



## FALKLAND ISLANDS

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### Fisheries (Conservation and Management) Ordinance 2005

#### (ORDINANCE No. 14 OF 2005)

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## FALKLAND ISLANDS

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### Fisheries (Conservation and Management) Ordinance 2005

AN ORDINANCE To reform and restate the law relating to fisheries resources and fisheries management, control and conservation.

#### PART I PRELIMINARY

##### *Introductory*

#### **1 Short title and commencement**

(1) This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2005.

(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.

#### **2 Interpretation**

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

"**the Agreements**" means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas adopted by the Conference of the United Nations' Food and Agriculture Organisation on 24<sup>th</sup> November 1993 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10<sup>th</sup> December 1982 relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted in New York on 4<sup>th</sup> December 1995;

"**aggregation limit**" has the meaning given in section 58(2);

**"Antarctic Convergence"** means a line joining the following points along parallels of latitude and meridians of longitude-

50°S, 0°; 50°S, 30°E; 45°S, 30°E; 45°S, 80°E; 55°S, 80°E; 55°S, 150°E; 60°S, 150°E; 60°S, 50°W; 50°S, 50°W; 50°S, 0°.

**"approved"** means approved by the Director;

**"approved action plan"** means an action plan referred to in section 17E;

*[S. 4(2)(e)/Ord. 9/21/w.e.f. 01/10/21.]*

**"approved form"**, in relation to any document, means the form prescribed by Regulations made under this Ordinance or if there is no such prescribed form, the form approved by the Director; and includes an electronic format that is so prescribed or approved;

**"Approved Mortgagees Register"** means the Register provided for by section 61(3);

**"associated or dependent species"** means any non-harvested species taken or otherwise affected by the taking of any harvested species;

**"the Association"** means the Falkland Islands Fishing Companies Association established by section 191;

**"best available information"** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time;

**"biological diversity"** means the variability among living organisms, including diversity within species, between species, and of ecosystems;

**"capacity to fish"** has the meaning given by section 17C(11);

*[S. 4(2)(e)/Ord. 9/21/w.e.f. 01/10/21.]*

**"CCAMLR"** means the Convention on the Conservation of Antarctic Marine Living Resources done in Canberra on 20th May 1980, as amended from time to time, and includes any Protocol to the Convention and any decision or measure which is for the time being in force adopted pursuant to that Convention by the Commission to that Convention;

**"CCAMLR waters"** means the marine waters lying to the south of 60°S latitude and the waters between that latitude and the Antarctic Convergence;

**"Catch Entitlement"** means the Catch Entitlement generated in relation to Individual Transferable Quota or Provisional Quota as provided by section 37(5) when Total Allowable Effort is set by the Director under section 37(1), or, as the case may be, the Catch Entitlement generated in relation to Individual Transferable Quota or Provisional Quota as provided by section 38(5) when Total Allowable Catch is set by the Director under section 38(1);

**"charterer"**, in relation to a fishing vessel or an aircraft, means any person who is a lessee or a sublessee of the fishing vessel or aircraft or is the hirer of the vessel or aircraft under a charterparty;

**"charterparty"**, in relation to a fishing vessel or an aircraft, is an agreement for the hire of the vessel or aircraft entered into by any person who, whether as owner of the vessel or aircraft or otherwise, is entitled to enter into that agreement;

**"commercial fisher"** means a person who, other than as a fish farmer or so far as may be reasonably incidental to recreation, engages in fishing with a view to profit;

**"the Commission"** means the Disputes Commission established under section 98;

**"the Committee"** means the committee established pursuant to section 7;

**"conservation"** means the maintenance or restoration of fisheries resources for their future use, and "conserving" has a corresponding meaning;

**"contravene"** includes a failure to comply with;

**"the Crown"** means Her Majesty the Queen in right of Her Government of the Falkland Islands and includes Her Majesty's lawful successors in the same right;

**"Director"** means the Director of Fisheries continuing to hold office or appointed under section 4 and includes any Deputy Director of Fisheries appointed under that section;

**"document"** means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes-

- (a) any writing on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device, and any material subsequently derived from information so recorded or stored;
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
- (d) any book, map, plan, graph, or drawing;
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;
- (f) a document transmitted or received electronically;

**"effort management stock"** means a stock subject to an effort management system;

**"effort management system"** means the management of a stock of fish by permitting taking of fish of that stock only by a fishing vessel the catching capacity of which has been assessed and limiting the period for which such fishing vessel may fish for that stock;

**"eligible company"** in relation to Individual Transferable Quota has the meaning given by section 17(6) and in relation to Provisional Quota has the meaning given by section 18(3);

*[S. 4(2)(f)/Ord. 9/21/w.e.f. 01/10/21.]*

**"environmental principles"** means the environmental principles set out in section 9(1);

**"examiner"** means a person appointed under section 4(3) to be an examiner and holding a warrant card issued under section 5;

**"export"** means the carriage aboard any vessel or aircraft of fish from the Falkland Islands or the fishing waters to any place not within the Falkland Islands or the fishing waters, and cognate expressions have corresponding meanings;

**"export licence"** means a licence so described provided for in section 46(3);

**"Falkland Islands fishing vessel"** means a fishing vessel that is a Falkland Islands ship;

**"Falkland Islands ship"** means a Falkland Islands ship referred to in section 6 of the Maritime Ordinance 2017;

*[S. 4(2)(a)/Ord. 9/21/w.e.f. 01/10/21.]*

**"Falkland Islands status"** has the same meaning as it has under section 17(5) of the Constitution;

**"fish"** means any marine animal not being a mammal or bird, whether fresh or cured including shellfish and any part of such animal and includes salmon, migratory trout and fishmeal;

**"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. 10(a)/Ord. 14/15/w.e.f. 24/12/15.]*

**"fish farmer"** ...

*[S. 2(a)/Ord. 20/2006/w.e.f. 1/1/16 and S. 10(b)/Ord. 14/15/w.e.f. 24/12/15.]*

**"fish receiver permit"** means a permit granted under section 47(3);

**"fisheries resources"** means any one or more stocks or species of fish;

**"fishery"** means fishery established under section 16(1) and specified in Schedule 2;

**"fisheries officer"** means-

- (a) a person deemed by section 4(1) to be a fisheries officer and, unless he is a customs officer, police officer or a commissioned officer of Her Majesty's armed forces, holding a warrant card issued under section 5,
- (b) a person appointed in accordance with section 4 to be a fisheries officer and holding a warrant card issued under section 5,
- (c) a person appointed under section 4(3) to be an examiner and holding a warrant card issued under section 5;

**"fishing"** means-

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;

- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) any operations at sea directly in support of, or in preparation for, any activity described in this definition;
- (e) aircraft use related to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a fishing vessel; or
- (f) the processing or carrying of fish that have been taken;

but does not include fish farming or any activity which is part of a business of fish farming;

*[S. 10(c)/Ord. 14/15/w.e.f. 24/12/15.]*

**"fishing concession"** means any fishing right and any permit or licence, other than a fish receiver permit, granted under this Ordinance;

**"Fishing Effort Value"** in relation to a fishing vessel, means the Fishing Effort Value assigned to that fishing vessel under section 40(1);

**"fishing licence"** means a fishing licence granted under section 41(1);

**"fishing right"** means any Individual Transferable Quota, any Provisional Quota and any Catch Entitlement;

**"fishing vessel"** means any launch, vessel or floating craft of any description of whatever size, and in whatever way propelled, which is for the time being engaged in fishing or for the processing, storage or carriage of fish or of any operations (including trans-shipment of fish) ancillary thereto and includes a fish carrier;

**"fishing waters"** means the fishing waters of the Falkland Islands specified in section 3;

**"functions"** means powers and duties and "function" has a corresponding meaning;

**"high seas"** means the marine waters beyond the territorial sea, archipelagic waters, fisheries zone or exclusive economic zone of any State, country, part of a country or any territory for the external affairs of which a State is responsible but does not include any waters to which CCAMLR applies;

**"high seas fishing licence"** means a fishing licence granted pursuant to section 130;

**"holder"**, in relation to any licence, authority, approval, licence or certificate, means the person to whom the licence, authority, approval, licence, or certificate has been issued, granted or given and "holds" and "held" have corresponding meanings;

**"Individual Transferable Quota"** has the meaning given in section 17(1) and unless specifically stated to the contrary or the context indicates otherwise, includes both Individual Transferable Quota A and Individual Transferable Quota B;

*[S. 4(2)(b)/Ord. 9/21/w.e.f. 01/10/21.]*

“**Individual Transferable Quota A**” means the Individual Transferable Quota granted before the commencement of the Fisheries (Conservation and Management) (Amendment) Ordinance 2021 or granted under section 21;

[S. 4(2)(e)/Ord. 9/21/w.e.f. 01/10/21.]

“**Individual Transferable Quota B**” means the Individual Transferable Quota granted under section 17B;

[S. 4(2)(e)/Ord. 9/21/w.e.f. 01/10/21.]

“**Individual Transferable Quota Eligibility Register**” means Part A or Part B, as the context requires, of the Individual Transferable Quota Eligibility Register in relation to the fishery concerned provided for by section 23(1);

[S. 4(2)(c)/Ord. 9/21/w.e.f. 01/10/21.]

“**Individual Transferable Quota Ownership Register**” means Part A or Part B, as the context requires, of the register in relation to the fishery concerned provided for by section 52(1);

[S. 4(2)(d)/Ord. 9/21/w.e.f. 01/10/21.]

“**information principles**” means the information principles set out in section 10;

“**intellectual property**” has the meaning provided for in article 2 of the Convention done on 14th July 1967 establishing the World Intellectual Property Organisation and in the World Trade Organisation Agreement on the Trade Related Aspects of Intellectual Property Rights of 15<sup>th</sup> April 1994;

“**Interim Fishery Conservation and Management Zone**” means the zone of that name established by and described in the Proclamation by the Governor of 29th October 1986;

“**intermediate Individual Transferable Quota company**” means a company which —

- (a) is wholly owned by one or more Individual Transferable Quota B eligible companies; and
- (b) owns at least 51% of a qualifying company to be used by the Individual Transferable Quota B eligible company for fishing;

[S. 4(2)(e)/Ord. 9/21/w.e.f. 01/10/21.]

“**internal waters**” means those marine waters which are to the landward side of the baselines from which the territorial sea is measured;

“**international conservation and management measure**” means-

- (a) any measure to conserve or manage one or more species of living resources that is adopted and applied in accordance with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 whether by global, regional or subregional fisheries organisations, subject to the rights and obligations of their members, or by treaties or other international agreements;
- (b) without prejudice to paragraph (a), any decision or measure for the time being in force under CCAMLR; and

- (c) any measure to conserve or manage one or more species of living resources that are adopted and applied under the provisions of any other Convention, multilateral or bilateral international agreement which has been applied by the Government of the United Kingdom in accordance with international law to the Falkland Islands so as to apply to the fishing waters;

**"land store"** means a building or facility on land in the Falkland Islands used or intended to be used for the storage of fish;

**"long-term viability"**, in relation to the biomass level of a stock or species, means that there is a low risk of collapse of the stock or species, and the stock or species has the potential to recover to a higher biomass level;

**"master"** includes in relation to a fishing vessel the person for the time being in command of or in charge of the fishing vessel or in charge of the fishing operations on board the fishing vessel;

**"maximum sustainable yield"**, in relation to any stock, means the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock;

**"mortgage"** means any charge registered under this Ordinance;

**"mortgagee"** means the proprietor of a mortgage;

**"mortgagor"** means any person who is the registered owner of quota subject to a mortgage;

**"multi-species stock"** means an effort or quota management stock that consists of two or more species;

**"non-Falkland Islands fishing vessel"** means any fishing vessel which is not a Falkland Islands fishing vessel;

**"non-Falkland Islands fishing business"** means a fishing business which is not a company the name of which is eligible to appear on the Individual Transferable Quota Eligibility Register;

**"non-Falkland Islands fishing waters"** means the waters in respect of which any country other than the Falkland Islands exercises fishery jurisdiction in accordance with international law;

**"observer"** means a person appointed as an observer under section 184(2);

**"operator"**, in relation to a fishing vessel, means a person other than the owner, charterer or master of the vessel who is responsible for the management of the vessel or is responsible for the management of fishing on or with it;

**"this Ordinance"** includes a reference to any regulations made under this Ordinance or having effect as if made under this Ordinance;

**"the Outer Zone"** means the zone of that name established by and described in the Proclamation by the Acting Governor of the 22nd August 1994;



**"overseas fishing business"** is any business the whole or any part of the activities of which consist of fishing and which is not a company incorporated in the Falkland Islands;

**"overseas master fishing licence"** means an overseas master fishing licence granted under section 44;

**"overseas person"** means a person who does not have Falkland Islands status;

**"owner"**-

- (a) in relation to any vessel, means any person by whom the vessel is owned;
- (b) in relation to Individual Transferable Quota or quota comprised within Individual Transferable Quota granted under this Ordinance, means the person shown as the owner in the Individual Transferable Quota Ownership Register;

**"person"** includes a company or other body corporate;

**"possession"** means possession of, or control over (including joint possession and joint control over)-

- (a) any fish, or
- (b) any fishing vessel or other vessel, container, package, thing, premises or place in or on which any fish are found;

**"premises"** means any land or building, and includes any vessel, or any vehicle or conveyance of any kind whatever;

**"processing"** includes cutting, shelling, freezing, and the use of all other methods of manufacture and preservation;

**"Provisional Quota"** means any Quota granted under section 22;

**"Provisional Quota Eligibility Register"** means the register provided for in relation to the fishery concerned by section 26(1);

**"qualifying company"** has the meaning given by section 41(14);

**"quota"** means, any part of Individual Transferable Quota;

**"quota management stock"** means any stock subject to a quota management system;

**"quota management system"** means the management of a stock or stocks by the allocation of Individual Transferable Quota or Provisional Quota in relation to that stock;

**"recognised stock exchange"** means The Stock Exchange in the United Kingdom and any other stock exchange which is for the time being a recognised stock exchange for the purposes of the laws of the Falkland Islands relating to taxation;

**"satellite-tracking device"** means a device installed on board a fishing vessel which ensures the automatic transmission to the Fisheries Monitoring Centre of such data as are required by regulations to be transmitted by the device;

**"shellfish"** includes crustaceans and molluscs of any kind, and includes any (or part of any) brood, ware, half-ware or spat of shellfish and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish;

**"stock"** means the stock of a species of fish occurring in the fishing waters or, where appropriate in the context, the relevant part of the fishing waters;

**"temporary order"** means an order under section 51;

**"territorial sea"** means the territorial sea of the Falkland Islands as defined and declared under the Falkland Islands (Territorial Sea) Order 1989;

**"Total Allowable Catch"**, in relation to any quota management stock, means a total allowable catch as set or varied for that stock by notice in the Gazette under section 38;

**"Total Allowable Effort"**, in relation to any effort management stock, means a total allowable effort in relation to that stock as set or varied for that stock by notice in the Gazette under section 37;

**"transaction"** in relation to any Individual Transferable Quota means a transfer of the Individual Transferable Quota or any quota comprised in it, or a mortgage of, discharge of mortgage of or assignment of mortgage of, the Individual Transferable Quota or any quota comprised in it;

**"trans-shipment licence"** means a licence so described granted under section 46(2); and

**"trans-shipment of fish"** means the passing of fish from one fishing vessel to another or from a fishing vessel to a land store or vehicle whether or not the fish was taken by, with or from the fishing vessel from which the fish is passed and trans-shipment has a corresponding meaning.

(2) In this Ordinance, **"court"**, unless otherwise stated to the contrary, means the Summary Court or the Magistrate's Court and any court on appeal, or further appeal, from a decision at first instance in the Summary Court or the Magistrate's Court.

(3)...

[S. 23/Ord. 4/2019/w.e.f. 10/4/2019]

(4) This Ordinance binds the Crown.

### **3 Fishing waters**

(1) The fishing waters of the Falkland Islands comprise-

- (a) the internal waters;
- (b) the territorial sea;

- (c) the Interim Fishery Conservation Management Zone;
- (d) the Outer Zone; and
- (e) any other marine waters over which exclusive rights of fishing or fisheries management are claimed by the Falkland Islands by proclamation, law or convention for the time being in force in the Falkland Islands.

(2) All fishing rights in relation to fish in the fishing waters are, at the commencement of this section, vested in the Crown which may dispose in accordance with this Ordinance of them and of any fishing rights the grant of which is revoked or which are forfeited to the Crown under any provision of this Ordinance. In so far as any fishing right vested in the Crown at the commencement of this section has not subsequently been disposed of by the Crown in accordance with this Ordinance, it belongs to the Crown.

#### **4 Director of Fisheries, Deputy Director of Fisheries, fisheries officers and examiners**

(1) Any person holding office immediately before the commencement of this Ordinance as Director of Fisheries, Deputy Director of Fisheries or fisheries protection officer shall hold office as Director of Fisheries, Deputy Director of Fisheries or fisheries officer as if he had been appointed to that office under the relevant provision of this section.

(2) Subject to subsection (1), the Governor shall appoint a public officer to be the Director of Fisheries and may appoint another public officer to be the Deputy Director of Fisheries. The Deputy Director of Fisheries may, subject to any directions of the Governor to the contrary, exercise any function conferred upon the Director of Fisheries by or under this Ordinance.

(3) The Governor may appoint any public officer to be an examiner to assist in the enforcement and administration of this Ordinance by examining and verifying the keeping of accounts, records, returns and information required to be kept or made under any provision of this Ordinance.

(4) The Director's responsibilities under this Ordinance include-

- (a) the conservation of stocks;
- (b) the assessment of stocks and the collection of statistics;
- (c) the development and management of fisheries;
- (d) the monitoring, control and surveillance of fishing;
- (e) the regulation of the conduct of fishing and operations and activities ancillary thereto;
- (f) the issue, variation, suspension and revocation of permits and licences provided for by this Ordinance;
- (g) the collection of fees payable under this Ordinance;
- (h) the making of such reports to the Governor as the latter, acting in his discretion or upon the advice of Executive Council, may require;
- (i) the performance of such other functions as are conferred on him by this Ordinance.

(5) In the carrying out of his responsibilities and in the performance of his functions under this Ordinance the Director shall act in accordance with any directions, not inconsistent with this Ordinance, which the Governor acting in his discretion may give to him.

(6) The following persons shall be fisheries officers-

- (a) every person appointed in that behalf by the Governor;
- (b) every person appointed under subsection (3) to be an examiner;
- (c) every member of the Royal Falkland Islands Police;
- (d) every customs officer;
- (e) commissioned officers of any of Her Majesty's Ships;
- (f) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force or of the Falkland Islands Government.

## **5 Warrant cards**

(1) The Director shall cause a warrant card to be issued to every person appointed to every examiner appointed under section 4(3) and to every fisheries officer appointed under section 4(6).

(2) A warrant card shall contain a recent photograph of the examiner or fisheries officer to whom it is issued and be in the approved form.

(3) A person who ceases to be an examiner or fisheries officer shall surrender his warrant to the Director.

(4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence.

## **6 Executive Council to review policy**

(1) The Executive Council shall at least once in every successive period of twelve months following the enactment of this Ordinance consider the matters mentioned in subsection (2).

(2) Those matters are-

- (a) whether the objectives mentioned in section 13 have in the Executive Council's view been satisfactorily pursued; and
- (b) whether any changes should be made in the policies of the Falkland Islands in relation to fisheries resources and fisheries management, control and conservation.

## **7 The Committee**

(1) There shall be a Fisheries Committee which shall be constituted by two elected members of the Legislative Assembly selected by all the members of the Legislative Assembly, the Director and such other public officers as may be determined by the Governor and by such number of representatives of fishing or other interests selected in such manner as the Governor may determine.

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

(2) The Chairman of the Committee shall be such of the two members of the Committee selected by the elected members of the Legislative Assembly as shall be determined by the elected members of the Legislative Assembly and the other of them shall be the Vice-Chairman of the Committee.

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

(3) The Committee shall not transact any business at any time when both the Chairman and the Vice-Chairman are absent therefrom.

(4) The function of the Committee shall be to advise the Director as to the exercise of his powers under this Ordinance and as to such other matters on which he consults them.

### *Purpose and principles*

## **8 Purpose**

(1) The purposes of this Ordinance are-

- (a) to provide for the utilisation of the fisheries resources of the Falkland Islands while ensuring sustainability; and
- (b) to facilitate the compliance by the Falkland Islands with international obligations applying to the Falkland Islands relating to fishing, fishing vessels and the conservation and management of fish, and in particular the obligations under the United Nations Convention on the Law of the Sea of 10<sup>th</sup> December 1982 and the Agreements.

(2) In this Ordinance-

- (a) "**ensuring sustainability**" means-
  - (i) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
  - (ii) avoiding, remedying, or mitigating adverse effects of fishing on the marine environment so far as it is reasonably practicable to do so;
- (b) "**utilisation**" means conserving, using, enhancing, and developing fisheries resources to enable the Government of the Falkland Islands to provide for the social and economic wellbeing of the Falkland Islands, either directly or by contribution to governmental revenues.

(3) So that effect may be given to the purposes of this Ordinance, fishing within the fishing waters and the trans-shipment of fish within the fishing waters is prohibited unless it is undertaken-

- (a) under a licence or permit granted under this Ordinance;
- (b) in accordance with the applicable provisions of this Ordinance and of any regulations made thereunder, and

- (c) in accordance with the conditions of the licence or permit.

## **9 Environmental principles**

(1) All persons exercising or performing functions, duties or powers under this Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following environmental principles-

- (a) associated or dependent species shall be maintained at or above a level that ensures their long term viability;
- (b) biological diversity of the marine environment shall be maintained; and
- (c) habitats of particular significance for fisheries management shall be protected.

(2) The provisions of the Conservation of Wildlife and Nature Ordinance 1999 specified in Schedule 1 to this Ordinance shall have effect, subject to the modifications specified in the said Schedule, to the fishing waters outside the territorial sea as they do in the Falkland Islands and the territorial sea.

## **10 Information principles**

All persons exercising or performing functions, duties or powers under this Ordinance in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following information principles-

- (a) decisions shall be based on the best available information;
- (b) decision-makers shall consider any uncertainty in the information available in any case;
- (c) decision-makers shall be cautious when information is uncertain, unreliable, or inadequate.

### *Sustainability measures*

## **11 Sustainability measures**

(1) The Director may from time to time set or vary any sustainability measure for one or more stocks, after taking into account-

- (a) any effects of fishing on any stock and the marine environment;
- (b) any existing controls under this Ordinance that apply to the stock concerned; and
- (c) the natural variability of the stock concerned.

(2) Without limiting the generality of subsection (1), sustainability measures may relate to any one or more of the following-

- (a) in the case of an effort management stock, any Total Allowable Effort in relation to that stock;
- (b) in the case of a quota management stock, any Total Allowable Catch for that stock;

- (c) the size, sex, or biological state of any fish of any stock that may be taken;
- (d) the areas from which any fish of any stock may be taken;
- (e) the fishing methods by which any fish of any stock may be taken or which may be used in any area;
- (f) the period for which fishing may take place in any fishery.

## **12 Consultation**

(1) The Director shall, except in a case of urgency, so far as is reasonably practicable consult with the Committee and such persons or organisations within the Falkland Islands as the Director considers it desirable to consult who are representative of persons having an interest in the stock or the effects of fishing on the marine environment and environmental interests before setting or varying any sustainability measure.

(2) Nothing in subsection (1) shall have effect so as to preclude the Director from consulting any person or body not identified or referred to in that subsection.

(3) After setting or varying any sustainability measure the Director shall, as soon as practicable, publish the reasons for his decision.

## **PART II REGULATION OF FISHING**

### **CHAPTER 1 INTRODUCTORY**

#### *Preliminary*

## **13 Director to pursue objectives etc**

In performing his functions under this Part, the Director shall pursue the following objectives-

- (a) the implementation of efficient and cost-effective fisheries management on behalf of the Falkland Islands;
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment.
- (c) ensuring, through proper conservation and management measures, that the living resources of the fishing waters are protected from over-exploitation;
- (d) achieving the optimum utilisation of the living resources of the fishing waters; and

- (e) ensuring that conservation and management measures in the fishing waters and the high seas are in accordance with the obligations of the Falkland Islands under international agreements that deal with fish stocks.

*Provisions relating to international co-operation*

**14 Fishing vessels involved in contravening international conservation and management measures**

(1) Without prejudice to section 15, the Director shall not authorise under this Ordinance the use of any Falkland Islands fishing vessel-

- (a) for fishing within the fishing waters;
- (b) for fishing on the high seas for a conserved fish stock; or
- (c) for fishing in waters to which CCAMLR relates,

during the period specified in subsection (2) if a court has convicted a person of an offence described in subsection (3) involving the use of the fishing vessel and has ordered the person to pay a fine in respect of the offence.

(2) The period starts when the person is ordered to pay the fine and ends when one of the following events occurs-

- (a) the person pays the fine or complies with any penalty imposed on him for failure to pay the fine;
- (b) the court orders the forfeiture of the fishing vessel as a result of the failure to pay the fine or in relation to another offence;
- (c) the conviction of the person for the offence for which the person was ordered to pay the fine is quashed or the person is pardoned in respect of that offence; or
- (d) the vessel is no longer owned, in whole or in part, by the person referred to in subsection (1).

(3) Subsection (1) limits authorisation of the use of a fishing vessel involved in any of the following offences-

- (a) an offence under Part VI constituted by one of the following acts or omissions that contravenes a condition of a high seas fishing licence that authorises fishing for a conserved fish stock on the high seas or contravenes a provision of a temporary order relating to fishing for a conserved fish stock on the high seas-
  - (i) fishing for the conserved fish stock at a particular time in a particular place or with particular equipment;
  - (ii) failing to maintain accurate records of catch;
  - (iii) failing to provide an accurate return of fish taken, carried, trans-shipped or processed;



- (iv) taking, carrying, trans-shipping or processing more fish than authorised by the high seas fishing licence;
  - (v) changing or hiding the markings of the fishing vessel;
  - (vi) failing to comply with any measure for the time being in force under CCAMLR and relating to the conservation or management of any species (whether or not of fish) to which that Convention relates;
- (b) an offence under Part VI or Part VII involving fish from a conserved fish stock and a fishing vessel;
  - (c) an offence under Part VI or Part VII involving a fishing vessel equipped for fishing for a conserved fish stock;
  - (d) an offence under a prescribed provision of this Ordinance or the regulations that is constituted by a prescribed act or omission relating to a conserved fish stock.
- (4) In this section, "**conserved fish stock**" means-
- (a) a straddling fish stock covered by a global, regional or sub-regional conservation or management measure;
  - (b) a highly migratory fish stock covered by a global, regional or sub-regional conservation or management measure; and
  - (c) any fish within waters to which CCAMLR applies.

## **15 Certain fishing vessels not to be authorised to fish**

(1) The Director shall not authorise under this Ordinance the use of a fishing vessel, wherever registered, for fishing in the fishing waters or a Falkland Islands fishing vessel for fishing in CCAMLR waters or on the high seas where he has been informed by the Governor in writing that States Parties to CCAMLR, or any other Convention or international agreement to which this subsection has been applied by Order under subsection (2), are required not to authorise fishing vessels to fish in the waters in question.

(2) The Governor may by Order extend the application of subsection (1) so as to apply additionally where there is a requirement of a kind referred to in that subsection under a Convention or international agreement specified in that Order.

(3) Subject to subsection (4), the Director shall not authorise under this Ordinance the use of a fishing vessel for fishing within the fishing waters where the fishing vessel has been authorised to be used for fishing on the high seas (including waters to which CCAMLR or any other international agreement relates) by another country and the Director has been informed by the Governor in writing that that country has either-

- (a) suspended such authorisation and such suspension has not expired; or
- (b) withdrawn such authorisation within the 3 years preceding the application to the Director for authorisation,

because the fishing vessel has undermined the effectiveness of international conservation and management measures.

(4) Subject to subsection (5), subsection (3) does not apply if the Director has been informed in writing by the Governor after taking into account all relevant facts, that the Governor is satisfied the grant of authorisation in respect of the fishing vessel will not undermine the object and purpose of any of the international obligations referred to in section 8(1)(b).

(5) In this section "**the Governor**" means the Governor acting in his discretion.

## **CHAPTER 2 PROPERTY RIGHTS**

### **Division A - Individual Transferable Quotas and Provisional Quotas**

#### *Establishment of fisheries*

#### **16 Establishment and variation of fisheries**

(1) The fisheries specified in Schedule 2 are hereby established.

(2) The Governor may by Order amending Schedule 2, on consideration of, but not necessarily in accordance with, a recommendation made by the Director, except in the case of emergency, after the Director has consulted the Committee and, where the Director has in mind the variation of a fishery, after he has consulted any owners of Individual Transferable Quota or Provisional Quota granted in relation to that fishery-

- (a) establish a further fishery or fisheries;
- (b) vary a fishery which has been established, including a fishery established by subsection (1);
- (c) revoke a fishery which has been established, including a fishery established by subsection (1).

(3) An Order establishing a fishery shall state whether or not Provisional Quota may be granted under section 22 in relation to that fishery.

(4) A fishery may be established in relation to a species of fish or a number of species of fish or in relation to a description or class of fish and may be so established in relation to either or both of-

- (a) the whole or a part of the fishing waters;
- (b) the whole or part of a year.

(5) An Order under subsection (2) varying or revoking a fishery shall make provision in relation to the effect of the variation or revocation of any previously granted Individual Transferable Quota and shall, if a fishery is revoked for any reason other than for reasons of conservation, make provision for payment of fair and adequate compensation for any loss suffered or likely to be suffered by the owners of the Individual Transferable Quota in that fishery.



## *Nature of and grant of Individual Transferable Quotas and Provisional Quotas*

### **17 Individual Transferable Quotas**

(1) An Individual Transferable Quota is a right of the owner of it to the fraction registered in the Individual Transferable Quota Ownership Register of the Total Allowable Effort or Total Allowable Catch from time to time declared by the Director under sections 37 or 38, as the case may be, in respect of the fishery established under section 16 in relation to which the Individual Transferable Quota was granted, and where the context so requires "Individual Transferable Quota" includes any part of that fraction.

(2) Subject to section 58 the Director may, in writing —

- (a) at any time after the commencement of the Fisheries (Conservation and Management) (Amendment) Ordinance 2021, grant an Individual Transferable Quota B to an eligible company in accordance with section 17B; or
- (b) grant Individual Transferable Quota A in accordance with section 21.

*[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]*

(3) The Crown is the owner of the Individual Transferable Quotas in any fishery established under section 16(1) or section 16(2) in the aggregate from time to time of —

- (a) the extent that grants of Individual Transferable Quota made under this section and Provisional Quota made under section 22 in that fishery from time to time do not extend to the whole of the Total Allowable Effort or Total Allowable Catch in that fishery;
- (b) Individual Transferable Quota granted under this section and Provisional Quota granted under section 22 which has been surrendered to the Crown or forfeited to the Crown under the provisions of this Ordinance.

*[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]*

(4) The Crown may deal with the Individual Transferable Quota it owns —

- (a) by granting it, (and where it has previously been granted, as if it had never previously been granted) to a company the name of which appears on Part B of an Individual Transferable Quota Eligibility Register in accordance with the provisions of section 17A or on Part A or Part B of an Individual Transferable Quota Eligibility Register in accordance with this Ordinance; or
- (b) in the case of Individual Transferable Quota which has previously been granted, by transferring it to a company the name of which appears on the relevant Part of an Individual Transferable Quota Eligibility Register.

*[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]*

(5) The owner of Individual Transferable Quota may at any time surrender it to the Crown.

*[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]*

(6) A company is an eligible company —

- (a) in relation to the grant or transfer to it of the whole or part of an Individual Transferable Quota B in respect of a fishery if its name appears in Part B of an Individual Transferable Quota Eligibility Register for the fishery in question; or

- (b) in relation to the grant or transfer to it of an Individual Transferable Quota A in respect of a fishery if its name appears in Part A or Part B of an Individual Transferable Quota Eligibility Register for the fishery in question.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

(7) An eligible company on Part A of the Individual Transferable Quota Eligibility Register may, subject to section 58, take a transfer of the whole or part of an Individual Transferable Quota A from an eligible company that is on either Part A or Part B of that Register.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

(8) An eligible company on Part B of the Individual Transferable Quota Eligibility Register may, subject to section 58, take a transfer of the whole or part of an Individual Transferable Quota A or B from an eligible company that is on either Part A or Part B of that Register.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

(9) The grant of an Individual Transferable Quota does not take effect, and the transfer of the whole or part of an Individual Transferable Quota does not take effect, until the particulars of the grant or transfer required by section 52 to be registered in the relevant part of the Individual Transferable Quota Ownership Register have been registered.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

(10) An Individual Transferable Quota is a fishing right but does not of itself authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

(11) The Director may withhold approval of an application for grant of Individual Transferable Quota or for eligibility for registration on an Individual Transferable Quota Eligibility Register if there are investigations or proceedings against the applicant or a qualifying company specified in the application that could potentially lead to contraventions of section 182 and incurring the prohibitions thereunder until the investigations or proceedings are finalised.

[S. 5(1)/Ord. 9/21/w.e.f. 01/10/21.]

### ***Individual Transferable Quota B***

#### **17A. Notice of intention to grant Individual Transferable Quota B or Provisional Quotas and criteria in relation to their grant**

(1) The Director must, before granting any Individual Transferable Quota B under section 17B or any Provisional Quota under section 18, publish a notice, notifying that the Director intends to grant those fishing rights specified in the notice in relation to fishing in a specified fishery.

(2) For a newly established fishery, a notice under subsection (1) must be published at least 3 months before the opening of Part B of an Individual Transferable Quota Eligibility Register in respect of that fishery and in relation to Provisional Quota after the opening of a Provisional Quota Eligibility Register in relation to that fishery.

- (3) A notice to which subsection (1) relates must specify —
- (a) the criteria in relation to which the Director will assess applications for the grant of Individual Transferable Quota B, or, as the case may be, Provisional Quota and that only applications by companies the names of which appear on Part B of the relevant Individual Transferable Quota Eligibility Register will be considered;
  - (b) the procedures that will be followed by the Director when selecting the companies to which the grant will be made;
  - (c) the period for which the grant of Individual Transferable Quota B or Provisional Quota will be in force unless it is sooner cancelled or otherwise ceases to apply or to have effect;
  - (d) the right of a person aggrieved by a decision to make application for review available under section 108 to persons in relation to the grant of, or the refusal to grant, Individual Transferable Quota B or Provisional Quota; and
  - (e) any other matter in respect of the grant that, in the opinion of the Director, should be notified to prospective applicants.
- (4) The reference in subsection (1) to a notice is a reference to a notice published —
- (a) in the *Gazette*;
  - (b) in a newspaper circulating throughout the Falkland Islands; and
  - (c) in such other newspaper or publication (if any) that appears to the Director to be appropriate in the circumstances.

[S. 6/Ord. 9/21/w.e.f. 01/10/21.]

### **17B. Grant of Individual Transferable Quota B**

- (1) A grant by the Director of an Individual Transferable Quota B —
- (a) can only be made in respect of a fishery established under section 16(1) or section 16(2);
  - (b) must be in writing signed by the Director and must state —
    - (i) the fraction it grants of the Total Allowable Effort or Total Allowable Catch in the fishery to which it relates;
    - (ii) that the Individual Transferable Quota B may only be transferred to an eligible company whose name appears on Part B of the relevant Individual Transferable Quota Eligibility Register;
    - (iii) that Catch Entitlement generated in relation to the Individual Transferable Quota B may only be taken by fishing vessels to which a fishing licence or scientific permit has been granted; and
    - (iv) the period, not exceeding 25 years, in respect of which it is made.

(2) On granting any Individual Transferable Quota B the Director must cause sufficient particulars of it and the grantee to be registered in Part B of an Individual Transferable Quota Ownership Register.

[S. 6/Ord. 9/21/w.e.f. 01/10/21.]

