secure the payment of money, or
 - (c) an assignment of the licence by the mortgagee or chargee in the exercise of a power of sale conferred by such a mortgage or charge.

(3) The holder of a licence may, with the consent of the Governor, surrender the licence, which shall thereupon cease to have effect.

(4) No change (otherwise than by operation of law) in the beneficial ownership of a share in the holder of a licence shall have effect without the consent of the Governor; and any transaction or instrument by virtue of which any such change would, apart from this subsection, take effect shall to that extent be void.

14 Effect of termination etc of licence

(1) A condition of a licence relating to the carrying out of works after any activity the subject of the licence ceases shall remain in effect notwithstanding the expiry or sooner termination of the licence, and may be enforced against the person who was the holder of the licence immediately before such expiry or termination.

(2) Without prejudice to subsection (1), the cancellation, assignment or surrender of a licence shall not affect any civil or criminal liability arising before it takes effect.

Sub-licences

15 Sub-licences

(1) The holder of a licence may by an instrument in writing (a "sub-licence") authorise an approved company-

- (a) to carry on within so much of the marine waters or freshwater to which the main licence relates as is specified in the sub-licence ("the relevant waters") fish farming of a description authorised by the main licence and specified in the sub-licence; and

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (b) to construct or provide and to maintain within the relevant waters for the purpose of fish farming so much of the structures, plant, apparatus and equipment authorised by the main licence as are so specified,

subject to such terms and conditions, not being inconsistent with this Ordinance, any regulations under it and the conditions contained in the main licence, as may be contained in the sub-licence.

(2) No sub-licence shall have effect unless the prescribed notice of it is given to the Governor.

(3) Subject to subsections (4) and (5), a sub-licence shall remain in force for such period, not exceeding the unexpired residue of the term of the main licence, as is specified in it.

(4) The holder of a main licence may cancel or suspend any relevant sub-licence, and the holder of a sub-licence may surrender the sub-licence, in accordance with the terms of the sub-licence.

(5) Where a licence is cancelled with effect from any date, any relevant sub-licence is also cancelled with effect from the same date; but where the Governor gives any notice referred to in section 9(1) to the holder of a licence-

- (a) he shall also give a copy of it to the holder of any relevant sub-licence, and
- (b) anything which may be done or is required to be done under section 9, 10, 11 or 12 or under regulations under section 18(5)(f) by, to or in relation to the holder of the licence may be done or shall be done, as the case may be, by, to or in relation to the holder of any relevant sub-licence.

(6) The holder of a licence may not surrender the licence under section 13(3) without the consent of the holder of any relevant sub-licence.

(7) Regulations may provide that, in default of payment by the holder of a licence, any sum due under section 18(1) may be recovered from the holder of any relevant sub-licence.

(8) Where the Governor is satisfied that the holder of a sub-licence has ceased to be an approved company, he shall by notice to the holder of the main licence cancel that licence; and sections 9(3) and (6), 10, 11 and 12 and subsection (5) apply with any necessary modifications in relation to a notice under this subsection as they apply in relation to a notice under section 9(2).

(9) In this section-

"main licence", in relation to a sub-licence, means the licence relating to the marine waters or freshwater to which the sub-licence relates; and

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

"relevant sub-licence", in relation to a licence, means a sub-licence relating to the whole or part of the marine waters or freshwater to which the licence relates.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

Registration etc

16 Map of licensed areas

(1) The Director shall prepare and maintain a map at a suitable scale on which shall be delineated all marine waters or freshwater for the time being specified in licences.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(2) The Director shall-

- (a) make the map prepared under subsection (1), or a copy of it, available for inspection by any person at his office at all reasonable times, and

- (b) supply a copy of it, or of an extract from it, to any person on payment of such reasonable charge as he may determine.

17 Register of licences etc.

(1) The Director shall keep a register containing prescribed information about-

- (a) applications for licences;
- (b) licences;
- (c) sub-licences;
- (d) any assignment, mortgage, charge, suspension, cancellation or surrender of a licence;
- (e) any suspension, cancellation or surrender of a sub-licence;
- (f) notices of prescribed kinds given to holders of licences or sub-licences;
- (g) appeals under section 11, and any orders made or directions given on any such appeals;
and
- (h) action taken under section 12.

