



FALKLAND ISLANDS

Land (Non-residents) Ordinance 1999

(ORDINANCE No. 14 OF 1999)

ARRANGEMENT OF PROVISIONS

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FALKLAND ISLANDS

Land (Non-residents) Ordinance 1999

AN ORDINANCE To replace Part II of the Aliens Ordinance and the Land (Sub-division for Non-residents) Ordinance 1995 with fresh provision as to the acquisition of land in the Falkland Islands by non-residents.

[DATE OF COMMENCEMENT: 1ST DECEMBER 1999]

1 Short title and commencement

This Ordinance may be cited as the Land (Non-residents) Ordinance 1999 and shall come into operation on such date as may be fixed by the Governor by notice published in the Gazette.

2 Interpretation

(1) For the purposes of this Ordinance, an individual shall be regarded as being resident in the Falkland Islands-

- (a) if-
 - (i) under the provisions of section 22(5) of the Constitution he is to be regarded as belonging to the Falkland Islands; and

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

- (ii) he is ordinarily resident in the Falkland Islands; or
- (b) if-
 - (i) he has under the provisions of the Immigration Ordinance 1987 been granted a permanent residence permit; and
 - (ii) he is ordinarily resident in the Falkland Islands.

(2) For the purposes of this Ordinance, a body corporate is to be regarded as being resident in the Falkland Islands-

- (a) if it is a statutory corporation created or continued under any Ordinance of the Falkland Islands;
- (b) if it is a company incorporated in the Falkland Islands and at least seventy-five per cent of its share capital carrying voting rights at general meetings of the company are beneficially owned by individuals who, under the provisions of subsection (1) of this section are to be regarded as being resident in the Falkland Islands

[S. 3(a) and (b)/Ord. 12/15/w.e.f. 29/2/16 (as corrected by S.R. & O. 2/16/w.e.f. 29/2/16).]

- (c) if it is a company, incorporated outside the Falkland Islands to which section 3(1) of this Ordinance for the time being applies.

(3) For the purposes of subsection (1) of this section, an individual is ordinarily resident in the Falkland Islands if he usually lives in the Falkland Islands.

(4) Her Majesty in right of Her Government of the United Kingdom, as well as in right of Her Government in the Falkland Islands, shall for the purposes of this Ordinance be regarded as being resident in the Falkland Islands and, accordingly, no licence under this Ordinance is required in relation to the acquisition of land in the Falkland Islands by or for any Department, Ministry or other division of Her Majesty's Government in the United Kingdom.

(5) For the purposes of this Ordinance, "land" has the meaning given by section 4(2).

3 Certain companies doing business in the Falkland Islands to be treated as resident

(1) Subject to this section, there shall be treated as being for the purposes of this Ordinance resident in the Falkland Islands-

- (a) every oversea company which on 1st August 1999 was registered pursuant to Part X of the Companies Act 1948 in its application to the Falkland Islands (which, inter alia, requires an oversea company, that is to say a company incorporated outside the Falkland Islands which has established a place of business in the Falkland Islands, to deliver certain documents to the Registrar of Companies for registration); and
- (b) any company to which an order under subsection (2) for the time being relates.

(2) The Governor may, by order made under this subsection, provide that there shall be treated as being for the purposes of this Ordinance as being resident in the Falkland Islands, so long as the order continues to apply in respect of it, every company specified by name in that order or falling within a class or category specified in the order.

(3) Any company for the time being holding-

- (a) a banking licence granted by the Governor under section 5(1) of the Banking Ordinance 1987; or
- (b) a licence granted by the Governor under section 3(2) of the Telecommunications Ordinance 1988,

shall for the purpose of this Ordinance be treated as being resident in the Falkland Islands for so long as that licence is in force (but only in so far as may be necessary to enable it, without a licence granted under this Ordinance, to acquire land (including an interest in land acquired by way of security) reasonably incidentally to the carrying out of its operations pursuant to its first-mentioned licence).

(4) The Governor may by notice published in the Gazette declare that section 3(1) shall no longer apply to any company to which that notice relates (but so that the publication of such a notice shall not have effect so as to require such a company to obtain a licence under this Ordinance to enable it to continue lawfully to hold any land it acquired prior to the publication of the notice under this subsection).