### **17C. Application for name of company to be placed upon Part B of Individual Transferable Quota Eligibility Register**

(1) A company may on payment of the prescribed fee, if any, apply to the Director in the approved form for its name to be placed upon Part B of an Individual Transferable Quota Eligibility Register.

(2) An application under subsection (1) must be accompanied by —

- (a) a statutory declaration by a person who is a director of the company to which are exhibited the documents mentioned in subsection (3); and
- (b) information as to such of the things mentioned in subsection (6) as are relevant in relation to the applicant company.

(3) The documents referred to in subsection (2)(a) are —

- (a) a copy of the register of members of the company certified by the secretary of the company to be a true copy of the register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (b) a list of the directors and secretary of the company and of their addresses as at the date of the declaration;
- (c) a certified copy of the certificate of incorporation of the company;
- (d) a certified copy of the Articles of Association of the company;
- (e) a copy of the register of members of any company appearing in the register of members to which paragraph (a) refers, certified by the secretary of that company to be a true copy of that register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (f) evidence in draft or in final form that the company —
  - (i) owns at least 51% of a qualifying company or subject to subsection (8) wholly or partly owns an intermediate Individual Transferable Quota company that owns at least 51% of a qualifying company; or
  - (ii) has capacity to fish in its own right;
- (g) a copy of the company's approved action plan certified by the secretary of the company as a true copy of the approved action plan for the company;
- (h) a copy of the last available audited annual accounts of the company, and, in addition where available any later unaudited annual accounts of the company; and
- (i) any other document prescribed by regulations as being required to be exhibited to the statutory declaration or which the Director may have notified the applicant is required to accompany the application.

(4) In an application under this section, the Director may accept draft documents under subsection (3)(f) pending the Director's decision under section 17D.

(5) The statutory declaration referred to in subsection (2)(a) must contain statements on the part of the person making it as to the following matters —

- (a) that they believe all the natural persons appearing in the copy of the register of members referred to in subsection (3)(a) to be persons having Falkland Islands status and who are ordinarily resident in the Falkland Islands;
- (b) that they believe that none of the persons whose name appears in that register is a nominee or trustee for any other person;
- (c) if a copy of a register of a company which is a member of the applicant company accompanies the declaration pursuant to subsection (3)(e), that they believe all natural persons whose names appear in that register to be persons having Falkland Islands status, who are ordinarily resident in the Falkland Islands and that they believe that none of those persons is a nominee or trustee for any other person;
- (d) that they have perused the information provided under subsection (2)(b) and believe that information to be true and that, as far as they are aware it contains all available relevant information to which subsection (6) refers; and
- (e) any other matter prescribed by regulations as being a matter with which the statutory declaration must deal or which the Director has notified them is required to accompany the application.

(6) The information referred to in subsection 2(b) is information as to —

- (a) details of any existing business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;
- (b) details of any proposed business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;
- (c) any existing borrowing or financing arrangements with any company, body, organisation or person;
- (d) any proposed borrowing or financing arrangements with any company, body, organisation or person;
- (e) any other information available to the company which demonstrate that —
  - (i) the shareholders of the company who have Falkland Islands status and are ordinarily resident in the Falkland Islands are, or as the case may be, if Individual Transferable Quota B is granted to the company, will be, in effective control of how its Individual Transferable Quota B rights are used;
  - (ii) the company is or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota B is granted, will be, actively involved in one or more of taking, processing or selling fish and that its holdings of Individual Transferable Quota B rights are, or as the case may be if Individual



Transferable Quota B is granted, will be, commensurate with the level of its business activity;

- (iii) the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota B is granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.

(7) The Governor may make regulations after consulting the Association and the Committee on the details of the requirements set out in subsection 6(e).

(8) The Director may approve or refuse to approve an arrangement by eligible companies to use an intermediate Individual Transferable Quota company for the ownership of 51% of a qualifying company.

(9) A company aggrieved by a decision of the Director to refuse to approve the use of an intermediate Individual Transferable Quota company under subsection (8), may apply under section 108 for the Commission to review that decision.

(10) An application under subsection (1) may be made in respect of Part B of an Individual Transferable Quota Eligibility Register of any number of established fisheries.

(11) For purposes of subsection (3)(f)(ii) "capacity to fish" means the ability to have active involvement in the taking of fish in —

- (a) a fishery for which a company applies to be on Part B of an Individual Transferable Quota Eligibility Register under this section; or
- (b) a fishery for which a company is already registered for on Part B of the Individual Transferable Quota Eligibility Register.

*[S. 6/Ord. 9/21/w.e.f. 01/10/21.]*

#### **17D. Determination of applications for name of company to be placed upon Part B of Individual Transferable Quota Eligibility Register**

(1) The Director must, provided the prescribed fee, if any, has been paid upon the application, but not otherwise, consider any application under section 17C which the Director receives and determine it in accordance with this section.

(2) The Director must not grant an application for a company's name to be placed upon Part B of an Individual Transferable Quota Eligibility Register by —

- (a) any person other than a company which the Director is satisfied is a company incorporated in and having its principal place of business in the Falkland Islands which satisfies the following requirements —
  - (i) its Articles of Association do not permit —
    - (aa) the issue of bearer shares, convertible loan stock or convertible debentures;

- (bb) the issue of shares to, and the registration of shares in the name of, any person other than persons who have Falkland Islands status and who are ordinarily resident in the Falkland Islands;
- (ii) the whole of its issued share capital is owned by, and all of its directors are, persons having Falkland Islands status who are ordinarily resident in the Falkland Islands or is owned by companies the whole of the issued share capital of which is owned by, and all the directors of which are, persons having Falkland Islands status who are ordinarily resident in the Falkland Islands;
- (iii) the company —
  - (aa) holds a minimum of 51% of all the shares in a qualifying company or wholly or partly owns an intermediate Individual Transferable Quota company that owns 51% of a qualifying company in an arrangement approved by the Director under section 17C(8); or
  - (bb) has submitted evidence that the company has capacity to fish in its own right;
- (b) any company which the Financial Secretary has notified the Director appears on the Financial Secretary's list of persons to whom credit is not to be granted;
- (c) any company that does not have an approved action plan;
- (d) any company if its directors, or the directors of its associated qualifying company have bound themselves to act or have acted in a way that circumvents their independent judgement; or

*[Revision w.e.f. 08/10/2021]*

- (e) any company which has been convicted of an offence specified for the purposes of this paragraph by an Order made by the Governor.
- (3) The Director must refuse any application for registration of a company's name upon Part B of an Individual Transferable Quota Eligibility Register unless the Director is satisfied —
- (a) that the shareholders of the company who have Falkland Islands status and are ordinarily resident in the Falkland Islands, or as the case may be, if Individual Transferable Quota B is granted to the company, will be, in effective control of how its Individual Transferable Quota B rights are used;
  - (b) that the company or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota B is granted, will be, actively involved in one or more of taking, processing or selling fish and that its holdings of Individual Transferable Quota B rights are, or as the case may be if Individual Transferable Quota B is granted, will be, commensurate with the level of its business activity;
  - (c) that the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota B is granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.

(4) The Governor may upon such conditions, if any, as the Governor sees fit, whether on application of the company concerned or otherwise, authorise the Director, if the Director is satisfied that they can properly do so having regard to the requirements of subsection (3), to enter the name of the company upon Part B of an Individual Transferable Quota Eligibility Register notwithstanding that the Director would otherwise be bound to refuse the application by reason of subsection (2)(a)(ii) or (b).

(5) Where the documents referred to in section 17C(3)(f) are submitted in draft form, the Director may provisionally approve the application and notify the applicant and at the same time request the applicant to submit final copies that are in the same form as the drafts, and the final copies must be submitted within 21 days of the company being notified of the provisional approval.

(6) The Director must, as soon as practicable, after final copies are submitted under subsection (5), notify the applicant in writing of the decision to grant or refuse its application for entry of its name upon Part B of an Individual Transferable Quota Eligibility Register.

(7) If the Director refuses to grant an application, the Director must give the reasons why they have refused the application and if they refused because of failure to meet any of the requirements of subsection (2)(a)(iii)(bb), (2)(d) or subsection (3), the notification must draw the applicant's attention to the right of the applicant under subsection (8) to seek review of the Director's decision.

(8) A company aggrieved by a decision of the Director to refuse its application for entry of its name upon Part B of an Individual Transferable Quota Eligibility Register because of any of the requirements of subsection (2)(a)(iii)(bb), (2)(d) or subsection (3) may apply under section 108 for the Commission to review that decision.

(9) There is no right to apply for such review where the refusal is based or partly based on the ground that the provisions of subsection (2), other than (2)(a)(iii)(bb) or (2)(d), are not complied with by the company.

(10) The Governor may by Order under this subsection specify offences for the purposes of subsection (2)(e) and such offences may include offences under the laws relating to fishing or fisheries conservation and management of overseas countries.

*[S. 6/Ord. 9/21/w.e.f. 01/10/21.]*

## **17E. Action Plans**

(1) The Director must draft an action plan for each company that wishes to apply to be registered on Part B of an Individual Transferable Quota Eligibility Register for purposes of achieving goals set in regulations made under subsection (2).

(2) The Governor may after consulting the Committee and the Association make regulations about action plans.

(3) An action plan must not depart from the goals set in regulations made under subsection (2) and may provide for the following matters —

- (a) milestones or targets for measuring progress against the goals;

- (b) a requirement for transhipment of an amount of catch to be determined by the Director, through the Falkland Islands through a domestic containerisation service;
  - (c) targets intended to favour and give preference to businesses or individuals who are based in the Falkland Islands; and
  - (d) the period of validity of the action plan.
- (4) The Director must submit the draft action plan for consideration by the company for which it is drafted and, allow time for the company to make submissions.
- (5) Where a company and the Director agree on an action plan that plan is the approved plan for that company for purposes of submission with an application under section 17C(1) or 26.
- (6) If the Director and a company fail to agree an action plan by a date determined by the Director, the action plan as drafted or as amended by the Director after taking into account submissions by the company, becomes the company's approved action plan for purposes of submission with an application under section 17C(1) or 26.
- (7) Before finalising an action plan for a company, the Director must consider submissions made to the Director by the company.
- (8) Where a company is dissatisfied with the Director's approved action plan to be submitted with the first application by a company for registration on Part B of an Individual Transferable Quota Eligibility Register under section 17C, the company may appeal to the Governor and the Governor may amend the plan or refer the plan back to the Director with directions.
- (9) A company aggrieved by the decision of the Director regarding an approved action plan for that company, other than for an application referred to in subsection (8), may apply under section 108 for the Commission to review that decision.

*[S. 6/Ord. 9/21/w.e.f. 01/10/21.]*

#### **17F. Penalties for breach of action plan**

- (1) The Director may impose penalties for breach of provisions of an approved action plan.
- (2) Penalties that may be applied are —
- (a) a financial penalty;
  - (b) loss of Catch Entitlement when next generated and this may be partial or full forfeiture, and may apply to specified fisheries or to all fisheries; or
  - (c) suspension or restriction of the right to buy or hold Catch Entitlement for the next period for which it is generated and this may apply to specified fisheries or all fisheries.
- (3) The Director may apply one or a combination of penalties but the penalty must be reasonable and proportionate to the scale of the breach or breaches.
- (4) The maximum financial penalties that may be applied are —
- (a) for a breach related to transhipment, an amount arrived at by multiplying the shortfall on the target by the relevant freight rate;

- (b) for any other breach, the total gross value of the eligible company's catch for that year.
- (5) In imposing a penalty, the Director must take into account any mitigating or aggravating circumstances.
- (6) The Director must issue guidance on details of how penalties will be determined.
- (7) A company may appeal to the Disputes Commission if it believes that a penalty is unreasonable or disproportionate.

[S. 6/Ord. 9/21/w.e.f. 01/10/21.]

## **18 Provisional Quotas**

- (1) A Provisional Quota (hereinafter called "**Provisional Quota**") is a right of the owner of it to the fraction registered in the Provisional Quota Ownership Register of the Total Allowable Effort or Total Allowable Catch from time to time declared by the Director under sections 37 or 38, as the case may be, in respect of the fishery established under section 16 in relation to which the Provisional Quota was granted.
- (2) Subject to the provisions of section 58 of this Ordinance in relation to aggregation limits, the Director may at any time after the commencement of this Ordinance in writing grant a Provisional Quota to an eligible company but may only do so in respect of a fishery specified in Schedule 2 as being a fishery in respect of which Provisional Quota may be granted.
- (3) A company is an eligible company in relation to the grant or transfer to it of the whole or part of a Provisional Quota in respect of a fishery if its name appears in the Provisional Quota Eligibility Register for the fishery in question.
- (4) The grant of a Provisional Quota does not take effect until the particulars of the grant required by section 53 to be registered in the Provisional Quota Ownership Register have been registered.
- (5) A Provisional Quota is a fishing right but does not of itself authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

## **19. Notice of Intention to grant Individual Transferable Quota A and criteria in relation to its grant**

- (1) The Director must, before granting any Individual Transferable Quota A under section 21, publish a notice, notifying that the Director intends to grant that fishing right as specified in the notice in relation to fishing in a specified fishery.
- (2) A notice under subsection (1) must be published at least 3 months before the opening of Part A of the Individual Transferable Quota Eligibility Register in respect of that fishery.
- (3) A notice to which subsection (1) relates must specify —
  - (a) the criteria in relation to which the Director will assess applications for the grant of Individual Transferable Quota A, and that only applications by companies whose names appear on the relevant Individual Transferable Quota Eligibility Register will be considered;

- (b) the procedures that will be followed by the Director when selecting the companies to which the grant will be made;
  - (c) the period for which the grant of Individual Transferable Quota A will be in force unless it is sooner cancelled or otherwise ceases to apply or to have effect;
  - (d) the right of a person aggrieved by a decision to make application for review available under section 108 to persons in relation to the grant of, or the refusal to grant, Individual Transferable Quota A; and
  - (e) any other matter in respect of the grant that, in the opinion of the Director, should be notified to prospective applicants.
- (4) The reference in subsection (1) to a notice is a reference to a notice published —
- (a) in the *Gazette*;
  - (b) in a newspaper circulating throughout the Falkland Islands; and
  - (c) in such other newspaper or publication (if any) that appears to the Director to be appropriate in the circumstances.

[S. 7/Ord. 9/21/w.e.f. 01/10/21.]

## **20 Certain decisions to be provisional**

- (1) Where the Director makes a decision as to the person or persons to whom the grant of an Individual Transferable Quota or Provisional Quota is to be made the following provisions of this section apply.
- (2) The Director shall by notice published in the *Gazette* state the names of the companies to which the Individual Transferable Quota or Provisional Quota are to be granted and sufficient particulars of the rights to be granted to them and shall also so publish any refusal of an application for Individual Transferable Quota or Provisional Quota and the name of the company concerned.
- (3) Any person aggrieved by a decision by the Director to grant or refuse an application for a grant of Individual Transferable Quota or Provisional Quota to any company may apply under section 108 to the Commission to review the matter.
- (4) A grant of an Individual Transferable Quota or Provisional Quota shall not be made to such a company -
- (a) before the end of the period within which, under subsection (3), applications to the Commission may be made for a review of the decision in relation to the grant;
  - (b) if an application in relation to the decision is made to the Commission under section 108, before the application is dealt with by the Commission or is otherwise disposed of;
  - (c) at all, if the Commission does not confirm the decision of the Director to grant that Individual Transferable Quota or Provisional Quota to that company, unless (and to the extent which) the decision of the Director is restored on appeal to the Supreme Court under section 124.

## 21. Individual Transferable Quota A

(1) A grant of Individual Transferable Quota A must be entered in Part A of an Individual Transferable Quota Ownership Register.

(2) A grant by the Director of an Individual Transferable Quota A —

- (a) can only be made on the establishment of a new fishery under section 16(2)(a) as a result of a variation or revocation of a fishery under section 16(2)(b) or (c);
- (b) must be in writing signed by the Director and must state —
  - (i) the fraction it grants of the Total Allowable Effort or Total Allowable Catch in the fishery to which it relates;
  - (ii) that the Individual Transferable Quota A may only be transferred to an eligible company whose name appears on Part A or Part B of the relevant Individual Transferable Quota Eligibility Register;
  - (iii) that Catch Entitlement generated in relation to the Individual Transferable Quota A may only be taken by fishing vessels to which a fishing licence or scientific permit has been granted; and
  - (iv) the period up to 2031 in respect for which it is made.

(3) An eligible company that —

- (a) owns Individual Transferable Quota A; and
- (b) is granted Individual Transferable Quota B in the same fishery;

may be required by the Director to surrender some or all of its Individual Transferable Quota A in exchange for the Individual Transferable Quota B granted.

(4) The holder of Individual Transferable Quota A must continue to comply with all relevant provisions of this Ordinance in order to remain on Part A of the Individual Transferable Quota Ownership Register.

(5) An eligible company which owns Individual Transferable Quota A whose application for Individual Transferable Quota B is unsuccessful continues to hold the Individual Transferable Quota A as granted and to be listed on Part A of an Individual Transferable Quota Eligibility Register and Part A of an Individual Transferable Quota Ownership Register as long as it continues to meet the relevant criteria.

(6) Any Individual Transferable Quota A that is the subject of an application for Individual Transferable Quota B may not be sold, transferred or otherwise disposed of between the date of application and the date of the outcome of the application.

(7) On granting any Individual Transferable Quota A the Director must cause sufficient particulars of it and the grantee to be registered in Part A of an Individual Transferable Quota Ownership Register.

*[S. 8/Ord. 9/21/w.e.f. 01/10/21.]*

## 22 Grant of Provisional Quota

### (1) A grant of Provisional Quota

- (a) can only be made in respect of a fishery indicated in Schedule 2 as being one in respect of which such a grant may be made; and
- (b) shall be in writing signed by the Director and state-
  - (i) the fraction of Total Allowable Effort or Total Allowable Catch set in accordance with sections 37 or 38 in the fishery to which the Provisional Quota relates;
  - (ii) that it is not transferable in whole or in part and cannot be mortgaged or charged in any way;
  - (iii) the date from which it takes effect;
  - (iv) the period, which shall not exceed 5 years, for which it is granted;
  - (ivA) that it is only convertible to Individual Transferable Quota B;

*[S. 9/Ord. 9/21/w.e.f. 01/10/21.]*

- (v) the conditions subject to which it is convertible into a grant of Individual Transferable Quota B, which must include a condition of the kind mentioned in subsection (2);

*[S. 9/Ord. 9/21/w.e.f. 01/10/21.]*

- (vi) that Catch Entitlement generated in relation to the Provisional Quota may only be taken by fishing vessels to which a fishing licence or a scientific permit has been granted;

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

- (vii) that Catch Entitlement generated in relation to the Provisional Quota may only be transferred to companies named in the grant.

(2) The compulsory condition required by subsection (1)(b)(v) is a condition that the name of the applicant for conversion appears upon Part B of the Individual Transferable Quota Eligibility Register maintained in respect of the relevant fishery.

*[S. 9/Ord. 9/21/w.e.f. 01/10/21.]*

### (3) Any purported transfer of-

- (a) Provisional Quota; or
- (b) Catch Entitlement generated by it,

to a company not named in the grant of Provisional Quota is void and of no effect(4) The owner of Provisional Quota may at any time surrender it to the Crown.

(5) On granting any Provisional Quota the Director shall register sufficient particulars of it and of the owner in the Provisional Quota Ownership Register.



## *Individual Transferable Quota Eligibility Registers*

### **23. Individual Transferable Quota Eligibility Registers**

- (1) There is an Individual Transferable Quota Eligibility Register in relation to every fishery upon which the Director places the name and principal place of business of every company which satisfies the Director on application under sections 17C(1) or 24(1A) that it is eligible to have its name placed upon that Register or the name of which the Governor has authorised the Director under sections 17D(4) or 25(5) to place upon that Register.
- (2) The register maintained in accordance with subsection (1) must be divided into the following Parts —
  - (a) Part A, entries for Individual Transferrable Quota A; and
  - (b) Part B, entries for Individual Transferrable Quota B.
- (3) Subject to subsection (4), the Director must strike out in any part of an Individual Transferable Quota Eligibility Register any entry relating to a company which appears to the Director to be no longer eligible to have its name appear on that part of the Register.
- (4) Before striking out a company's name under subsection (3) the Director must —
  - (a) give at least 14 days notice in writing to the company stating the Director's intention to do so; and
  - (b) notify the company that it may at any time within a period not less than 14 days, as stated in the notice, make written representations to the Director against the entry in relation to it in an Individual Transferable Quota Eligibility Register being struck out.
- (5) The Director must take into account representations made under subsection (4)(b) before deciding to strike out the name of the company.
- (6) If the Director strikes out an entry under subsection (3), the Director must forthwith give notice to the company in writing of the effect of such striking out.
- (7) A company that has been struck out may within 90 days of the service of a notice under subsection (6), or such longer period as the Governor may, on the application of the company, in writing agree, do one of the following —
  - (a) on application to the Commission under section 108 satisfy the Commission that the decision of the Director was made in error;
  - (b) on application under section 17C(1) or 24(1A), satisfy the Director that it has again become eligible to have its name appear on an Individual Transferable Quota Eligibility Register for the fishery; or
  - (c) dispose, in accordance with this Ordinance, of the Individual Transferable Quota it owns in the fishery to a company or companies the name or names of which appear on an Individual Transferable Quota Eligibility Register.

(8) Subject to subsection (9), where a company fails to act in accordance with subsection (7) and that company owns Individual Transferable Quota, any grant of that Individual Transferable Quota to the company may be revoked under section 33(2)(d).

(9) A company may apply under section 108 for the Commission to review a decision of the Director under subsection (3) to strike its name from an Individual Transferable Quota Eligibility Register.

*[S. 10/Ord. 9/21/w.e.f. 01/10/21]*

## **24 Application for name of company to be placed upon Part A of Individual Transferable Quota Eligibility Register**

(1) This section applies to applications for a company to be placed on Part A of an Individual Transferable Quota Eligibility Register.

*[S. 11/Ord. 9/21/w.e.f. 01/10/21.]*

(1A) A company may on payment of the prescribed fee, if any, apply to the Director in the approved form for its name to be placed upon Part A of an Individual Transferable Quota Eligibility Register.

*[S. 11/Ord. 9/21/w.e.f. 01/10/21.]*

(2) An application under subsection (1) shall be accompanied by-

- (a) a statutory declaration by a person who is a director of the company to which are exhibited the documents mentioned in subsection (3); and
- (b) information as to such of the things mentioned in subsection (5) as are relevant in relation to the applicant company.

(3) The documents referred to in subsection (2)(a) are-

- (a) a copy of the register of members of the company certified by the secretary of the company to be a true copy of the register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (b) a list of the directors and secretary of the company and of their addresses as at the date of the declaration;
- (c) a certified copy of the certificate of incorporation of the company;
- (d) a certified copy of the Articles of Association of the company;
- (e) a copy of the register of members of any company appearing in the register of members to which paragraph (a) refers, certified by the secretary of that company to be a true copy of that register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (f) a copy of the last available audited annual accounts of the company, and, in addition where available any later unaudited annual accounts of the company;

- (g) any other document prescribed by regulations as being required to be exhibited to the statutory declaration or which the Director may have notified the applicant is required to accompany the application.

(4) The statutory declaration referred to in subsection (2)(a) shall contain statements on the part of the person making it as to the following matters-

- (a) that he believes all the natural persons appearing in the copy of the register of members referred to in subsection (3) (a) to be persons having Falkland Islands status;
- (b) that he believes that none of the persons whose name appears in that register is a nominee or trustee for any other person;
- (c) if a copy of a register of a company which is a member of the applicant company accompanies the declaration pursuant to subsection (3)(e), that he believes all natural persons whose names appear in that register to be persons having Falkland Islands status and that he believes that none of those persons is a nominee or trustee for any other person;
- (d) that he has perused the information provided under subsection (2)(b) and believes that information to be true and that, as far as he is aware it contains all available relevant information to which subsection (5) refers; and
- (e) any other matter prescribed by regulations as being a matter with which the statutory declaration shall deal or which the Director may have notified him is required to accompany the application.

(5) The information referred to in subsection 2(b) is information as to-

- (a) details of any existing business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;
- (b) details of any proposed business arrangements with any company, body, organisation or person involved in the taking, processing, purchasing or marketing of fish, or the provision of vessels, equipment, or crews;
- (c) any existing borrowing or financing arrangements with any company, body, organisation or person;
- (d) any proposed borrowing or financing arrangements with any company, body, organisation or person;
- (e) any other information available to the company which may serve to demonstrate that-
  - (i) the shareholders of the company who have Falkland Islands status are, or as the case may be, if Individual Transferable Quota is thereafter granted to the company, will be, in effective control of how its Individual Transferable Quota rights are used;
  - (ii) the company is or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota is thereafter granted, will be, actively involved in one or more of taking, processing or selling fish and that its

holdings of Individual Transferable Quota rights are, or as the case may be if Individual Transferable Quota is thereafter granted, will be, commensurate with the level of its business activity;

- (iii) the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota is thereafter granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.

(6) An application under subsection (1) may be made in respect of Part A of the Individual Transferable Quota Eligibility Register of any number of established fisheries.

*[S. 11/Ord. 9/21/w.e.f. 01/10/21.]*

## **25. Determination of applications for name of company to be placed upon Part A of Individual Transferable Quota Eligibility Register**

(1) This section applies to determination of applications for a company to be placed on Part A of an Individual Transferable Quota Eligibility Register.

(2) The Director must, provided the prescribed fee, if any, has been paid upon the application, but not otherwise, consider any application under section 24 which the Director receives and determine it in accordance with the provisions of this section.

(3) The Director must not grant an application for a company's name to be placed upon Part A of an Individual Transferable Quota Eligibility Register by —

- (a) any person other than a company which the Director is satisfied is a company incorporated in and having its principal place of business in the Falkland Islands which satisfies the following requirements —
  - (i) its Articles of Association do not permit —
    - (aa) the issue of bearer shares, convertible loan stock or convertible debentures;
    - (bb) the issue of shares to, and the registration of shares in the name of, any person other than persons who have Falkland Islands status and who are ordinarily resident in the Falkland Islands;
  - (ii) the whole of its issued share capital is owned by, and all of its directors are, persons having Falkland Islands status who are ordinarily resident in the Falkland Islands or is owned by companies the whole of the issued share capital of which is owned by, and all the directors of which are, persons having Falkland Islands status who are ordinarily resident in the Falkland Islands;
- (b) any company which the Financial Secretary has notified the Director appears on the Financial Secretary's list of persons to whom credit is not to be granted; or

*[Revision w.e.f. 08/10/2021]*

- (c) any company which has been convicted of an offence specified for the purposes of this paragraph by an Order made by the Governor.
- (4) The Director must refuse any application for registration of a company's name upon Part A of an Individual Transferable Quota Eligibility Register unless the Director is satisfied —
- (a) that the shareholders of the company who have Falkland Islands status are, or as the case may be, if Individual Transferable Quota is granted to the company, will be, in effective control of how its Individual Transferable Quota rights are used;
  - (b) the company or, in the case of a holding company, its associate companies are, or as the case may be, if Individual Transferable Quota is granted, will be, actively involved in one or more of taking, processing or selling fish and that its holdings of Individual Transferable Quota rights are, or as the case may be if Individual Transferable Quota is thereafter granted, will be, commensurate with the level of its business activity;
  - (c) the company's income and economic returns from taking, processing and sale of fish, or such of them as are relevant in the circumstances of the case represent, or as the case may be, if Individual Transferable Quota is granted, will represent, a sufficient return on the value of the rights held and one which does not, or as the case may be, will not, over a reasonable period represent a significantly lower rate of return than that received by holders of similar rights.
- (5) The Governor may upon such conditions, if any, as the Governor sees fit, whether on application of the company concerned or otherwise, authorise the Director, if the Director is satisfied that the Director can properly do so having regard to the requirements of subsection (4), to enter the name of the company upon Part A of the Individual Transferable Quota Eligibility Register notwithstanding that the Director would otherwise be bound to refuse the application by reason of subsection (3)(a)(ii) or (b).
- (6) The Director must, as soon as practicable, notify the applicant in writing of the Director's decision to grant or refuse its application for entry of its name upon Part A of an Individual Transferable Quota Eligibility Register and, if the Director refuses such an application, of the reasons why and, if the Director has refused the application because of any of the requirements of subsection (4) the notification must draw the applicant's attention to the right of the applicant under subsection (7) to seek review of the Director's decision.
- (7) A company aggrieved by a decision of the Director to refuse its application for entry of its name upon Part A of an Individual Transferable Quota Eligibility Register because of any of the requirements of subsection (4) may apply under section 108 for the Commission to review that decision, but there is no right to apply for such review where the refusal is based or partly based on the ground that the provisions of subsection (3) are not complied with by the company.
- (8) The Governor may by Order under this subsection specify offences for the purposes of subsection (3)(c) and such offences may include offences under the laws relating to fishing or fisheries conservation and management of overseas countries.

[S. 12/Ord. 9/21/w.e.f. 01/10/21.]

## **26. Period for which name of company appears upon Individual Transferable Quota Eligibility Register**

(1) Unless otherwise provided by Order made by the Governor under this subsection, the name of a company on an Individual Transferable Quota Eligibility Register remains valid and may be renewed under subsection (2) for a period of 12 months from the date of first registration or, as the case may be, the last preceding renewal of registration.

(2) Unless otherwise provided by an Order made under subsection (1), an application for the renewal of the period for which the name of a company appears upon an Individual Transferable Quota Eligibility Register must be made annually not more than 56 days and not less than 28 days before the expiration of the initial period or last preceding renewal granted under this subsection and must be —

- (a) made in the approved form;
- (b) accompanied by the prescribed fee (if any);
- (c) accompanied by a statutory declaration made by a director of the company containing the following statements —
  - (i) either —
    - (aa) that there have been no changes since the date of the application under sections 17C(1) or 24(1A) or, if the period has previously been renewed on application under this subsection, since the last preceding application for renewal under this subsection, in any of the documents copies of which were required to be furnished by sections 17C(3)(a) to (g) and (i) or 24(3)(a) to (e) and (g) upon the application under section 17C(1) or 24(1A); or
    - (bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes;
  - (ii) unless the name of the company was placed upon the Register pursuant to an authorisation given under section 17D(4) or 25(5), that they believe that —
    - (aa) all the natural persons appearing in the copy of register of members of the company on the date the statutory declaration is made to be persons having Falkland Islands status, and who, for applications for Part B of the Individual Transferable Quota Eligibility Register, are ordinarily resident in the Falkland Islands;
    - (bb) none of the persons whose name appears in the register is a nominee or trustee for any other person;
    - (cc) all the natural persons whose names appear in the register of members of any company which is a shareholder of the company to which the registration relates to be persons having Falkland Islands status, and who, for applications for Part B of the Individual Transferable Quota Eligibility Register, are ordinarily resident in the Falkland Islands and that they believe that none of those persons is a nominee or trustee for any other person;

- (iii) if the name of the company was first registered pursuant to an authorisation given under section 17D(4) or 25(5) either —
  - (aa) that there has been no change in the ownership of the shares of the company since the date of the original application leading to the first registration or, if the registration has been renewed under this subsection, since the date of the last preceding application for renewal of the application; or
  - (bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes;
- (iv) either —
  - (aa) that there have been no changes since the date of the application under section 17C(1) or 24(1A) or if the period of appearance of the company's name upon the register has been previously renewed under this subsection, since the date of the last preceding application under this subsection, in any of the matters to which section 17C(6) or 24(5) relates; or
  - (bb) state that there have been such changes, identifying them and exhibiting any documents not previously exhibited to a statutory declaration under this section which section 17C(6) or 24(5) would have required to be exhibited were the application for under this subsection an application under section 17C(1) or 24(1A);
- (v) statements as to such other matters as may be prescribed to be contained in the statutory declaration;
- (vi) a statement that a company listed on Part B of an Individual Transferable Quota Eligibility Register has not ceased to be a member of the Association under section 191(5)(a)(iii); and
- (vii) such other matters as required by the Director in respect of a company registered in Part B of the Individual Transferable Quota Eligibility Register regarding the company's performance in respect of the targets and milestones in its approved action plan.

(3) The Director may grant an application for renewal under subsection (2) if the Director is satisfied on considering the application that the company continues to meet the requirements for appearance of its name upon the relevant Part of the Individual Transferable Quota Eligibility Register.

(4) The Director may refuse any application under subsection (2) on any ground upon which under section 17D or 25 the Director may refuse an application under section 17C(1) or 24(1A), but if they refuse any such application the Director must notify the applicant in writing within 7 days of the reason or reasons for the refusal.

(5) The Director may, in exceptional circumstances, allow a company to remain on Part B of the Individual Transferable Quota Eligibility Register without demonstrating —

- (a) ability to undertake fishing in its own right or through a qualifying company; or

(b) membership of the Association.

(6) If the Director refuses an application made under subsection (2) of this section, section 17D(8) or 25(7) applies to the same extent as it would had the application been an application under section 17C(1) or 24(1A) which the Director had refused on a corresponding ground.

(7) If a company fails to make application under subsection (2) in accordance with that subsection and has not notified the Director under section 31(3) that it is no longer eligible to hold Individual Transferable Quota, it commits an offence and the Director must, whether or not the company is prosecuted for that offence, as soon as its registration upon that part of the Register expires, serve notice upon the company under section 33(2) of revocation of the Individual Transferable Quota held by the company, on the ground specified in section 33(2)(h).

[S. 13/Ord. 9/21/w.e.f. 01/10/21.]

### *Provisional Quota Eligibility Register*

#### **27 Provisional Quota Eligibility Registers**

(1) There shall be a Provisional Quota Eligibility Register in relation to every fishery in respect of which by virtue of section 16(1) or (3) and Schedule 2 Provisional Quota may be granted, upon which the Director shall place the name and principal place of business of every company which satisfies him on application under section 28 that it is eligible to have its name placed upon that Register.

(2) Subject to subsection (3), the Director shall strike out in a Provisional Quota Eligibility Register any entry therein relating to a company which appears to him to be no longer eligible to have its name appear on that Register.

(3) The Director shall not strike out a company's name under subsection (2) unless at least 21 days previously he has served a notice in writing upon the company stating his intention to do so and his proposed reasons for doing so and additionally notifying the company that it may at any time within the period stated in the notice, being not less than 21 days, make written representations to him against the entry in relation to it in the Provisional Quota Eligibility Register being struck out, which the Director shall take into account before deciding to strike out the name of the company.

(4) The Director, if he strikes out an entry in relation to a company in a Provisional Quota Eligibility Register shall forthwith give notice to the company in writing of the effect of such striking out, that is to say that the company shall within 90 days of the service of that notice or such longer period as the Governor may, on the application of the company, in writing agree, either-

(a) on application to the Commission under section 108 satisfy the Commission that the decision of the Director was made in error; or

(b) on application under section 28, satisfy the Director that it has again become eligible to have its name appear on the Provisional Quota Eligibility Register for the fishery,



and that if it fails to do so, the grant of Provisional Quota to the company will be revoked under section 33(2)(e).

## **28 Application for name of company to be placed upon Provisional Quota Eligibility Register**

(1) A company may on payment of the prescribed fee, if any, apply to the Director in the approved form for its name to be placed upon a Provisional Quota Eligibility Register.

(2) An application under subsection (1) shall be accompanied by a statutory declaration by a person who is a director or the secretary of the company to which are exhibited the following documents-

- (a) a copy of the register of members of the company certified by the secretary of the company to be a true copy of the register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (b) a list of the directors and secretary of the company and of their addresses as at the date of the declaration;
- (c) a certified copy of the certificate of incorporation of the company;
- (d) a certified copy of the Articles of Association of the company;
- (e) a copy of the register of members of any company appearing in the register of members to which paragraph (a) refers, certified by the secretary of that company to be a true copy of that register as made up to a date not preceding by more than 7 days the date on which the declaration was made;
- (f) any other document prescribed by regulations as being required to accompany an application under subsection (1) or which the Director may have notified him is required to accompany the application.

