



FALKLAND ISLANDS

Land Charges Ordinance 1996

(ORDINANCE No. 24 OF 1996)

ARRANGEMENT OF PROVISIONS

Section

Preliminary

1. Short title and commencement.
2. Interpretation.
3. The registers and the index.

Registration in register of land charges

4. The register of land charges.
5. Registration of land charges.
6. Effect of land charges and protection of purchasers.

Registration of registers of pending actions, writs and orders and deeds of arrangement

7. The register of pending actions.
8. The register of writs and orders affecting land.
9. The register of deeds of arrangement affecting land.
10. Expiry and renewal of registration.

Searches and official searches

11. Searches.
12. Official searches.

Miscellaneous and supplementary

13. Date of effective registration and priority notices.
14. Protection of legal practitioners, trustees, etc.
15. Saving for overreaching powers.
16. Application to the Crown.
17. General rules.
18. Appeals to the Supreme Court.
19. Future effect of section 9(2) of the Land Ordinance.



FALKLAND ISLANDS

Land Charges Ordinance 1996

AN ORDINANCE To provide for the registration of land charges and other instruments and matters affecting land in the Falkland Islands.

[DATE OF COMMENCEMENT: 5TH MAY 1997]

Preliminary

1 Short title and commencement

This Ordinance may be cited as the Land Charges Ordinance 1996 and shall come into force on such date as maybe fixed by the Governor by notice published in the *Gazette*.

2 Interpretation

In this Ordinance, unless the context otherwise requires,

"conveyance", **"estate owner"**, **"hereditament"**, **"land"**, **"legal estate"** and **"trust for sale"** have the same meanings as they have under section 2(1) of the Mortgages and Property Ordinance 1996;

"court" means the Magistrate's Court, or the Supreme Court on appeal from that court;

"deed of arrangement" has the same meaning as in the Deeds of Arrangement Act 1914 in its application to the Falkland Islands;

"pending land action" means any action or proceeding pending in court relating to land or any interest in or change of land;

"purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any estate or interest in land or a charge on land, and "purchase" has a corresponding meaning;

"**registrar**" means the Registrar General;

"**registry**" means the office of the Registrar General.

3 The registers and the index

(1) The registrar shall keep at the registry in the prescribed manner the following registers

- (a) a register of land charges;
- (b) a register of pending actions;
- (c) a register of writs and orders affecting land; and
- (d) a register of deeds of arrangement affecting land,

and shall keep there an index whereby all entries made in any of those registers can readily be traced.

(2) Every application to register shall be in the prescribed form and contain the prescribed particulars.

(3) Where any charge or other matter is registrable in more than one of the registers kept under this Ordinance, it shall be sufficient if it is registered in one such register, and if it is so registered the person entitled to the benefit of it shall not be prejudicially affected by any provision of this Ordinance as to the effect of non-registration in any other such register.

(4) An office copy of an entry in any register kept under this section shall be admissible in evidence in all proceedings and between all parties to the same extent as the original would be admissible.

(5) Subject to the provisions of this Ordinance, registration may be vacated pursuant to an order of the court.

(6) In this section "index" includes any device or combination of devices serving the purpose of an index.

Registration in register of land charges

4 The register of land charges

(1) If a charge on or obligation affecting land falls into one of the classes described in this section, it may be registered in the register of land charges as a land charge of that class.

(2) A Class I land charge is any of the following-

- (a) a mortgage;
- (b) a general equitable charge;
- (c) an estate contract;

and for this purpose-

- (i) a mortgage is a legal mortgage whether or not that mortgage is purported to be protected by a deposit of documents relating to the legal estate affected;
- (ii) a general equitable charge is any equitable charge which-
 - (a) does not arise or affect an interest arising under a trust for sale or a settlement;
 - (b) is not a charge given by way of indemnity against rents equitably apportioned or charged exclusively on land in exoneration of other land and against the breach or non observance of covenants and conditions; and
 - (c) is not included in any other class of land charges;
- (iii) an estate contract is a contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase a right of pre-emption or any other like right.

(3) A Class II land charge is any of the following-

- (a) a Tax Charge;
- (b) a restrictive covenant;
- (c) an equitable easement;

and for this purpose-

- (i) a Tax Charge is a charge on land, being a charge acquired by the Crown or the Commissioner of Tax under and Ordinance of the Falkland Islands relating to tax;
- (ii) a restrictive covenant is a covenant or agreement (other than a covenant or agreement between a lessor and a lessee) restrictive of the user of land and entered into after the coming into force of this Ordinance;
- (iii) an equitable easement is an easement, right or privilege over or affecting land created or arising after the coming into force of this Ordinance, and being merely an equitable interest.