(5) The Governor may only publish a notice pursuant to subsection (4) if he is satisfied-

- (a) that the company so specified has ceased to be registered pursuant to Part X of the Companies Act 1948 as an oversea company having a place of business in the Falkland Islands; or
- (b) that the company so specified is in serious default of its obligations under Part X of the Companies Act 1948; or
- (c) that the company so specified is no longer for the purposes of the Taxes Ordinance 1997 carrying on business in the Falkland Islands through a branch or agency; or
- (d) that by reason of a change in the beneficial ownership of the company so specified occurring after the enactment of this Ordinance and which he considers to be material, it is not in the general interest to continue to permit the company so specified to acquire land in the Falkland Islands without obtaining a licence under this Ordinance permitting it to do so; and

before publishing such a notice the Governor shall-

- (i) notify any company which would be affected thereby of his intention to publish that notice and, so far as affects that company, the ground or grounds upon which he intends to publish that notice; and
- (ii) afford to any such company a reasonable opportunity of making representations in writing to him; and
- (iii) take any such representations he may receive from such a company into account,

but if a notice in respect of a company is published under this section, it may be expressed to have effect retrospective to a date (not being earlier than the date of the notification under paragraph (i)) stated in the notice.

4 Non-residents to obtain licences to hold land

(1) Subject to this Ordinance, it is unlawful for a person who is neither resident in the Falkland Islands nor under this Ordinance to be treated as being resident in the Falkland Islands to acquire or purport to acquire for his own benefit any land or interest in land in the Falkland Islands.

(2) For the purposes of this section, but subject to subsection (3)-

- (a) a person acquires land if he knowingly acquires for his own benefit a freehold or leasehold estate in land or contracts to acquire a freehold or leasehold estate in land whether he does so in his own name alone, jointly with others or through a nominee or trustee of any kind, and whether by or under a trust, settlement, resulting or constructive trust or any other device or arrangement, whether or not of a like or similar nature to any of the foregoing;
- (b) "land" includes land wholly or partly covered by water and includes any building or structure forming part of any land and any interest in land;
- (c) "interest in land" includes a mortgage, charge or debenture affecting land, any right to occupy land and any equitable interest in land.

(3) Where any land or an interest in land in the Falkland Islands has been acquired by a company and-

- (a) at the time of the acquisition the company was by virtue of section 2(2)(b) for the purposes of this Ordinance to be regarded as being resident in the Falkland Islands; but
- (b) at a later time while the company still holds that land or interest in land section 2(2)(b) is no longer satisfied in relation to that company,

the company shall be deemed for the purposes of subsection (1) of this section to have acquired that land or interest at that later time (and so that it is unlawful for the company to continue to hold that land or interest in land unless it obtains a licence under section 5 authorising it so to do).

(4) Nothing in subsection (1) applies-

- (a) to any lease, agreement, licence or arrangement, other than one involving acquisition of the freehold estate, whereby an individual is entitled for an indefinite period or a fixed period not exceeding three years to the use of land not exceeding two acres in area as his residence, and provided that he does not use any part of that land, or any buildings thereon for the purpose of any trade, business or profession and that he does not part with the possession of the whole or any part thereof to any other person other than a person who is a dependent or bona fide employee of his;
- (b) so as to prevent any person who is not resident in the Falkland Islands holding any land upon trust for any person who is resident, and provided that the trust is effected in writing and the identity of the person for whom the land is held is apparent from the face of the trust instrument;
- (c) to any contract or option for sale or lease so long as the purchaser or lessee is neither entitled to enter into possession nor actually enters into possession of the land to which it relates, until a licence under section 5 has been obtained;
- (d) to any lease, agreement, licence in writing or other instrument under which a person is entitled to occupy for business purposes for not more than twelve months certain any land not exceeding (in aggregate with all other land which the person is entitled to occupy in relation to which no licence under this Ordinance has been obtained, and to which this paragraph applies) five acres in area (and for the purposes of this paragraph, an individual and his spouse are to be deemed to be one person, and any company in which an individual or his spouse or both of them in combination owns more than

twenty-five per cent of the share capital carrying voting rights at general meetings of the company is to be deemed to be the same person as that individual, and two or more companies in both or all of which an individual or his spouse or both of them in combination own more than twenty-five per cent of the share capital carrying voting rights at general meetings are to be deemed to be one and the same person).

(5) Section 6 applies where a person who is not for the purposes of this Ordinance resident in the Falkland Islands or to be treated as being resident in the Falkland Islands acquires land in breach of subsection (1) of this section.