(3) The statutory declaration shall-

- (a) contain statements on the part of the person making it as to the following matters-
  - (i) as to such of the shareholders as are natural persons-
    - (aa) as to which of them are persons who have Falkland Islands status and are ordinarily resident in the Falkland Islands; and
    - (bb) as to the remainder of such shareholders, the country in which they are ordinarily resident and their country of citizenship;
  - (ii) as to such of the shareholders of the company as are bodies corporate the country under the law of which they are incorporated;
- (b) as to every company identified pursuant to paragraph (a)(ii), be accompanied by-
  - (i) the documents mentioned in paragraphs (a) to (e) of subsection (2) or, where the company is not incorporated in the Falkland Islands, the documents which, under the law of the country of incorporation of that company, correspond to the documents mentioned in paragraphs (a) to (e) of subsection (2);

(ii) any other document prescribed by regulations as being required to accompany an application under subsection (1) or which the Director may have notified him is to accompany the application.

(c) contain statements as to any other matter prescribed by regulations as being a matter with which the statutory declaration shall deal or which the Director may have notified him is required to accompany the application.

(4) An application under subsection (1) may be made in respect of the Provisional Quota Eligibility Register of any number of established fisheries in respect of which Provisional Quota may be granted.

## **29 Determination of applications for name of company to be placed upon Provisional Quota Eligibility Register**

(1) The Director shall consider any application under section 28 which he receives and shall determine it in accordance with the provisions of this section.

(2) The Director shall not grant an application for a company's name to be placed upon a Provisional Quota Eligibility Register-

(a) by any person other than a company which he is satisfied is a company incorporated in and having its principal place of business in the Falkland Islands which satisfies the following requirements-

(i) its Articles of Association prohibit the issue of bearer shares, convertible loan stock or convertible debentures;

(ii) not less than 25.1% of its issued share capital, or such other percentage as may be prescribed by Order, either generally or in relation to the Eligibility Register maintained in respect of the fishery in question, is owned by persons who are ordinarily resident in the Falkland Islands and who have Falkland Islands status;

(iii) its Articles require a majority of its directors to be persons who have Falkland Islands status and who are ordinarily resident in the Falkland Islands;

(b) by any company which the Financial Secretary has notified him appears on his list of persons to whom credit is not to be granted; or

(c) by any company which has been convicted of an offence specified for the purposes of this paragraph by an Order made by the Governor, or which is owned or controlled directly or indirectly by such a company.

(3) The Director may (provided that the company has paid the prescribed fee, if any, in relation to the application) grant any application for a company's name to be placed upon a Provisional Quota Eligibility Register which he is satisfied is not one he is required by subsection (2) to refuse, and may refuse such an application notwithstanding that he is satisfied it is not one he is required by subsection (2) to refuse.

(4) The Director shall, as soon as practicable, notify the applicant in writing of his decision to grant or refuse an application for placing a company's name upon a Provisional Quota Eligibility Register and, if he refuses such an application, of the ground or grounds on which he has done so

and the right of the applicant to apply to the Commission to review any decision of the Director to refuse the application for any reason other than one mentioned in subsection (2).

### **30 Period for which name of company shall appear upon Provisional Quota Eligibility Register**

(1) Unless otherwise provided by Order made by the Governor under this subsection, the name of a company on a Provisional Quota Eligibility Register shall appear upon that Register for a period of 12 months from the date it was first placed upon that Register or, as the case may be, the last preceding date from which the period of appearance of its name on that Register was renewed but the period of appearance of its name may be renewed or further renewed on an application under subsection (2).

(2) Unless otherwise provided by an Order made under subsection (1), an application for the renewal of the period for which the name of a company shall appear upon a Provisional Quota Eligibility Register shall be made annually not more than 56 days and not less than 28 days before the expiration of the initial period or last preceding renewal granted under this subsection and shall be-

- (a) made in the approved form;
- (b) accompanied by the prescribed fee, if any;
- (c) accompanied by a statutory declaration made by a director of the company containing the following statements-
  - (i) either-
    - (aa) that there have been no changes since the date of the original application leading to the first registration or, if the registration has been renewed, since the last preceding application for renewal of registration under this subsection, in any of the documents copies of which were required to be furnished by section 28(2)(a) to (d) upon the first application for registration; or
    - (bb) that there have been such changes, identifying them, if necessary by reference to copy documents exhibited to the statutory declaration, and that there have been no other such changes; and
  - (ii) statements as to such other matters as may be required by regulations to be contained in the statutory declaration.

(3) The Director may grant an application for renewal under subsection (2) if he is satisfied that on considering the application the company continues to meet the requirements for registration of its name upon the Provisional Quota Eligibility Register.

(4) The Director may refuse any such application on any ground upon which under section 29 he may refuse an application under section 28(1), but if he refuses any such application he shall notify the applicant in writing within 7 days of the reason or reasons for the refusal.

(5) If the Director refuses an application for renewal of the registration of a company's name upon the Provisional Quota Eligibility Register, section 24(6) applies to the same extent as it

would had the application been an application for original registration of a company's name upon the Individual Transferable Quota Eligibility Register which the Director had refused on a corresponding ground.

(6) If a company fails to make application for renewal of the registration of its name upon the Provisional Quota Eligibility Register in accordance with subsection (2) and, if it holds any Provisional Quota, has not notified the Director that it wishes to surrender the Provisional Quota it holds, the company commits an offence and the Director shall, whether or not the company is prosecuted for that offence, as soon as its registration upon that Register expires serve notice under section 33(2) of revocation of the Provisional Quota held by the company, on the ground specified in section 33(2)(h).

### *Changes of circumstances*

#### **31 Duty to notify change in circumstances: removal of company's name from Eligibility Register**

(1) For the purposes of this section, a company is not qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota if, at the time in question, in the case of a holding of Individual Transferable Quota, it is to be treated by subsection (2) as not continuing to be eligible to have its name appear on the relevant Individual Transferable Quota Eligibility Register or, in the case of a holding of Provisional Quota it is to be treated by subsection (2) as not continuing to be eligible to have its name appear on the relevant Provisional Quota Eligibility Register.

(2) For the purposes of subsection (1), a company continues to be eligible to have its name appear on an Individual Transferable Quota Eligibility Register or, as the case may be, a Provisional Quota Eligibility Register, on which its name appears if, were it to apply-

(a) in the case of an Individual Transferable Quota Eligibility Register, under section 17C(1) or 24(1A) on that date for the registration of its name upon that Individual Transferable Quota Eligibility Register, it would satisfy either-

- (i) the requirements of section 17D(2) or 25(3); or
- (ii) the conditions of any special consent given to it by the Governor under section 17D(4) or 25(5),

in relation to the entry of its name upon that Register;

[S. 14/Ord. 9/21/w.e.f. 01/10/21.]

(b) in the case of a Provisional Quota Eligibility Register, under section 28(1) on that date for the registration of its name upon that Provisional Quota Eligibility Register, it would satisfy the requirements of section 29(2) in relation to the entry of its name upon that Register.

(3) Without prejudice to its obligations under section 32(1), if a company becomes no longer qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota-

- (a) it shall forthwith notify the Director in writing of that fact and give him full particulars of the event or events which has or have occurred and caused it to be no longer qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota;
- (b) within 90 days of the date on which the company ceased to be qualified or such greater period as the Director may allow under subsection (5)-
  - (i) take action resulting in it within that period again becoming qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota;
  - (ii) surrender the Individual Transferable Quota or, as the case may be, Provisional Quota to the Crown; or
  - (iii) in the case of Individual Transferable Quota, dispose of the Individual Transferable Quota to a company qualified to hold it, without contravening section 58.

(4) If the Director becomes aware, other than by reason of a notice under subsection (3)(a) being given to him, that a company which holds Individual Transferable Quota is no longer qualified to hold it, he shall serve notice on that company requiring it within 90 days of the service of that notice, to do one or other of the things mentioned in subparagraphs (i), (ii) and (iii) of subsection (3)(b) and notify the Director in writing if it does so.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(5) The Director, on application by a company which has given him notice under subsection (3)(a) or upon which he has served notice under subsection (4), may, if he considers that there is reasonable cause so to do, extend the time within which the company may take action resulting in it again becoming qualified to hold the Quota or dispose of the Individual Transferable Quota it holds by such period as he may see fit, but not exceeding a further 90 days.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(6) A company aggrieved by the service upon it of a notice under subsection (4) may apply under section 108 for a review by the Commission of the matter, but only on the ground that at the time of the service of the notice it was qualified to hold Individual Transferable Quota or, as the case may be, Provisional Quota.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(7) If having given notice under subsection (3)(a) or having been served with notice under subsection (4), the company fails within the period of 90 days or such further period as may be permitted under subsection (5) to do such one or other of the things mentioned in paragraph (b) of subsection (3) as may be appropriate in the circumstances of the case and notify the Director thereof in writing, the Director shall revoke the grant of Individual Transferable Quota to the company and shall-

- (a) notify the company in writing that he has revoked the grant;
- (b) make such notation in the Individual Transferable Quota Register or the Provisional Quota Register as is required by section 52(2)(h) or section 53; and
- (c) remove the company's name from the relevant Eligibility Register,

but shall not do so while any application to the Commission for review of the service of the notice under subsection (4) remains undetermined.

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

(8) A company which, without reasonable excuse, fails to notify the Director as required by subsection (3)(a) commits an offence.

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

(9) Section 34(8) to (10) shall apply in relation to any Individual Transferable Quota the grant of which has been revoked under subsection (7).

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

### *Documents and information to be supplied to the Director*

## **32 Duty to provide documents and information to the Director**

(1) Every company which owns Individual Transferable Quota or Provisional Quota shall-

- (a) at the same time as it files-
  - (i) a copy of its audited annual accounts to the Commissioners of Taxes under the provisions of section 30 of the Taxes Ordinance, supply a copy of those audited accounts to the Director;
  - (ii) its annual return under the provisions of section 126 of the Companies Act 1948 in its application to the Falkland Islands, supply a copy of that annual return to the Director;
  - (iii) a certified copy of any amendment to its Articles of Association under section 12 of the Companies Act 1948 in its application to the Falkland Islands, supply a certified copy of that amendment to the Director; and
- (b) at the same time as it supplies to the Director a copy of its audited accounts pursuant to paragraph (a), further supply to the Director a statutory declaration made not more than 7 days previously by a director of the company that as at the date that declaration was made the company continued to be eligible to have its name appear on any Individual Transferable Quota Register or Provisional Quota Register on which its name appeared as at that date.

(2) Every company which owns Individual Transferable Quota or Provisional Quota shall within 14 days of any request in writing by the Director so to do, or such greater time as he may, on the application of the company allow, supply to the Director-

- (a) an explanation or further details of anything appearing in the company's audited accounts of which he may require an explanation;
- (b) a copy of any agreement made by the company in relation to the marketing of fish, or the lending of money to the company or financing of any building, facility, ship or fishing vessel acquired or to be acquired by the company or of any activity undertaken by the company;

- (c) particulars of any transaction in relation to the sale of fish entered into by the company;
- (d) any other document or information relating to the business of the company.

(3) A company which contravenes subsection (1) or (2) commits an offence.

### ***Revocation of grant of Individual Transferable Quota or Provisional Quota***

### **33 Grounds on which grant of Individual Transferable Quota or Provisional Quota may be revoked**

(1) This section has effect without prejudice to sections 31(7) and 173(1)(e).

(2) The grant of Individual Transferable Quota or Provisional Quota to a company may be revoked by the Director serving a notice on the owner on any one or more of the following grounds-

- (a) that a receiver or administrative receiver has been appointed by any mortgagee or debenture-holder under the provisions of any mortgage or debenture of Individual Transferable Quota, and that Individual Transferable Quota has not, within 90 days of his appointment, or such greater period as the Director may allow, been transferred to a company the name of which appears on the relevant Eligibility Register;
- (b) that a winding up order has been made by the Supreme Court or any other court having jurisdiction to do so in respect of the company and the liquidator of the company has not, within 90 days thereafter, transferred the Individual Transferable Quota or Provisional Quota to a company the name of which appears on the relevant Eligibility Register;
- (c) that the Director is not satisfied that the company is properly exploiting the Individual Transferable Quota or Provisional Quota;
- (d) that the company has failed to comply with a notice served on it under section 23(4) or section 27(4);
- (e) that the Director has removed the company's name under section 31(7)(c) from the relevant Eligibility Register;

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

- (f) that, in relation to a material part of its business, the owner appears to the Director to be required to act in accordance with the instructions of a non-Falkland Islands fishing business;
- (g) that the Director has refused an application for renewal of the registration of the company's name upon the Individual Transferable Quota Eligibility Register or Provisional Quota Eligibility Register, as the case may be;
- (h) that the company has failed to renew its registration upon the Individual Transferable Quota Eligibility Register or Provisional Quota Eligibility Register, as the case may be.

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

(3) The revocation of the grant of an Individual Transferable Quota or of a Provisional Quota does not bring to an end any Catch Entitlement generated in respect of that Individual Transferable Quota or Provisional Quota in respect of the fishing period current on the date of the revocation.

(4) The ground or grounds on which the Director revokes the grant of Individual Transferable Quota or Provisional Quota shall be stated in the notice served under subsection (2).

(5) Where a notice is served on the ground specified in subsection (2)(h), it shall not take effect if within 14 days of the service of that notice the company makes an application to renew its registration upon the relevant Register, but without prejudice to the power of the Director, if that application is refused, to serve a further notice on the ground specified in subsection (2)(g).

(6) Subsection (5) has prejudice to the power of the Director to serve a further notice of revocation of the grant under any other paragraph of subsection (2).

### **34 Supplementary to sections 31 and 33**

(1) The Director shall consult the owners of Individual Transferable Quota and the owners of Provisional Quota and the Committee as to the criteria and policies to be applied by him in determining whether a company is properly exploiting Individual Transferable Quota or Provisional Quota belonging to it ("**the proposed criteria**") and shall thereafter submit the proposed criteria to the Governor for approval who may approve them, with or without amendment or refer them back to the Director for reconsideration.

(2) As soon as the proposed criteria have been approved by the Governor, they shall be published in the Gazette, and, if appropriate, as amended by the Governor.

(3) The criteria published in accordance with subsection (2) may be amended or replaced from time to time in accordance mutatis mutandis with the procedure set out in subsections (1) and (2).

(4) Without prejudice to any other provision conferring a right of application for such review, a right of application for review by the Commission lies to the Commission under section 108 against a decision by the Director to revoke a grant of Individual Transferable Quota or Provisional Quota on the ground set out in section 33(2)(c) or (g), but not on any ground set out in any other paragraph of section 33(2).

(5) When a fishing right registered under this Part is suspended, revoked, forfeited or ceases to have effect, or a suspension of a fishing right is revoked the Director shall make a notation in the Register to that effect and if the fishing right is cancelled or ceases to have effect shall, in addition, cancel the registration of the fishing right.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(6) The Director shall rectify the Register accordingly where, because of a decision made by him or by the Magistrate's Court or the Supreme Court, a notation made by him under subsection (5) is no longer correct.

(7) Where a person other than the holder of a fishing right has an interest in the fishing right, being an interest in relation to which a dealing has been registered under section 52, the Director



shall give that person written notification of anything he has done under subsection (5) or (6) in relation to that fishing right.

(8) The Director shall use his best efforts to sell by tender any Individual Transferable Quota the grant of which has been revoked under section 31(6) or section 33(2) to a company or companies the name of which appears upon the Individual Transferable Quota Eligibility Register at the best price reasonably obtainable, but shall not do so-

- (a) within 14 days of the revocation; or
- (b) while any application to the Commission or to the Supreme Court for review of his decision to revoke the grant remains undetermined.

(9) The proceeds of sale of any Individual Transferable Quota under subsection (8) shall be applied-

- (a) in payment of any expenses of and in connection with the sale;
- (b) in discharge of any sums due and payable to the Crown under this Ordinance from the former owner of the quota;
- (c) in discharge of any sum due in respect of principal and interest to a registered mortgagee of the quota;
- (d) in payment of any balance to the former owner of the quota.

(10) The Director shall execute a grant of Individual Transferable Quota to give effect to any sale he effects under subsection (8), and shall register that grant in the Individual Transferable Quota Ownership Register.

### *Fees*

#### **35 Fees for Individual Transferable Quota and Provisional Quota**

(1) Without prejudice to section 189 there shall be payable to the Crown in respect of Individual Transferable Quota and Provisional Quota such sums if any as are from time to time prescribed by regulations under this subsection.

(2) Such sums shall be prescribed-

- (a) in relation to the amount of Individual Transferable Quota or Provisional Quota held by a company, and different sums may be prescribed in relation to different established fisheries;
- (b) shall be payable on such annual, seasonal or other periodic basis as is prescribed by such regulations.

## *Offences*

### **36 Offences in relation to certain applications**

(1) A company commits an offence if on, or in connection with, an application-

- (a) under section 17C(1) or 24(1A) for its name to be placed upon an Individual Transferable Quota Eligibility Register;

*[S. 15/Ord. 9/21/w.e.f. 01/10/21.]*

- (b) under section 26(2) for renewal of the period for which a company's name shall appear upon an Individual Transferable Quota Eligibility Register;
- (c) under section 28(1) for its name to be placed upon a Provisional Quota Eligibility Register;
- (d) under section 30(2) for renewal of the period for which a company's name shall appear upon a Provisional Quota Eligibility Register;

it does or permits or suffers to be done any of the things mentioned in subsection (2).

(2) The things referred to in subsection (1) are-

- (a) the making by or on behalf of the company of any statement which is false in any material particular;
- (b) the supply to the Director of any document of any kind containing any statement which is false in any material particular.

(3) For the purposes of subsection (2)-

- (a) without prejudice to any circumstances in which a statement may be found to be made by or on behalf of a company a statement is to be deemed to be made by or on behalf of the company if it is made by any director, officer or manager of the company apparently acting within his authority as such;
- (b) a document is to be deemed to be supplied on behalf of a company if it is supplied or delivered to the Director by the company or any director, officer or manager of the company, or any other person doing so on behalf of the company;
- (c) a statement is false in a material particular if it is both false and, in the circumstances of the case, may influence the Director in however small a degree, in favour of granting the application or disincline him to refuse it.

## **Division B - Catch Entitlements**

### *Setting of Total Allowable Effort or Total Allowable Catch and Fishing Effort Values of vessels*

### **37 Total Allowable Effort and Catch Entitlements**

(1) The Director, if he does not propose to set Total Allowable Catch in respect of it under the next following section, shall from time to time, by notice published in the Gazette, set in respect

of every effort management stock in respect of which any Individual Transferable Quota has been granted, and which is for the time being managed by way of setting Total Allowable Effort in respect of that stock, the Total Allowable Effort in respect of that stock expressed in terms of units of vessel Fishing Effort Value and specify the period to which the notice relates.

(2) The Total Allowable Effort may be set under subsection (1) so as to apply-

- (a) in respect of the calendar year or other period specified in the notice; or
- (b) in respect of the calendar year specified in the notice and thereafter in respect of each successive calendar year until the notice is amended or revoked under subsection (4).

(3) A notice under subsection (1) may set the Total Allowable Effort in respect of a stock at nil and no compensation shall be payable to any person if Total Allowable Effort is so set.

(4) The Director may at any time amend or revoke a notice under subsection (1) by further notice under that subsection.

(5) Where a notice under subsection (1) has been published, an Individual Transferable Quota and a Provisional Quota generates Catch Entitlement in accordance with the following formula-

$$a = (b \text{ divided by } 1000) \text{ multiplied by } c,$$

where-

*a* is the Catch Entitlement,

*b* is the number of thousandths of the total allowable effort in relation to the stock held by the owner of the Individual Transferable Quota or Provisional Quota; and

*c* is the Total Allowable Effort notified under subsection (1),

but the Catch Entitlement does not authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

(6) The Director shall notify every owner of Individual Transferable Quota or Provisional Quota in relation to a fishery 3 months or such shorter period as may be specified by regulations before the commencement of the period to which the notice under subsection (1) relates the Catch Entitlement, if any, generated for that period in respect of that owner's Individual Transferable Quota or Provisional Quota.

(7) Any Catch Entitlement generated under subsection (5) must be registered by the Director in the relevant Part in the Catch Entitlement Register maintained under section 55.

[S. 16/Ord. 9/21/w.e.f. 01/10/21.]

(7A) Catch Entitlement —

- (a) generated under Individual Transferable Quota A, may be transferred to a transferee on Part A or Part B of the Individual Transferable Quota Eligibility Register;
- (b) generated under Individual Transferable Quota B must only be transferred to a transferee who is on Part B of the Individual Transferable Quota Eligibility Register.

[S. 16/Ord. 9/21/w.e.f. 01/10/21.]

(8) The Director may of his own motion or on the application of any interested person correct any error in any notification he has given under subsection (6).

### **38 Total Allowable Catch and Catch Entitlements**

(1) The Director, if he does not propose to set Total Allowable Effort in respect of it under the preceding section, shall from time to time by notice published in the Gazette, set in respect of every quota management stock in respect of which any Individual Transferable Quota or Provisional Quota has been granted the Total Allowable Catch in respect of that stock and specify the period to which the notice relates.

(2) The Total Allowable Catch may be set under subsection (1) so as to apply-

- (a) in respect of the calendar year or other period specified in the notice; or
- (b) in respect of the calendar year specified in the notice and thereafter in respect of successive calendar years until the notice is amended or revoked under subsection (4).

(3) A notice under subsection (1) may set the Total Allowable Catch at nil, and no compensation shall be payable to any person if the Total Allowable Catch is so set.

(4) The Director may at any time amend or revoke a notice under subsection (1) by further notice under that subsection.

(5) Where a notice under subsection (1) has been published, an Individual Transferable Quota or a Provisional Quota generates Catch Entitlement in accordance with the following formula-

$$a = (b \text{ divided by } 100,000) \text{ multiplied by } c,$$

where-

*a* is the Catch Entitlement,

*b* is the number of hundred thousandths of the total allowable catch in relation to the stock held by the owner of the Individual Transferable Quota or Provisional Quota; and

*c* is the Total Allowable Catch notified under subsection (1);

but the catch entitlement does not authorise the taking of fish, which is only authorised by a fishing licence or scientific permit.

[S. 17/Ord. 9/21/w.e.f. 01/10/21; and S. 30/Ord. 9/21/w.e.f. 01/10/21.]

(6) The Director shall notify every owner of Individual Transferable Quota or Provisional Quota in relation to a stock 3 months, or such shorter period as may be specified by regulations, before the commencement of the period to which the notice under subsection (1) relates the Catch Entitlement generated under this section for that period in respect of that owner's holding of Individual Transferable Quota or Provisional Quota.

[S. 17/Ord. 9/21/w.e.f. 01/10/21.]

(7) Any Catch Entitlement generated under subsection (5) must be registered by the Director in the relevant Part in the Catch Entitlement Register maintained under section 55.

[S. 17/Ord. 9/21/w.e.f. 01/10/21.]

(7A) Catch Entitlement —

- (a) generated under Individual Transferable Quota A, may be transferred to a transferee who is on Part A or Part B of the Individual Transferable Quota Eligibility Register;
- (b) generated under Individual Transferable Quota B must only be transferred to a transferee who is on Part B of the Individual Transferable Quota Eligibility Register.

*[S. 17/Ord. 9/21/w.e.f. 01/10/21.]*

(8) The Director shall of his own motion or on the application of any interested person correct any error he finds in any notification he has given under subsection (6).

### **39 Supplementary to sections 37 and 38**

(1) The Director shall set the Total Allowable Effort or Total Allowable Catch as the case may be, in respect of a stock to which section 37(1) or section 38(1) applies so that the Total Allowable Effort or Total Allowable Catch-

- (a) takes into account the interdependence of stocks;
- (b) enables the level of any stock the current level of which is below the level the Director believes to be appropriate for ensuring sustainability to be restored to that level within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(2) In considering the way in which and rate at which a stock is moved towards or above a level necessary to ensure sustainability, the Director shall take into account such economic factors as he considers relevant.

(3) ...

*[S. 18/Ord. 9/21/w.e.f. 01/10/21.]*

### **40 Assessment of Fishing Effort Value in relation to fishing vessels**

(1) The Director may of his own motion and shall on application being made to him in the approved form by the owner or charterer of a fishing vessel or any other person appearing to the Director to have a sufficient interest, and the prescribed fee, if any, being paid, assign to that fishing vessel a Fishing Effort Value in relation to-

- (a) the type of the fishing vessel;
- (b) the tonnage and engine power of the fishing vessel and its maximum speed;
- (c) the equipment with which the fishing vessel is fitted, including fishing equipment, fish processing machinery or apparatus and fish freezing apparatus or equipment;
- (d) the fish storage capacity of the fishing vessel;
- (e) the fishing method to be employed as specified in the application;
- (f) the target species specified in the application;

- (g) the manning of the fishing vessel;
- (h) any other matter the Director considers to be relevant or is prescribed,

and without prejudice to section 54(4) a Fishing Effort Value assigned under this subsection may be expressed by the Director to be provisional.

(2) A Fishing Effort Value shall be assessed in relation to the weight of fish of the target species specified in the application which, in the opinion of the Director, the fishing vessel could be expected with a full complement, composed as stated in the application, all other things being equal, to take in a day's fishing in comparison with a notional fishing vessel, the Fishing Effort Value of which is 1, (and so that a fishing vessel which, in the opinion of the Director, could be expected to take 70 per cent more fish in a day's fishing than that notional fishing vessel, would be assigned a Fishing Effort Value of 1.7).

(3) The Director shall notify the applicant under subsection (1) and the owner of the fishing vessel in question if he was not the applicant, of-

- (a) the Fishing Effort Value assigned by the Director to that fishing vessel on application being made under subsection (1) or of the Director's own motion; and
- (b) the characteristics of and in relation to that fishing vessel (including fishing gear) and the target species and method of fishing taken into account by the Director in assigning that Fishing Effort Value to that fishing vessel.

(4) For the purposes of subsection (1), the Director shall calculate Fishing Effort Value units in such manner, if any, as is for the time being prescribed and, if none is for the time being prescribed, in such manner as he determines.

## **Division C - Licences and Permits**

### *Fishing licences*

#### **41 Fishing licences**

(1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, and subject to section 14(1)(a), grant to a person a fishing licence authorising, subject to subsections (2) to (4), the use by that person, or by a person acting on that person's behalf, of a fishing vessel for fishing in the fishing waters or a specified fishery within the fishing waters. The Director may impose conditions, specified in the licence, on granting a licence under this subsection.

(2) Unless specifically stated to the contrary therein a fishing licence granted under subsection (1) does not authorise fishing within the internal waters.

(3) A fishing licence granted under subsection (1) does not authorise the use of a fishing vessel unless the fishing vessel complies with all conditions (if any) subject to which the licence was granted.

(4) An application made for the grant of a fishing licence under subsection (1) shall-

- (a) provide the Director with such information as the Director reasonably requires for proper consideration of the application;
- (b) if the application is made by a person other than a company incorporated in the Falkland Islands or a natural person ordinarily resident in the Falkland Islands, specify the name of a company so incorporated authorised by the applicant to accept service on behalf of the applicant or all notices, documents and proceedings given made or commenced under any provision of this Ordinance or any other written law of the Falkland Islands, (and, for the purposes of paragraph (b) of this subsection, an application for a licence made by an agent on behalf of another person, shall be deemed to be made by that other person).

(5) A person named as the applicant's agent for service pursuant to paragraph (b) of subsection (4) shall, if a licence is granted pursuant to that application, continue to be authorised to accept service on behalf of the applicant until the expiration of 3 years from the date on which the licence ceases to have effect unless the applicant notifies the Director in writing that another person (being a company incorporated in the Falkland Islands) is the applicant's agent for service in substitution for the agent for service named in the application when service may be effected on the company so substituted. The foregoing provisions of this subsection shall apply mutatis mutandis to every replacement of agent for service by the applicant.

(6) In addition to any other reason for which the Director may under subsection (1) refuse to grant a fishing licence, the Director may refuse to grant a fishing licence if he has reasonable cause to believe that a requirement of a law of the Falkland Islands has not been complied with in relation to the fishing vessel in question.

(7) A fishing licence granted under this section may authorise the use of a fishing vessel-

- (a) for commercial fishing generally;
- (b) for recreational fishing generally; or
- (c) as a charter boat, that is to say for charter to persons who wish to engage in recreational fishing;
- (d) for specified fishing activities including-
  - (i) carrying of fish received from another fishing vessel; or
  - (ii) the processing of fish.

(8) The Director must not grant —

- (a) to any person other than a qualifying company a fishing licence authorising the taking of any part of any Catch Entitlement generated by any Individual Transferable Quota; or
- (b) a fishing licence under paragraph (a) for Catch Entitlement derived from Individual Transferable Quota B where a vessel is being used through a charter party agreement if the charter party agreement has not been approved by the Director.

[S. 19/Ord. 9/21/w.e.f. 01/10/21.]

(8A) The Director may approve or refuse to approve a charter party agreement for purposes of this section and in coming to a decision the Director must be guided by the requirements in sections 17C(6)(e) and 17D(3).

*[S. 19/Ord. 9/21/w.e.f. 01/10/21.]*

(8B) A company aggrieved by a decision of the Director to refuse to approve a charter party agreement under subsection (8A), may apply under section 108 for the Commission to review that decision.

*[S. 19/Ord. 9/21/w.e.f. 01/10/21.]*

(9) No compensation is payable if a fishing licence is revoked or ceases to be in force or ceases to apply to a fishery.

(10) A fishing licence-

- (a) is subject to such conditions as are prescribed in relation to licences granted under this section and without prejudice to the generality of the foregoing and to any power to make regulations under section 223(2)(u), may include a condition that there be a functioning satellite-tracking device aboard the fishing vessel at all times during the continuation of the licence, whether or not the fishing vessel is within the fishing waters;
- (b) comes into force on the date specified for the purpose in the licence or, if no date is so specified, on the date on which it is granted; and
- (c) subject to this section, remains in force until the date specified for the purpose in the licence.

(11) A fishing licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to the Director.

(12) A fishing licence is not transferable.

(13) The Director may, by written notice given to the holder of a fishing licence-

- (a) revoke the licence; or
- (b) whether or not at the request of the holder, vary or revoke a condition to which the licence is subject or specify a condition or further condition to which the licence is to be subject.

(14) For the purposes of subsection (8), a qualifying company is —

- (a) in respect of Individual Transferable Quota A, a company —
  - (i) which is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands; and
  - (ii) in which at least 25.1% or such other percentage as may be specified by regulations of each class of the shares in the company carrying voting rights at general meetings of the company are owned by persons having Falkland Islands status and



who are ordinarily resident in the Falkland Islands or by a company or companies incorporated in the Falkland Islands and wholly so owned;

- (b) in respect of Individual Transferable Quota B, a company —
  - (i) which is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands;
  - (ii) the majority of whose Directors are persons with Falkland Islands status and who are ordinarily resident in the Falkland Islands or are companies which satisfy the following requirements —
    - (aa) it is incorporated in the Falkland Islands and has its principal place of business in the Falkland Islands;
    - (bb) its Articles of Association do not permit the issue of bearer shares, convertible loan stock or convertible debentures nor the issue of shares to, or the registration of shares in the name of, any person other than persons who have Falkland Islands status and are ordinarily resident in the Falkland Islands;
    - (cc) the whole of its issued share capital is owned by, and all the directors of which are, persons having Falkland Islands status who are ordinarily resident in the Falkland Islands; and
  - (iii) in which at least 51% or such other percentage as may be specified by regulations of all classes of shares in the company (whether or not they carry voting rights) are owned by the eligible company that owns the Catch Entitlement that is to be fished under the licence or are owned by an intermediate Individual Transferable Quota company as approved by the Director under section 17C(8), that is wholly or partly owned by that eligible company; or
  - (iv) which is an Individual Transferable Quota B eligible company.

[S. 19/Ord. 9/21/w.e.f. 01/10/21.]

### *Scientific permits*

#### **42 Scientific permits**

(1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, grant to a person a scientific permit in respect of a specified fishing vessel (including an overseas fishing vessel) authorising the use of the fishing vessel by that person, or a person acting on that person's behalf, for scientific research purposes in a specified area of the fishing waters or a specified fishery within the fishing waters. The Director may impose conditions, specified in the permit, on granting a permit under this subsection.

(2) An application made for the grant of a scientific permit under subsection (1) shall-

- (a) provide the Director with such information as the Director reasonably requires for a proper consideration of the application;

- (b) if the application is made by a person other than a company incorporated in the Falkland Islands or a natural person ordinarily resident in the Falkland Islands, specify the name of a company so incorporated authorised by the applicant to accept service on behalf of the applicant or all notices, documents and proceedings given made or commenced under any provision of this Ordinance or any other written law of the Falkland Islands,

(and, for the purposes of paragraph (b) of this subsection, an application for a scientific permit made by an agent on behalf of another person shall be deemed to be made by that other person).

(3) A person named as the applicant's agent for service pursuant to paragraph (b) of subsection (2) shall, if a permit is granted pursuant to that application, continue to be authorised to accept service on behalf of the applicant until the expiration of 3 years from the date on which the permit ceases to have effect unless the applicant notifies the Director in writing that another person (being a company incorporated in the Falkland Islands) is the applicant's agent for service in substitution for the agent for service named in the application when service may be effected on the company so substituted. The foregoing provisions of this subsection shall apply mutatis mutandis to every replacement of agent for service by the applicant.

(4) A scientific permit is, in addition to any conditions which are imposed on the grant of the permit, or which may have effect under any other provision of this Ordinance, subject to the following conditions-

- (a) the permit may be revoked under subsection (7);
- (b) no compensation is payable because the permit is revoked or ceases to be in force.

(5) Subsection (4) has effect without prejudice to any other provision of this Ordinance which imposes a condition on scientific permits.

(6) A scientific permit-

- (a) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
- (b) subject to this Ordinance, remains in force until the date specified for the purpose in the permit.

(7) The Director may, by written notice given to the holder of a scientific permit-

- (a) revoke the permit; or
- (b) whether or not at the request of the holder, vary or revoke a condition to which the permit is subject or specify a condition or further condition to which the permit is to be subject.

(8) A scientific permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to the Director.

### *Suspension and revocation of suspension of fishing concessions*

### **43 Suspension of fishing concessions**

- (1) The Director may by written notice given to the holder of a fishing concession suspend the operation of the concession if any fee, levy, charge or other money relating to the concession is not paid as it becomes due.
- (2) The Director, by written notice given to the holder of a fishing concession suspended under this section-
  - (a) may revoke the suspension; and
  - (b) shall revoke the suspension if it was effected under subsection (1) and the money is paid or there is a remission or refund made under the regulations of the whole of the money.

### *Overseas masters of fishing vessels*

### **44 Overseas master fishing licences**

- (1) The Director may, upon application made in the approved form, and on payment of the prescribed fee, if any, grant to an overseas person an overseas master fishing licence authorising the person to be in charge of a fishing vessel that is being used for fishing in the fishing waters or may for any reason he sees fit, refuse to grant such a licence.
- (2) An application made for the grant of an overseas master fishing licence shall provide the Director with such information as he reasonably requires for proper consideration of the application.
- (3) An overseas master fishing licence authorising a person to be in charge of a fishing vessel that is being used for commercial fishing in a fishery specified in Schedule 2 is subject to the following conditions in addition to any conditions which may be specified in the licence-
  - (a) the holder of the licence shall comply with any obligations imposed on the holder by the licence;
  - (b) the licence shall cease to apply in relation to that fishery if the fishery is revoked under section 16(2)(c) and shall not apply for so long as fishing in that fishery is suspended by the Director;
- (4) A licence granted under this section-
  - (a) is subject to such other conditions as are prescribed in relation to licences granted under this section;
  - (b) comes into force on the date specified for the purpose in the licence or, if no date is so specified, on the date on which it is granted; and
  - (c) subject to this section, remains in force until the date specified for the purpose in the licence.