(2) Regulations may provide-

- (a) for the making, amendment and cancellation of entries in the register;
- (b) for the supply by holders of licences and sub-licences and other persons of information for inclusion in the register;
- (c) that a specified transaction, instrument or other matter shall be of no effect unless the prescribed information about it is entered in the register.

(3) The Director shall-

- (a) make the register available for inspection by any person at his office at all reasonable times, and
- (b) supply a copy of any entry in it to any person on payment of such reasonable charge as he may determine.

(4) The register may be kept otherwise than in documentary form; and where it is so kept, the requirement of subsection (3)(a) is satisfied if the Director makes any part of which any person wishes to inspect available for inspection in visible and legible form.

Royalties

18 Royalties

(1) The holder of a licence shall pay to the Crown in respect of the licence such sums as are-

- (a) from time to time prescribed, or

(b) calculated in such manner as is from time to time prescribed.

(2) In prescribing sums under this section the Governor shall have regard to-

(a) the general levels of world prices of fish, and

(b) such other factors as appear to him to be relevant for the purpose.

(3) Regulations may prescribe different sums under this section in respect of-

(a) different species of fish,

(b) marine waters or freshwater of different descriptions or in different locations, and

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(c) fish farming of different descriptions.

(4) Before making regulations prescribing sums under this section, the Governor shall consult such persons carrying on or likely to carry on fish farming in the Falkland Islands, or such body or bodies appearing him to be representative of those persons, as appear to him appropriate.

(5) Such regulations may-

(a) provide that the sums shall be payable on such annual, seasonal or other periodic basis as is prescribed;

(b) provide that no sums shall be payable in respect of any period specified in the regulations, either-

(i) generally,

(ii) in respect of licences of a description so specified, or

(iii) in respect of fish farming in marine waters or freshwater so specified;

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(c) require holders of licences and sub-licences to keep and make available for inspection such accounts and records, and to make such returns, as are prescribed;

(d) require holders of licences and sub-licences to keep and use such apparatus as is prescribed for the purpose of measuring the weight or volume of fish or any other matter relevant for the purpose of calculating any sum payable under this section;

(e) provide for the testing of any such apparatus;

(f) without prejudice to section 21, provide for the suspension or cancellation of a licence by the Governor by notice to the holder of the licence, in the case of any failure by the holder of the licence-

(i) to pay any sum due under subsection (1), or

(ii) to comply with any requirement imposed by or under the regulations.

Regulations

19 Regulations

The Governor may make regulations prescribing anything which may be prescribed under this Ordinance.

Enforcement

20 Enforcement: general

- (1) The Director shall be responsible for enforcing this Ordinance.
- (2) The Deputy Director may, subject to any directions of the Governor to the contrary, exercise any function conferred upon the Director by or under this Ordinance.
- (3) The Director may appoint any public officer to be an examiner to assist in the enforcement and administration of this Ordinance by examining and verifying any accounts, records and returns required to be kept or made by regulations under section 18 or under any condition contained in a licence.
- (4) In performing his functions under this Ordinance the Director shall act in accordance with any directions, not inconsistent with this Ordinance, which the Governor may give to him.
- (5) The Schedule to this Ordinance has effect for conferring on fisheries officers^v and veterinary officers powers for enforcing this Ordinance; and in the exercise of those powers fisheries officers^{vi} and veterinary officers shall act in accordance with any directions, not inconsistent with this Ordinance, which the Director may give to them.

[S. 6/Ord. 14/15/w.e.f. 24/12/15.]

21 Offences

- (1) If a person carries on fish farming, or causes or permits fish farming to be carried on, in any marine waters or freshwater otherwise than-
 - (a) by authority of a licence or sub-licence, or
 - (b) pursuant to section 12(1)(b),

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

- (2) If a person constructs, provides or maintains within marine waters or freshwater for the purpose of fish farming any structure, plant, apparatus or equipment otherwise than by authority of a licence or sub-licence, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(3) If any condition contained in a licence (other than a condition imposed under section 7(1)) is not complied with, the holder of the licence commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(4) If the holder of a licence or sub-licence fails-

- (a) to supply any information required by regulations under section 17(2)(b) to be supplied for inclusion in the register,
- (b) to pay any sum due under section 18(1) or recoverable under regulations under section 15(7), as the case may be, or
- (c) to comply with any requirement imposed by or under regulations prescribing sums under section 18,

it commits an offence and is liable to a fine not exceeding the maximum of level 5 on the standard scale (but without prejudice to the right of the Crown to recover any sum by civil proceedings or otherwise).