(3A) A Class III land charge is an obligation (not being a Tax Charge) to pay or repay any sum of money (whether to the Crown or to any other person) arising under any provision of any Ordinance where that, or any other provision of that Ordinance, provides that that obligation shall be registrable as a land charge under this Ordinance.

[S. 5(a)/Ord. 28/98/w.e.f. 9/12/98.]

(4) A charge or obligation created before the coming into force of this Ordinance can only be registered as a Class I land charge if it is acquired under a conveyance made on or after the date on which this Ordinance comes into force.

(5) Registration of a charge which, by virtue of this section, is a registrable charge shall, subject to this Ordinance, constitute actual notice of the charge to every person of the existence of the charge, whether or not a search has been made pursuant to this Ordinance by the person in question.

5 Registration of land charges

- (1) A land charge shall be registered in the name of the estate owner whose estate is affected.
- (2) A mortgage created before the date on which this Ordinance comes into force may be registered as a land charge before any transfer of the mortgage is made.
- (3) The expenses incurred by a person entitled to the charge in registering a land charge of Class I (other than an estate contract) or by the Commissioner of Tax in registering a Tax Charge shall be deemed to form part of the land charge, and shall be recoverable accordingly on the day for payment of any part of the land charge next after such expenses are incurred.
- (4) In the case of a land charge for securing money created by a company as a floating charge, registration under section 95 of the Companies Act 1948 in its application to the Falkland Islands shall be sufficient in place of registration under this Ordinance, and shall have effect as if the land charge had been registered under this Ordinance.

6 Effect of land charges and protection of purchasers

- (1) Subject to subsection (3) of this section, a land charge of Class I (other than an estate contract) created or arising after the coming into force of this Ordinance shall be void as against a purchaser of land charged with it, or any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase.
- (2) Subject to subsection (3) of this section, an estate contract and a land charge of Class II or Class III created or entered into after the coming into force of this Ordinance shall be void as against a purchaser for money or money's worth of a legal estate in the land charged with it, unless the land charge is registered in the appropriate register before the completion of the purchase.

[S. 5(b)/Ord. 28/98/w.e.f. 9/12/98.]

- (3) Subsections (1) and (2) have effect subject to section 12 (official searches) and section 13 (date of effective registration and priority notices).

Registration of registers of pending actions, writs and orders and deeds of arrangement

7 The register of pending actions

- (1) There may be registered in the register of pending actions-
 - (a) a pending land action;
 - (b) a petition in bankruptcy filed after the coming into force of this Ordinance
- (2) Subject to general rules under section 17 of this Ordinance, every application for registration under this section shall contain particulars of the title of the proceedings and the name, address and description of the estate owner or other person whose estate or interest is intended to be affected.
- (3) An application for registration shall also state-

- (a) if it relates to a pending land action, the court in which and the day on which the action was commenced; and
- (b) if it relates to a petition in bankruptcy, the court in which and the day on which the petition was filed.

(4) The registrar shall forthwith enter the particulars in the register, in the name of the estate owner or other person whose estate or interest is intended to be affected.

(5) An application to register a petition in bankruptcy against a firm shall state the names and addresses of the partners, and the registration shall be effected against each partner as well as against the firm.

(6) No fee shall be charged for the registration of a petition in bankruptcy if the application is made by the registrar of the court in which the petition is filed.

(7) A pending land action shall not bind a purchaser without express notice of it unless it is for the time being registered under this section.

(8) A petition in bankruptcy shall not bind a purchaser of a legal estate in good faith, for money or money's worth, unless it is for the time being registered under this section.

(9) The court, if it thinks fit, may upon the determination of the proceedings, or during the pendency of the proceedings if satisfied that they are not prosecuted in good faith, make an order vacating a registration under this section, and direct the party on whose behalf it was made to pay all or any of the costs and expenses occasioned by the registration and its vacation.

8 The register of writs and orders affecting land

(1) There may be registered in the register of writs and orders affecting land-

- (a) any writ or order affecting land issued or made by any court for the purpose of enforcing a judgment or recognisance;
- (b) any order appointing a receiver or sequestrator of land;
- (c) any bankruptcy order, whether or not the bankrupt's estate is known to include land.

(2) Every entry made pursuant to this section shall be made in the name of the estate owner or other person whose land, if any, is affected by the writ or order registered.