(5) The Director may, by written notice given to the holder of a licence whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (3)) or specify a condition or further condition to which the licence is to be subject.

(6) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to the Director.

(7) The Director may, by written notice given to the holder of the licence, revoke the licence-

- (a) if the holder of the licence is convicted of an offence under this Ordinance or an offence under the law of an overseas country or territory corresponding to an offence under this Ordinance;
- (b) if the holder of the licence during the currency of the licence or at any time during the preceding 5 years is or was convicted of any offence under the law of the Falkland Islands or any other country or territory which involved violence towards or maltreatment of any member of the crew of a fishing vessel of which he was at the time a master or a mate or officer, and which was not, in the case of an offence preceding the application under subsection (1), disclosed in that application; or
- (c) if any information provided by or on behalf of an applicant under subsection (1) is found by him to be false or misleading in a material particular.

(8) No compensation is payable because the overseas master fishing licence is revoked, ceases to be in force or ceases to apply to a fishery.

(9) A person who uses a fishing vessel for fishing in the fishing waters commits an offence unless every overseas person who is a master of that fishing vessel holds a licence granted under subsection (1).

(10) Where the person who is in charge of a fishing vessel is different from the person who is in charge of the fishing operations of that fishing vessel and either of them is an overseas person, a licence under subsection (1) is required by such of them as is an overseas person and the provisions of this section, including subsection (8) shall have effect accordingly.

#### **45 Prohibited masters**

(1) Without prejudice to the generality of his powers under section 44(1) to refuse to grant an overseas master fishing licence, the Director may refuse to grant such a licence to any person to whom the Director reasonably believes any of the things mentioned in section 44(7) applied at any time during the preceding 5 years.

(2) The Director may in the circumstances mentioned in subsection (3) by written notice given to any person prohibit that person from being master-

- (a) of any Falkland Islands fishing vessel or from being in charge of fishing operations on that fishing vessel during any time a licence or permit under this Ordinance is held in respect of that fishing vessel; or
- (b) of any non-Falkland Islands fishing vessel or from being in charge of fishing operations on that fishing vessel at any time it is within the fishing waters.

The making of a prohibition under this subsection, and the period for which it has effect, shall be published in the Gazette.

(3) The circumstances referred to in subsection (2) are that there applies in respect of that person any of the things mentioned in section 44(7) which would, if that person held an overseas master fishing licence, enable the Director to revoke that licence.

(4) A person who contravenes a prohibition imposed under subsection (2) commits an offence.

(5) A person commits an offence who employs another person as master or person in charge of fishing operations-

- (a) on any fishing vessel within the fishing waters;
- (b) upon any Falkland Islands fishing vessel,

while-

- (i) a licence or permit under this Ordinance is held in respect of that vessel; and
- (ii) that person is the subject of a prohibition under subsection (2) of this section.

(6) A prohibition under subsection (2) shall have effect for such period as is stated therein, not being greater than 5 years from the happening of the thing in respect of which the prohibition was made.

### *Trans-shipment and export licences*

#### **46 Trans-shipment licences and export licences**

(1) A person who, except as may be provided by regulations-

- (a) trans-ships fish in the fishing waters other than under and in accordance with the conditions of a licence granted under subsection (2);
- (b) exports fish from the Falkland Islands other than under and in accordance with the conditions of a licence granted under subsection (3),

commits an offence.

(2) The Director may, subject to the payment of such fee, if any, as is prescribed, grant a trans-shipment licence to the owner, charterer or operator of-

- (a) a fishing vessel from which fish is to be transferred; or
- (b) a fishing vessel or other vessel by which fish is to be received.

(3) The Director may, subject to the payment of such fee, if any, as is prescribed, grant an export licence to-

- (a) the owner, charterer or operator of a fishing vessel on board which the fish is to be exported;

- (b) the owner or charterer of a specified aircraft on board which the fish is to be exported.
- (4) The Director may impose conditions consistent with the purposes of this Ordinance on the grant of a licence under subsection (2) or subsection (3).
- (5) The holder of a licence granted under subsection (2) or subsection (3) and the master of any fishing vessel or the commander of any aircraft to which it relates shall make such returns and provide such statistical information to the Director as he may require or may be prescribed by regulations.

### *Fish receiver permits*

#### **47 Fish receiver permits**

- (1) Subject to subsection (2), this section applies in respect of the receipt of fish from any fishery mentioned in Schedule 2.
- (2) This section does not apply in respect of-
  - (a) the receipt by any person on any one occasion of a quantity of not more than 30 kilograms of fish intended for consumption upon his own premises;
  - (b) fish purchased or received from a person who himself has a fish receiver licence;
  - (c) the receipt of fish under a trans-shipment licence or export licence granted under section 46.
- (3) The Director may, on application being made in the approved form, and upon payment of the prescribed fee (if any), grant to a person a fish receiver permit authorising that person to receive fish from a person engaged in fishing in the fishery or fisheries specified in the application.
- (4) An application for a fish receiver permit shall provide the Director with such information as he reasonably requires for proper consideration of the application.
- (5) No compensation shall be payable if the fish receiver permit is revoked, ceases to be in force or ceases to apply to a fishery in respect of fish taken in a particular fishery or fisheries.
- (6) A fish receiver permit-
  - (a) may be granted subject to such conditions as are specified in the permit;
  - (b) may specify premises at which fish received under the permit are to be kept while in the possession of the holder;
  - (c) comes into force on the date specified in the permit, and if no date is specified comes into force on the date on which it is granted; and
  - (d) subject to this Ordinance, remains in force until the earlier of the date specified in the permit or the first anniversary of the date on which it came into force.

(7) Without prejudice to any provisions of regulations made under section 223, the Director may by written notice to the holder of a fish receiver permit require that person-

- (a) to provide to him in writing, within 14 days or such longer period as is specified in the notice, such return or information in relation to fish received by that person as is specified in the notice; and
- (b) to verify that return by statutory declaration.

(8) A person commits an offence who-

- (a) receives any fish in contravention of this section; or
- (b) fails without reasonable excuse to comply with a requirement of the Director made in accordance with subsection (7).

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

## **Division D - Miscellaneous provisions**

### **48 Authority to extend to tender boats**

Where the use by a person of a specified fishing vessel is authorised by a fishing licence, high seas fishing licence or scientific permit the authority to use that fishing vessel extends to the use of any tender boat carried by the first-mentioned fishing vessel.

### **49 Holders of fishing concessions to furnish returns etc**

(1) Regulations made under section 223 may require the holders of fishing concessions to record, and furnish returns containing, information in relation to-

- (a) the taking of fish and the sale or disposal of such fish;
- (b) the carrying and trans-shipping, unloading or discharging of fish taken;
- (c) the processing of fish taken;
- (d) the sale or other disposal of fish taken, whether processed or not; and
- (e) the course, or position at regular intervals, inside or outside the fishing waters of fishing vessels to which the fishing concessions relate.

(2) In subsection (1)(d) of this section "**disposal**" includes the return of fish to the sea, dumping fish on land and incinerating fish, whether at sea or on land.

(3) It is a condition of a fishing concession that the holder of the fishing concession shall comply with the requirements of any regulations made by virtue of subsection (1).

### **50 High seas fishing licence condition to facilitate boarding outside fishing waters**

(1) It is a condition of a high seas fishing licence authorising the use of a Falkland Islands-fishing vessel upon the high seas that the master of the fishing vessel, except as may otherwise be authorised by the Governor acting in his discretion, shall-

- (a) facilitate boarding of the fishing vessel; and

- (b) co-operate with inspection of the fishing vessel,

by any official of any country acting in accordance with the provisions of an international agreement or convention which applies to the Falkland Islands.

(2) A master who contravenes the condition mentioned in subsection (1) commits an offence.

## **51 Temporary orders**

(1) The purpose of this section is to enable speedy action to be taken by the Governor acting in his discretion to deal with-

- (a) emergencies;
- (b) other circumstances where urgent action is required for purposes related to the management of a fishery; or
- (c) to ensure compliance by the Falkland Islands with an international agreement or convention applying to the Falkland Islands and relating to fishing or fish.

(2) If the Governor acting in his discretion is satisfied after taking into account any views expressed to him by the Director-

- (a) that it is necessary to take action for the purposes of this section; and
- (b) that the action contemplated is consistent with the purposes of this Ordinance,

the Governor may make an Order under this subsection.

(3) An Order under subsection (2) may be made with respect to any matter directly or indirectly connected with fishing-

- (a) in a fishery;
- (b) in relation to Falkland Islands fishing vessels, upon the high seas; or
- (c) any matter incidental to (a) or (b).

(4) The Governor may at any time by Order revoke an Order made under subsection (2).

(5) Unless it is extended by Order made by the Governor under this subsection, an Order made under subsection (2) ceases to have effect-

- (a) on a date specified in the Order made under subsection (2);
- (b) on being revoked pursuant to subsection (4); or
- (c) at the expiry of 3 months after the Order is made,

whichever is the earliest.

(6) To the extent that an Order under subsection (2) or (5) is inconsistent with any provision of a fishing concession or fish receiver permit, the Order overrides that provision and, to that extent, that provision has no effect, but when the Order ceases to have effect, any provision overridden by the Order is, subject to this Ordinance, and unless otherwise provided by regulations, revived.



**PART III  
REGISTERS AND DEALINGS**

**Division A - Registers**

*Individual Transferable Quota and Provisional Quota Ownership Registers*

**52 Individual Transferable Quota Ownership Register**

(1) There shall be an Individual Transferable Quota Ownership Register in respect of every fishery in respect of which Individual Transferable Quota has been granted.

(1A) The Individual Transferable Quota Ownership Register under subsection (1) must be divided into the following parts —

- (a) Part A, for entries in respect of Individual Transferable Quota A;
- (b) Part B, for entries in respect of Individual Transferable Quota B.

*[S. 20/Ord. 9/21/w.e.f. 01/10/21.]*

(2) The Director must register in the relevant part of an Individual Transferable Quota Ownership Register —

*[S. 20/Ord. 9/21/w.e.f. 01/10/21.]*

- (a) sufficient particulars of the grant of any Individual Transferable Quota in that fishery, including a grant of Individual Transferable Quota made by way of conversion of Provisional Quota;
- (b) sufficient particulars of every surrender of Individual Transferable Quota in that fishery delivered to him;
- (c) particulars of any lawful transfer of Individual Transferable Quota in that fishery delivered to him for registration pursuant to section 17B(2) or 21(7) and-

*[S. 20/Ord. 9/21/w.e.f. 01/10/21.]*

- (i) the names of the transferor and the transferee;
- (ii) the time and date of the registration of the transfer;
- (d) the aggregate holding of Quota held by each company;
- (e) particulars of any mortgage of Individual Transferable Quota in that fishery delivered to him pursuant to section 60(1) and-
  - (i) the names of the mortgagor and the mortgagee;
  - (ii) the time and date of the registration of the mortgage;
  - (iii) the number of Quota shares secured by the mortgage;
  - (iv) every variation of the terms of the mortgage;
  - (v) every assignment of the mortgage; and

- (vi) the time and date of the discharge of the mortgage;
- (f) particulars of any memorandum of variation of a mortgage of Individual Transferable Quota or Provisional Quota registered pursuant to section 60(6);
- (g) every caveat registered in respect of any Individual Transferable Quota or quota shares under section 59 or section 70-
  - (i) the names of the caveator and Individual Transferable Quota owner over whose quota shares the caveat is registered;
  - (ii) the time and date of the registration of the caveat;
  - (iii) the number of quota shares over which the caveat is registered;
  - (iv) the type of caveat being imposed;
  - (v) the date (if any) on which the caveat will lapse; and
  - (vi) the date on which the caveat is withdrawn;
- (h) every revocation of the grant or forfeiture of Individual Transferable Quota under this Ordinance, including-
  - (i) the time and date of the registration of the resulting transfer to the Crown of the quota; and
  - (ii) the number of quota shares transferred to the Crown;
- (i) such other matters as may be required to be registered by regulations made under section 223 of this Ordinance.

### **53 Provisional Quota Ownership Register**

- (1) There shall for every fishery in respect of which Provisional Quota has been granted be a Provisional Quota Ownership Register.
- (2) The Director shall register in a Provisional Quota Ownership Register-
  - (a) sufficient particulars of the grant of any Provisional Quota in that fishery;
  - (b) sufficient particulars of every surrender of Provisional Quota in that fishery delivered to him;
  - (c) the aggregate holding of Quota held by each company by way of Provisional Quota;
  - (d) particulars of every conversion of Provisional Quota in that fishery to Individual Transferable Quota B in that fishery;

*[S. 21/Ord. 9/21/w.e.f. 01/10/21.]*

- (e) the names of the companies to which, in relation to any Provisional Quota, Catch Entitlement generated in relation to that Provisional Quota may be transferred and held by such companies.

## *Fishing Effort Value and Catch Entitlement Registers*

### **54 Fishing Effort Value Register**

- (1) The Director shall maintain a Fishing Effort Value Register.
- (2) The Director shall register in the Fishing Effort Value Register-
  - (a) all Fishing Effort Values assigned to fishing vessels whether on application under section 40(1) or of his own motion;
  - (b) in relation to each fishing vessel appearing in the Register-
    - (i) the characteristics of that fishing vessel;
    - (ii) the target species;
    - (iii) the method of fishing,taken into account under section 40.
- (3) Where any alteration is made to any fishing vessel in relation to any of the characteristics notified to the owner of a fishing vessel under section 40(3)(b), the owner shall as soon as reasonably possible, and in any case before any further fish from a quota management stock is taken by that fishing vessel, notify the Director in writing of the alteration and furnish him with full particulars of it.
- (4) A person who contravenes subsection (3) commits an offence.
- (5) The Director may from time to time, whether as a result of a notification or for any other reason which in his opinion renders it desirable to do so (including the fishing vessel taking more or less fish than the Fishing Effort Value assigned to it would predicate) alter the Fishing Effort Value of any fishing vessel and shall amend the Register maintained under subsection (1) accordingly.
- (6) Whenever the Director, pursuant to subsection (5), notifies an increase in the Fishing Effort Value assigned to any fishing vessel, he may vary any permit or licence held by that fishing vessel as he thinks necessary so as to reduce the quantity of fish that the fishing vessel is permitted to take under that permit or licence to the quantity it would have been able to take if it had its formerly assigned Fishing Effort Value.

### **55 Catch Entitlement Register**

- (1) The Director shall maintain a Catch Entitlement Register in respect of every fishery in respect of which Individual Transferable Quota or Provisional Quota has been granted.
- (1A) The Catch Entitlement Register maintained under subsection (1) must be divided into the following Parts —
  - (a) Part A, for entries of Catch Entitlement in respect of fisheries in respect of which Individual Transferable Quota A has been granted;

- (b) Part B, for entries of Catch Entitlement in respect of fisheries in respect of which Individual Transferable Quota B has been granted.

*[S. 22/Ord. 9/21/w.e.f. 01/10/21.]*

(2) The Director must register in the relevant Part of a Catch Entitlement Register —

*[S. 22/Ord. 9/21/w.e.f. 01/10/21.]*

- (a) every Catch Entitlement held by any person at any time;
- (b) the amount of Catch Entitlement generated under section 37 or section 38, and held by any person;
- (c) every registered transfer of Catch Entitlement and-
  - (i) the names of the transferor and transferee; and
  - (ii) the amount in fishing effort or in weight of the Catch Entitlement transferred; and
  - (iii) the time and date of the registration;
- (d) every caveat registered in respect of Catch Entitlement under section 70 and-
  - (i) the names of the caveator and the Catch Entitlement owner over whose Catch Entitlement the caveat is registered;
  - (ii) the time and date of the registration of the caveat;
  - (iii) the amount in fishing effort or in weight of Catch Entitlement in respect of which the caveat is registered;
  - (iv) the type of caveat imposed;
  - (v) the date (if any) on which the caveat will lapse; and
  - (vi) the date on which the caveat is withdrawn;
- (e) every forfeiture of Catch Entitlement under this Ordinance, including-
  - (i) the time and date of the registration of the resulting transfer to the Crown of the Catch Entitlement;
  - (ii) the amount of fishing effort of Catch Entitlement transferred to the Crown; and
- (f) such other matters as may be required by regulations made under section 223.

(3) Each Catch Entitlement Register shall in relation to each Catch Entitlement registered therein contain the last known postal address of the Catch Entitlement owner and of any person having a registered interest in that Catch Entitlement.

(4) The Director must not register any transfer of any Catch Entitlement generated under section 37 or section 38 —

- (a) in respect of any Individual Transferable Quota A unless the company is registered on Part A or Part B of the Individual Transferable Quota Eligibility Register in respect of the fishery concerned;

- (b) in respect of Individual Transferable Quota B, unless the company is registered on Part B of the Individual Transferable Quota Eligibility Register in respect of the fishery concerned; or
- (c) in relation to any Provisional Quota, unless the company is registered under section 53(2)(e) in the Provisional Quota Ownership Register relating to the fishery concerned.

[S. 22/Ord. 9/21/w.e.f. 01/10/21.]

(5) Any transfer of Catch Entitlement that contravenes subsection (4) is void.

[S. 22/Ord. 9/21/w.e.f. 01/10/21.]

(6) ...

[S. 22/Ord. 9/21/w.e.f. 01/10/21.]

## **56 General provisions in relation to Registers**

(1) The Director may delegate the performance of any of his functions in relation to any Register to any public officer in the Department of Fisheries.

(2) Subject to any Order under section 215, every Register shall be maintained at the Department of Fisheries.

(3) Notice of any kind of trust relating to an Individual Transferable Quota, Provisional Quota or Catch Entitlement is not receivable by the Director and shall not be entered upon any Register maintained for the purposes of this Ordinance.

(4) The Director may close any Register maintained under this Ordinance-

- (a) for a period not exceeding 72 hours;
- (b) for a period exceeding 72 hours after consulting such persons or organisations as the Director considers to be representative of the classes of owners of the Individual Transferable Quota, Provisional Quota or Catch Entitlements affected by the closure,

but before doing so, the Director shall, if practicable, publicly notify the proposed closure.

(5) The Director shall, subject to any Order under section 215, receive documents for registration during ordinary office hours of the Department of Fisheries within any period a Register is closed under subsection (4), but is not obliged to register or cause to be registered any documents received during that period which if not so registered shall be registered immediately the Register is re-opened and before any other documents received after the Register is re-opened are registered therein.

## **Division B - Dealings**

### ***Transfers and mortgages***

## **57 Transfer of Individual Transferable Quota**

(1) A transfer of quota shares shall not be registered if-

- (a) at the time of the presentation of the transfer for registration, the transferor is not registered as the owner of the Individual Transferable Quota or as a mortgagee whose name appears on the Approved Mortgagees Register;
- (b) the quota shares or Individual Transferable Quota of which they form part sought to be transferred are subject to any caveat or mortgage registered under the provisions of this Ordinance;
- (c) the name of the transferee —
  - (i) in respect of Individual Transferable Quota A, does not appear on Part A or Part B of the Individual Transferable Quota Eligibility Register;
  - (ii) in respect of Individual Transferable Quota B, does not appear on Part B of the Individual Transferable Quota Eligibility Register;

*[S. 23/Ord. 9/21/w.e.f. 01/10/21.]*

- (d) the transfer would cause a contravention of section 58;
- (e) the transfer would result in the number of quota shares in the quota management stock concerned owned by the transferee exceeding the prescribed percentage;
- (f) the fee, if any, prescribed as payable on registration of the transfer remains unpaid.

(2) Subject to subsection (1) a transfer of part of an Individual Transferable Quota may be registered.

(3) For the purposes of subsection (1)(d) a transfer would result in an impermissible Catch Entitlement if as a result of the transfer either the transferor or transferee would own less than one thousandth (or such other fraction as is prescribed by regulations) of the aggregate Individual Transferable Quota in the fishery in question.

(4) A transfer of Individual Transferable Quota to any person is void if it is to any person other than a company the name of which —

- (a) in respect of Individual Transferable Quota A, is registered upon Part A or Part B of an Individual Transferable Quota Eligibility Register; or
- (b) in respect of Individual Transferable Quota B, is registered upon Part B of an Individual Transferable Quota Eligibility Register.

*[S. 23/Ord. 9/21/w.e.f. 01/10/21.]*

(5) A transfer has no effect to transfer Individual Transferable Quota unless it is registered.

(6) In subsection (1)(e), "**prescribed percentage**" has the same meaning as it has under section 58(1)(c).

## **58 Domination of fishing sector**

(1) In this section-

- (a) a person is connected to another person if under the provisions of section 208 read with section 210 of the Taxes Ordinance 1997 he would be taken to be connected with that person;
- (b) "**divest**" means-
  - (i) to dispose of to another or to others by way of transfer of Individual Transferable Quota or Catch Entitlement not resulting in a contravention of subsection (2);
  - (ii) to surrender such Individual Transferable Quota or Catch Entitlement to the Crown; or
  - (iii) to transfer shares in a company or companies,
 and so as to bring to an end a contravention of subsection (2);

[S. 4/Ord. 1/22/w.e.f. 31/01/22.]

- (c) "**prescribed percentage**" means such percentage as is for the time being prescribed by regulations for the purpose of this section of —
  - (i) the total Individual Transferable Quota of a quota management stock;
  - (ii) the total Individual Transferable Quota of a fishery;
  - (iii) Catch Entitlement generated in relation to the Individual Transferable Quota of a quota management stock; or
  - (iv) the total Catch Entitlement generated in relation to the Individual Transferable Quota of a fishery; and

[S. 4/Ord. 1/22/w.e.f. 31/01/22.]

- (d) "**a person**" does not include the Crown.

(2) Subject to the provisions of any regulations to the contrary, a grant or disposal of Individual Transferable Quota or Catch Entitlement is prohibited if it has the effect that in aggregate more than the prescribed percentage ("the aggregation limit") of Individual Transferable Quota or Catch Entitlement in relation to a stock or a fishery is owned or controlled by a person or by that person and persons who are associated or connected persons in relation to that person and a grant of Provisional Quota is prohibited if the grantee, as a result of such grant would, subject to performance of the conditions of that grant become entitled to a grant of Individual Transferable Quota which would exceed the aggregation limit.

[S. 4/Ord. 1/22/w.e.f. 31/01/22.]

(3) The Director shall, if he believes that a transfer in contravention of subsection (2) has taken place, serve a notice ("**a divestment notice**")-

- (a) requiring the person or that person and the associated or connected persons (as the case may be) within such period, not being less than 90 days as is stated in the notice, or such longer period, not exceeding 180 days from the service of the notice, as the Director may subsequently agree in writing, to divest himself or themselves of ownership or control of so much of the Individual Transferable Quota or Catch Entitlement as to result in the aggregate Individual Transferable Quota or Catch Entitlement owned by that person or by that person and persons who are associated or

connected persons in relation to that person becoming equal to or less than the prescribed percentage; and

- (b) stating the ground or grounds for the belief of the Director.

*[S. 24/Ord. 9/21/w.e.f. 01/10/21.] [S. 4/Ord. 1/22/w.e.f. 31/01/22.]*

(3A) Where a divestment notice is served under subsection (3), the Director must enter a caveat against the transfer of so much of the Individual Transferable Quota or Catch Entitlement of the relevant owner as the divestment notice relates to —

- (a) Individual Transferable Quota A, in Part A or Part B of the Individual Transferable Quota Ownership Register or of the Catch Entitlement Register; or
- (b) Individual Transferable Quota B, in Part B of the Individual Transferable Ownership Register or of the Catch Entitlement Register.

*[S. 24/Ord. 9/21/w.e.f. 01/10/21.] [S. 4/Ord. 1/22/w.e.f. 31/01/22.]*

(4) If, after taking into account any extension of time granted by the Director under subsection (3), the person or persons on whom a divestment notice is served fails or fail to comply with its requirements within the time allowed the Director shall-

- (a) serve upon that person or those persons a further notice —
  - (i) notifying that so much of the Individual Transferable Quota or Catch Entitlement under its or their ownership or control as exceeds the prescribed percentage (“the excess”) is forfeit to the Crown pursuant to subsection (5);
  - (ii) stating the amount of Individual Transferable Quota or Catch Entitlement concerned;
- (b) register in the relevant Part of the Individual Transferable Quota Ownership Register or the Catch Entitlement Register the transfer in respect of so much of the Individual Transferable Quota or Catch Entitlement as is not forfeit to the Crown pursuant to subsection (5) or, as the case may be, amend those Registers so as to show ownership by the owner in question of only so much Individual Transferable Quota or Catch Entitlement as is not forfeit under subsection (5).

*[S. 24/Ord. 9/21/w.e.f. 01/10/21.] [S. 4/Ord. 1/22/w.e.f. 31/01/22.]*

(5) On service of a notice under subsection (4) the excess is forfeit to and vested in the Crown without liability for payment of compensation.

## **59 Registration of caveat on behalf of Crown**

(1) If the Director has served a notice of revocation of grant under section 33(2) he shall cause a caveat to be entered in relation to the Individual Transferable Quota or Provisional Quota concerned in the appropriate Register.

(2) Any caveat directed to be registered under subsection (1) shall remain on the Register until removed by a direction of the Director or order of the Supreme Court.



## **60 Mortgages of Individual Transferable Quota**

(1) Except as otherwise provided by this Ordinance, any Individual Transferable Quota or quota shares comprised in it may be mortgaged by deed registered in the Individual Transferable Quota Register.

(2) A mortgage by way of transfer or assignment of Individual Transferable Quota shall not be made and a mortgage thereof shall only be made by way of charge thereon.

(3) A mortgagee may assign to another person a mortgage and the mortgagee's rights, interests and obligations under that mortgage by a memorandum of assignment in the approved form.

(4) No such assignment shall have effect until it is registered in the Individual Transferable Quota Register.

(5) Without limiting the covenants, conditions and powers that may, by agreement between the mortgagor and the mortgagee, be contained in a mortgage of an Individual Transferable Quota or quota shares comprised therein, such a mortgage shall confer on the mortgagee, in the event of default by the mortgagor in the performance of any covenant by, or obligation on the part of, the mortgagor contained or implied in the mortgage, the power to sell the Individual Transferable Quota, in whole or in part.

(6) A mortgage may be varied by a memorandum in writing executed by the parties to the mortgage, but no such variation shall have effect until it has been registered in the Individual Transferable Quota Register.

## **61 Mortgages to be to approved mortgagees only**

(1) A mortgage of an Individual Transferable Quota is of no effect so as to confer any security or power upon the mortgagee unless the mortgagee has been approved under this section and the name of the mortgagee appears on the Approved Mortgagees Register on the date on which the mortgage was executed.

(2) The Governor may on application in writing containing such particulars as are prescribed approve, or as he sees fit refuse to approve, any company to be a mortgagee of Individual Transferable Quota or of quota shares comprised therein.

(3) The Director shall maintain an Approved Mortgagees Register in which the Director register particulars of the name and principal place of business of every company which has been approved by the Governor under subsection (2).

(4) A mortgage of an Individual Transferable Quota to a person who is not a company the name of which appears on the Approved Mortgagees Register does not have effect to confer any security upon the lender over the quota to which it relates.

## *Enforcement of mortgages*

### **62 Restriction on exercise of mortgagee's power of sale**

(1) A mortgagee cannot exercise his power of sale-

- (a) if the Individual Transferable Quota is subject to a Crown caveat registered under section 58; or
- (b) so as to dispose of the Individual Transferable Quota to any person whose name does not appear on the Individual Transferable Quota Eligibility Register,

and any purported disposition which contravenes this subsection is void and of no effect.

(2) A power conferred by any mortgage to sell any Individual Transferable Quota shall not become or be deemed to have become exercisable because of-

- (a) any default in the payment of any money secured by that mortgage; or
- (b) any default in the performance or observance of any covenant expressed or implied in the mortgage,

unless and until the mortgagee serves on the mortgagor a notice complying with this section: provided that a notice which does not comply with subsection (3) shall not for that reason only be void if the failure to comply with that subsection does not materially prejudice the interests of the mortgagor.

(3) Every notice required by subsection (2) shall-

- (a) be in writing;
- (b) shall inform the mortgagor of-
  - (i) the nature and extent of the default complained of;
  - (ii) the date by which the mortgagor is required to remedy the default, if the default is capable of remedy; and
  - (iii) the rights that the mortgagee will be entitled to exercise if the default is not remedied within the stated period.

(4) The date stated pursuant to subsection (3)(b)(ii) shall not be less than 1 month from the date of service of the notice.

(5) In addition to giving the notice required by subsection (2), if the Individual Transferable Quota is subject to any caveat registered under this Ordinance, the mortgagee shall immediately after serving notice upon the mortgagor serve a copy of the notice on each caveator, but failure to do so does not of itself prevent any of the powers referred to in subsection (2) becoming or being deemed to have become exercisable and does not prevent any money secured by the mortgage from becoming or being deemed to have become payable.

(6) For the purposes of subsection (2), entering into a contract to sell, or the granting of an option to purchase, Individual Transferable Quota shall not be regarded as the exercise of a power of

sale if the contract or option is expressed to be conditional on the failure by the mortgagor to remedy a default specified in a notice under this section served either before or after the contract is entered into or the option is granted, as the case may be.

(7) A mortgagee who exercises a power of sale of Individual Transferable Quota owes a duty to the mortgagor to take care to obtain the best price reasonably obtainable.

(8) The effect of subsection (7) cannot be excluded by contract between the parties to any mortgage or in any other manner whatsoever and notwithstanding any enactment or rule of law or anything contained in any deed or instrument by or under which the power of sale is conferred-

- (a) it is not a defence to proceedings against a mortgagee for a breach of the duty imposed by subsection (7) that the mortgagee was acting as the mortgagor's agent or under a power of attorney from the mortgagor;
- (b) a mortgagee is not entitled to compensation or indemnity from the mortgaged Individual Transferable Quota or mortgaged quota shares or the mortgagor in respect of any liability incurred by the mortgagee arising from a breach of the duty imposed by subsection (7).

### **63 Court may permit mortgagee to exercise power of sale before period expired**

(1) The Supreme Court may, on the application of a mortgagee made ex parte or otherwise as the Supreme Court thinks fit, grant leave to the mortgagee to exercise any of the powers of the mortgagor of the Individual Transferable Quota the subject of the mortgage at any time before the date specified in the notice served on the mortgagor under section 62(2).

(2) Leave granted under subsection (1) may be granted either unconditionally or upon and subject to such conditions as the Supreme Court thinks fit.

### **64 Restriction on action to recover deficiency**

(1) If at any time the mortgagee exercises the power of sale the amount realised is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the amount of the deficiency, or any part of the deficiency, shall be commenced by the mortgagee against any person (other than the mortgagor of the Individual Transferable Quota or quota shares comprised therein at the time of the exercise of the power of sale) unless the mortgagee, at least one month before the exercise of the power of sale, serves on that person notice of the mortgagor's intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount realised being less than the amount owing under the covenant to repay.

(2) The Supreme Court may on the application of a mortgagee made ex parte or otherwise as the Supreme Court thinks fit, waive wholly or in part the one month period referred to in subsection (1).

(3) The effect of subsection (1) cannot be excluded by contract between the parties or, subject to subsection (2), in any other manner whatsoever.

## **65 Application of proceeds of sale**

The proceeds of any sale by a mortgagee pursuant to any power of sale of an Individual Transferable Quota shall be applied-

- (a) firstly, in payment of the costs and expenses of and occasioned by the sale;
- (b) secondly, in payment of any sum then due and owing to the mortgagee under or by virtue of the mortgage;
- (c) thirdly, in payment of any sum then due and owing from the mortgagor to the Crown in respect of fees and levies payable to the Crown under this Ordinance; and
- (d) fourthly, in payment of any surplus to the mortgagor.

## **66 Transfer by mortgagee**

(1) Upon the registration of any transfer executed by a mortgagee for the purpose of the sale of any Individual Transferable Quota or quota shares comprised therein by the mortgagee, ownership of the Individual Transferable Quota, subject to section 61(1), passes to and vests in the purchaser, freed and discharged from any liability under or by virtue of the mortgage.

(2) Upon registration of such a transfer in the Individual Transferable Quota Register, every caveat in respect of the Individual Transferable Quota or the quota shares the subject of the transfer being transferred lapses and the ownership of the Individual Transferable Quota or that part passes to and vests in the purchaser, freed and discharged from the interest claimed by the caveator.

(3) The Director shall cause to be made in the Individual Transferable Quota Register any entry necessary to show that the mortgage has been discharged and that all caveats have lapsed in respect of the Individual Transferable Quota or quota shares comprised therein transferred.

(4) If a mortgagee gives a receipt in writing in respect of any money arising under an exercise of the power of sale conferred by this Division, or any money or securities comprised in or arising under the mortgagee's mortgage, the receipt is a sufficient discharge for that money or for those securities, and a person paying or transferring the money or securities shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred.

## **67 Discharge of mortgage**

(1) The mortgagee shall execute a memorandum of discharge of the mortgage-

- (a) upon the sum secured by it being wholly paid off; or
- (b) if for any other reason the mortgagee is bound to discharge the mortgage.

(2) A memorandum of discharge shall be in substantially the form specified in Form 6 in Schedule 1 to the Mortgages and Property Ordinance 1996, omitting so much thereof as relates to the source of funds used by the mortgagor to procure the discharge.

(3) A memorandum of discharge shall be registered in the Individual Transferable Quota Ownership Register and shall have effect in accordance with its tenor.

## **Division C - Caveats**

### **68 Types of caveat**

A caveat may, subject to section 70(2), be registered over any Individual Transferable Quota, Provisional Quota or Catch Entitlement-

- (a) at the request of any person with the consent of the owner;
- (b) by or at the direction of the Director under section 74;
- (c) at the direction or order of the Supreme Court in any civil proceedings.

### **69 Effect of caveat**

(1) While a caveat remains in force, no entry shall be made on a Register which would have the effect of mortgaging or transferring the whole or any part of the Individual Transferable Quota or Provisional Quota or transferring the whole or any part of the Catch Entitlement to which the caveat relates, but nothing in this subsection applies to a transfer by a mortgagee to which section 66(1) applies.

(2) Subsection (1) does not prevent the registration of an entry if the caveator consents to that entry and the consent relates to-

- (a) a transfer of the whole or a part of the Individual Transferable Quota or Catch Entitlement and constitutes a withdrawal of the caveat in respect of the property transferred; or
- (b) a mortgage of the whole or part of the Individual Transferable Quota the subject of the caveat.

### **70 Caveat against transfer of Individual Transferable Quota, Provisional Quota or Catch Entitlement**

(1) If-

- (a) the owner of the Individual Transferable Quota, Provisional Quota, or Catch Entitlement concerned and any other person jointly lodge a caveat with the Director;
- (b) a court directs or orders that a caveat be lodged; or
- (c) the Director enters a caveat or causes a caveat to be lodged under section 58(3) or 74,

the Director shall, if the caveat meets all the requirements of this Ordinance for registration, cause that caveat to be registered under section 79 against the Individual Transferable Quota, Provisional Quota or Catch Entitlement, as the case may be.

(2) Except as otherwise provided by this Ordinance, the Director shall only cause a caveat to be registered under subsection (1)(a) if the Individual Transferable Quota, Provisional Quota or Catch Entitlement is not already subject to any other caveat registered under this Ordinance.

## **71 Caveat may be withdrawn**

(1) Any caveat may, either as to the whole or any part of an Individual Transferable Quota, Provisional Quota or Catch Entitlement protected by the caveat be withdrawn by the person whose interests are protected by the caveat or by the person's attorney or agent under a written authority.

(2) Every withdrawal of a caveat shall be in the approved form.

(3) If the caveat is registered for a period stated at the time of registration, the caveat lapses at the expiration of that period.

## **72 Order of court for removal of caveat**

(1) This section does not apply to caveats imposed under section 74.

(2) The owner of Individual Transferable Quota, Provisional Quota or Catch Entitlement against which a caveat has been registered may apply to the Supreme Court for an order that the caveat shall be removed.