(5) In proceedings for an offence under subsection (3) or (4)(c) it is a defence for the accused to prove that it took all reasonable precautions and exercised all due diligence to avoid such an act or omission by itself or any person under its control.

(6) If the holder of a licence fails to comply with any requirement imposed by a notice under section 9(1)(a), it commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(7) If a person knowingly contravenes a direction under section 10, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(8) If a person in making any application under this Ordinance, or purporting to comply with a requirement made by or under this Ordinance or regulations made under it-

- (a) furnishes information which he knows is false in a material particular; or
- (b) recklessly furnishes information which is false in a material particular,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(9) If a person intentionally obstructs another person in the exercise of a power conferred on the other person by the Schedule to this Ordinance, he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(10) If a person who has entered on any land, premises, vehicle or vessel in the exercise of a power conferred by the Schedule to this Ordinance discloses to another person information obtained by him there about a manufacturing process or trade secret, then, unless the disclosure is made-

- (a) in the course of performing his duty in connection with the purposes for which he was authorised to enter on the land, premises, vehicle or vessel, or
- (b) to another agency for the purpose of investigating or prosecuting an offence,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

(11) If a person, within the marine waters or freshwater to which a licence or sub-licence applies and without the authority of the holder of the licence or sub-licence, as the case may be, or other lawful authority-

- (a) searches for or takes any fish the farming of which is authorised by the licence or sub-licence, or
- (b) releases any such fish from any pen, compound or other structure,

he commits an offence and is liable to a fine not exceeding the maximum of level 8 on the standard scale.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

(12) Where an offence under this section which has been committed by a body corporate 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, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(13) In subsection (12) "director", in relation to any body corporate whose affairs are managed by its members, means a member of that body corporate.

22 Injunctions

(1) Where the Director considers it necessary or expedient for-

- (a) a failure to comply with a condition contained in a licence;
- (b) a direction under section 10;
- (c) a transaction or disposition appearing to him to be intended to defeat the vesting of any property under section 12(2) or to prevent or interfere with the exercise of the power under section 12(2),
- (d) a failure to comply with a requirement imposed by or under regulations prescribing sums under section 18; or
- (e) any act constituting an offence under section 21 and not falling within paragraphs (a) to (d),

whether actual or apprehended, to be restrained by injunction, he may apply to the Court for an injunction, whether or not he has taken any other steps for the prosecution or prevention of the matter.

(2) On an application under subsection (1) the Court may grant such an injunction as it thinks appropriate for the purpose of restraining the matter.

Amendments

23 ...

[S. 7/Ord. 14/15/w.e.f. 24/12/15.]

**SCHEDULE
POWERS OF ENTRY AND SEARCH**

section 20(5)

1 Interpretation

In this Schedule-

"**examine**", in relation to fish, includes count, measure, weigh, grade or gauge; and

"**premises**" includes any structure, plant, apparatus or equipment in marine waters or freshwater.

[S. 3(2)(d)/Ord. 14/15/w.e.f. 24/12/15.]

2 Powers of fisheries officers^{vii} and veterinary officers

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

A fisheries officer^{viii} and veterinary officer may-

- (a) where he has reasonable grounds to believe that there is on any land or premises anything that may afford evidence as to the commission of an offence under this Ordinance, with the consent of the owner or occupier of the land or premises or under a warrant issued under paragraph 5-
 - (i) enter the land or premises;
 - (ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which he has reasonable grounds to believe that there is any such thing;
 - (iii) examine and take possession of, or secure against interference, any such thing that he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;
- (b) where he has reasonable grounds to believe that there is in any vehicle or vessel anything that may afford evidence as to the commission of an offence under this Ordinance, with the consent of the owner or the person in charge of the vehicle or vessel or under a warrant issued under paragraph 5-
 - (i) stop and detain the vehicle or vessel or; and
 - (ii) enter or board and search the vehicle or vessel;
 - (iii) break open and search any compartment, container or other receptacle in which he has reasonable grounds to believe that there is any thing; and
 - (iv) examine and take possession of, or secure against interference, any document or other thing that he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