(3) No fee shall be charged for the registration of a bankruptcy order if the application for registration is made by an official receiver.

(4) Except as provided by subsection (5) of this section and by section 37(5) of the Supreme Court Act 1981 and section 107(3) of the County Courts Act 1984 (which make special provision as to receiving orders in respect of the land of judgment debtors) in the application of those provisions to the Falkland Islands under the provisions of the Administration of Justice Ordinance, every such writ and order as is mentioned in subsection (1) of this section, and every delivery in execution or other proceedings taken pursuant to any such writ or order, or in obedience to any such writ or order, shall be void as against a purchaser of the land unless the writ or order is for the time being registered under this section.

(5) Subject to subsection (6) of this section, the title of a trustee in bankruptcy shall be void as against a purchaser of a legal estate in good faith for money or money's worth unless the bankruptcy order is for the time being registered under this section.

(6) Where a petition in bankruptcy has been registered under the proceeding section, the title of the trustee in bankruptcy shall be void as against a purchaser of a legal estate in good faith for money or money's worth claiming under a conveyance made after the date of registration, unless at the date of the conveyance either the registration of the petition is in force or a receiving order on the petition is registered under this section.

9 The register of deeds of arrangement affecting land

(1) A deed of arrangement affecting land may be registered in the register of deeds of arrangement affecting land, in the name of the debtor, on the application of a trustee of the deed or a creditor assenting to or taking the benefit of the deed.

(2) Every deed of arrangement shall be void as against a purchaser of any land comprised in it or affected by it unless it is for the time being registered under this section.

10 Expiry and renewal of registration

A registration under section 7, section 8 or section 9 of this Ordinance shall cease to have effect at the end of the period of five years from the date on which it is made, but may be renewed from time to time and, if so renewed, shall have effect for five years from the date of renewal.

Searches and official searches

11 Searches

(1) A person may search in any register kept under this Ordinance on paying the prescribed fee.

(2) Without prejudice to subsection (1) of this section, the registrar may provide facilities for enabling persons entitled to search in any such register to see photographic or other images or copies of any portion of the register which they may wish to examine.

12 Official searches

(1) Where any person requires a search to be made at the registry for entries of any matters or documents, entries of which are made or allowed to be made in the registry by this Ordinance, he may make a requisition in that behalf to the registrar, which may be either-

- (a) a written requisition delivered at or sent by post to the registry; or
- (b) a requisition communicated by teleprinter, telephone, telephonic facsimile transmission or other means in such manner as may be prescribed in relation to the means in question, in which case it shall be treated as made to the registrar if, but only if, he accepts it;

and the registrar shall not accept a requisition made in accordance with paragraph (b) unless it is made by a person maintaining a credit account at the registry, and may at his discretion refuse to accept it notwithstanding that it is made by such a person.

(2) The prescribed fee shall be payable in respect of every requisition made under this section; and that fee-

- (a) in the case of a requisition made in accordance with subsection (1)(a) of this section, shall be paid in such manner as may be prescribed for the purposes of this paragraph unless the requisition is made by a person maintaining a credit account at the registry and the fee is debited to that account,
- (b) in the case of a requisition made in accordance with subsection (1)(b) of this section it shall be debited to the credit account of the person by whom the requisition is made.

(3) Where a requisition is made under subsection (1) of this section and the fee payable in respect of it is paid or debited in accordance with subsection (2) of this section, the registrar shall thereupon make the search required and-

- (a) shall issue a certificate setting out the result of the search; and
- (b) without prejudice to paragraph (a) of this subsection, take such other steps as he considers appropriate to communicate that result to the person by whom the requisition was made.

(4) In favour of a purchaser or an intending purchaser, as against persons interested under or in respect of matters or documents entries of which are required or allowed as aforesaid, the certificate, according to its tenor, shall be conclusive, affirmatively or negatively as the case may be.

(5) If any officer, clerk or person employed in the registry commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate under this section, he commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding the maximum of level 7 on the standard scale.

(6) Without prejudice to subsection (5), no officer, clerk or person employed in the registry shall, in the absence of fraud on his part, be liable for any loss which may be suffered-

- (a) by reason of any discrepancy between
 - (i) the particulars which are shown in a certificate under this section as being the particulars in respect of which the search for entries was made, and
 - (ii) the particulars in respect of which a search for entries was required by the person who made the requisition; or
- (b) by reason of any communication of the result of a search under this section made otherwise than by issuing a certificate under this section.