(3) The Supreme Court, if satisfied that at least 3 working days' notice in writing of the application has been given to the caveator or the person on whose behalf the caveat was registered, or that that person has in writing waived such notice, may-

(a) order that the caveat be removed-

(i) entirely;

(ii) in part; or

(iii) in respect of a particular transaction;

(b) impose such sureties and other conditions as it thinks fit; and

(c) make such other orders in respect of the caveat as it thinks fit.

## **73 Person entering or maintaining caveat without due cause liable in damages**

Any person who lodges a caveat and who, when that caveat is no longer needed to protect any interest of the caveator, fails, without reasonable cause, to withdraw that caveat as soon as reasonably practicable after having been requested to do so by any person prejudicially affected by the caveat, is liable in damages for any loss or damage suffered by any person as a result of the failure to withdraw the caveat.

## **74 Crown caveats preventing registration of transactions**

(1) If-

(a) a company has been charged with an offence under sections 127(2), 136, 137(1), 138(1), 167(1), 168(1) or 172(1);

and conviction for that offence may result in forfeiture of Quota under section 173; or

- (b) the Director believes on reasonable grounds that any company has committed such an offence,

the Director may cause a caveat to be registered under this Ordinance in respect of any Individual Transferable Quota owned by that person at the time of the entry of the caveat, and the caveat may apply to a number of quota shares not exceeding the whole Individual Transferable Quota or to the whole Individual Transferable Quota, and if he causes a caveat to be registered he shall forthwith give written notice thereof to the owner of the Individual Transferable Quota.

(2) The Supreme Court may at any time, on application by the owner of any quota order that any caveat registered in accordance with subsection (1) shall not apply in respect of the quota or any part of the quota whether generally or in respect of any specified dealing in the quota and any such Order may be subject to such sureties and conditions as the Supreme Court may specify.

(3) A caveat registered in accordance with subsection (1)(a) shall have effect until all proceedings in respect of the relevant offence have been finally determined.

(4) A caveat registered in accordance with subsection (1)(b) shall have effect until the later of-

- (a) the expiry of 30 days from the date of the registration of the caveat; and
- (b) where proceedings for an offence to which subsection (1)(a) applies are commenced within that period of 30 days, the final determination of all proceedings in respect of that offence.

(5) Where a caveat has been registered under subsection (1)(a) or (b) and it is decided subsequently-

- (a) not to institute proceedings for an offence to which subsection (1)(a) relates; or
- (b) to abandon any such proceedings which have been commenced,

the Director shall forthwith cause any caveat registered under subsection (1) to be cancelled.

## **Division D - Registration procedure and correction of Registers**

### ***Registration procedure***

#### **75 Transactions not effectual until registered**

No transaction has any effect for any of the purposes of this Ordinance until it is registered in accordance with this Part.

#### **76 When transactions deemed registered**

Every transaction registered under this Ordinance shall be deemed to have been registered for the purposes of this Ordinance at the time recorded in the Register as the time at which the transaction was registered.

## **77 Application for registration**

Every application to register a transaction shall-

- (a) be made by presenting to the Director an instrument in such form as is approved or prescribed, if any;
- (b) contain such particulars as are specified in that form (if any) or are prescribed;
- (c) be executed in such manner, if any, as is specified in the approved form or is prescribed; and
- (d) be accompanied by the prescribed fee, if any.

## **78 Priority according to time of registration**

(1) Instruments presented for registration under this Ordinance shall be registered in the order in which they are received for registration or by regulations to be treated as received for registration and, for that purpose, that order shall be in accordance with the dates and times recorded by the Director or by any public officer charged by an Order under section 215 with the duty of maintaining the Register as the date and time when the instruments were received.

(2) Regulations under this Ordinance may prescribe when an instrument is to be treated as received for registration.

## **79 Registration procedure**

On receipt of an application that complies with section 77 and is completed to the satisfaction of the Director, the Director shall-

- (a) record in the appropriate Register the particulars set out in the instrument required by this Ordinance to be registered and the date on which and time at which the particulars are so recorded;
- (b) issue a registration notice as to the particulars recorded under paragraph (a);
- (c) forward the registration notice to the person who presented the instrument for registration and forward copies of the notice to each of the other parties to the transaction;
- (d) if the instrument registered is a caveat in relation to any Individual Transferable Quota, Provisional Quota or Catch Entitlement, give notice of the registration of the caveat to the owner (if not otherwise notified) and any mortgagee and to any other caveator of that Individual Transferable Quota, Provisional Quota or Catch Entitlement.

## **80 Procedure relating to defective applications for registration**

(1) If-

- (a) any document relating to a transaction lodged for registration; or
- (b) any document presented for registration together with any other documents,



is found not to be in order for the purposes of registration, the Director may return that document or those documents to the person by whom they were lodged or, if that person is not available, to such other person as may, in the opinion of the Director, be entitled to receive them.

(2) Before returning any documents in accordance with subsection (1), the Director shall cause a copy to be made of that document and cause that copy to be filed in his office.

(3) If any document is returned as provided in subsection (1), that document shall be deemed not to have been presented for registration, but any fee paid in respect of its registration shall be retained unless the Director decides otherwise.

### **81 Director not concerned with effect**

The Director is not concerned with the effect in law of any instrument lodged under this Part and the registration of the dealing does not give any effect to the instrument which it would not have if this Part had not been enacted.

## *Correction of Registers*

### **82 Application for correction of Register**

(1) A person who presents an instrument for registration under section 77 and any other person having a registered interest in the Individual Transferable Quota or Catch Entitlement to which the instrument applies may apply to the Director to correct the record on the Register of the particulars set out in the instrument on the ground that the Register does not accurately record those particulars or is incorrect for any other reason specified for the purpose in regulations made under section 223.

(2) Every application made under subsection (1) shall-

- (a) be made within 14 days after the registration notice issued under section 79(b) is forwarded to that person, or such longer period as the Director may allow;
- (b) be in the approved form, if any; and
- (c) include a copy of the registration notice issued under section 79(b) that relates to the record on the Register to which the application relates.

### **83 Correction of Register**

(1) If, upon receipt of an application under section 82, the Director is satisfied that the Register does not record accurately the particulars set out in the instrument to which the application relates or is incorrect for any other reason specified in regulations made under section 220, the Director shall correct the Register accordingly and-

- (a) record on the Register the nature of the correction and the date and time at which the correction was made; and
- (b) notify the person who made the application under section 82 and any other person whom the Director considers will be affected by the correction.

(2) If the Director is satisfied that the Register does not record accurately the particulars set out in the instrument to which the entry on the Register relates, or subject to any regulations made under section 223, is for any other reason incorrect, the Director may of his own motion, after notifying those persons whom the Director considers will be affected, correct the Register accordingly and record on the Register the nature of the correction and the time at which the correction was made.

(3) Without limiting the generality of subsection (2), the power conferred by that subsection is exercisable if-

- (a) a registration notice has been issued in error or an entry or endorsement has been made in error;
- (b) a misdescription has occurred in any entry in the Register or in any registration notice issued under section 79(b); or
- (c) an instrument has been obtained fraudulently or wrongfully, or retained fraudulently or wrongfully.

(4) Subject to subsection (5), the Director shall not make any correction to a Register under this section if to do so would, in the opinion of the Director, prejudice a purchaser for value who appears to the Director to have acted in good faith. In this subsection "**purchaser for value**" includes a mortgagee for value.

(5) Subsection (4) does not prevent the Director from correcting a Register if he is satisfied that the purchaser for value has consented in writing to the correction being made.

(6) Any person who is aggrieved by the refusal of the Director to grant an application under section 82(1) to correct a Register, or any alleged false, incorrect or misleading entry in any Register may apply to the Magistrate's Court for an order for correction of the Register concerned and the Director shall comply with any such order.

### *Evidentiary*

#### **84 Evidentiary provisions**

(1) Any Register maintained under this Ordinance is prima facie evidence of any particulars registered in it.

(2) If any such Register is wholly or partly kept by use of a computer, a document authenticated by the Director which purports to reproduce in writing all or any of the particulars comprising that Register, or that part of it, as the case may be, is admissible in any proceedings as evidence of those particulars to the full extent of the original of them.

(3) A copy or extract authenticated by the Director or from an instrument evidencing a dealing registered under this Ordinance is admissible in any proceedings to the full extent of the original.

(4) The Director, upon application and on payment of the prescribed fee, shall supply a person with an authenticated copy of or extract from an entry in the Register or an instrument evidencing a dealing registered under this Ordinance.

(5) In this section "**authenticated by the Director**" means signed by the Director or another public officer in the Department of Fisheries authorised by the Director and bearing the official seal or stamp of the Department of Fisheries.

### *Miscellaneous*

#### **85 Immunity from personal liability**

(1) Subject to subsection (2), the Director and other public officers are not liable to any action, suit or proceedings for or in respect of an act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

(2) Nothing in subsection (1) shall have effect in relation to proceedings for judicial review or an application for leave to bring proceedings for judicial review, provided that no order shall be made in such proceedings requiring the Director or any public officer personally to pay any sum to any person in respect of or arising out of any act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

(3) Where, apart from subsection (2), the Supreme Court would otherwise have had power in judicial review proceedings to order the Director or other public officer personally to pay any sum to any person, the Supreme Court shall have power, if it sees fit, to order the Crown to pay that sum to that person.

#### **86 False entries in registers etc**

A person commits an offence who-

- (a) makes, causes to be made or concurs in making a false entry in a Register; or
- (b) produces or tenders in evidence a document falsely purporting to be an instrument or a copy of or extract from an instrument lodged with the Director under this Part or to be a copy from an entry in a Register maintained under this Part.

#### **87 Provisions in relation to Registers**

(1) Any Register required or permitted to be kept under any provision of this Ordinance may be kept wholly or partly by means of a computer.

(2) Any Register kept pursuant to this Ordinance shall, subject to payment of such fee, if any, as may be prescribed, be available for inspection by the public during the usual office hours of the place at which it is kept.

(3) If a Register is kept wholly or partly by use of a computer, references in this Ordinance-

- (a) to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or part of the Register;
- (b) to particulars being registered, or entered in the Register, are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
- (c) to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

(4) The Director or any other public officer charged by an Order under section 215 with the duty of keeping the Register shall, upon request and on payment of such charge as may be prescribed, and if none such charge as may be reasonable, provide to the person requesting the same copies of and extracts from any Register referred to in subsection (1).

### *Protection of purchasers*

#### **88 Purchasers and mortgagees not to be affected by notice**

(1) A person-

- (a) who has as a bona fide purchaser for value acquired, or intends as a bona fide purchaser for value to acquire, any Individual Transferable Quota; or
- (b) who has as a bona fide mortgagee for value of Individual Transferable Quota taken, or intends as a bona fide mortgagee for value to take, a mortgage granted in accordance with this Ordinance,

is not required-

- (i) to inquire into or ascertain the circumstances in which or the consideration for which the previous owner, or as the case may be, the owner, of the Individual Transferable Quota or any predecessor in title of the previous owner or owner was or is registered; or
- (ii) to inquire as to the application of the purchase money, or of any part of it,

and, in the absence of fraud on his part, is not affected by notice, direct or constructive, of any trust or unregistered interest (and knowledge that any such trust or unregistered interest is in existence is not of itself evidence of fraud).

(2) A person-

- (a) who has acquired ownership as a bona fide purchaser for value of an Individual Transferable Quota and who is registered under this Ordinance as its owner; or
- (b) who has taken as a bona fide mortgagee for value of any Individual Transferable Quota any mortgage granted in accordance with this Ordinance and is registered as mortgagee under that mortgage in accordance with this Ordinance,

shall not be liable to-

- (i) any action or proceedings for recovery of damages; or
- (ii) be deprived of his rights as registered owner of the Individual Transferable Quota or, as the case may be, of his interest as mortgagee,

on the ground that the person from whom the registered owner acquired the Individual Transferable Quota, or as the case may be, took the mortgage-

- (aa) was registered as owner through fraud or error or under any void or voidable instrument; or
- (bb) directly or indirectly derived title from a person registered as owner through fraud or error or under any void or voidable instrument.

### *Compensation*

#### **89 Individual Transferable Quota Ownership Register: compensation for mistake or wrongdoing**

(1) This section applies to any person who-

- (a) sustains loss or damage through any omission, mistake or wrongdoing of the Director or, as the case may be, any other person, body or organisation responsible under this Ordinance for maintaining the Individual Transferable Quota Ownership Register in the exercise of functions connected with the keeping of that Register;
- (b) is deprived of the rights in respect of which the person is registered as owner or mortgagee of any Individual Transferable Quota-
  - (i) by the registration of any other person as the owner or as mortgagee, as the case may be; or
  - (ii) by any error, omission or misdescription in any record in respect of Individual Transferable Quota kept by the Director or, as the case may be, any other person body or organisation responsible for keeping the Individual Transferable Quota Ownership Register or in any entry or memorial in that Register; or
- (c) sustains any loss or damage by the wrongful inclusion in any such record of a statement about ownership or any mortgage of quota,

and who by virtue of section 88 is unable to bring proceedings in respect of that Individual Transferable Quota or that interest as owner or mortgagee, as the case may be.

(2) A person to whom this section applies may bring proceedings for recovery of damages against the Crown.

(3) The Crown Proceedings Act 1947 in its application to the Falkland Islands applies to proceedings against the Crown under subsection (2).

**PART IV**  
**RECORD-KEEPING, REPORTING, DISPOSAL OF FISH AND PROVISIONS**  
**RELATING TO TAKING AND POSSESSION OF FISH FOR PURPOSE OF SALE**

**90 References to weight of fish to be references to green weight etc**

(1) Unless otherwise expressly provided to the contrary by regulations under this Ordinance, every reference in this Ordinance to the weight of fish is to be taken to be a reference to the green weight of the fish.

(2) The Director may, by notice published in the Gazette, after consultation with such bodies or persons as the Director considers appropriate in the circumstances, set conversion factors which shall, subject to subsection (3), for all purposes (including any proceedings for an offence under this Ordinance) be used to determine the weight of any fish and such conversion factors shall be used to translate the weight of the fish in the state to which it has been processed to the green weight.

(3) The Director may, in respect of any fishing vessel on which fish is processed, having regard to the method of processing or the processing history of the fishing vessel and after consultation with the owner, charterer, operator or master of the fishing vessel, issue a certificate specifying conversion factors for that fishing vessel which shall for all purposes (including any proceedings for an offence under this Ordinance) be used to determine the weight of any fish processed by that fishing vessel within the terms of the certificate.

(4) Every certificate issued under subsection (3)-

- (a) shall apply in respect of the fish processed during the currency of the certificate;
- (b) may be subject to such conditions, including conditions relating to methods of taking, processing, packing and labelling of fish, the presence of observers appointed under section 184(2) or fisheries officers, or the recording of catches, as the Director sees fit; and
- (c) may at any time be revoked by the Director by notice in writing, or may be amended or replaced by a further certificate issued by the Director under subsection (3).

(5) A certificate issued under subsection (3) may be expressed to be valid for such period as the Director thinks fit, and the certificate, or any revocation of the certificate, shall take effect on the date specified for the purpose by the Director, being a date not earlier than the earliest of the following dates or occasions-

- (a) the commencement of the fishing period following that in which the owner, charterer operator or master of the fishing vessel is issued with the certificate or notified of the revocation;
- (b) the next departure of the fishing vessel from any Falkland Islands port following the issue of the certificate or notification of the revocation;
- (c) the day on which any observer who is present on the fishing vessel concerned, after the owner, charterer, operator or master is issued with a certificate or notified of the revocation, certifies that the current catch of the fishing vessel has been recorded by that observer; and

- (d) such earlier date as may be agreed in writing between the Director and the owner, charterer, operator or master of the fishing vessel.

(6) . . .

[S. 23/Ord. 20/2006/w.e.f. 1/1/16 and S. 11/Ord. 14/15/w.e.f. 24/12/15.]

## **91 Persons who are required to keep records and returns**

(1) The following persons shall keep such accounts and records, and provide to the Director such returns and information, as may be required by or under regulations made under this Ordinance-

- (a) holders of scientific permits or fishing licences entitling the holder to take fish;
- (b) owners, caveators and mortgagees of Individual Transferable Quota, and owners and caveators of Provisional Quota and Catch Entitlements;
- (c) owners, charterers, operators and masters of Falkland Islands fishing vessels;
- (d) owners and persons in charge of any premises where fish are received, purchased, stored, transported, processed, sold or otherwise disposed of;
- (e) persons engaged in the receiving, purchasing, transporting, processing, storage, sale or disposal of fish;
- (f) holders of high seas fishing licences issued under section 130.

### *Disposal of fish*

## **92 Disposal of fish by commercial fishers**

(1) In this section and in section 93, "**commercial fisher**" includes a person who holds a high seas fishing licence issued under section 130.

(2) No commercial fisher may sell or otherwise dispose of fish taken by the commercial fisher in that capacity, except to a licensed fish receiver or as provided in subsection (3) or (6).

(3) Any commercial fisher may sell or otherwise dispose of not more than 30 kilograms of fish in one transaction.

(4) A commercial fisher shall not enter into more than one transaction permitted by subsection (3) with the same person within any period of 24 hours.

(5) Every commercial fisher who sells or otherwise disposes of any fish under subsection (3) shall, at the time of the transaction, make such records of the transaction as the commercial fisher is required to make by regulations.

(6) Subsection (2) does not apply in respect of fish-

- (a) landed outside the Falkland Islands or trans-shipped outside the fishing waters;
- (b) lawfully abandoned or returned to the waters from which the fish was taken;

- (c) lawfully used by the commercial fisher who took the fish as bait, or consumed on board the fishing vessel with which the fish was taken;
- (ca) produced in the course of a lawful fish farming operation, except fish (other than shellfish) which have been released from captivity;

[S. 23/Ord. 20/2006/w.e.f. 1/1/16 and S. 11/Ord. 14/15/w.e.f. 24/12/15.]

- (d) lawfully taken on the high seas and landed other than in the Falkland Islands; or
- (e) lawfully taken on the high seas and trans-shipped without contravening a high seas fishing licence issued under section 130.

(7) A commercial fisher who contravenes any provision of this section commits an offence.

### **93 Restrictions on purchase or acquisition of fish by certain persons**

(1) A commercial fisher who is not a licensed fish receiver shall not purchase, acquire or be in possession of any fish for the purpose of sale unless the fish was-

- (a) taken in that person's capacity as a commercial fisher; or
- (b) purchased or acquired by that person from a licensed fish receiver for use as bait in that person's commercial fishing activities.

(2) A licensed fish receiver shall not purchase or otherwise acquire or be in possession of any fish unless the fish was-

- (a) purchased or acquired for the purpose of sale from-
  - (i) a commercial fisher;
  - (ii) another licensed fish receiver;
  - (iii) the owner, charterer or operator of a non-Falkland Islands fishing vessel licensed under a fishing licence;
  - (iv) the owner, charterer or operator of a non-Falkland Islands fishing vessel if the fish was landed and disposed of in accordance with the conditions of an approval granted under subsection (8); or
- (b) lawfully taken by that person for the purposes of sale in the person's capacity as a commercial fisher, where that person has lawfully kept and completed all records, returns and other documents required under this Ordinance as if the commercial fisher and the licensed fish receiver had been separate persons; or
- (c) acquired or possessed by the licensed fish receiver otherwise than for the purpose of sale by the licensed fish receiver in accordance with subsection (5).

(3) A person other than a person who at the relevant time is acting in the person's capacity as a commercial fisher or licensed fish receiver shall not purchase, otherwise acquire or be in possession of any fish for the purpose of sale, unless the fish was-

- (a) lawfully taken by him within the Falkland Islands; or
- (b) purchased or acquired from-



- (i) a commercial fisher in a transaction referred to in section 92(2);
- (ii) a licensed fish receiver; or
- (iii) a fish farmer.

(4) Any person who contravenes any provision of subsections (1) to (3) commits an offence.

(5) For the purposes of subsection (2)(c) of this section, fish is acquired or possessed by a licensed fish receiver in accordance with this subsection if the fish-

- (a) is held by the licensed fish receiver for a person for storage or processing;
- (b) is held by the licensed fish receiver with the approval in writing of the Director (which approval may be granted either generally or particularly) but was not so held before that approval was granted; and
- (c) is stored in accordance with any condition imposed by the Director in relation to the furnishing to him of records and returns and any other conditions which the Director may impose.

(6) Subsection (3) of this section does not apply in respect of fish if-

- (a) the fish was lawfully purchased or acquired from an approved person;
- (b) that approved person has lawfully acquired or purchased the fish from a licensed fish receiver; and
- (c) the purchase or acquisition, and the storage and disposal, of the fish and the keeping of records in relation to it was in accordance with the conditions of the approval granted by the Director.

(7) Subsection (4) does not apply in respect of any fish produced in the course of a lawful fish farming operation and subsequently traded.

(8) The Director may approve in writing, subject to such conditions as he may think fit, the landing in the Falkland Islands of fish taken by a non-Falkland Islands fishing vessel outside the fishing waters.

(9) This section does not apply in respect of-

- (a) any fish lawfully taken outside the fishing waters that has been landed other than in the Falkland Islands; or
- (b) any transaction with the Crown; or
- (c) any fish lawfully taken otherwise than for the purpose of sale and served as part of a meal to the person who took the fish and their immediate guests.

*When fish deemed to be taken or possessed for purposes of sale*

**94 Fish in licensed premises or premises where food sold deemed to have been taken for the purposes of sale**

(1) For the purposes of this Ordinance, all fish in any premises owned or operated by any licensed fish receiver shall, in the absence of proof to the contrary, be deemed to have been taken, and to be possessed, for the purpose of sale.

(2) For the purposes of this Ordinance, all fish in any premises where food is sold, prepared for sale, stored, or processed shall, in the absence of proof to the contrary, be deemed to have been taken, and to be possessed, for the purpose of sale.

**95 Special provision in relation to fish farms**

(1) No fish farmer shall be in possession of fish for sale unless-

- (a) lawfully purchased or acquired from another fish farmer or from a licensed fish receiver; or
- (b) lawfully bred or cultivated by the fish farmer.

(2) Unless the contrary is proved all fish on or transferred from any fish farm shall be deemed to be farmed, and to be possessed, for the purpose of sale.

(3) A person who contravenes subsection (1) commits an offence.

**96 Possession of excessive quantities of fish**

(1) For the purposes of this Ordinance, except as provided by subsection (2), any person in possession of fish exceeding 10 kilograms meat weight or green weight shall, in the absence of proof to the contrary, be deemed to have acquired or possess that fish for the purposes of sale unless the fish is shown to have been taken by him as an amateur fisherman in the inland waters or in a river, stream or lake but nothing in this section prohibits the possession by an amateur fisherman of a single fish exceeding that weight.

(2) Nothing in subsection (1) applies to-

- (a) *Salmo trutta* (trout);
- (b) *Eleginops maclovinus* (in the Falkland Islands commonly called mullet);
- (c) *Odontesthes smitti* (in the Falkland Islands commonly called smelt and sometimes called pejerrey);
- (d) *Odontesthes nigricans* (in the Falkland Islands commonly called smelt); and
- (e) *Sprattus fuegensis* (in the Falkland Islands commonly called Falkland Herring).

**97 Exclusion of ornamental fish**

(1) Nothing in this Part applies to ornamental fish.

(2) For the purposes of subsection (1) "**ornamental fish**" are fish not ordinarily found in the wild state in the fishing waters and which are kept in, or kept for the purpose of sale to persons for keeping in, aquaria or ornamental pools or ponds.

## **PART V REVIEW BY DISPUTES COMMISSION**

### *Establishment etc. of Disputes Commission*

#### **98 Establishment of Disputes Commission**

- (1) There is hereby established a Disputes Commission.
- (2) The Commission shall consist of the following members-
  - (a) a person appointed by the Governor, who shall be the Chairman of the Commission (hereinafter in this Part called "**the Chairman**"); and
  - (b) such other members as are appointed in accordance with section 99.

#### **99 Appointment of members**

- (1) The Governor shall appoint not more than 7 persons to be members of the Commission.
- (2) Each member shall be appointed for a period not exceeding 4 years specified in his instrument of appointment, but is eligible for re-appointment under this section.

#### **100 Acting Chairman of Commission**

- (1) The Governor may appoint a person to act in the office of Chairman-
  - (a) during a vacancy in the office of Chairman; or
  - (b) during any period, or during all periods, when the Chairman is absent from duty or from the Falkland Islands or is, for any other reason, unable to perform the duties of the office of Chairman.
- (2) Anything done by or in relation to a person purporting to act as Chairman by virtue of appointment under subsection (1) is not invalid merely because-
  - (a) the occasion for the person's appointment had not arisen; or
  - (b) there is a defect or irregularity in connection with the person's appointment; or
  - (c) the person's appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.
- (3) A person appointed under subsection (1) to act in the office of Chairman need not be one of the persons appointed to be a member of the Commission under the preceding section.

(4) Any reference in any subsequent provision of this Part to the Chairman shall wherever appropriate be construed as a reference to a person appointed under subsection (1) of this section to act in the office of Chairman.

### **101 Constitution of Commission for exercise of powers**

For the purpose of any review, the Commission is to be constituted by-

- (a) the Chairman; and
- (b) two members selected by the Chairman.

### **102 Member unable to complete review**

If the Commission has commenced or completed a review of a decision but has not finally determined the matter and one of the members (other than the Chairman) constituting the Commission for the purposes of the review has ceased to be a member, or has ceased to be available for the purposes of the review whether because of the operation of section 104 or otherwise, then the hearing and determination, or the determination, of the review, is to be completed by the Commission constituted by the remaining members, but if the Chairman has ceased to be a member constituting the Commission for such purpose or has ceased to be available the review shall recommence before the Commission differently constituted.

### **103 Terms and conditions of appointment**

A member of the Commission holds office on such terms and conditions as may be prescribed by regulations under section 223, but such regulations shall not provide for remuneration to be payable to any member of the Commission who is a full-time public officer.

### **104 Disclosure of interests**

(1) Where a member is, or is to be, a member of the Commission for the purposes of a review and has a conflict of interest in relation to the review, the member shall disclose the matters giving rise to that conflict to the parties to the proceedings and except with the consent of all the parties to the proceedings shall not take part in the review or exercise any powers in relation to the review and if he fails to disclose his interest in accordance with this subsection he commits an offence.

(2) Where the Chairman becomes aware that a member is, or is to be a member of the Commission as constituted for the purposes of a review and that the member has a conflict of interest in relation to the review-

- (a) the Chairman shall, if he considers that the member should not take part, or should not continue to take part, in the review, direct the member accordingly; and
- (b) in any other case, the Chairman shall disclose the member's interests to all the parties to the proceedings.

(3) Where the Chairman discloses the member's interest to all the parties to the proceedings, the member shall not, except with the consent of all the parties, take part in the review or exercise any powers in relation to the review.

(4) For the purposes of this section, a member has a conflict of interest in relation to a review by the Commission if he has any interest pecuniary or otherwise that could conflict with the proper performance of the member's functions in relation to that review.

### **105 Resignation and termination of appointment**

(1) The Governor may terminate the appointment of a member of the Commission for misbehaviour or physical or mental incapacity or by reason of inefficiency or incompetence.

(2) A member of the Commission may resign by giving to the Governor a signed notice of resignation.

(3) The appointment of a member of the Commission ceases if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

### **106 Registrar of Commission**

(1) The Courts Administrator shall be Registrar of the Commission.

(2) The Registrar has such duties, powers and functions as are provided by this Ordinance and the regulations and such other powers and functions as the Chairman directs.

### *Review by Commission*

#### **107. The functions of the Commission**

The functions of the Commission are to review decisions made by the Director —

- (a) under section 17C(8), to refuse to approve an arrangement by eligible companies for an intermediate Individual Transferable Quota company;
- (b) under section 17D(8) to refuse an application for entry of a company's name upon Part B of an Individual Transferable Quota Eligibility Register;
- (c) under section 17E(9) relating to approval of an action plan for an eligible company;
- (d) under section 17F(8), relating to a penalty imposed by the Director;
- (e) under section 20 as to the person or persons to whom the grant of Individual Transferable Quota or Provisional Quota is made;
- (f) under section 23(3) to strike out an entry in an Individual Transferable Quota Eligibility Register;
- (g) under section 25(4) to refuse an application for entry of a company's name upon Part A of an Individual Transferable Quota Eligibility Register;
- (h) under section 26(3) to renew the registration of a company's name upon an Individual Transferable Quota Eligibility Register;

- (i) under section 26(4) to refuse to renew the registration of a company's name upon an Individual Transferable Quota Eligibility Register;
- (j) under section 27(2) to strike out an entry in a Provisional Quota Eligibility Register;
- (k) under section 29(3) to refuse an application for registration of a company's name upon a Provisional Quota Eligibility Register;
- (l) under section 30(4) to refuse to renew the registration of a company's name upon Provisional Quota Eligibility Register;
- (m) to serve a notice upon a company under section 31(4); and
- (n) under section 33(2)(c) or (f), to revoke a grant of Individual Transferable Quota or Provisional Quota; and
- (o) under section 41(8A) to refuse to approve a charter party agreement.

*[S. 25/Ord. 9/21/w.e.f. 01/10/21.]*

### **108 Application to the Commission for review**

- (1) A person who is aggrieved by a decision that is reviewable under section 107 may, within 14 days after being notified by the Director of the decision, by written notice delivered to the Registrar apply to the Commission for review of the decision.
- (2) An application for review shall include details of the decision in respect of which review is sought and of the reasons why the review is sought.
- (3) Where a decision of the Director is required to be published in the Gazette the Director shall for the purposes of subsection (1) be deemed to have notified that decision to every person affected by it on the date it is published in the Gazette.

### **109 Director to be notified of application to Commission for review**

- (1) Where an application for a review of a decision is made under section 108, the Registrar shall, as soon as practicable, give written notice of the making of the application-
  - (a) to the Director; and
  - (b) to such other persons as the Chairman may direct him to give such notice.
- (2) Where the Director is notified of an application for review, he shall, within 14 days of being so notified, send to the Registrar-
  - (a) a statement of his reasons for the decision; and
  - (b) a copy of each other document or part of a document that is in the possession or control of the Director and is considered by the Director to be relevant to the review of the decision.
- (3) The Director shall be a party to the proceedings before the Commission.

## **110 Arrangements for hearing of application**

If an application is made to the Registrar for review of a decision, the Chairman shall fix, and direct the Registrar to give to each party written notice of, the date, time and place for the hearing of the application.

## **111 Powers of Commission etc.**

- (1) The Commission may, for the purposes of the review of a decision-
  - (a) take evidence on oath or affirmation; and
  - (b) adjourn the review from time to time.
- (2) The Chairman may in relation to a review-
  - (a) by summons in writing require any person to appear before the Commission to give evidence;
  - (b) by summons in writing require any person to produce to the Commission such documents as are referred to in the summons;
  - (c) require any person appearing before the Commission to give evidence, to give such evidence on oath or affirmation; and
  - (d) administer an oath or affirmation to any person so appearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.
- (4) A person appearing before the Commission to give evidence is not entitled unless he is a party to the proceedings to be represented before the Commission by any other person or to examine or cross-examine any other person appearing before the Commission to give evidence.
- (5) Notwithstanding the preceding provisions of this section, the Commission may if it sees fit accept a written statement verified by statutory declaration from a person instead of oral evidence by that person.

## **112 Procedure of Commission**

- (1) In proceedings before the Commission-
  - (a) the procedure to be followed is, subject to this Ordinance, such as the Chairman may decide;
  - (b) the proceedings are to be conducted with as little formality and technicality, and as quickly, as the requirements of this Ordinance and a proper consideration by the Commission permit; and
  - (c) the Commission is not bound by any rules of evidence but may inform itself on any matter in any way it thinks appropriate and which is fair as between the parties.

(2) For the purposes of subsection (1) directions as to the procedure to be followed at or in connection with the hearing of an application may be given whether before or after the hearing of the application has commenced by the Chairman.

(3) A direction may be varied or revoked at any time by the Chairman.

(4) A party to the proceedings may appear in person or may be represented by any other person.

(5) Subject to the subsequent provisions of this section, the Commission shall take oral evidence in public.

(6) Where the Commission is satisfied that it is in the public interest to do so, the Commission may direct that particular oral evidence, or oral evidence for the purposes of a particular review, is to be taken in private.

(7) If the Commission gives a direction under subsection (6), it shall also give directions as to the persons who may be present when the oral evidence is given.

### **113 Powers in relation to decisions under review**

(1) The Commission may, for the purposes of reviewing a decision, exercise all the powers conferred by this Ordinance on the Director and may-

- (a) affirm the decision;
- (b) vary the decision;
- (c) set the decision aside and substitute a new decision.

(2) Where the Commission varies the decision or sets aside the decision and substitutes a new decision, the decision as varied or substituted is, for all purposes of this Ordinance, except for the purposes of applications to the Commission for review, appeals to the Supreme Court under section 124 or applications to the Supreme Court for judicial review of the determination by the Commission, to be taken to be a decision of the Director.

(3) A decision made by the Commission takes effect when the applicant is notified of the decision under section 123.

### **114 Withdrawal of application for review and power to dismiss application**

(1) An applicant for review of a decision may, by written notice sent or delivered to the Registrar, withdraw that application at any time.

(2) If a person has lodged an application to the Registrar for review by the Commission of a decision by the Director, and the Chairman is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application, the Chairman may dismiss the application.

(3) If the Chairman dismisses an application under subsection (2), that application is to be taken to have been withdrawn at the time when the application is dismissed.



### **115 Refusal to be sworn or to answer questions etc.**

(1) A person appearing before the Commission to give evidence commits an offence if he, without reasonable excuse-

- (a) refuses to comply with a requirement under section 111(1) either to take an oath or make an affirmation; or
- (b) refuses or fails to answer a question which he is required by the Commission to answer or gives any evidence knowing that it is false or misleading in a material particular or being reckless as to whether it is false or misleading in a material particular.

(2) A person commits an offence who without reasonable excuse refuses or fails to produce a document that he is required to produce by a summons under section 111(2).

### **116 Decision of questions before the Commission**

Any question relating to the review of a decision before the Commission is to be decided-

- (a) according to the opinion of a majority of the members constituting the Commission for the purposes of the review;
- (b) if the Commission, for a reason mentioned in section 102 is constituted by the Chairman and another member, in accordance with the opinion of the Chairman.

### **117 Restriction of publication of certain matters**

(1) Where the Commission is satisfied in relation to a review that it is in the public interest-

- (a) that any evidence given before the Commission;
- (b) that any information given to the Commission; or
- (c) that the contents of any document produced to the Commission,

should not be published, or should not be published except in a particular manner and to particular persons, the Commission may give a written direction accordingly.

(2) A person who contravenes a direction given by the Commission under subsection (1) commits an offence.

(3) Where the Commission has given a direction under subsection (1) in relation to the publication of any evidence or information or the contents of a document, such direction does not-

- (a) excuse the Commission from its obligations under section 123; or
- (b) prevent a person from communicating to another person a matter contained in the evidence, information or document if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or information having been given or the document having been produced to the Commission.

### **118 Failure of witness to attend**

A person commits an offence who, having been served with a summons to appear before the Commission to give evidence, fails to attend as required by the summons or fails to appear and report from day to day unless excused, or released from further attendance by the Chairman.

### **119 Protection of members of Commission**

A member of the Commission has, in the performance of his duties as a member the same protection and immunity as a Justice of the Peace has as a member of the Summary Court.

### **120 Protection of witnesses**

Subject to this part, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings before a court.

### **121 Fees for persons giving evidence**

(1) A person, other than a party to proceedings or a public officer, who is summoned to appear before the Commission to give evidence is entitled to be paid in respect of his attendance such fees and allowances for expenses as are fixed by or allowed in accordance with regulations made for the purposes of this subsection or, if no such regulations have been made, fees and allowances for expenses fixed or allowed by the Chairman.