- (c) examine any equipment found in any place, being equipment that he has reasonable grounds to believe has been used, is being used, or is intended to be used, for fish farming;
- (d) seize, detain, remove or secure-
 - (i) any fish which he has reasonable grounds to believe has been kept in contravention of this Ordinance;
 - (ii) any equipment which he has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Ordinance; or
 - (iii) any document or other thing which he has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;
- (e) enter on and examine any premises which he has reasonable grounds to believe has been used or is being used in connection with fish farming, for the purpose of ascertaining whether any offence under this Ordinance has been or is being committed;
- (f) in furtherance of that purpose-
 - (i) search the premises for, and examine, any fish;
 - (ii) search the premises for, inspect, take extracts from, and make copies of, any documents relating to fish farming; and
 - (iii) if he finds, during the course of the search, anything that he believes, on reasonable grounds, may provide evidence of an offence under this Ordinance, secure the thing pending the obtaining of a warrant to seize it;
- (g) with the consent of the holder of a licence or sub-licence or under a warrant issued under paragraph 5, seize anything found during the course of a search which he believes on reasonable grounds may provide evidence of an offence under this Ordinance; and
- (h) require a person found on or in any land or premises entered under paragraph (a) or (e) or in any vehicle or vessel entered, boarded, detained or searched under paragraph (b)-
 - (i) to state the person's name and address,
 - (ii) to produce any document in the person's possession or under the person's control relating to any fish farming, or
 - (iii) to give information concerning any fish farming.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

3 Production of authority

(1) Where a fisheries officer^{ix} and veterinary officer proposes to enter and search any land or premises, he must, if there is a person on the land or premises, produce his warrant card and, if he fails to do so, he is not authorised to enter and search the land or premises.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(2) Where a fisheries officer^x and veterinary officer proposes to enter, board, search or detain a vehicle or vessel, he must, if there is a person in charge of the vehicle or vessel, produce his warrant card and, if he fails to do so, he is not authorised to enter, board, search or detain the vehicle or vessel.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(3) Where a fisheries officer^{xi} and veterinary officer makes a requirement of a person under any provision of paragraph 1, he must produce his warrant card to that person and, if the officer fails to do so, that person is not obliged to comply with the requirement.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(4) This paragraph does not apply to a member of Her Majesty's Services who is in uniform.

4 Assistance of fisheries officer^{xii} and veterinary officer

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(1) Any fisheries officer^{xiii} and veterinary officer exercising any of the powers conferred on him by this Schedule may do so with the aid of such assistants as he considers to be necessary for the purpose.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(2) Any person called upon by a fisheries officer^{xiv} and veterinary officer to assist him in the exercise of any of the powers conferred by this Schedule is authorised to render such assistance.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(3) A person who, while assisting a fisheries officer^{xv} and veterinary officer does any act under this Schedule, or omits to do any act required by this Schedule, is not under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless he acted or omitted to act in bad faith.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(4) The Crown may not be held directly or indirectly liable for an act or omission of any person assisting a fisheries officer^{xvi} and veterinary officer under the authority of sub-paragraph (2) unless he has himself incurred liability for the act or omission.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

5 Search warrants

(1) A justice of the peace may, upon application by a fisheries officer^{xvii} and veterinary officer, issue a warrant to search land or premises or any vehicle or vessel if the justice is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or that there will be within the next 72 hours, any evidential material on the land or premises or in the vehicle or vessel.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

(2) A warrant issued under this section must set out-

- (a) the offence to which the warrant relates;

- (b) a description of the land, premises, vehicle or vessel to which the warrant relates;
- (c) the kinds of evidential material that had to be searched for under the warrant;
- (d) the name of the fisheries officer^{xviii} and veterinary officer who, unless he inserts the name of another officer in the warrant, is to be responsible for executing the warrant;

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

- (e) the period for which the warrant remains in force, which must not exceed 7 days; and
- (f) whether the warrant may be executed at any time or only during particular hours.