(6) Where by virtue of subsection (3) it becomes unlawful for a person to continue to hold land, unless the Governor shall direct otherwise or a licence under section 5 shall have been obtained before the expiration of three months from the date on which the unlawfulness arose, section 6 applies in respect of the land in question.

5 Licences to hold land or an interest in land in the Falkland Islands

(1) A person who is not resident in the Falkland Islands may apply to the Governor for a licence to hold land in the Falkland Islands, and the Governor may grant such a licence either free of conditions or subject to such conditions to be performed by the licensee as the Governor considers necessary or convenient in the particular circumstances of the case. Any such condition is enforceable by civil proceedings in the Supreme Court brought by or on behalf of Her Majesty in right of Her Government in the same manner (including by an order for specific performance or by an award of damages) as if it had been a condition of a contract for valuable consideration entered into by the licensee with Her said Majesty, but unless it is informed to the contrary by or on behalf of Her Majesty, the court shall proceed on the basis that an award of damages is not a sufficient remedy.

(2) Without prejudice to the generality of the Governor's powers under subsection (1) to impose conditions on the grant of a licence, such powers include power to impose conditions requiring the licensee to carry out such works as may be specified in the licence upon the land the subject of the licence or in the neighbourhood of the land, in so far, in the case of conditions requiring works to be carried out in the neighbourhood of the land, as such works are reasonably incidental to the use the licensee intends to make of the land the subject of the licence.

(3) A condition imposed under subsection (1) shall not require the payment of any sum of money to any person.

(4) A licence granted under subsection (1) shall cease to have effect if the land or interest in land to which it relates if not already owned by the licensee is not acquired by the licensee within three years of the date on which the licence was granted.

(5) Every application for the grant of a licence under subsection (1) shall identify the land or interest in land to which it relates and shall contain such other information as may be prescribed by regulations made under subsection (6).

(6) The Governor may make such regulations as he considers necessary or convenient to be made for the better implementation of the purposes of this section, and without prejudice to the generality of the foregoing provisions of this subsection, such regulations may-

- (a) require the payment to the Governor of a fee of such amount as may be prescribed by the regulations on the making, or alternatively upon the granting, of an application for a licence under subsection (1);
- (b) require the submission of plans and details of the applicant's proposals in relation to the land to which the application relates;
- (c) where the application is a company, require the submission of such information in relation to the constitution of and ownership and control of the company as the Governor may require in connection with the application; and
- (d) may enable the registration of conditions of licences under the provisions of the Land Charges Ordinance 1996.

6 Forfeiture or disposal etc of land unlawfully acquired or held by a non-resident

(1) This section applies where section 4(5) or section 4(6) so provides. It also applies where land is owned by a person who is not resident or to be treated as being resident in the Falkland Islands for the purposes of this Ordinance to whom a licence, in respect of that land, has been granted under section 5 and any condition which remains in force of that licence has not been performed or has been contravened.

(2) Where this section applies in respect of any land, the Governor may serve upon the owner of the land a notice complying with the requirements of subsection (3). Where different persons are each an owner of land in respect of a different interest, separate notices must be served on any of them in respect of whom as the Governor has in mind to take any action under any of the subsequent provisions of this section

(3) A notice under subsection (2) must-

- (a) sufficiently identify the land to which it relates;
- (b) state why the Governor believes that this section applies in respect of that land;
- (c) state that the Governor is considering whether to order the forfeiture of the land pursuant to subsection (5) or whether alternatively to order the compulsory sale of the land pursuant to subsection (6);
- (d) state that the Governor will, before making any such order, take into account any representations in writing he may receive from the owner within such period (not being less than 28 days) as the Governor must specify in such notice or such longer period as the Governor, at the request of the owner, may allow;
- (e) state that the Governor must, before making any such order, consider and decide upon any application received from the owner for a licence under section 5 authorising the continued holding of the land by the owner; and
- (f) state the effect of subsection (4).