(2) Where a witness has been summoned to give evidence at the request of a party to the proceedings, the fees and allowances payable to that witness are to be paid by that party and in any other case they are to be paid by the Director.

### **122 Obstruction of Commission**

A person commits an offence who obstructs or hinders the Commission or a member of the Commission in the performance of the functions of the Commission or who disrupts the taking of evidence by the Commission.

### **123 Reasons for and notification of Commission decision**

(1) Whenever it reaches a decision on a review, the Commission shall prepare a written statement setting out the decision of the Commission on the review and the reasons for that decision.

(2) The Registrar shall send or give to each party to the proceedings a copy of the statement prepared under subsection (1) as soon as practicable after the decision concerned is made.

## *Appeals*

### **124 Appeals to Supreme Court on question of law**

(1) An appeal lies on a point of law to the Supreme Court at the instance of any party to proceedings before the Commission who is aggrieved by the decision of the Commission.

(2) Such an appeal shall be instituted within 28 days after the appellant was notified under section 123 of the decision concerned.

(3) The Supreme Court has jurisdiction to hear and to determine the appeal and may make such order thereon as it thinks appropriate and, without prejudice to the generality of the foregoing may-

- (a) affirm or set aside the decision of the Commission and substitute such decision as it thinks fit for the decision of the Commission; or
- (b) remit the matter to the Commission to be reviewed and decided afresh in accordance with directions of the Supreme Court and either with or without the taking of further evidence.

### **125 Operation etc of decisions subject to appeal**

(1) Subject to this section, the institution of an appeal to the Supreme Court from a decision of the Commission does not-

- (a) affect the operation of the decision; or
- (b) prevent the taking of action to implement the decision; or
- (c) prevent the taking of action in reliance on the making of the decision.

(2) Where an appeal is made to the Supreme Court from a decision of the Commission, a judge of that Court may make such Order of the kind mentioned in subsection (3) as he considers appropriate for the purposes of securing the effectiveness of the hearing and the determination of the appeal.

(3) The Orders that may be made under subsection (2) are Orders staying, or otherwise affecting the operation or implementation of either or both of the following-

- (a) the decision of the Commission or a part of the decision;
- (b) the decision to which the proceedings before the Commission related or a part of the decision.

(4) A judge of the Supreme Court may by Order vary or revoke an Order in force under subsection (2), including an Order that has previously been varied under this subsection.

(5) An Order under subsection (2)-

- (a) is subject to such conditions as are specified in the Order; and
- (b) has effect until the earlier of?
  - (i) the end of the period, if any, specified in the Order as the period of its operation; and
  - (ii) the giving by the Supreme Court of a decision on the appeal to the Supreme Court; or
  - (iii) the withdrawal of the appeal.

**PART VI  
HIGH SEAS FISHING**

*Administration*

**126 Responsibilities of Director under this Part**

(1) The Director shall be responsible for-

- (a) maintaining a record of all Falkland Islands fishing vessels in respect of which high seas fishing licences have been issued under this Part, which record shall include all information provided by an applicant under section 129;
- (b) the collection of statistics concerning fish stocks and fishing on the high seas;
- (c) the monitoring, control and surveillance of the operations of Falkland Islands fishing vessels on the high seas;
- (d) the issue, variation, suspension and revocation of licences for fishing on the high seas;
- (e) the collection of fees in respect of licences issued under this Part;
- (f) the taking of appropriate measures in co-operation with foreign states for the implementation of the Agreements;
- (g) the making of such reports to the Governor as the Governor may direct or the Director may consider appropriate for the implementation of the Agreements and this Part.

(2) The Governor may give or may authorise the Director to give such information and make such reports as may be necessary to enable the Falkland Islands to ensure compliance with obligations under the Agreements or either of them.

(3) The Director may, and if directed by the Governor shall, in writing authorise any public officer to exercise any or all of the powers of the Director either concurrently with him or in his absence subject to such conditions, including territorial restrictions, as may be stipulated in the authorisation.

(4) This Part shall be enforced by all fisheries officers acting subject to the direction of the Director and such officers shall have the powers set out or referred to in sections 134 and 135.

(5) In this section "**the Governor**" means the Governor acting in his discretion.

*Licences for fishing on the high seas*

**127 Prohibition of fishing on the high seas without a licence**

(1) No Falkland Islands fishing vessel shall be used for fishing on the high seas except under the authority of a high seas fishing licence.

(2) Where a fishing vessel is used in contravention of subsection (1) the master, owner, charterer and operator each commit an offence.

(3) A person taking or transporting fish under the authority of a high seas fishing licence shall-

- (a) at all times the licence remains in force, carry the licence, or a copy of the licence on board the fishing vessel to which the licence relates;
- (b) produce the licence, or copy, on demand to a fisheries officer or high seas fishery inspector or a high seas fishing inspector acting on behalf of any other country.

(4) A person commits an offence who contravenes subsection (3).

### **128 Fishing vessels eligible for high seas fishing licences**

Any Falkland Islands fishing vessel is eligible for a high seas fishing licence except where section 14(1)(b), section 15(1) or an Order under section 15(2) prohibits the grant of a high seas fishing licence in respect of that fishing vessel.

*[S.R. & O. 23/05/w.e.f. 23/12/05.]*

### **129 Applications and fees**

(1) An application for the grant of a high seas fishing licence shall be-

- (a) made to the Director in the approved form;
- (b) accompanied by the information required under subsection (2) and such other information and documents as may be prescribed or if none have been prescribed are required by the Director in the approved form; and
- (c) accompanied by the application fee, if any.

(2) An application for a high seas fishing licence shall relate to a specific Falkland Islands fishing vessel and shall be accompanied by the following information in relation to that fishing vessel-

- (a)-
  - (i) the name of the fishing vessel;
  - (ii) its registration number;
  - (iii) previous names (if known);
- (b) previous flag;
- (c) international radio call sign;
- (d) names and addresses of the owner and of any charterer or operator if different from the owner;
- (e) when and where the fishing vessel was built;
- (f) the type of the fishing vessel;

- (g) its length;
- (h) the type of fishing method or methods employed by the fishing vessel;
- (i) its moulded depth;
- (j) its beam;
- (k) its gross registered tonnage, where available; and
- (l) the power of the main engine or engines of the fishing vessel.

### **130 Grant of high seas fishing licences and conditions relating to licences**

(1) A high seas fishing licence shall be granted by the Director to the owner, charterer or operator in respect of a specified Falkland Islands fishing vessel.

(2) Subject to any directions given to him by the Governor pursuant to section 4(5), the issue of each high seas fishing licence shall be in the discretion of the Director.

(3) The Director shall not grant a high seas fishing licence in respect of a Falkland Islands fishing vessel unless he is satisfied that the Falkland Islands will be able to exercise effectively their responsibilities under the Agreements in respect of that fishing vessel.

(4) A high seas fishing licence may authorise a Falkland Islands fishing vessel to be used for fishing generally or may confer limited authority by reference in particular to-

- (a) the area in which fishing is authorised;
- (b) the period, times or particular voyages during which fishing is authorised;
- (c) the descriptions, quantities, size and presentation of fish which may be taken, or
- (d) the method of fishing.

(5) A high seas fishing licence shall be subject to the following conditions-

- (a) the fishing vessel to which the licence relates shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;
- (b) such records of fishing operations shall be kept on board the fishing vessel to which the licence relates and such returns shall be submitted to the Director concerning areas of fishing, catches and landings of fish and such other matters as are stipulated in the licence or as shall be notified by the Director to the person to whom the licence is granted; and
- (c) the fishing vessel to which the licence relates shall not engage in activities which undermine the effectiveness of international conservation and management measures and in particular such activities as may be prescribed,

and may be granted subject to such other conditions, including in particular (but without prejudice to the generality of the Director's power to impose conditions) as to-

- (i) the trans-shipment, of any fish taken under authority of the licence, as the Director thinks fit;

- (ii) the installation, maintenance in working order and operation at all specified times of a satellite-tracking device of such model, type and specification and having such operating and reporting characteristics as the Director may specify in any such condition.

(6) A high seas fishing licence shall authorise fishing subject to such further conditions as may appear to the Director to be necessary or expedient for the conservation or management of species of living marine resources in the high seas and as may be specified by him in writing.

(7) If a licence condition referred to in or imposed in exercise of the Director's powers under subsection (5) or (6) is contravened, the master, the owner, charterer and operator of the fishing vessel concerned in such breach each commit an offence.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(8) A high seas fishing licence may be-

- (a) varied from time to time; or
- (b) revoked or suspended if-
  - (i) that appears to the Director to be necessary or expedient for the conservation or management of living marine resources in the high seas;
  - (ii) the fishing vessel is no longer registered in the Falkland Islands under Part 2 of the Maritime Ordinance 2017;

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

- (iii) the holder of the licence or any person authorised to fish under the authority of the licence has been convicted of an offence under this Part;
- (iv) the holder of the licence has been convicted of a fish-related offence under the laws of a country other than the Falkland Islands;
- (v) the holder of the licence is no longer the owner, charterer or operator of the fishing vessel;
- (vi) any information or documents supplied in or in connection with the application was false in any material particular.

(9) If a high seas fishing licence is varied, revoked or suspended the Director may, if he considers it appropriate after taking into account the circumstances of the case, refund the whole or any part of the fee charged for the licence.

### **131 Period of validity of high seas fishing licences**

(1) Subject to section 130(8)(b) and to subsection (2) of this section, the period of validity of a high seas fishing licence shall be 12 months or such other period less than 12 months as may be specified in the licence.

(2) A high seas fishing licence ceases to be valid if the fishing vessel in respect of which it was issued ceases to be a Falkland Islands fishing vessel.

(3) The holder of a high seas fishing licence shall within 7 days of any change of owner, charterer or operator of the fishing vessel to which the licence relates notify the Director in writing of the change.

(4) A person who contravenes subsection (3) commits an offence.

### *International co-operation*

#### **132 High seas fishing information**

(1) The Director may require any person who holds a licence under this Part and any fisherman or person owning, chartering or working on a Falkland Islands fishing vessel that is used for fishing on the high seas, to provide him with information or make returns in such form and at such intervals as he may decide concerning areas of fishing, catches and landings of fish and such other matters relating to fishing operations with which such person is connected as may be stated in any such requirement.

(2) A person commits an offence who, without reasonable excuse, refuses or fails to provide to the Director any information he has required in the exercise of his powers under subsection (1).

#### **133 Exchange of information with other countries**

(1) The Director if so authorised by the Governor acting in his discretion may make such arrangements as may be appropriate to enable him to exchange information, including evidentiary material, with other countries that are parties to the Agreements or either of them or to which the Agreements have or either of them has been applied to enable the Falkland Islands and such other countries better to implement the objects of the Agreements or either of them.

(2) Without derogating from the generality of arrangements which may be made by the Director under subsection (1), the Director in particular, if so authorised by the Governor acting in his discretion, may where he has reason to believe that a non-Falkland Islands fishing vessel has engaged in activities that undermine international conservation and management measures-

- (a) provide to the appropriate authorities of the country in which the non-Falkland Islands fishing vessel concerned is registered such information, including evidentiary material, relating to those activities, as may be necessary to assist the flag state in identifying the vessel; and
- (b) when such non-Falkland Islands fishing vessel is voluntarily in a port of the Falkland Islands, promptly notify the appropriate authorities of the country in which the non-Falklands Islands fishing vessel is registered accordingly.

### *Enforcement*



### **134 General powers of fisheries officers for the purposes of this Part**

(1) For the purpose of enforcing this Part, a fisheries officer may exercise in respect of a Falkland Islands fishing vessel on the high seas the same powers as he is authorised by section 141(2) to exercise in relation to such a vessel within the fishing waters.

[S.R. & O. 23/05/w.e.f. 23/12/05.]

(2) For the purposes of enforcing this Part, any reference in section 141(2)-

- (a) to a fishing licence shall be deemed to be a reference to a high seas fishing licence; and
- (b) to the fishing waters shall be deemed to be a reference to the high seas.

### **135 Application of provisions of Part VII in relation to this Part**

Sections 141 to 161 in Part VII of this Ordinance apply equally for the purposes of this Part.

#### *Offences in places beyond the fishing waters: Falkland Islands fishing vessels beyond the fishing waters*

### **136 Falkland Islands fishing vessel with fish on high seas**

A person commits an offence if-

- (a) he knowingly has fish in his possession or control;
- (b) the fish is on a Falkland Islands fishing vessel on the high seas; and
- (c) the taking of the fish was not authorised by a high seas fishing licence,

but it is a defence to a prosecution for an offence under this section for the defendant to prove either-

- (i) that the fish concerned was lawfully taken within the fishing waters under the authority of a fishing licence or scientific permit granted under this Ordinance; or
- (ii) that the fish concerned was lawfully taken within the fishing waters of another country.

### **137 Falkland Islands fishing vessel on high seas equipped for fishing**

(1) A person commits an offence if he is the owner, charterer, operator or master of a Falkland Islands fishing vessel and-

- (a) that fishing vessel is equipped with nets, traps or other equipment for fishing; and
- (b) the fishing vessel is on the high seas.

(2) It is a defence to a prosecution under subsection (1) for the defendant to prove that-

- (a) he holds a high seas fishing licence to be at that location equipped with the nets, traps or other equipment for fishing with which it was, in fact, equipped;

- (b) all fishing equipment on board is, so far as is reasonably practicable, stowed so as not to be readily available for immediate fishing or in such manner as may be prescribed; and
  - (i) the fishing vessel is proceeding for one or more of the purposes of repair, alteration, survey, sale, charter, change of crew or disembarking of crew to a port outside the Falkland Islands;
  - (ii) the fishing vessel is engaged solely in the ordinary course of trade of carrying cargo between the Falkland Islands or the fishing waters and a port outside the Falkland Islands; or
- (c) there is some other reasonable excuse for the fishing vessel being found in the position it was found equipped as mentioned in subsection (1).

**138 Falkland Islands fishing vessel fishing in another country's waters**

(1) A person commits an offence if-

- (a) the person knowingly uses a Falkland Islands fishing vessel for fishing; and
- (b) the fishing vessel is in the fishing waters of another country and the person knows that fact or is reckless as to that fact; and
- (c) the person is required by the law of the country in question to have an authorisation (however described) given under the law of the country for the fishing and he does not have any such authorisation.

(2) If the person has been convicted in the other country of an offence involving the fishing, he cannot be convicted of an offence under this section in relation to it.

*Other*

**139 Visits by fishing vessels and fish carriers which are not Falkland Islands ships**

(1) Except in the case of emergency, the master of a fishing vessel or fish carrier that is not a Falkland Islands ship who intends to bring the vessel into the internal waters of the Falkland Islands, shall give the Director at least 72 hours' notice of his intention to do so.

(2) If the Governor is satisfied on the report of the Director that a vessel has undermined international conservation and management measures, he may authorise the Director, by notice to the master of a vessel to which subsection (1) applies, to direct the vessel-

- (a) not to enter the internal waters of the Falkland Islands; or
- (b) if it has entered the internal waters of the Falkland Islands, to leave those waters.

(3) If the Governor is satisfied on reasonable grounds that it is necessary for the purpose of the conservation and management of fish, the Governor may, by notice in the Gazette, direct any class or classes of fishing vessel or fish carrier not to enter the internal waters of the Falkland Islands.

(4) The master of a vessel to which a notice under subsection (2) or subsection (3) applies, who brings the vessel into the internal waters of the Falkland Islands knowing that the notice applies to the vessel, commits an offence.

(5) This section does not prevent a vessel from entering or remaining in the internal waters of the Falkland Islands for such period as is necessary for the purposes of obtaining food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside the Falkland Islands.

**140 Application of this Part to CCAMLR waters**

(1) Subject to this section, the foregoing provisions of this Part shall apply to fishing in CCAMLR waters.

(2) In their application in respect of CCAMLR waters the foregoing provisions of this Part shall be modified in accordance with the following Table-

**TABLE**

<i>Provision</i>	<i>Modification</i>
Section 130(3)	Replace with the following-  "(3) The Director shall not grant a high seas fishing licence in relation to CCAMLR waters in respect of a Falkland Islands fishing vessel unless he is satisfied that the Falkland Islands will be able to exercise sufficient control and supervision in respect of that vessel, such that its activities are unlikely to prejudice the objectives of CCAMLR and CCAMLR conservation measures."

<i>Provision</i>	<i>Modification</i>
Section 130(5)(c)	(a) Replace all words appearing before the words "as may be prescribed" with the words "the fishing vessel shall not engage in activities which undermine the effectiveness of conservation measures or any such other activities"; and  (b) insert after the words "such other conditions" the words "not inconsistent with conservation measures",
Section 130(6)	(a) Insert after "A high seas fishing licence shall authorise fishing" the words, "in CCAMLR waters"; and  (b) replace "in the high seas" with the words, "in CCAMLR waters".
New section 130(6A)	Insert the following new subsection (6A)-  "(6A). In relation to CCAMLR waters " <b>conservation measures</b> " means measures to conserve Antarctic marine living resources and the Antarctic ecosystem adopted in accordance with Article IX of CCAMLR."
Section 130(8)(b)(i)	Replace "living marine resources in the high seas" with "Antarctic marine living resources in CCAMLR waters"
Section 132	Replace "on the high seas" with "in CCAMLR waters"
Section 133(1)	Replace-  (a) "the Agreements or either of them" with "CCAMLR";  (b) "the Agreements have or either of them" with "CCAMLR"; and  (c) "the Agreements or either of them" with "CCAMLR"
Section 133(2)	Replace "international conservation and management measures" with "measures to conserve Antarctic marine living resources and the Antarctic marine ecosystem adopted in accordance with Article IX of CCAMLR"

## PART VII SURVEILLANCE AND ENFORCEMENT

### *Officers*

#### 141 Powers of officers

(1) Fisheries officers are, in the exercise of their powers and performance of their functions, subject to the directions of the Director.

(2) A fisheries officer may-

- (a) board a fishing vessel in the fishing waters that the fisheries officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the fishing waters and may-

- (i) search the fishing vessel for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document or record relating to the fishing operations of the fishing vessel; and
  - (ii) break open and enter any hold, compartment, container or other receptacle on the fishing vessel that the officer has reasonable grounds to believe contains anything that may afford evidence as to the commission of an offence under this Ordinance;
- (b) board a fishing vessel in the fishing waters in relation to which a fishing licence or scientific permit is in force for the purpose of ascertaining whether a condition of the fishing licence or scientific permit or a provision of a temporary order is being, or has been, complied with and, in furtherance of that purpose, may search the fishing vessel and break open and enter any hold, compartment, container or other receptacle on the fishing vessel;
- (c) examine anything found by action taken under paragraph (a) or (b);
- (d) for the purposes of boarding a fishing vessel under paragraph (a) or (b), require the master to stop the fishing vessel;
- (e) where the fisheries officer has reasonable grounds to believe that there is on any land or in any 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 section 143-
- (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 the fisheries officer 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 the fisheries officer has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;
- (f) where the fisheries officer has reasonable grounds to believe that there is in any vehicle or aircraft 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 aircraft or under a warrant issued under section 143-
- (i) stop and detain the vehicle or detain the aircraft, as the case may be; and
  - (ii) enter and search the vehicle or aircraft;
  - (iii) break open and search any compartment, container or other receptacle in the vehicle or aircraft in which the fisheries officer has reasonable grounds to believe that there is any such thing; and
  - (iv) examine and take possession of, or secure against interference, any document or other thing found within the vehicle or aircraft that the fisheries officer has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;

- (g) examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the fishing waters;
- (h) require the holder of a fishing licence or scientific permit which provides for the use of equipment of a particular type to give the fisheries officer such help as he reasonably requires for the purpose of measuring the equipment;
- (i) subject to subsections (1) and (11), seize, detain, remove or secure-
  - (i) any fish that the fisheries officer has reasonable grounds to believe have been taken, processed, carried or landed in contravention of this Ordinance;
  - (ii) any fishing vessel, net, trap or other equipment that the officer 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, instrument, appliance or other thing of whatsoever nature or description that the fisheries officer has reasonable grounds to believe may afford evidence as to the commission of an offence under this Ordinance;
- (j) seize any fishing vessel, net, trap, other equipment or fish that are forfeited to the Crown under any provision of this Ordinance or which the fisheries officer has reasonable grounds to believe are forfeited under any such provision;
- (k) enter on any land or premises specified in a fish receiver permit for the purpose of ascertaining whether a condition of the permit is being, or has been, complied with or whether the holder is contravening or has contravened a provision of this Ordinance and, in furtherance of that purpose-
  - (i) search the land or premises for, and examine, fish;
  - (ii) search the land or premises for, inspect, take extracts from, and make copies of, any documents relating to the receiving of fish; and
  - (iii) if the fisheries officer finds, during the course of the search, anything that he believes, on reasonable grounds, may provide evidence of a contravention of a provision of this Ordinance, secure the thing pending the obtaining of a warrant to seize it; and
  - (iv) with the consent of the holder of a fish receiver permit or under a warrant issued under section 143, seize anything found during the course of a search that the fisheries officer believes, on reasonable grounds, may provide evidence of a contravention of this Ordinance;
- (l) subject to section 154, detain a person in the Falkland Islands for a period not exceeding 48 hours for the purpose of determining during the period of detention whether or not to charge the person with an offence under this Ordinance if he has reasonable grounds to believe that the person-
  - (i) is not a person who has Falkland Islands status or a person who is ordinarily resident in the Falkland Islands; and

- (ii) was on a non-Falkland Islands fishing vessel when it was used in the commission of such an offence;
- (m) subject to section 155, search without warrant a person detained under paragraph (l), his clothing and any property under his immediate control so as to ascertain whether a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from that detention is hidden on the person or his clothing or property;
- (n) without warrant, arrest a person whom the fisheries officer has reasonable grounds to believe has committed an offence under this Ordinance;
- (o) if the fisheries officer has reasonable grounds to believe that a fishing vessel has been used, is being used or is intended to be used in contravention of this Ordinance, require the master of the fishing vessel, if the fishing vessel is at a place in the Falkland Islands, to remain in control of the fishing vessel at that place or, if the fishing vessel is not at a place in the Falkland Islands, to bring the fishing vessel to such a place, or to a place at sea, specified by the officer and to remain in control of the fishing vessel at that place, and (in either case) until a fisheries officer permits the master to depart from that place;
- (p) require the master of a fishing vessel who, because of a requirement under paragraph (o) or a previous requirement under this paragraph, is in control of a fishing vessel at a place to take the fishing vessel to another place in the Falkland Islands, or to a place at sea, specified by the fisheries officer and to remain in control of the fishing vessel at that place until a fisheries officer permits the master to depart from that place;
- (q) bring a fishing vessel that the fisheries officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Ordinance to a place in the Falkland Islands (whether or not the fishing vessel has previously been brought to another place or other places) and may remain in control of that fishing vessel pending the taking and determination of proceedings in respect of that contravention;
- (r) require the master of a fishing vessel to produce any fishing licence or scientific permit, or evidence of the grant of any such licence or permit, for or in respect of the fishing vessel;
- (s) take copies of, or extracts from, a fishing licence or scientific permit or any other document produced in accordance with a requirement under paragraph (r);
- (t) require the master of a fishing vessel in relation to which a fishing licence or scientific permit is in force under this Ordinance to give information concerning the fishing vessel and its crew and any person on board the fishing vessel;
- (u) require the master of a fishing vessel to cause to be lifted from the sea any equipment that the fisheries officer has reasonable grounds to believe is being, or has been, used by a person on board the fishing vessel in contravention of this Ordinance;
- (v) require a person who is on board a fishing vessel in relation to which a fishing licence or scientific permit under this Ordinance is in force, or who is engaged in fishing in the fishing waters, or whom he reasonably suspects of having committed an offence under this Ordinance, to state the person's name and address;

- (w) require a person found on any land or premises entered under paragraph (e) or in any vehicle or aircraft detained or searched under paragraph (f) to state the person's name and address or produce any document in the person's possession or under the person's control relating to any fish found on the land or in the premises, vehicle or aircraft or to give information concerning any such fish.

(3) If a fisheries officer under subsection (2)(i) seizes, detains, removes or secures any fish or any fishing vessel, net, trap or other equipment, the fisheries officer shall within 7 days after taking that action give written notice of the grounds for the taking of the action to the person believed by the officer-

- (a) to have taken, processed, carried or landed the fish, in the case of action having been taken by the officer in relation to any fish;
- (b) to be the owner of the fishing vessel (if the action has been taken in relation to any fishing vessel); or
- (c) to be the person to have used, to be using or to be intending to be used the net, trap or other equipment (if the action has been taken in relation to any net, trap or other equipment).

(4) For the sake of avoidance of doubt it is hereby declared that-

- (a) the validity of the seizure of a fishing vessel by a fisheries officer under subsection (2)(i) is not affected merely because the fishing vessel is brought or taken under escort to a place and the fishing vessel had to travel on the high seas to reach that place;
- (b) subsection (2)(o) and (p) permit a fisheries officer to require the master of a fishing vessel to bring or take the fishing vessel to a specified place and remain in control of the fishing vessel there even if it is necessary for the fishing vessel to travel on the high seas to reach that place;
- (c) subsection (2)(q) allows a fisheries officer to bring a fishing vessel to a place and remain in control of it there even if it is necessary for the fishing vessel to travel on the high seas to reach the place.

(5) Where a fisheries officer (other than a member of Her Majesty's armed forces, police officer or customs officer who is in uniform) boards a fishing vessel, the fisheries officer shall produce his warrant card and, if he fails to do so, he is not authorised to remain on board the fishing vessel.

(6) Where a fisheries officer (other than a member of Her Majesty's armed forces who is in uniform) proposes to enter and search, or to detain, a vehicle or aircraft, the officer shall, if there is a person in charge of the vehicle or aircraft produce his warrant card and, if the fisheries officer fails to do so, the fisheries officer is not authorised to enter and search, or to detain, the vehicle or aircraft.

(7) Where a fisheries officer (other than a member of Her Majesty's armed forces who is in uniform) makes a requirement of a person ("**the relevant person**") under any provision of subsection (2) except paragraph (d), he is required to produce a warrant card to the relevant person and, if the fisheries officer fails to do so, the relevant person is not obliged to comply with the requirement.



(8) In exercising the powers conferred on him by subsection (2), a fisheries officer may only use force when and to the degree necessary in the circumstances-

- (a) to ensure the safety of the fisheries officer, of any other fisheries officer or of any person assisting the fisheries officer pursuant to section 142; or
- (b) where the fisheries officer or any other fisheries officer is obstructed in the performance of his duties.

(9) In this section "**examine**" includes count, measure, weigh, grade or gauge.

(10) In subsection (6) "**his warrant card**", in the case of a police officer or customs officer, means the warrant card issued to him as a police officer or customs officer, as the case may be.

(11) Whenever a fisheries officer seizes, detains, removes or secures any document, instrument, appliance or other thing as evidence in exercise of his powers under subsection (2)(i)(iii) he shall within 7 days give written notice of such seizure, detention, removal or securing to the person appearing to him to have been in possession thereof immediately prior to such seizure, detention, removal or securing.

#### **142 Person to assist fisheries officer**

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

(2) Any person called upon by a fisheries officer to assist him in the exercise of any of the powers conferred by this Ordinance is, by this subsection, authorised to render such assistance.

(3) A person who, while assisting a fisheries officer, does any act under this Ordinance, or omits to do any act required by this Ordinance, shall not be 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.

(4) The Crown may not be held directly or indirectly liable for an act or omission of any person assisting a fisheries officer under the authority of subsection (2) unless he has himself incurred liability for the act or omission.

#### **143 Search warrants**

(1) A Justice of the Peace may, upon application by a fisheries officer, issue a warrant to search land or premises or any vehicle or aircraft if the Justice of the Peace 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, at the premises or in the vehicle or aircraft.

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

- (a) the offence to which the warrant relates;
- (b) a description of the land, premises, vehicle, aircraft or other conveyance (hereinafter in this Part called "**the premises**") to which the warrant relates;
- (c) the kinds of evidential material that may be searched for under the warrant;

- (d) the name of the fisheries officer who, unless he inserts the name of another officer in the warrant, is to be responsible for executing the warrant;
- (e) the period for which the warrant remains in force, which shall not exceed 7 days; and
- (f) whether the warrant may be executed at any time or only during particular hours.

(3) The warrant shall also state that it authorises the seizure of a thing (other than evidential material of a kind referred to in subsection (2)(c)) found at the premises 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 or the regulations 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 or the regulations.

(4) Nothing in subsection (2)(e) prevents the issue of successive warrants in relation to the same premises.

#### **144 Actions authorised by a search warrant**

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

- (a) to enter the premises;
- (b) to take samples of things found at the premises for forensic purposes;
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises;
- (d) to seize other things found at the premises 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 or the regulations under the 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 or the regulations.

(2) If the warrant states that it may be executed only during particular hours, the warrant shall 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 relate.

#### **145 Availability of assistance and use of force in executing a search warrant**

In executing a warrant-

- (a) the executing officer may be accompanied by such persons and make use of such assistance;

- (b) the executing officer, or a person who is a fisheries officer or a police officer and who is assisting in the execution of the warrant, may use such force against such persons and things; and
- (c) a person who is not a fisheries officer and is not a police officer and who is assisting in the execution of a warrant may use such force against things,

as is reasonable in the circumstances.

#### **146 Copy of search warrant to be given to occupier etc.**

(1) If while a warrant is being executed the occupier of the premises concerned or another person apparently representing him is present at the premises, the executing officer or a person assisting him shall make available to that person a copy of the warrant and the executing officer shall produce to that person his warrant card issued to him under section 5 or as a police officer or customs officer, as the case may be.

(2) The copy of the warrant referred to in subsection (1) need not include the signature of the Justice of the Peace or the seal of the relevant court.

#### **147 Powers available to officer executing search warrant**

(1) In executing a warrant, the executing officer or person assisting him may, for a purpose incidental to the execution of the warrant or if the occupier of the premises consents in writing, take photographs (including video recordings) of the premises or of things at the 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 temporarily ceases occupation and leaves the premises-

- (a) for not more than 1 hour; or
- (b) for a longer period if the occupier of the premises consents in writing.

#### **148 Use of equipment to examine or process things**

(1) The executing officer or a person assisting him may bring to the premises the subject of the warrant any equipment reasonably necessary for the examination or processing of things found at the 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 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 subsection (2), the executing officer shall, 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 examination or 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 a 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.

#### **149 Use of electronic equipment at premises**

(1) 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 equipment to put the material into 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 subsection (2)(a) only if-

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

(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 subsection, 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 shall give notice to the occupier of the premises the subject of the warrant of his intention to secure equipment and of the fact that the equipment may be secured for up to 48 hours.

(6) The equipment may be secured under subsection (4) until the end of a period of not more than 48 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 required to operate the electronic equipment on the premises which has been

secured pursuant to subsection (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 subsection (7), he shall 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 Part relating to the issue of warrants apply, with any modifications that are necessary, to the issuing of an extension.

### **150 Compensation for damage to electronic equipment**

(1) If-

- (a) damage is caused to equipment as a result of being operated as mentioned in section 148 or 149; and
- (b) the damage was caused as a result of insufficient care being exercised in selecting the person who was to operate the equipment or insufficient care being exercised 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.

### **151 Copies of seized things to be provided**

(1) Subject to subsection (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 shall, 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) Subsection (1) does not apply if the thing that has been seized was seized under section 149(2)(b) or possession by the occupier of the document, film, computer file, thing or information would constitute an offence under any law having effect in the Falkland Islands.

### **152 Occupier entitled to be present during search**

If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the 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.

### **153 Receipts for things seized under search warrant**

The executing officer or a person assisting him shall provide a receipt for a thing seized under a warrant or moved under section 149(2) but if two or more things are seized or moved, they may be covered in the one receipt.

### **154 Detention under sections 134 and 141(2)**

(1) A person ("**the detainee**") detained under section 134 or section 141(2)(l) shall be released from detention-

- (a) as soon as a fisheries officer knows or reasonably believes that the detainee is a person who has an address in the Falkland Islands;
- (b) at the time the detainee is brought before a Justice of the Peace following a decision to charge the detainee with an offence referred to in sections 134 or 141(2)(l);
- (c) at the time a decision is made not to charge the detainee with an offence referred to in that provision; or
- (d) at the expiry of 48 hours after the beginning of the detention,

whichever first occurs.

(2) Nothing in this Ordinance authorises a fisheries officer to use more force in detaining a person than is reasonably necessary.

### **155 Searches under sections 134 and 141(2)**

(1) A search under section 134 or section 141(2)(m) of a person ("**the detainee**") shall ordinarily only be conducted by a fisheries officer of the same sex as the detainee or by a person assisting a fisheries officer of the same sex as the detainee.

(2) Section 134 and section 141(2)(m) and this section do not authorise a fisheries officer, or other person conducting the search-

- (a) to remove any of the detainee's clothing;
- (b) to require the detainee to remove any of his clothing; or
- (c) to use more force, or subject a detainee to greater indignity, than is reasonably necessary to conduct the search.

(3) If, in conducting a search, a fisheries officer finds a weapon or other thing mentioned in section 141(2)(m), he may take possession of that weapon or other thing and keep it for such time as he reasonably thinks necessary for the purposes of this Ordinance.

(4) If on conducting a search under subsection (1) a person not being a police officer finds a weapon or other thing mentioned in subsection (3), he shall take possession of it and shall as soon as possible give it to a police officer and that officer may keep it for such time as he thinks necessary for the purposes of this Ordinance.

## **156 Power to pursue vessels**

(1) A fisheries officer may exercise, with respect to non-Falkland Islands fishing vessels at a place at sea outside the fishing waters but not within the territorial sea of another country, a power conferred on a fisheries officer under section 141 if the following conditions are satisfied-

- (a) a fisheries officer has good reason to believe that a provision of this Ordinance has been contravened in relation to the vessel;
- (b) before the pursuit of the fishing vessel was commenced, the vessel was given a visual or auditory signal to stop at a distance which enabled the signal to be seen or heard by the vessel;
- (c) the fishing vessel or one of its boats was at a place within the fishing waters when the pursuit of the vessel commenced;
- (d) one or more fisheries officers have pursued the fishing vessel from that place to the place at which it is sought to exercise that power; and
- (e) the pursuit was not interrupted at any time before the fisheries officer arrived at that place with a view to exercising that power.

(2) For the purposes of subsection (1) a pursuit of a fishing vessel is not to be taken to be interrupted only because visual or non-visual contact was interrupted temporarily.

## **157 Release of detained fishing vessel and other seized property**

(1) Where any property, including a fishing vessel, is under the control of a fisheries officer because of the exercise by that officer of powers under section 134 or 141 (as they apply of their own force or because of any other provision of this Ordinance), the court may on the application of any person appearing to the court to have a sufficient interest therein direct that the property be released-

- (a) to the owner, charterer, operator or the master of the fishing vessel, in the case of a fishing vessel; and
- (b) in any other case, to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed,

on such conditions as the court thinks fit, which may include conditions as to the giving of security for payment of-

- (c) the value of the fishing vessel or other property if it is forfeited to the Crown by order of the court as a consequence of conviction of an offence under this Ordinance;
- (d) the amount of any fines which the court considers, in the light of the facts reported by the Crown on the hearing of the application under this section, might be imposed in the event of it convicting the owner, charterer, operator or master of any relevant offence;
- (e) in the case of an offence relating to the use of a fishing vessel, the cost of pursuit and arrest or detention of the fishing vessel and of bringing it to the port or other place at which it is detained; and

- (f) such amount as, in the opinion of the court, represents the likely amount of the costs of the prosecution of any offence with which the owner, charterer, operator or master has been charged or with which the court is informed it is likely that such a person may be charged on a full indemnity basis, assuming a not guilty plea.

(2) For the purposes of this section, a reference to property includes a reference to fish, and property is to be taken to be under the control of a fisheries officer if any person is, in relation to that property, subject to the direction of the fisheries officer.

### **158 Protection of fisheries officer from liability**

(1) No fisheries officer who does any act under this Ordinance or omits to do any act required by this Ordinance shall be 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 has acted or omitted to act in bad faith or without reasonable cause.