(3) The warrant must also state that it authorises the seizure of a thing (other than evidential material of a kind referred to in sub-paragraph (2)(c)) found on the land or premises or in the vehicle or vessel in the course of the search that the executing officer or a person assisting him believes on reasonable grounds to be evidential material in relation to an offence to which the warrant relates or a thing relevant to another offence under this Ordinance, if the executing officer or a person assisting him believes on reasonable grounds that seizure of that thing is necessary to prevent its concealment, loss or destruction or use in committing an offence under this Ordinance.

(4) Nothing in sub-paragraph (2)(e) prevents the issue of successive warrants in relation to the same land, premises, vehicle or vessel.

6 Matters authorised by a search warrant

(1) A warrant authorises the executing officer or a person assisting him-

- (a) to enter the land, premises, vehicle or vessel to which the warrant relates and, in the case of a vehicle or vessel, to enter it wherever it is;
- (b) to take samples of things found on the land or premises or in the vehicle or vessel for forensic purposes;
- (c) to search the land, premises, vehicle or vessel for the kinds of evidential material specified in the warrant, and to seize things of that kind found on the land or premises or in the vehicle or vessel;
- (d) seize other things found on the land or premises or in the vehicle or vessel in the course of the search that the executing officer or a person assisting him believes on reasonable grounds to be evidential material in relation to an offence to which the warrant relates or evidential material in relation to another offence under this Ordinance, if the executing officer or a person assisting him believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence under this Ordinance.

(2) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(3) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies for the purpose of investigating or prosecuting an offence to which the things relates.

7 Availability of assistance and use of force in executing a warrant

In executing a warrant-

- (a) the executing officer may be accompanied by such persons and make use of such assistance as is reasonable in the circumstances;
- (b) the executing officer, or a person who is a fisheries officer^{xix} and veterinary officer or a police officer and is assisting in the execution of the warrant, may use such force against such person and things as is reasonable in the circumstances; and

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

- (c) a person who is neither a fisheries officer^{xx} [nor a] veterinary officer nor a police officer and is assisting in the execution of a warrant may use such force against things as is reasonable in the circumstances.

[S. 8/Ord. 14/15/w.e.f. 24/12/15.]

8 Copy of warrant to be given to occupier etc.

(1) If while a warrant is being executed in relation to land or premises, the occupier of the land or premises or another person apparently representing him is present on the land or premises, the executing officer or a person assisting him must make available to that person a copy of the warrant and the executing officer must produce to that person his warrant card.

(2) The copy of the warrant referred to in sub-paragraph (1) need not include the signature of the justice of the peace.

9 Powers available to officer executing warrant

(1) In executing a warrant in relation to land or premises, the executing officer or person assisting him may, for a purpose incidental to the execution of the warrant or if the occupier of the land or premises consents in writing, take photographs (including video recordings) of the premises or of things on the land or premises.

(2) If a warrant is being executed, the executing officer or person assisting him may, if the warrant is still in force, complete the execution of the warrant after the officer and all persons assisting him have temporarily left the land or premises-

- (a) for not more than one hour; or
- (b) for a longer period if the occupier of the land premises consents in writing.

10 Use of equipment to examine or process things

(1) In executing a warrant in relation to land or premises, the executing officer or a person assisting him may bring to the land or premises the subject of the warrant any equipment reasonably necessary for the examination or processing of things found on the land or premises in order to determine whether they are things that may be seized under the warrant.

(2) If it is not practicable to examine or process the things at the premises the subject of the warrant or the occupier of the land or premises consents in writing, the things may be moved to another

place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

(3) If things are moved to another place for the purpose of examination or processing under subparagraph (2), the executing officer must, if it is practical to do so, inform the occupier of the address of the place and a time at which the examination or processing will be carried out, and allow that occupier or his representative to be present during the examinational processing.

(4) The executing officer or person assisting him may operate equipment already at the premises the subject of the warrant to carry out the examination or processing of a thing found at the premises in order to determine whether it is the thing that may be seized under the warrant if the executing officer or such a person believes on reasonable grounds that the equipment is suitable for the examination or processing and the examination or processing can be carried out without damage to the equipment or the thing.