(4) The Governor-

- (a) must not make any order pursuant to subsection (5) or (6) before the expiration of the period of time permitted to the owner of the land for the purpose of making written

representations to the Governor or without taking any such representations, if made, into account;

- (b) before making an order pursuant to subsection (5) (forfeiture of the land without compensation) must first-
 - (i) consider whether, even if the owner has not made an application for a licence under section 5 of this Ordinance in response to the notice under subsection (2), such a licence ought to be granted to the owner (but this subparagraph does not apply where the relevant notice under subsection (2) of this section was served in consequence of the non-performance or breach by the owner of a condition imposed upon that owner by a licence granted under section 5);
 - (ii) where the land has been acquired without a licence having been granted under this Ordinance authorising the acquisition of the land by the owner, take reasonable account of the degree of fault or lack of fault of the owner in acquiring the land without having obtained that licence (including whether it was reasonable in the circumstances for the owner to acquire land or an interest in land in the Falkland Islands without, if that be the case, engaging to advise it a legal practitioner who might reasonably be expected to have a sufficient knowledge of the relevant law of the Falkland Islands, including the provisions of this Ordinance, and to have advised the owner of the effect of this Ordinance); and
 - (iii) consider whether, balancing the general interest of the Falkland Islands, including the the need to deter the acquisition of land in breach of the provisions of this Ordinance, and those of the owner, the forfeiture of the land, without payment of compensation would be justified or whether instead, the Governor should not grant a licence pursuant to section 5 of this Ordinance or make an order under subsection (6) of this section (order for compulsory sale by the owner of the land);
 - (iv) consider whether, if this section applies only because the owner has failed to perform or has contravened a provision of a licence granted under section 5, any other remedy (such as an order of the Supreme Court requiring the owner to remedy the non-performance or breach, whether or not coupled with an order requiring the owner to pay damages in respect of any loss caused by the non-performance or breach) might be a sufficient remedy;
- (c) before making an order under subsection (6) (order for compulsory sale by the owner of the land) must first consider the like matters he is required by paragraph (b) to consider, but omitting anything therein which of its nature relates only to an order under subsection (5) (order for forfeiture of the land without payment of compensation).

(5) Subject to the foregoing provisions of this section, where subsection (1) applies in respect of any land, the Governor with the consent of the Secretary of State may by order under this subsection, published in the Gazette, declare that that land is, so far as it belongs to the relevant owner, forfeit to Her Majesty the Queen in right of Her government of the Falkland Islands, without compensation, and on such publication that land so far as it so belongs is vested in Her Majesty accordingly.

(6) Subject to the foregoing provisions of this section, where subsection (1) applies in respect of any land, the Governor may by order, published in the Gazette, require that the land, so far as it

belongs to the relevant owner, must be sold by that owner, within such time, not being less than six months, as is specified in that order, or such greater period as the Governor may on the application of that owner allow. Where an order under this subsection is made in consequence of the failure of the owner to perform any condition imposed pursuant to section 5(1) subject to which a licence was granted to that owner, the Governor may in the order require that the sale shall be subject to such conditions (being conditions intended to require the purchaser to perform or observe obligations corresponding with the conditions contained in the licence) as he sees fit and any conditions specified in the order for that purpose shall be binding on a purchaser whether or not the owner imposes them upon the purchaser.

(7) Where an order has been made under subsection (6) and the relevant owner fails without reasonable excuse to comply with that order within the time limited by that order or such greater period as the Governor may allow, the Governor may revoke that order and with the consent of the Secretary of State replace it with an order made by him under subsection (5).

(8) Except where this section applies by reason of the non-performance or breach of a condition imposed in a licence granted under section 5 to the relevant owner, and an order to which subsection (5) or subsection (6) relates is not made, instead of making an order under either of those subsections the Governor may grant a licence to the relevant owner under section 5 and may in relation to the grant of that licence exercise any of the powers he has under that section. The provisions of this Ordinance (including the provisions of this section) shall apply to and in relation to any licence granted pursuant to this subsection as if that licence had been granted pursuant to an application under section 5(1).

(9) The Governor may by instrument under his hand and registered in the Deeds Registry maintained pursuant to the Lands Ordinance disclaim in favour of the person or persons named in the instrument any land or interest in land which vests in Her Majesty only by virtue of an order made under subsection (5). The effect of any such disclaimer is to vest in or transfer the land or interest in land specified in the instrument to that person or those persons. The Governor's power under this subsection includes power to disclaim the land or interest in favour of its former owner if that person has, by the time of the disclaimer, obtained a licence under section 5 in respect of the land or interest in land concerned.

7 Inheritance of land under will or intestacy

(1) Subsections (2) to (5) of this section apply subject to subsection (6).