(2) The Crown may not be held directly or indirectly liable for an act or omission of any such fisheries officer unless the officer has himself incurred liability for the act or omission.

### *Fish receiver permits*

### **159 Holder of fish receiver permit to give information etc**

(1) A fisheries officer may, by written notice given to the holder of a fish receiver permit, require him-

- (a) to give the fisheries officer, within such reasonable time as is specified in the notice, such return or information in relation to fish received by the holder of the permit as is specified in the notice; and
- (b) to verify any such return or information by statutory declaration.

(2) Regulations under section 223 of this Ordinance may make provision-

- (a) requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them; and
- (b) requiring such persons to give returns or information in relation to fish received by them, not being returns or information mentioned in subsection (1).

### **160 Offences in relation to returns by holders of fish receiver permits**

A holder of a fish receiver permit commits an offence if he refuses to or fails to give a return or information required under section 159 or under regulations made for the purposes of that section.



## *Enforcement generally*

### **161 Offences**

(1) A person commits an offence who-

- (a) being the holder of a fishing licence, high seas fishing licence, overseas master fishing licence, scientific permit or fish receiver permit, contravenes a condition of that licence or permit or a provision of a temporary order;
- (b) being the holder of a fishing licence, high seas fishing licence, scientific permit or fish receiver permit, causes or permits a person acting on his behalf to contravene a condition of the licence or permit or a provision of a temporary order;
- (c) being a person acting on behalf of the holder of a fishing licence, high seas fishing licence, scientific permit, or fish receiver permit, contravenes a condition of the licence or permit or a provision of a temporary order;
- (d) makes or purports to make a record, or furnishes or purports to furnish a return, relating to a matter specified in section 91 knowing that the record or return contains a statement in respect of that matter that is false or misleading in a material respect or being reckless as to whether the record or return contains a statement in respect of a matter that is false or misleading in a material respect;

(2) Subsection (1) (and the remainder of this section so far as it relates to that subsection) applies whether the contravention occurs inside or outside the fishing waters.

(3) A prosecution for an offence under this section may be commenced at any time within 4 years after the commission of the offence.

### **162 Breach of condition or requirement**

Where no other offence is provided by this Ordinance in respect of the contravention in question, a person who contravenes a condition or requirement imposed by the Director in respect of any consent, approval, authority, or certificate issued or granted under this Ordinance (except a condition or requirement to pay a sum of money) commits an offence under this section.

### **163 Obstruction of fisheries officers**

(1) A person commits an offence who-

- (a) resists or obstructs, aids, abets, incites or encourages any other person to resist or obstruct any-
  - (i) fisheries officer in the execution of his powers or duties;
  - (ii) person assisting a fisheries officer in accordance with section 142; or
- (b) uses threatening language or behaves in a threatening manner towards any-
  - (i) fisheries officer executing his powers or duties; or
  - (ii) person assisting a fisheries officer in accordance with section 142; or

- (c) fails to comply with any lawful requirement of any fisheries officer;
- (d) provides to any fisheries officer any particulars that are false or misleading in any material respect; or
- (e) personates or falsely claims to be a fisheries officer or a person lawfully assisting a fisheries officer.

(2) A person who refuses to allow any fisheries officer or any person assisting a fisheries officer in accordance with section 142 to exercise any of the powers conferred on that fisheries officer or person by this Ordinance shall be deemed to be obstructing that fisheries officer or person.

#### **164 Removing fish from traps, etc**

A person commits an offence who, not being a fisheries officer acting in the course of his duties as such, within the fishing waters removes a fish from a net, trap or other equipment for the taking of fish unless he is the owner of the net, trap or other equipment or is acting with the authority of the owner.

#### **165 Persons not to receive fish in certain circumstances**

(1) A person commits an offence who, not being the holder of a fish receiver permit, receives, otherwise than for his private or domestic use, fish from a person who he knows, or has reason to suspect, is engaged in commercial fishing.

(2) An offence under subsection (1) is not committed by a person who receives fish as a servant or agent of the holder of the fish receiver permit.

#### **166 Power of court to make banning order**

(1) Where a court convicts a person of an offence under section 161(1) (a), (b),(c) or (d), the court may, in addition to any penalty it imposes in respect of that offence, order that the person convicted shall not, during such period as the court determines, but not exceeding 3 years, be on a fishing vessel within the fishing waters with the intention of engaging in commercial fishing whether on his own account or as the servant or agent of any other person.

(2) Where a court convicts a person of an offence under section 161(1) (a), (c), (d) or (e) or sections 136, 137 or 138 involving a Falkland Islands fishing vessel it may, in addition to any penalty imposed in respect of that offence prohibit that person from being on any Falkland Islands fishing vessel outside the fishing waters for the purposes of commercial fishing during a period specified by the Court, but not exceeding 3 years.

#### **167 Using fishing vessel for fishing in fishing waters: strict liability offence**

(1) A person who, at any place within the fishing waters uses a fishing vessel for fishing commits an offence unless there is in force in respect of that fishing vessel a fishing licence or scientific permit authorising the use of the fishing vessel at that place.

(2) It is not a defence to a prosecution brought under this section for the defendant to show that he did not know that he was within the fishing waters or at the place in question.

## **168 Offence of deliberate use of fishing vessel for fishing in fishing waters**

(1) A person commits an offence under this subsection if-

- (a) he intentionally uses a fishing vessel within the fishing waters;
- (b) the use of the fishing vessel is for fishing and the person either knew that it was being so used or was reckless as to that fact; and
- (c) the fishing vessel is at a place in the fishing waters at the time of the use and the person either knew or was reckless as to that fact.

(2) No offence is committed under subsection (1) if the defendant shows that a fishing licence or scientific permit was in force authorising the use of the fishing vessel at the place in the fishing waters in question for the species of fish for which it was fishing.

(3) It is not a defence to a prosecution under subsection (1) for the defendant to show that he did not know that he was at a place within the fishing waters.

## **169 Having fishing vessel equipped with nets etc: strict liability offence**

(1) A person commits an offence who at a place within the fishing waters has in his possession or charge a fishing vessel, nets, traps or other equipment for fishing unless-

- (a) the use, or presence, of the fishing vessel at that place is authorised by a fishing licence;
- (b) the fishing vessel's nets, traps or other equipment for fishing are stowed in such manner that they are not readily available for fishing or in such manner as may be prescribed by regulations under section 223(1); or
- (c) the use of the fishing vessel for scientific research purposes in that area is authorised under a scientific permit; or
- (d) the fishing vessel, nets, traps or other equipment for fishing is or are being used for recreational fishing purposes;

but it is a defence for the defendant to prove that the fishing vessel was at the time of the alleged offence transiting the fishing waters without fishing therein.

(2) It is not a defence to a prosecution for an offence under subsection (1) for the defendant to show-

- (a) that he did not know that he was at a place within the fishing waters; or
- (b) that he had no intention of fishing within the fishing waters.

## **170 Fishing in internal waters other than with a fishing vessel**

(1) Subject to subsection (2), a person commits an offence who, when not authorised to do so by a fishing licence or scientific permit, fishes in the internal waters other than with a fishing vessel.

(2) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove that the fishing was undertaken with a view to the catch being consumed only in the Falkland Islands.

### **171 Possession of nets etc in internal waters other than upon a fishing vessel**

(1) Subject to subsection (2), a person commits an offence who, other than as is authorised by a fishing licence or scientific permit, in the internal waters has in his possession nets, traps or other equipment for fishing other than upon a fishing vessel.

(2) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove-

- (a) that the nets, traps or other equipment for fishing in his possession were in his possession with a view to the catch taken thereby being consumed only in the Falkland Islands or
- (b) that he had some reasonable excuse for being in possession of the nets, traps or other equipment for fishing at the time and place in question.

### **172 Using vessel outside fishing waters to support illegal fishing in fishing waters**

(1) A person ("**the supporter**") commits an offence if-

- (a) the supporter uses a vessel ("**the support vessel**");
- (b) the support vessel is outside the fishing waters; and
- (c) the use of the support vessel is directly in support of, or in preparation for the use of a fishing vessel (other than the support vessel) by a person in the fishing waters in contravention of sections 167, 168 or 169.

(2) For the sake of avoidance of doubt it is declared that-

- (a) a fisheries officer outside the fishing waters (but not in the territorial sea of another country) may exercise powers under section 141 in relation to the support vessel and any person on the support vessel whom the officer has reasonable cause to believe has committed an offence under this section; and
- (b) the requirements of section 156 accordingly apply in relation to the pursuit of vessels used for the commission of offences to which subsection (1) of this section relates.

(3) A fisheries officer may exercise powers under section 141(2)(a) in relation to the support vessel as if the support vessel were in the fishing waters.

### ***Forfeiture by court order***

### **173 Forfeiture**

(1) Where a court convicts a person of an offence under sections 127(2), 136, 137(1), 138(1), 168(1) or 170(1), whether or not the court orders that person to pay a fine it shall order the forfeiture of such of the following as are relevant in the circumstances of the case-

- (a) any fishing vessel used in the commission of the offence, in so far as the same may not already be forfeit to the Crown under section 175 or subsection (2) of this section;
- (b) the nets, traps or equipment used in the commission of the offence;

- (c) fish on board any fishing vessel involved in the commission of such an offence;
- (d) the proceeds of sale of any such fish;
- (e) where a person convicted of the offence owns any Individual Transferable Quota or Provisional Quota, that Quota,

unless the court for special reasons relating to the offence announced in open court otherwise orders.

(2) Where a court convicts a person of an offence under sections 161, 169(1) or 171(1), the court may order the forfeiture of all or any of such of the following as may be relevant in the circumstances of the case-

- (a) nets, traps or equipment on board a fishing vessel or in possession of a person convicted of an offence under section 171(1) in relation to which the offence is committed at the time of the offence;
- (b) fish on board that fishing vessel at that time or in relation to which the offence is committed; and
- (c) the proceeds of the sale of any such fish.

(3) Any property, including fish, ordered by a court to be forfeited becomes the property of the Crown.

(4) Notwithstanding that a court has under subsection (1) ordered the forfeiture of any Individual Transferable Quota or Provisional Quota, any Catch Entitlement generated by that Quota in the fishing period current at the time of the forfeiture is not affected by the forfeiture.

#### **174 Disposal of fishing vessel forfeit by order of a court**

(1) Any fishing vessel, nets, traps, equipment or fish forfeit to the Crown under section 173 shall, subject to subsections (2) and (3), be dealt with in such manner as the Governor may direct.

(2) Where the Governor is satisfied that at the time of the court's order for forfeiture of the fishing vessel concerned it was subject to a mortgage to a third party securing payment of a sum of money, the Governor shall order that the fishing vessel shall be offered for sale.

(3) Nothing forfeited to the Crown by order of the court under section 173 may be sold to the previous owner or to any person associated or connected with the previous owner.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(4) For the purposes of this section-

- (a) a mortgage is a mortgage to a third party if it is a mortgage to a person who is not a person who is a person who is associated or connected with the previous owner;
- (b) a person is connected with the previous owner if under section 208 read with section 210 of the Taxes Ordinance 1997 he would be treated as an associated or connected person in relation to the previous owner.

(5) Where a fishing vessel forfeited to the Crown under section 173 is sold the proceeds of sale shall be applied-

- (a) in repayment or discharge of the costs and expenses incurred by the Crown in or in connection with the sale;
- (b) in payment or discharge of any third party mortgage of the fishing vessel,

and the balance shall be paid into the Consolidated Fund.

### *Automatic forfeiture of things used in certain offences*

#### **175 Automatic forfeiture**

The following things are forfeited to the Crown-

- (a) any nets, traps or equipment which were used in the commission of an offence under sections 168 or 169 or were on a fishing vessel used in an offence under any of those provisions at the time of the commission of that offence;
- (b) any fish involved in the commission of an offence under any provision mentioned in paragraph (a) or on a fishing vessel described in paragraph (a) at the time of any of the offences mentioned in that paragraph.

### *Dealing with things as automatically forfeited*

#### **176 Application of sections 177 to 181**

Sections 177 to 181 set out rules about a thing that a fisheries officer seizes under sections 134 and 141(2)(j) because-

- (a) the thing is forfeited under section 175; or
- (b) the fisheries officer has reasonable grounds to believe that the thing is forfeited under section 176.

#### **177 Notice of seizure**

(1) The fisheries officer shall give written notice of the seizure of the thing to the person who was the master of the fishing vessel immediately before the seizure or whom the fisheries officer has reasonable grounds to believe was the master of the fishing vessel immediately before the seizure.

(2) If the fisheries officer cannot conveniently give the notice to the required person in person, he may give written notice of the seizure of the thing in such manner as he considers is most likely to bring the matter to the attention of the owner of the thing.

(3) The notice shall-

- (a) identify the thing;

- (b) state that the thing has been seized;
- (c) state that the thing will be condemned as forfeited unless the owner of the thing or the person who had possession, custody or control of the thing immediately before it was seized gives to the Director within 30 days a written claim for the thing; and
- (d) specify the address of the Director.

### **178 Thing condemned if not claimed in time**

(1) A thing is condemned as forfeited to the Crown 30 days after notice of seizure of the thing has been given under section 177 unless-

- (a) within those 30 days the owner of the thing or the person who had possession, custody or control of it immediately before it was seized gives to the Director a written claim for it; and
- (b) the claim sets out an address for service upon the claimant.

(2) A person may claim the thing even if it has been destroyed or disposed of before the claim was made.

### **179 Dealing with a claim for thing**

(1) If a notice of claim is given in accordance with section 178-

- (a) an officer may retain possession of the thing without commencing any proceedings for the condemnation of the goods; and
- (b) the Director may serve notice upon the claimant stating that the thing will be condemned if the claimant does not institute proceedings against the Crown within 2 months of the date of the notice to recover the thing or for a declaration that the thing is not forfeited.

(2) A notice under subsection (1) shall be sent by pre-paid post to the address specified under section 178(1)(b) or by delivering the notice or causing it to be delivered to the claimant personally.

(3) A notice may be given under subsection (2) even if the thing has been released under section 157.

### **180 Condemnation of thing if it is claimed**

(1) This section applies if the Director gives the claimant a notice under section 179 about instituting any proceedings to recover the thing or for a declaration that the thing is not forfeited.

(2) The thing is condemned as forfeited to the Crown 2 months after notice under section 179 is given if the claimant does not institute proceedings against the Crown for recovery of the thing within 2 months of the notice.

(3) Where proceedings against the Crown are instituted within 2 months of the notice, the thing is condemned as forfeited to the Crown if, at the end of the proceedings there is not-

- (a) an order for the claimant to recover the thing;
- (b) an order for the Crown to pay the claimant the proceeds of sale of the thing if it has been sold before the end of the proceedings;
- (c) an order for the Crown to pay the claimant the market value of the thing at the time it was disposed of or destroyed, if it is to be disposed of or destroyed before the end of the proceedings; or
- (d) a declaration that the thing is not forfeited.

(4) For the purposes of subsection (3), if the proceedings go to judgment, "**the end of the proceedings**" means the end of the period for lodging an appeal against a judgment, if no appeal is lodged within that period, or when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

(5) Proceedings relating to the thing may be instituted or continued even if it is disposed of or destroyed.

(6) If the court hearing the proceedings decides that it would have ordered the thing to be delivered to a person apart from the fact that the thing had been disposed of or destroyed, the court shall order the Crown to pay the person an amount equal to the proceeds of the sale of the thing, if it has been sold before the end of the proceedings, or the market value of the thing at the time it was disposed of or destroyed, if it has been disposed of or destroyed before the end of the proceedings.

### **181 Dealing with thing after it is condemned**

If the thing is condemned as forfeited to the Crown it shall be dealt with or disposed of in accordance with the directions of the Governor.

### **182 Prohibition of fishing activity in case of re-offending**

(1) If any person is convicted within a period of 7 years of-

- (a) two or more grave offences committed on separate occasions; or
- (b) three or more offences committed on separate occasions one or more of which is a grave offence and one or more of which is a serious offence,

the court shall, in addition to any other penalty it imposes, order-

- (i) that the person forfeit any licence, permit or approval obtained under this Ordinance; and
- (ii) that the person be prohibited for a period specified by the court not being less than 2 years and not exceeding 5 years, commencing on the date of the most recent conviction from doing any of the following-
  - (aa) holding any Quota, Catch Entitlement, licence, permit or approval obtained under this Ordinance; or
  - (bb) engaging in fishing;



(2) A person who contravenes or fails to comply with an order made under subsection (1) commits an offence.

(3) In this section-

- (a) **"grave offence"** means an offence punishable on conviction by a fine exceeding the maximum of Level 11 on the standard scale;
- (b) **"serious offence"** means an offence punishable on conviction by a fine exceeding the maximum of Level 7 on the standard scale but not exceeding the maximum of Level 11 on the standard scale.

### *Enforcement action prevails over admiralty action*

#### **183 Seizure or forfeiture has effect despite admiralty proceedings**

(1) The seizure, detention or forfeiture of a fishing vessel under this Ordinance has effect despite all or any of the following events-

- (a) the arrest of the fishing vessel;
- (b) the making of an order for the sale of the fishing vessel by the court; and
- (c) the sale of the fishing vessel under an order made by the court,

in proceedings within the admiralty jurisdiction of the Supreme Court.

(2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture or the event that was the basis for the seizure, detention or forfeiture occurred before or after the arrest or making of the order for sale.

### *Observer programme*

#### **184 Observer programme**

(1) The Director may establish an observer programme for the purpose of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement.

(2) The Director may appoint any person employed in the Department of Fisheries to be an observer for the purposes of the observer programme under subsection (1) of this section, and an observer so appointed has all the powers of an observer under sections 186 and 188.

(3) The Director may place any observer appointed under this section on any vessel to observe fishing and the trans-shipment, transportation, and landing of fish.

(4) An observer may collect any information on fisheries resources, fishing (including catch and effort information), the effect of fishing on the aquatic environment, and the transportation of fish including-

- (a) the species, quantity, size, age and condition of fish taken;
- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish;
- (d) all aspects of the operation of any fishing vessel;
- (e) processing, transportation, trans-shipment, storage, or disposal of any fish;
- (f) any other matter that may assist the Director to obtain, analyse, or verify information for the purposes of fisheries research, fisheries management, and fisheries enforcement.

(5) No fisheries officer or any person with the powers of a fisheries officer shall be appointed under subsection (2) of this section.

### **185 Director to give notice of intention to place observer on fishing vessel**

(1) Before placing any observer on a fishing vessel, the Director shall give the owner, charterer, operator or master of the fishing vessel, reasonable notice of his intention to place an observer or observers on the fishing vessel.

(2) Upon receipt of a notice given under subsection (1), no person shall cause or allow the fishing vessel to which the notice relates to put to sea without having on board the number of observers specified in the notice given under that subsection.

(3) Any person who contravenes subsection (2) commits an offence.

(4) For the purposes of this section, the term "**reasonable notice**" means such notice as is reasonable in all the circumstances, or such other period or type of notice as may be agreed between the Director and the owner, charterer, operator or master, on or after which the fishing vessel is not to put to sea without having on board the specified number of observers.

### **186 Powers of observers and obligations of persons on fishing vessels carrying observers**

(1) The owner, charterer, operator and master of any fishing vessel on which an observer is placed shall allow the observer, at any reasonable time, having regard to the operations of the fishing vessel, to-

- (a) have access to the fishing gear and the storage and processing facilities on the fishing vessel;
- (b) have access to any fish or aquatic life (including seabirds and protected species) on board the fishing vessel;
- (c) have access to the bridge and the navigation and communications equipment of the fishing vessel;
- (d) have access to the logs and records of the fishing vessel, whether required to be carried and maintained by or under this Ordinance or otherwise;
- (e) receive and transmit messages and communicate with the shore and other fishing vessels;

- (f) take, measure, and retain samples or whole specimens of any fish or aquatic life (including seabirds and protected species) caught;
- (g) store samples and whole specimens on the fishing vessel, including samples and whole specimens held in the fishing vessel's freezing facilities.

(2) Every person on board a fishing vessel on which there is an observer commits an offence, who-

- (a) fails to provide reasonable assistance to enable the observer to exercise powers under subsection (1) of this section; or
- (b) hinders or prevents the observer exercising those powers.

### **187 Food and accommodation to be provided for observers**

(1) The owner, charterer, operator and master of any fishing vessel on which an observer is placed shall, free of charge, provide the observer with-

- (a) food and accommodation;
- (b) access to and use of adequate cooking and toilet and washing facilities to a standard approved or prescribed by the Director; and
- (c) access without unreasonable restriction to telecommunications facilities enabling the observer to make official communications.

(2) A person commits an offence who contravenes subsection (1) of this section.

### **188 Supervision by observers of trans-shipments, dumping of fish and operation of conversion factors**

(1) If an observer is on board a fishing vessel-

- (a) from which, or to which, any fish are trans-shipped;
- (b) from which any fish subject to the quota management system are returned to or abandoned in the sea;
- (c) in respect of which any conversion factor certificate may be or has been given under section 90(3) of this Ordinance; or
- (d) which is taking or has taken fish outside the fishing waters,

the master of the fishing vessel or, in the case of trans-shipment, the master of each fishing vessel, shall provide such information, and shall allow the observer to carry out such inspections (including sampling and measuring) of the fishing vessel, any fish, taken, processed, trans-shipped, or landed, and documents, as the observer may require for the purpose of-

- (e) observing the trans-shipment, abandonment, or return to the sea;
- (f) collecting information on the method of processing, and performance of the fishing vessel in undertaking such processing, in order to determine or monitor any conversion factor;

- (g) observing the fishing activities of the fishing vessel and the landing and disposal of its catch; or
- (h) taking, measuring and retaining samples or whole specimens of any fish or aquatic life (including seabirds and protected species) caught.

(2) An observer may take and make copies of such records, documents or information as the observer may require for the purposes of subsection (1).

(3) An observer may store in the fishing vessel's freezing facilities such samples and whole specimens of any fish or aquatic life (including seabirds and protected species) as the observer may require for the purposes of subsection (1).

(4) A person commits an offence who contravenes subsection (1).

## **PART VIII MISCELLANEOUS AND GENERAL**

### *Levy and collection of levy*

#### **189 Levy**

(1) Subject to subsection (2), the Governor may by regulations made under this subsection impose a levy-

- (a) in respect of any fishery specified in such regulations;
- (b) upon every company incorporated in the Falkland Islands holding Individual Transferable Quota or Provisional Quota;
- (c) providing for the proceeds of such levy less the costs of collection to be paid over, when received, by the Crown to the Falkland Islands Fishing Companies Association; and
- (d) requiring that the proceeds of any such levy may only be expended for such purposes as shall be specified in such regulations.

(2) No regulations may be made under subsection (1) in respect of any fishery unless companies holding the majority of the Quota in that fishery have by ballot approved those regulations in draft.

(3) The amount of levy is such amount as is prescribed and the regulations may provide for the payment of an amount of levy to be made by instalments and, subject to subsection (4), each instalment is due and payable at a time ascertained in accordance with the regulations.

(4) If the regulations provide for the payment of an amount of levy to be made by instalments and an instalment is not paid at or before the time due for payment of the instalment, the whole of the amount of levy unpaid becomes due and payable at that time.

(5) If an amount of levy remains unpaid after the day on which it becomes due for payment, there is payable to the Crown by way of penalty, in addition to that amount of levy, an amount

calculated at the rate of 15% per annum upon the amount of the levy from time to time remaining unpaid, to be calculated from the time when the amount of levy became payable.

(6) Any levy that is due and payable and any amount payable under subsection (5) may be recovered by the Crown as a civil debt due to the Crown.

(7) Any levy payable by virtue of regulations made under this section is payable in addition to, and not in substitution for, any fee payable under this Ordinance.

### **190 Supplementary to section 189**

(1) Regulations made for the purposes of section 189 may prescribe the amount of, or method of calculating the amount of, levy imposed by reference to a matter specified in the regulations, being a matter relating to the fishing concession and, without prejudice to the generality of the foregoing, may be made by reference to one or more of the following matters-

- (a) the nature or class of the concession;
- (b) where the levy is imposed in respect of Individual Transferable Quota or Provisional Quota, the turnover, profit or capital employed in the company owning it;
- (c) where the concession relates to the use of a fishing vessel-
  - (i) the size or tonnage of the fishing vessel, measured as prescribed, or the power of the fishing vessel's main engine;
  - (ii) the quantity or kind of equipment permitted by the licence to be carried on the fishing vessel for the purpose of taking, processing or carrying fish;
  - (iii) the limit upon the quantity of fish, measured as prescribed, that the licence authorises to be taken or processed with the use of the fishing vessel or carried by the fishing vessel, if any;
  - (iv) the kind of fish that the licence authorises to be taken or processed with the use of the fishing vessel or carried by the fishing vessel;
  - (v) the method by which the licence authorises fish to be taken, processed or carried; and
  - (vi) whether or not the fishing vessel will be engaged in taking fish pursuant to a fishing right.

(2) Regulations made for the purposes of section 189(1)(b) may prescribe the amount of, or method of calculating the amount of levy imposed by a reference to a matter specified in the regulations.

### ***The Association***

## 191 Falkland Islands Fishing Companies Association

(1) There is hereby established a Falkland Islands Fishing Companies Association (hereinafter called "**the Association**").

(2) The Association is a body corporate with perpetual succession, may sue or be sued in its corporate name, may hold real and personal property in that name and may employ such person or persons as it sees fit for the purpose of its functions.

(3) The functions of the Association are-

- (a) to represent the interests of its members;
- (b) to fund or carry out such fisheries-related research as may be agreed by the members of the Association;
- (c) such other functions as may, at the request of the Association or of his own motion, be prescribed by an Order made by the Governor under this paragraph.

(4) Any company —

- (a) which is listed in Part B of an Individual Transferable Quota Eligibility Register must become a member of the Association whether or not they own Individual Transferable Quota or Catch Entitlement; or
- (b) which is listed on Part A of an Individual Transferable Quota Eligibility Register or on the Provisional Quota Eligibility Register is entitled, but is not compelled to be, a member of the Association.

*[S. 26/Ord. 9/21/w.e.f. 01/10/21.]*

(5) A company —

- (a) referred to in subsection (4)(a) —
  - (i) automatically becomes a member of the Association upon the granting of an application under section 17D;
  - (ii) must notify the Association in writing of the grant of the application and the Association must add the company to its list of members; and
  - (iii) the company remains a member of the Association until it ceases to be listed on Part B of the Individual Transferable Quota Eligibility Register or ceases to be a member in accordance with the rules of the Association;
- (b) referred to in subsection (4)(b) becomes a member of the Association upon notifying the Association in writing that it wishes to be a member of the Association and remains a member of the Association until the earlier of —
  - (i) its ceasing to be listed on Part A of the Individual Transferable Quota Eligibility Register or on the Provisional Quota Eligibility Register;
  - (ii) its resigning membership of the Association by notice in writing addressed to the Secretary of the Association; or

- (iii) its ceasing to be a member in accordance with the rules of the Association.

[S. 26/Ord. 9/21/w.e.f. 01/10/21.]

(6) The Association must appoint —

- (a) a Chair and Vice-chair from among the directors of companies which are members of the Association or from senior managers employed by those companies; and
- (b) a Secretary.

[S. 26/Ord. 9/21/w.e.f. 01/10/21.]

(7) The Association must have such rules not inconsistent with the foregoing subsections as are determined by its members but such rules must prescribe —

- (a) the functions of the Chair and Vice-chair of the Association and the manner in which and intervals at which they are elected;
- (b) the functions of the Secretary of the Association;
- (c) the procedure at meetings of the Association;
- (d) that books of account must be kept in respect of the Association's income and expenditure and that they are audited;
- (e) that an annual general meeting is held of members of the Association and that the audited accounts of the Association are laid before and approved at such annual general meeting.

[S. 26/Ord. 9/21/w.e.f. 01/10/21.]

## *Offences*

### **192 Using false document or making false statement**

(1) A person commits an offence who knowingly, for the purpose of obtaining any benefit under this Ordinance-

- (a) makes any false or misleading statement;
- (b) omits any information,

in any communication, application, record or return prescribed or required under this Ordinance.

(2) A person commits an offence who knowingly, for the purpose of obtaining any benefit under this Ordinance-

- (a) uses, deals with or acts upon; or
- (b) causes any other person to use, deal with or act upon,

any communication, application, record or return prescribed by or required under this Ordinance which is false.

### *Provisions in relation to offences*

#### **193 Conduct of directors, servants and agents of body corporate**

(1) Where, in proceedings for an offence under this Ordinance, it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his actual or apparent authority and that the director, servant or agent had the state of mind required for the offence.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of a body corporate within the scope of his actual or apparent authority shall be deemed for the purposes of a prosecution for an offence under this Ordinance to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to prevent that conduct.

(3) Where, in proceedings for an offence under this Ordinance, it is necessary to prove a state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a servant or agent of the person within the scope of his actual or apparent authority and that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than the body corporate by a servant or agent of the person within the scope of his actual or apparent authority is to be deemed for the purposes of the prosecution for an offence under this Ordinance to have been engaged in also by the first-mentioned person unless the first-mentioned person shows that he took reasonable precautions and exercised due diligence to prevent the conduct.

(5) A reference in subsection (1) or (3) to the state of mind of the person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and his reasons for that intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes-

- (a) a person in accordance with whose instructions the corporation normally or usually acts; and
- (b) a member of the board or other controlling body of any statutory corporation.

(7) A reference in this Part-

- (a) to engaging in conduct includes a reference to failing or refusing to engage in conduct;
- (b) to an offence under this Ordinance, without prejudice to the generality of the effect of the definition of "this Ordinance" in section 3, is declared to include a reference to an offence created by regulations under this Ordinance.

(8) This section has effect without prejudice to section 195.

#### **194 Criminal liability of owners, operators, charterers and masters**

(1) Where an offence under this Ordinance is proved to have been committed in relation to a fishing vessel or any fishing operation undertaken by a fishing vessel, the owner, charterer,



operator and the master of that fishing vessel shall each be deemed to have committed that offence and may be proceeded against in respect of that offence and convicted and sentenced in respect of it accordingly.

(2) Except where it is specifically provided by this Ordinance to the contrary, it is not a defence to a prosecution for an offence under this Ordinance for the defendant to prove that he had no knowledge of the act or omission giving rise to the commission of the offence or that the defendant had no reasonable means of preventing the commission of the offence.

### **195 Liability of directors and officers of bodies corporate**

(1) Where an offence under this Ordinance is proved-

- (a) to have been committed with the consent or connivance of any director, secretary, manager or other similar officer of a body corporate convicted in respect of that offence, or any person who was purporting to act in any such capacity; or
- (b) to have been committed by the director, secretary, manager or other similar officer, or any person who was purporting to act in any such capacity,

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

he as well as the body corporate has committed that offence, and may be proceeded against and sentenced in respect of it accordingly and for the sake of avoidance of doubt his liability to be so sentenced includes, subject to section 203, liability to be sentenced to imprisonment for any term provided for in respect of that offence, even though the body corporate could not be so sentenced.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **196 Presumption as to owner, charterer, operator or master of a fishing vessel**

In any proceedings for an offence under this Ordinance an allegation made in an information as to the identity of the owner, charterer, operator or master of a fishing vessel at any time shall be presumed to be true unless the contrary is proved.

### **197 Unavoidable bycatch**

(1) Notwithstanding any other provision of this Ordinance, a person lawfully takes fish if he takes it as the inevitable consequence of the taking of other fish under the authority of and in accordance with a fishing licence.

(2) A person who takes fish which he is not permitted under the authority of and in accordance with a fishing licence to take shall within 48 hours of so doing inform the Director in writing that he has done so, giving particulars of the species and weight of the fish concerned and of the location at and the fishing vessel with which he took the fish.

(3) A person who contravenes subsection (2) commits an offence.

## 198 Evidence

(1) In any proceedings for an offence under this Ordinance, an allegation contained in the information or complaint that-

- (a) the defendant was at a particular place at the time of the alleged offence;
- (b) the fishing vessel, aircraft or other thing referred to in the information or complaint was at a particular place at the time of the alleged offence; or
- (c) fishing engaged in by or with a fishing vessel in relation to which a fishing concession was in force at the time of the alleged offence was commercial fishing;

is to be treated as prima facie evidence of that fact.

(2) A certificate under the hand of the Director-

- (a) that, at a time or during a period specified in the certificate, a fishing vessel specified in the certificate was, or was not, a Falkland Islands fishing vessel;
- (b) that, at a time or during a period specified in the certificate, an area of water specified in the certificate was, or was not, part of the fishing waters;
- (c) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the owner of Individual Transferable Quota, Provisional Quota or Catch Entitlement, specified in the certificate;
- (d) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fishing licence that was in force authorising the use of a fishing vessel specified in the certificate for fishing in an area of the fishing waters, or a specified fishery, specified in the certificate;
- (e) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a scientific permit that was in force authorising the use of a fishing vessel specified in the certificate for scientific research purposes in an area of the fishing waters, or a fishery, specified in the certificate;
- (f) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of an overseas master fishing licence that was in force authorising the person to be in charge of a fishing vessel being used for fishing in an area of the fishing waters, or a fishery, specified in the certificate;
- (g) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force authorising the person to receive fish from a person engaged in fishing in a fishery specified in the certificate;
- (h) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force,

shall in a prosecution for an offence under this Ordinance be prima facie evidence as to the matter stated therein unless the contrary be proved.

(3) The Director, on giving a certificate under subsection (2) that the person was the holder of Individual Transferable Quota, Provisional Quota or Catch Entitlement or of a licence or permit granted under this Ordinance may additionally, in the certificate, certify that conditions specified in the certificate were the conditions to which the fishing right, licence or permit, as the case may be, was subject and, if he does so, the certificate is, for the purposes of any prosecution for an offence under this Ordinance or the regulations, presumed to be correct unless the contrary is proved.

### **199 Copies of accounts, records, returns, etc.**

(1) A copy of any account, record, return, or information required to be kept, completed, or provided under this Ordinance that purports to be certified by the Director as having been kept, completed, or provided (as the case may require), at or within or in relation to any specified time, date, period, or place, shall be sufficient evidence, in the absence of proof to the contrary, of the fact that the account, record, return, or information was so kept, completed, or provided.

(2) Any copy of a record or other document taken by a fisheries officer, or any copy of such a copy, shall, subject to subsection (3) of this section, be admissible, to the same extent as the original record or document and of any transactions, dealings, amounts, or other matters contained in the record or the document.

(3) A copy of any account, record, return, or other document referred to in subsection (1) or subsection (2) of this section (including a copy of such a copy) shall be admissible in evidence only if-

(a) the prosecutor or an agent of the prosecutor serves on the defendant, or the defendant's agent or legal practitioner, not less than 4 weeks before the hearing at which it is proposed to tender the copy in evidence-

(i) notice of the prosecutor's intention to tender the copy in evidence; and

(ii) a copy of the copy which is to be so tendered; and

(b) the court has not, on the application of the defendant made not more than 14 days after receipt of the copy referred to in paragraph (a) of this subsection, ordered, not less than 7 days before the hearing (or such lesser period as the court in the special circumstances of the case thinks fit), that the copy is inadmissible as evidence in the proceedings.

(4) The court shall not make an order under subsection (3) of this section unless it is satisfied that there is reasonable doubt as to-

(a) the accuracy of the information contained or referred to in the document; or

(b) the validity of the document.

### **200 Service of summons and other documents**

(1) The service of any summons or other document in or in relation to any proceedings for an offence under this Ordinance upon an agent for service shall be as effectual for all purposes as if the summons or other document had been served upon the person in respect of whom he is the agent for service.

(2) In subsection (1) "**agent for service**" includes a person named pursuant to sections 41(4)(b) or (5), 42(2)(b) or (3).

### **201 Punishment of offences**

Schedule 3 to this Ordinance has effect for the purpose of prescribing the manner in which offences against the provisions of this Ordinance mentioned in that Schedule are punishable on conviction.