11 Use of electronic equipment at premises

(1) In executing a warrant in relation to premises, the executing officer or person assisting him may operate electronic equipment at the premises the subject of the warrant to see whether evidential material is accessible by doing so if he believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(2) If the executing officer or a person assisting him, after operating the equipment, finds that the evidential material is accessible by doing so, he may-

- (a) seize the equipment and any disk, tape or other associated device; or
- (b) operate the facilities to put the material in to documentary form, if the material can, by using facilities at the premises, be put in documentary form and may seize the documentation so produced; or
- (c) if the material can be transferred to a disk, tape or other storage device that is brought to the premises or is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises, operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

(3) A person may seize equipment under sub-paragraph (2)(a) only if-

- (a) it is not practicable to put the material in documentary form as mentioned in subparagraph (2)(b) or to copy the material as mentioned in sub-paragraph (2)(c); or
- (b) possession by the occupier of the equipment would constitute an offence under this Ordinance.

(4) If the executing officer or a person assisting him believes on reasonable grounds that evidential material may be accessible by operating electronic equipment at the premises but expert assistance is required to operate the equipment and if he does not take action under this sub-paragraph, the material may be destroyed, altered or otherwise interfered with, then the executing officer may do whatever is necessary to secure the equipment whether by locking it up, placing a guard or otherwise.

(5) The executing officer or a person assisting him must give notice to the occupier of the premises the subject of the warrant of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured under sub-paragraph (4) until the end of a period of not more than 24 hours or until the equipment has been operated by the expert, whichever happens first.

(7) If the executing officer or a person assisting him believes on reasonable grounds that the expert assistance requirement to operate the electronic equipment on the premises which has been secured pursuant to sub-paragraph (4) will not be available within 48 hours, he may apply to a justice of the peace for an extension of that time.

(8) If an executing officer or a person assisting him intends to make an application under subparagraph (7), he must give notice to the occupier of the premises of that intention and the occupier is entitled to be heard in relation to the application.

(9) The foregoing provisions of this Schedule relating to the issue of warrants apply, with any necessary modifications, to the issuing of an extension.

12 Compensation for damage to equipment

(1) Where-

- (a) damage is caused to equipment as a result of being operated as mentioned in paragraph 10 or 11; and
- (b) the damage was caused as a result of insufficient care being exercised-
 - (i) in selecting the person who was to operate the equipment, or
 - (ii) by the person operating the equipment,

compensation for the damage is payable to the owner of the equipment.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

13 Copies of seized things to be provided

(1) Subject to sub-paragraph (2), if a person seizes under a warrant a document, film, computer file or other thing that can readily be copied or a storage device information in which can readily be copied, that person must, if requested to do so by the occupier of the premises or by another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to the person who made the request as soon as practicable after the seizure.

(2) Sub-paragraph (1) does not apply if-

- (a) the thing that has been seized was seized under paragraph 11(2)(b) or (c), or
- (b) possession by the occupier of the thing or information would constitute an offence under any law having effect in the Falkland Islands.

14 Occupier entitled to be present during search

If a warrant is being executed in relation to land or premises and the occupier of the land or premises or another person who apparently represents him is present on the land or premises, he is entitled to observe the search being conducted but-

- (a) the right to observe the search being conducted ceases if the person impedes the search; and
- (b) the right to observe the search being conducted does not prevent two or more areas of the premises being searched at the same time.

15 Receipts for things seized under warrant

The executing officer or a person assisting him must provide a receipt for a thing seized under a warrant or moved under paragraph 10(2), but if two or more things are seized or moved, they may be covered in the one receipt.

ⁱ Previously Marine Farming Ordinance; renamed Fish Farming Ordinance by s. 3(2)(b)/Ord. 14/15/w.e.f. 24/12/15.

ⁱⁱ Notice 146 in Gazette 17 dated 31 December 2015

ⁱⁱⁱ Although the short title of this Ordinance has not been specifically amended by s. 3(2)(b) of the Marine Farming (Amendment) Ordinance No. 14 of 2015, the change to the short title has been made by implication. The editor has therefore reflected the change.

^{iv} Notice 146 in Gazette 17 dated 31 December 2015

^v S. 6 of the amending Ordinance has "fishery officers", but it is clear that although the expression used here is "fisheries officers", the amendment should be made. The editor has accordingly made the changes.

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