(2) Notwithstanding the preceding provisions of this Ordinance, and subject to this section, a licence is not required by a non-resident person to hold land in the Falkland Islands which he inherits or which becomes his property under or by virtue of the will or intestacy of his predecessor in title but he shall, if he has not previously disposed of his whole right title and interest in and to the land ("his ownership of the land"), and he is not then resident in the Falkland Islands, apply for a licence under section 5(1) not later than the third anniversary of the date on which the land vested in or was transferred to him and if such a licence is not granted within three months after such third anniversary or has not previously been granted to him in respect of that land, he shall dispose of his ownership of the land within the twelve months next following the expiry of such three months.

(3) Where a person does not dispose of his ownership of the land which he is required to dispose of by the provisions of subsection (2) within the time thereby limited or such greater period of time

as may be allowed by the Governor under subsection (4), his ownership of the land shall on expiry of that time vest in Her Majesty in right of Her Government of the Falkland Islands, and subsection (5) shall apply in relation to the land, the proceeds of sale of the land and the profits of the land pending sale.

(4) The Governor may at any time before the expiry thereof extend the time within which a person would otherwise be required under subsection (2) to dispose of his ownership of the land.

(5) Where land has vested in Her Majesty under subsection (3)-

- (a) and the land has vested in Her Majesty for any estate or interest less than the estate in fee simple absolute in possession, or in the opinion of the Governor the ownership of the land would, by reason of onerous obligations imposed by a predecessor in title which may be binding upon Her Majesty, be contrary to Her Majesty's interests, the Governor may at any time by notice in writing disclaim the same, whereupon the estate or interest of Her Majesty in the land shall vest in and merge with the estate or interest in the land immediately superior to that of Her Majesty, or if none, with the estate or interest in the land immediately inferior to that of Her Majesty; but
- (b) unless the Governor disclaims the land under paragraph (a) he shall cause the same to be sold as soon as reasonably possible at the best price reasonably obtainable from a person resident in the Falkland Islands (provided that he shall have power, without liability for loss, to postpone the sale for so long as in his opinion is reasonably and prudently necessary so as to realise a proper price from a person resident in the Falkland Islands) and shall pay the price received and the profits (if any) of the land pending sale received by Her Majesty, less the reasonable costs of and incidental to such sale and the reasonable cost of management of the land pending sale (including the cost of repairs, maintenance and insurance), to the person from whom the land was divested under subsection (2).

(6) Nothing in this Ordinance which would require a non-resident to hold a licence to acquire land applies, and nothing in subsections (2) to (5) of this section applies, to an interest in land consisting of a share in partnership which owns land if-

- (a) the partnership is one or a continuation of one to which the Companies and Private Partnerships Ordinance applied immediately before the commencement of this Ordinance, and
- (b) the share in the partnership is acquired by the non-resident under or by virtue of the terms of a will or intestacy of a prior owner of that share in the partnership.

(7) The Attorney General may apply to the Supreme Court for a declaration that the land described in the application has vested in Her Majesty under subsection (3) of this section and the Supreme Court may grant such a declaration and make such order incidental thereto as it thinks fit.

8 Breach of conditions of licence

(1) Without prejudice to section 6, a person commits an offence who knowingly and wilfully breaches or fails without reasonable excuse (the proof of which lies upon him) to perform any condition of a licence granted under this Ordinance.

(2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding the maximum of level 10 on the standard scale.

(3) A condition of a licence is enforceable at the suit of the Crown by injunction or order for specific performance against the licensee and any successor in title of his to the land.

9 Rules of court

The power to make rules of the Supreme Court under section 60 of the Administration of Justice Ordinance shall include power to make rules of court relating to the practice and procedure of the Supreme Court in relation to proceedings for enforcement of a condition of a licence under section 5(1) of this Ordinance.

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

10 Repeals and saving

(1) The Aliens Ordinance, in so far as not previously repealed, and the Land (Sub-division for Non-residents) Ordinance 1985 are repealed.

(2) Notwithstanding the repeals effected by subsection (1), any licence granted under either of the Ordinances thereby repealed, and being a licence to acquire or hold land in the Falkland Islands, which was in force immediately before the commencement of this Ordinance shall continue to have effect as if it had been granted under section 5 of this Ordinance and any conditions of the licence shall be enforceable under section 5(1) as if they had been imposed under the provisions of this Ordinance.