### **202 Matters to be taken into account in sentencing**

In sentencing any person for an offence under this Ordinance of which that person has been convicted the court shall, in addition to any other matters, take into account-

- (a) the difficulty of detecting and apprehending persons committing offences under the provisions of this Ordinance and bringing them to justice;
- (b) the need to discourage others from committing like offences.

### **203 Imprisonment of foreign persons**

(1) In the absence of an agreement to the contrary made-

- (a) between the Government of the Falkland Islands and the government of another country; or
- (b) the Government of the United Kingdom, on behalf of the Falkland Islands, and the government of another country,

the court shall not have power, notwithstanding that it would otherwise have such power, to sentence a person to a term of imprisonment in respect of an offence under Part VII or Part VIII of which it has convicted him or impose any sentence other than a fine upon him, unless he is-

- (a) a British citizen;
- (b) a British Overseas Territories citizen;
- (c) a person having Falkland Islands status; or
- (d) a person holding a permanent residence permit.

(2) If, but for subsection (1), a person could have been sentenced to a term of imprisonment, the person shall be liable to a fine not exceeding the maximum of Level 10 on the standard scale, if that is greater than the maximum fine he would otherwise have been liable to be ordered to pay.

### **204 Powers of court as to costs of prosecution and as to forfeiture of security**

(1) On convicting a person of an offence under this Ordinance the court may, in addition to any sentence and any order it makes for forfeiture of any property it imposes on that person, order that person-

- (a) to pay the costs of the prosecution;

- (b) if the offence of which the person was convicted was an offence under sections 127(2), 136, 137(1), 167, 168(1), 169(1) or 172(1) to pay the whole or any part of the costs of-
  - (i) pursuit by a fisheries patrol vessel or vessels of the fishing vessel concerned in the offence;
  - (ii) any fisheries patrol vessel accompanying the fishing vessel concerned in the offence from the point at which it was arrested to the place in the Falkland Islands at which it was detained;
  - (iii) detaining the fishing vessel in the Falkland Islands from the time of its arrival there, following arrest or detention, until the date on which it was released by the court under section 157.

(2) Where-

- (a) the offence of which the person was convicted is an offence mentioned in subsection (1)(b);
- (b) the person convicted of that offence is the owner of the fishing vessel concerned in that offence,

the court shall make an order against the owner of such of the kinds referred to in subsection (1)(b)(i), (ii) and (iii) as are relevant in the circumstances of the case unless the court, for special reason to the contrary related to the circumstances of the offence or offences, announced in open court, sees fit not to do so.

(3) For the purposes of an order under subsection (1)(b)(i) or (ii), the costs of a fisheries patrol vessel shall be calculated on a daily basis and calculated pro rata in relation to part of a day, and shall incorporate the following elements-

- (a) if the vessel is on charter to the Crown in right of its Government of the Falkland Islands-
  - (i) the daily charter rate for that vessel in accordance with the lease, sublease or agreement for his of the vessel;
  - (ii) if the lease, sublease or hire agreement is on a bareboat basis, the aggregate wages or salaries of the crew and any fisheries officers or other persons engaged aboard the vessel for the purposes of this Ordinance;
- (b) if the vessel is owned by the Crown in right of its Government of the Falkland Islands-
  - (i) such amount as the court is satisfied represents the fair depreciation of the vessel;
  - (ii) the aggregate wages or salaries of the crew and any fisheries officers or other persons engaged aboard the vessel for the purposes of this Ordinance; and
- (c) the cost of fuel consumed, unless that cost is included in the daily charter rate of a vessel chartered by the Crown.

(4) The costs referred to in subsection (1)(b)(iii) include the following-

- (a) the amount of any part of harbour dues which would be payable if the fishing vessel were voluntarily present at the place at which it is detained;
- (b) any watch reasonably maintained in relation to the safety of the vessel or preventing its escape.

**205 Power of court if forfeiture order cannot be made**

(1) If-

- (a) the court convicts the owner of a fishing vessel of an offence referred to in section 173(1)(a); and
- (b) if the fishing vessel had been at a port or harbour in the Falkland Islands the court would have made an order of a kind referred to in section 173(1)(a); but
- (c) the fishing vessel is not at a port or harbour in the Falkland Islands,

the court may make an order under subsection (2) of this section.

(2) An order under this subsection is an order that the owner of the fishing vessel shall pay to the Crown any one or more of the following-

- (a) such sum as the court specifies as being, in the opinion of the court, the value of the fishing vessel;
- (b) such sum as the court specifies as being, in the opinion of the court, the value of any nets, lines or other fishing gear aboard the fishing vessel at the time of the offence;
- (c) such sum as the court specifies as being, in the opinion of the court, the value of all or any fish aboard the fishing vessel at the time of the offence.

(3) Where-

- (a) the court makes an order under subsection (2);
- (b) the owner has provided security pursuant to section 157 in relation to the release by the court of the fishing vessel prior to trial,

the court shall order-

- (i) that such security shall not be released until any fine it may have ordered the owner to pay, and all sums which the court has, under section 204(1) or subsection (2) of this section, ordered the owner to pay have been paid;
- (ii) that unless all sums referred to in paragraph (i) are paid within 21 days, or such greater period as the court may allow, the security shall be realised and applied in payment in the following order of-
  - (aa) the fine, if still unpaid;
  - (bb) sums ordered to be paid under subsection (2), if still unpaid;
  - (cc) any sum ordered to be paid under section 204(1), if still unpaid;

(dd) any balance to the owner.

## **206 Detention etc of fishing vessel pending payment**

(1) If the court has ordered the owner of a fishing vessel-

- (a) on conviction of an offence to pay a fine;
- (b) to pay any sum under section 204(1),

and the fishing vessel is, at the time of such an order, in a port or harbour in the Falkland Islands, the Director shall cause that fishing vessel to be detained until such sum or sums is paid in full, whereupon he shall forthwith release the fishing vessel.

(2) If at any time after 21 days or such greater period not exceeding 90 days as the court may allow from the making of an order of a kind to which subsection (1) refers the sum or sums mentioned therein remain in whole or in part unpaid, the court shall, on the application of the Attorney General or by a person authorised by him, order that the fishing vessel and all stores, fuel, lubricants, apparatus, fishing gear and fish thereon is forfeit to the Crown, whereupon they are so forfeit and shall be dealt with in such manner as the Governor may direct.

## **207 Right of appeal in respect of order under section 204(1) or section 205(2)**

(1) An owner of a fishing vessel aggrieved by an order under section 204(1) or section 205(2) may appeal to the Supreme Court against that order in the same way as if it were an order to pay a fine made on conviction of an offence under this Ordinance.

(2) On the determination of an appeal under subsection (1), the Supreme Court may-

- (a) confirm the order;
- (b) vary the order in such manner as it sees fit; or
- (c) quash the order and make any order consequential thereon,

and may make such order in relation to the costs of the appeal as it thinks fit.

(3) If an appeal under subsection (1) has been made and remains undetermined-

- (a) no step shall be taken to give effect to any order under section 204(1)(b);
- (b) no application shall be made under section 206(2),

until such time as the appeal has been determined.

### *Administrative penalties*

## **208 Administrative penalties**

(1) This section-

- (a) applies in respect of an alleged offence under Part VI or Part VII that carries a penalty of a fine not exceeding the maximum of Level 10 on the standard scale;
  - (b) does not apply in respect of an alleged offence if an information or charge has been laid in respect of the alleged offence.
- (2) The Director may with the consent of the Attorney General cause notice in writing, in the approved form, to be served on a person if the Director has reasonable cause to believe that-
- (a) an offence to which this section applies may have been committed by that person;
  - (b) having regard to all the circumstances relating to the alleged offence, it is minor; and
  - (c) having regard to the previous conduct of the vessel and of that person, it would be appropriate to impose a penalty under this section.
- (3) A notice given under subsection (2) shall-
- (a) contain-
    - (i) the date and nature of the alleged offence;
    - (ii) a summary of the facts on which the allegation that an offence has been committed is based, which summary is sufficient to fully and fairly inform the person of the allegation against him; and
    - (iii) any other matters (other than previous convictions) that the Governor considers relevant to the imposition of a penalty; and
  - (b) be endorsed with a statement setting out the provisions of this section and the next two following sections.

## **209 Right to require that offence be dealt with by court**

- (1) Within 28 days after a notice under section 208 is served on a person, the person may, by a notice in writing in the approved form served on the Director, require that any proceedings in respect of the alleged offence be dealt with before a court.
- (2) No further proceedings may be taken under section 208 by the Director if-
- (a) a person gives notice in accordance with subsection (1); or
  - (b) the person does not, within 28 days after a notice under section 208 is served on him, admit the offence in accordance with subsection (4) of this section.
- (3) Nothing in this section prevents-
- (a) the subsequent laying of an information or charge in respect of the alleged offence;
  - (b) the conviction of the person of the offence by a court; or
  - (c) the imposition of a penalty under an enactment, or forfeiture under this Ordinance, on such a conviction.



(4) A person upon whom a notice under section 208 has been served who does not require that any proceedings in respect of the alleged offence be dealt with before a court may, by notice in writing served on the Director within 28 days after the notice under section 208 is served on him-

- (a) admit the offence; and
- (b) make submissions to the Director as to the matters the person wishes the Governor to take into account in imposing a penalty under section 210.

## **210 Amount of administrative penalty**

(1) If under section 209(4) the person admits an offence, the Governor may, after taking into account any submissions made by the person under that section, impose on that person a monetary penalty not exceeding one-third of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

(2) If the Governor imposes a penalty on a person under this section in respect of an offence, the Governor shall cause a notice in writing, in the approved form, of the particulars of the penalty to be served on the person.

(3) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on the person in accordance with subsection (2).

(4) Notwithstanding subsection (3), a penalty that has been imposed under this section is recoverable by the Crown, from the person on whom it has been imposed, in the same manner as a fine is recoverable on conviction for an offence by a court.

(5) Where a person admits an offence under section 209(4), no information or charge may be laid against that person in respect of the offence.

### *Administrative provisions*

## **211 Director to compile statistics**

(1) The Director shall cause to be compiled, from returns furnished under this Ordinance and from other sources, statistics in relation to such matters as the Governor may direct him.

(2) The Director if so directed in writing by the Governor, shall-

- (a) publish in such manner as the Governor may direct; or
- (b) make available to or supply to any person specified by the Governor,

such statistics mentioned in subsection (1) as are specified by the Governor.

## **212 Electronic transmission**

(1) The Director may approve for the purposes of this Ordinance the transmission of accounts, records, returns, transactions, information, notices, objections, requests, applications or other documents provided for under this Ordinance by means of electronic transmission.

(2) An approval under subsection (1)-

- (a) may relate to any person or any one or more classes of person;
- (b) may relate to any one or more classes of accounts, records, returns, transactions, information, notices, objections, requests, applications or other documents;
- (c) shall not relate to anything a person transmits or is required to transmit to the Director under sections 17C, 24, 26, 28, 30 or 31.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(3) In subsection (1), "**transmission**" in relation to any thing includes sending or delivering that thing, and in that subsection and this "**any thing**" includes any document of any kind whatsoever.

## **213 Compensation for acquisition of property**

(1) Subject to subsection (2), the Crown shall pay adequate compensation to any person from whom under the operation of this Ordinance any property is acquired other than by way of forfeiture pursuant to this Ordinance.

(2) Subject to the Constitution, no compensation is payable where any provision of this Ordinance provides that no compensation is to be payable.

(3) Unless the Crown and the person from whom the property is acquired agree on the amount of the compensation to be paid to that person, the Crown or that person may apply to the Supreme Court to determine the amount of such compensation to be paid to him, and the jurisdiction of the Supreme Court under this subsection excludes the jurisdiction of all other courts and tribunals except the Court of Appeal on appeal from the Supreme Court.

(4) Any damages or compensation recovered by any person or any other remedy given in proceedings begun otherwise under this section shall be taken into account in assessing compensation payable in proceedings under this section and arising out of the same event or transaction.

(5) In this section, "**property**" and "**adequate compensation**" have the same meaning as they do for the purposes of section 7 of the Constitution.

## **214 Recovery of compensation paid and costs in case of fraud**

(1) If any sum has been lawfully paid out of public money as compensation for any loss occasioned by fraud on the part of any person causing or procuring that person to be registered as the owner of any Individual Transferable Quota or Provisional Quota or as a mortgagee of such Quota, as the case may be, by virtue of any dealing with or transmission from a registered owner,

the amount of that compensation shall be deemed to be a civil debt due to the Crown from the person or persons legally responsible for it and may be recovered accordingly.

(2) In any action or proceedings for recovery of a debt due under subsection (1), the court may, for the purposes of that action, determine on the balance of the probabilities who is legally responsible for the fraud.

## **215 Transfer of duties and functions in relation to Registers**

(1) The Governor may by Order transfer any function of the Director in relation to the compiling, maintenance, upkeep, and correction of any Register provided for by this Ordinance to-

- (a) another public officer; or
- (b) a company incorporated and having its principal place of business in the Falkland Islands.

(2) An Order under subsection (1) shall-

- (a) specify the rights of the Crown in relation to information and data received, held or generated in relation to the performance or exercise of the functions, duties or powers; and
- (b) provide that the information and data specified in the Order is the property of the Crown.

(3) A public officer or company specified in an Order made under subsection (1) shall have and shall exercise in accordance with this Ordinance the functions of the Director transferred to him or it by that Order.

(4) Subject to subsection (3), the Governor may give a written direction to any public officer or company to whom a function has been transferred in relation to any Register in respect of the exercise by it of any specified function.

(5) The Governor has no power under subsection (4) to give any direction in respect of a specific application or in relation to a specific person.

(6) The Governor shall-

- (a) send a copy of any direction under subsection (4) to the public officer or company to which it is addressed; and
- (b) cause it to be published in the Gazette.

(7) The Governor may by Order under this subsection revoke or amend an Order under subsection (1) if he is satisfied that the public officer or company to whom or which any function of the Director was transferred by the Order has-

- (a) failed to comply with any provisions of the Order as to the performance of the functions transferred;
- (b) failed to comply with any direction given under subsection (5);
- (c) is not operating in accordance with the provisions of this Ordinance;

- (d) is insolvent or likely to become insolvent;
- (e) falsified any entry in any Register to which the Order relates or wilfully failed to make any entry he or it ought to have made in any such Register;
- (f) so far as relates to any register, any contract made between the Crown and any company for the compiling, upkeep, maintenance and correction of the Register pursuant to an Order under subsection (1) has expired; and
- (g) if the Order under subsection (1) provides for the functions of the Director in relation to a Register to be performed by another public officer, at any time if the Governor considers that those functions should be performed by another person.

(8) Before revoking or amending by Order under subsection (7) any Order made under subsection (1), the Governor shall, subject to subsection (9), give the public officer or company concerned 21 days' notice in writing of his intention to do so, specifying the ground or grounds on which he contemplates doing so.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(9) The Supreme Court may on application by the Governor under this subsection (and if it sees fit, ex parte) abridge the period of notice required to be given by the Governor under subsection (8) or, if in the opinion of the Court the urgency of the matter justifies so doing, dispense altogether with the giving of such notice.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

## **216 Transfer of property rights**

(1) If an Order under section 215(1) expires or is revoked by an Order under section 215(7), the Governor may transfer to the Crown-

- (a) by notice in writing to the company to which the Order under section 215(1) relates any property of that company (including intellectual property) that is necessary for the performance or exercise of the functions for which the company is or was responsible under the Order made under that provision; and
- (b) by notice in writing to any person other than that company, any rights and obligations of that company under any agreement or arrangement (including an employment contract) with that person that relate to the performance or exercise of those functions, but a notice under this paragraph cannot be served unless a notice has been, or is at the same time served on the company referred to in this paragraph.

(2) The Governor shall send the company a copy of a notice given under subsection (1)(b).

(3) A notice under subsection (1) shall not take effect until at least 30 days after it is served and shall contain the following information-

- (a) the date on which it is intended that the notice under subsection (1) shall take effect;
- (b) a statement that the company or other person on whom the notice is served may within 21 days of the receipt of the notice apply to the Supreme Court for an order that the notice shall not take effect;

- (c) a statement that unless the company or person makes an application of the kind referred to in paragraph (v) of this subsection, a notice under paragraph (a) of this subsection will take effect on the date specified in the notice under that paragraph;
- (d) a statement that if the company makes an application to the Supreme Court of the kind referred to in paragraph (b) of this subsection and that application is dismissed, the notice under subsection (1)(a) will take effect on the later of-
  - (i) the date specified in the notice as the date on which it is intended to take effect; and
  - (ii) the date on which the application to the Supreme Court is dismissed;
- (e) that if the notice takes effect so as to transfer property, rights or obligations, the company will be entitled to such compensation-
  - (i) as may be agreed between it and the Crown; or
  - (ii) in default of such agreement, such compensation as is fixed by the Supreme Court under section 213; and
- (f) in the case of a notice under paragraph (b) of subsection (1), a statement of the effect of subsection (4) of this section.

(4) A notice under paragraph (b) of subsection (1) shall not take effect-

- (a) at all if a notice under paragraph (a) of that section to a company which is the employer of the person upon whom the notice under subsection (1)(b) was served is dismissed by the Supreme Court;
- (b) on a date earlier than the later of the date on which such a notice under para (a) of subsection (1) takes effect and the date specified in the notice under paragraph (b) of subsection (1);
- (c) at all, if the Supreme Court sets aside the notice under paragraph (b) of subsection (1) on the application of the person on whom it was served.

(5) On a notice under subsection (1) taking effect the property, rights and obligations to which it relates vest in the Crown.

## **217 Right of application to Supreme Court**

(1) A company or person upon whom a notice under section 216(1)(a) or (b) has been served may within 21 days of the service of such a notice apply to the Supreme Court for an order setting aside that notice or such part of it as is specified in the application.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

(2) The Supreme Court on an application being made under subsection (1), unless it is satisfied that the transfer of any property, rights or obligations is necessary for the performance of the functions for which the company is or was responsible, shall-

- (a) set aside the notice; or
- (b) set aside such part of the notice that relates to that property or those rights or obligations.

(3) If a notice under section 216(1)(a) or (b) has taken effect and the company or person upon whom it was served and the Crown do not within 42 days of the date on which the notice takes effect agree the amount of the compensation to be paid by the Crown for any property, rights or obligations transferred to the Crown pursuant to section 216(5), the person or company may apply to the Supreme Court to order such amount of compensation to be paid in respect thereof as appears to the Supreme Court to be fair and adequate in all the circumstances of the case, and the Supreme Court shall have power to make such an order.

(4) On determining an application under this section the Supreme Court may make such order in respect of the costs of the application as it sees fit.

(5) The parties may agree that, instead of an application being made to the Supreme Court under subsection (3), the matter shall be submitted to arbitration under the Arbitration Act 1996 in its application to the Falkland Islands by an arbitrator appointed-

- (a) by agreement between the Governor and the person or company having the right to apply to the Supreme Court under subsection (3); or
- (b) in default of such agreement, by the Chief Justice.

## **218 Powers of Director when false or misleading information given**

(1) The Director may amend or revoke all or any part of a licence, permit, approval or authority given under this Ordinance, or a registration completed under this Ordinance (the "**specified action**") if-

- (a) he is satisfied that false or misleading information was material to the giving, making or completion of the specified action;
- (b) he is satisfied that the specified action was given, made or completed on the basis of that information;
- (c) he gives notice in writing of his intention to amend or revoke the specified action to whichever, in the circumstances of the case, is appropriate of-
  - (i) the holder of the licence, permit, approval or authority ; or
  - (ii) the person in relation to whom the decision was made or the registration was completed;
- (d) the notice is accompanied by a statement of the Director's reasons for the proposed revocation or amendment;
- (e) the Director gives the person to whom the notice is given a reasonable opportunity to make representations in relation to the proposed revocation or amendment; and
- (f) the Director considers any such representations before putting into effect the amendment or revocation.

(2) An amendment or revocation under subsection (1) is put into effect by giving notice in writing to whichever is appropriate, in the circumstances of the case, of-

- (a) the holder of the licence, permit, approval or authority; and

- (b) the person in relation to whom the decision was made or the registration was completed.

## **219 Requirement for additional information**

(1) The Director may require an applicant or a person who makes a request under this Ordinance to provide such additional information or evidence as the Director considers necessary on reasonable grounds to enable him to consider the applicant's application or request.

(2) The Director may require any such information or evidence to be given by way of a statutory declaration.

## **220 Official secrecy**

(1) The Director and every other person (including members of the Committee or of the Commission) having any official capacity or being employed in the administration of this Ordinance shall regard and deal with all documents and information coming into his possession in the course of his duties and which relate to the income or items of income of any company owning any Individual Transferable Quota or Provisional Quota or otherwise to its business affairs as confidential and shall not otherwise than in the pursuance of his duties for the purposes of this Ordinance, or with the authority of the Governor, communicate any such document or information, or any part thereof, to any other person.

(2) A person who contravenes subsection (1) commits an offence.

### *Giving of notices and service of summons and other documents*

## **221 Giving of notices etc**

(1) Except as otherwise specified in this Ordinance, if under this Ordinance any notice or other document is to be given, served on, or furnished to any person, that notice or other document may be-

- (a) given to the person personally;
- (b) sent by registered post addressed to the person at the person's usual or last known place of business or abode;
- (c) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Ordinance, sent by post to the person, or any other person authorised to act on the person's behalf, at that person's usual or last known place of business or abode;
- (d) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Ordinance, sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last known address, and for the purposes of this paragraph-

[S. 30/Ord. 9/21/w.e.f. 01/10/21.]

- (i) **"electronic transmission"** means any transmission of information sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer;
- (ii) **"address"** means a facsimile address or an electronic mail address.

(2) Any notice or other document so sent by post or registered post shall be deemed to have been given, served or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice or document was not received.

## **222 Service of summons and other documents**

The service of any summons or other document in or in relation to any proceedings for an offence under this Ordinance upon an agent for service shall be as effectual for all purposes as if the summons or other document had been served upon the person in respect of whom he is the agent for service.

### *Regulations, repeals and savings*

## **223 Regulations**

(1) The Governor may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations-

- (a) providing that an offence against-
  - (i) paragraphs (d), (e), (f), (g), (h), (j), (k) or (m) shall be punishable on conviction by such fine, not exceeding the maximum of Level 9 on the standard scale as is specified in the regulations in respect of that offence; and
  - (ii) paragraphs (i), (l), (n), (o), (q), (r), (s), (t), (u), (v), or (w) shall be punishable on conviction by such fine, not exceeding the maximum of Level 8 on the standard scale as is specified in the regulations in respect of that offence;

[S. 3(2)(a)/Ord. 9/15/w.e.f. 30/11/15.]

- (b) providing for the remission or refund of any levy, fee or charge payable under any provision of this Ordinance and of any penalty in relation to any such levy, fee or charge payable under this Ordinance;
- (c) exempting persons either in specified circumstances or generally from the need to obtain a permit for recreational fishing with a fishing vessel;
- (cA) providing for action plans in accordance with section 17E;

[S. 27/Ord. 9/21/w.e.f. 01/10/21.]

- (cB) providing for requirements under section 17C(6)(e);

[S. 27/Ord. 9/21/w.e.f. 01/10/21.]



- (d) regulating, authorising or prohibiting the taking or possession of any fish of any stock or species;
- (e) regulating, authorising or prohibiting the taking or possession of fish from any area;
- (f) regulating, authorising or prohibiting the taking or possession of fish at any time or for any period;
- (g) regulating or prohibiting the taking or possession of fish smaller, or larger, than a specified size;
- (h) regulating or prohibiting the taking or possession of fish that is in any specified condition or exhibits specified physical characteristics;
- (i) regulating or prohibiting the return of fish to any waters;
- (j) regulating or prohibiting any method of fishing;
- (k) regulating or prohibiting the possession or use of any kind of gear, equipment or device used for, or related to, fishing;
- (l) regulating or prohibiting the use of fishing vessels or fish carriers;
- (m) regulating the number or weight of any fish that may be taken or possessed, whether by reference to any period or on any other basis whatsoever, and prohibiting the taking or possession of any number or weight of fish that exceeds the specified maximum number or weight;
- (n) regulating the methods, equipment and devices to be used to process fish, and prohibiting the processing of fish otherwise than by a specified method or methods or by use of specified equipment or devices;
- (o) regulating the methods by, or the circumstances under which, fish may be held, stored, conveyed or identified, including the use of any containers, marks or labels;
- (p) providing for the imposition and recovery of fees in relation to such matters as are specified in the regulations;
- (q) providing for the marking of nets, traps and other equipment used by fishing vessels for taking fish-
  - (i) in the case of Falkland Islands vessels whether within the fishing waters or on the high seas; and
  - (ii) in the case of non-Falkland Islands vessels, within the fishing waters;
- (r) providing for the marking of Falkland Islands fishing vessels;
- (s) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the fishing waters;
- (t) providing for the reporting of the position of vessels the use of which is authorised by a fishing concession;
- (u) without prejudice to paragraph (t)-

- (i) providing for the establishment and operation of a Fisheries Monitoring Centre whether in the Falkland Islands or elsewhere, in relation to Falkland Islands fishing vessels wherever they may be and non-Falkland Islands fishing vessels in the fishing waters;
- (ii) requiring Falkland Islands fishing vessels, or Falkland Islands fishing vessels of a length equal to or greater than that specified in the regulations, at all times wherever they may be, and non-Falkland Islands fishing vessels at all times while licensed to fish in the fishing waters whether such vessels are for the time being within such waters or not, to have on board a functioning satellite-tracking device; and
- (iii) containing such provision as to the operation of satellite-tracking devices and the data to be transmitted thereby and otherwise in relation thereto as may be necessary or convenient;
- (v) providing for the furnishing of information relating to persons on board a fishing vessel that is in the fishing waters, being a fishing vessel the use of which is authorised by a fishing concession, or on board a Falkland Islands fishing vessel engaged in fishing outside the fishing waters;
- (w) providing for measures to be taken by fishing vessels to prevent or mitigate mortality or injury of birds and mammals as a result of the carrying out of any fishing operation;
- (x) prescribing the purposes for which a levy imposed under section 189(1)(b) may be expended by the Association;
- (y) revoking any regulations which continue in force by virtue of section 224(2).

(3) . . .

*[S. 3(2)(b)/Ord. 9/15/w.e.f. 30/11/15.]*

### **223A. Director to issue Guidance**

- (1) The Director may issue guidance on any matters for purposes of this Ordinance.
- (2) Guidance issued under subsection (1) must be made available to all eligible companies, qualifying companies and other interested parties, on request (electronically or in hard copy).

*[S. 28/Ord. 9/21/w.e.f. 01/10/21.]*

### **224 Repeals and savings**

(1) The Fisheries Ordinances 1986-1991, the High Seas Fishing Ordinance 1995, the Fishing (CCAMLR) Ordinance 1999 and the Fishing (CCAMLR) (Amendment) Ordinance 2002 are repealed.

(2) Notwithstanding subsection (1)-

- (a) any licence granted under any of the Ordinances repealed by subsection (1) which was in force immediately before the commencement of this section shall, subject to this paragraph, continue in force until it expires or 12 months from the commencement of section 130 of this Ordinance, whichever is the earlier, as if it had been granted under

section 130 of this Ordinance on the same terms and conditions, but may be cancelled in the same way as if it had been so granted;

- (b) any regulations made under any of the Ordinances repealed by subsection (1) which were in force immediately before the commencement of this section shall, in so far as they are not inconsistent with this Ordinance, continue in force until they are revoked by regulations made under section 223 of this Ordinance.

**SCHEDULE 1**  
**PROVISIONS OF CONSERVATION OF WILDLIFE AND NATURE ORDINANCE**  
**APPLYING IN THE FISHING WATERS**

Sections 1 to 7, 9 to 11, 17 and Schedule 1.

*[S. 30/Ord. 9/21/w.e.f. 01/10/21.]*

## SCHEDULE 2 FISHERIES

(section 16)

Description of Fishery	Valid species	Dates within which fishery operates	Provisional Quota permitted to be granted	Licence Code
Finfish	All finfish species except Skate ( <i>Rajidae</i> ) and Toothfish ( <i>Dissostichus eleginoides</i> )	All year	YES	A
Scallops	( <i>Zygochlamys patagonica</i> )	All year	YES	
Squid – JIG or Trawl	( <i>Illex argentinus</i> ) and ( <i>Martialia hyadesi</i> )	1 February – 15 June	YES	B
Squid (Summer)	Falkland Calamari ( <i>Doryteuthis gahi</i> )	26 February – 30 April	NO	C
Skate	All species of Skate ( <i>Rajidae</i> )	All year	YES	F
Squid and Restricted Finfish	( <i>Illex argentinus</i> ), ( <i>Martialia hyadesi</i> ), all Finfish species except Hake ( <i>Merluccius spp.</i> ), Skate ( <i>Rajidae</i> ) and Toothfish ( <i>Dissostichus eleginoides</i> )	1 February – 31 May	YES	G
Restricted Finfish - Pelagic	Southern Blue Whiting ( <i>Micromesistius australis</i> ) and Hoki ( <i>Macruronus magellanicus</i> )	All year	YES	S
Restricted Finfish	All finfish species except Hake ( <i>Merluccius spp.</i> ) Skate ( <i>Rajidae</i> ) and Toothfish ( <i>Dissostichus eleginoides</i> )	1 January - 31 March and 1 October - 31 December	YES	W
Toothfish – Longline	Toothfish ( <i>Dissostichus eleginoides</i> )	All year	NO	L
Squid (Winter)	Falkland Calamari ( <i>Doryteuthis gahi</i> )	30 July – 1 October	NO	X

[S.R. & O. 14/15/w.e.f. 30/9/15; S.R. & O. 15/20/w.e.f. 09/11/20; S.R. & O. 24/21/w.e.f.30/09/21; S.R.& O. 24/2022/w.e.f. 01.01.2023; S.R. & O 3/2023/w.e.f. 30.04.2023]

**SCHEDULE 3**  
**MANNER IN WHICH OFFENCES UNDER THIS ORDINANCE ARE PUNISHABLE**

Offences under the provisions of this Ordinance mentioned in the first column of the following Table are punishable on conviction in the manner specified in the third column of that Table. A reference to a Level in that column is to be construed as a reference to a fine not exceeding the maximum of that Level on the standard scale.

**Table**

<b>Provision</b>	<b>Description of offence</b>	<b>Penalty</b>
section 5 (3)	Failing to hand in warrant card	Level 5
section 26(6)	Failing to make application for renewal of registration upon Individual Transferable Quota Eligibility Register without having notified Director under section 31(2) of non-eligibility	Level 5
section 30(6)	The like offence in relation to failure to make application for refusal of registration upon Provisional Quota Eligibility Register	Level 5
section 32(4)	Failing to supply documents in accordance with section 32(1) or section 32(3)	Level 5
section 36(1)	Making false statement or supplying document containing false statement in connection with application under sections 24(1), 26(2) or 28(1)	Level 10 and imprisonment for 2 years
section 44(8)	Using fishing vessel with overseas master who does not have overseas master fishing licence	Level 8
section 45(4)	Contravening prohibition under section 45(2)	Level 6
section 45(5)	Employing as master person prohibited under section 45(2)	Level 9 and imprisonment for 6 months
section 46(1)	Trans-shipping or exporting fish without licence under section 46(3)	Level 8
section 47(8)(a)	Receiving fish without permit	Level 6
section 47(8)(b)	Failing to provide information or to verify it	Level 6
section 50(2)	Master failing to facilitate boarding or co-operate with inspection of fishing vessel	Level 5
section 54(3)	Failing to notify change in characteristics of fishing vessel as required by section 54(2)	Level 9 and imprisonment for 6 months
section 86	Making etc. false entry in Register or producing document falsely purporting to be copy of or extract of document lodged for registration etc.	Level 10 and imprisonment for 2 years
section 92(7)	Contravening any provision of section 91 as to disposal of	Level 8

<b>Provision</b>	<b>Description of offence</b>	<b>Penalty</b>
	fish	
section 93(4)	Contravening any provision of sections 93(1), (2) or (3) as to purchase or acquisition of fish	Level 8
section 95(3)	Unlawful possession by fish farmer of fish for sale	Level 7
section 115(1)	Unreasonably refusing as witness before Commission to take oath or affirmation or failing or refusing to answer question	Level 6
section 115(2)	Unreasonably refusing to produce document to Commission	Level 6
section 117(2)	Publication of any evidence, document etc in contravention of direction by the Commission	Level 6
section 118	Failure to comply with summons to attend before Commission as witness	Level 6
section 122	Obstructing or hindering Commission	Level 8
section 127(2)	Falkland Islands fishing vessel fishing on high seas without licence	Level 12 and imprisonment for 3 years
section 131(4)	Contravening section 131(3) (duty to notify change of owner, charterer or operator of fishing vessel in respect of which high seas fishing licence held)	Level 7
section 132(2)	Failure without reasonable excuse to provide information etc. as to high seas fishing	Level 8
section 136	Unlawful possession of fish on Falkland Islands fishing vessel on high seas	Level 11 and imprisonment for 30 months
section 137	Falkland Islands fishing vessel unlawfully on high seas when equipped for fishing	Level 11 and imprisonment for 30 months
section 138(1)	Falkland Islands fishing vessel unlawfully fishing in another country's waters	Level 12 and imprisonment for 3 years
section 139(4)	Visit by non-Falkland Islands vessel contrary to section 139(2) or (3)	Level 8
section 161(1)(a)	Contravening condition of fishing concession, fish receiver permit or overseas master fishing licence or of temporary order	Level 8
section 161(1)(b)	Holder of fishing concession or fish receiver permit causing or permitting person acting on his behalf to contravene condition of concession or permit or temporary order	Level 8
section 161(1)(c)	Person acting on behalf of holder of fishing concession, or fish receiver permit contravening condition of concession or permit or temporary order	Level 8
section 161(1)(d)	Making false or misleading record or return in relation to a matter specified in section 90	Level 8
section 162	Breach of condition or requirement of licence, permit etc	Level 6

<b>Provision</b>	<b>Description of offence</b>	<b>Penalty</b>
	where no other penalty provided	
section 163(1)	Resisting or obstructing a fisheries officer; using threatening language or behaviour to a fisheries officer; failing to comply with a lawful requirement of a fisheries officer; providing false or misleading particulars to a fisheries officer; personating or falsely claiming to be a fisheries officer	Level 9 and imprisonment for 6 months
section 164	Removing fish from traps etc.	Level 6 and imprisonment for 3 months
section 165	Receiving fish other than for private or domestic purposes from a commercial fisher, other than by holder of fish receiver permit	Level 8
section 167	Using fishing vessel in fishing waters without licence: absolute offence	Level 11 and imprisonment for 6 months
section 168	Deliberate unlawful use of fishing vessel in fishing waters	Level 12 and imprisonment for 3 years
section 169	Unlawful possession of nets, traps or other equipment for fishing on fishing vessel within fishing waters	Level 11 and imprisonment for 30 months
section 170	Fishing in internal waters other than with a fishing vessel	Level 8 and imprisonment for 12 months
section 171	Possession of nets etc in internal waters other than upon a fishing vessel	Level 8 and imprisonment for 12 months
section 172	Using boat outside fishing waters to support illegal fishing in fishing waters	Level 12 and imprisonment for 3 years
section 182(2)	Prohibited person re-offending	Level 12 and imprisonment for 3 years
section 186(2)	Failing to provide reasonable assistance to observer or hindering or obstructing observer	Level 8
section 187(2)	Failing to provide food or accommodation etc to observer	Level 8
section 188(4)	Failing to provide information to observer or allow observer to carry out inspections	Level 8
section 192(1)	Using false document or making false statement to obtain benefit under the Ordinance	Level 8 and imprisonment for 2 years
section 192(2)	Using or causing another to use, deal or act upon false communication etc.	Level 8 and imprisonment for 2 years
section 220(2)	Breach of secrecy	Level 6 and imprisonment for 6 months