Miscellaneous and supplementary

13 Date of effective registration and priority notices

(1) Any person intending to make an application for the registration of any contemplated charge, instrument or other matter in pursuance of this Ordinance or any rule made under or having effect under this Ordinance may give a priority notice in the prescribed form at least the relevant number of days before the registration is to take effect.

(2) Where a notice is given under subsection (1) of this section, it shall be entered in the register to which the intended application when made will relate.

(3) If the application is presented within the relevant number of days thereafter and refers in the prescribed manner to the notice, the registration shall take effect as if the registration had been made at the time when the charge, instrument or matter was created, entered into, made or arose, and the date at which the registration so takes effects shall be deemed to be the date of registration.

(4) Where-

- (a) any two charges, instruments or matters are contemporaneous; and
- (b) one of them (whether or not protected by a priority notice) is subject to or dependent on the other; and
- (c) the latter is protected by a priority notice,

the subsequent or dependent charge, instrument or matter shall be deemed to have been created, entered into or made, or to have arisen, after the registration of the other.

(5) Where a purchaser has obtained a certificate under the preceding section, any entry which is made in the register after the date of the certificate and before completion of the purchase, and is not made pursuant to a priority notice entered on the register on or before the date of the certificate, shall not affect the purchaser if the purchase is completed before the expiration of the relevant number of days after the date of the certificate.

(6) The relevant number of days is-

- (a) for the purposes of subsections (1) and (5) of this section, fifteen;
- (b) for the purposes of subsection (3) of this section, thirty;

or such other number as may be prescribed, but in reckoning the relevant number of days for any of the purposes of this section any days when the registry is not open to the public shall be excluded.

14 Protection of legal practitioners, trustees, etc

A legal practitioner, or a trustee, personal representative, agent or other person in a fiduciary position, shall not be answerable-

- (a) in respect of any loss occasioned by reliance on an office copy of an entry in any register kept under this Ordinance;
- (b) for any loss that may arise from error in a certificate under section 12 obtained by him.

15 Saving for overreaching powers

(1) The registration of any charge or any interest under this Ordinance shall not prevent the charge or interest being overreached under any other law having effect in the Falkland Islands, except where otherwise provided by that law.

(2) The registration as a land charge of a mortgage or charge shall not operate to prevent that mortgage or charge being overreached in favour of a prior mortgagee or a person deriving title under him where, by reason of a sale or foreclosure, or otherwise, the right of the subsequent mortgagee or subsequent chargee to redeem is barred.

16 Application to the Crown

This Ordinance binds the Crown, but-

- (a) nothing in this Ordinance shall be construed as rendering land owned or occupied for the purposes of the Crown subject to any charge to which, independently of this Ordinance, it would not be subject;
- (b) no fee shall be payable by or on behalf of the Crown in relation to the registration or discharge, on an application made by the Crown or on its behalf, of any entry in any register maintained under this Ordinance or in relation to any search in, or certificate of search in any such register or for a certified copy of any entry therein.

17 General rules

The Governor may make such general rules as may be required for carrying this Ordinance into effect, and in particular-

- (a) as to forms and contents of applications for registration, modes of identifying where practicable the land affected, requisitions for and certificates of official searches, and regulating the practice of the registry in connection therewith;
- (b) for providing for the mode of registration of a land charge (and in the case of a mortgage, general equitable charge, estate contract, restrictive covenant or equitable easement by reference to the instrument imposing or creating the charge, interest or restriction, of an extract from that instrument) and for the cancellation without an order of court of the registration of a land charge, on its cesser, or with the consent of the person entitled to it, or on sufficient evidence being furnished that the land charge has been overreached under the provisions of any law having effect in the Falkland Islands or in any other way;
- (c) for determining the date on which applications and notices shall be treated for the purposes of section 13 of this Ordinance as having been made or given;
- (d) for determining the times and order at and in which applications and priority notices are to be registered;
- (e) for varying the number of relevant days for any of the purposes of section 11 of this Ordinance;
- (f) for enabling the registrar to provide credit accounting facilities in respect of fees payable by virtue of this Ordinance;

- (g) for treating the debiting of such a fee to a credit account maintained at the registry as being for such purposes of this Ordinance or of the rules as may be specified in the rules, payment of that fee;
- (h) for the termination or general suspension of any credit accounting facilities provided under the rules or for their withdrawal or suspension in particular cases at the discretion of the registrar.

18 Appeals to the Supreme Court

(1) An appeal shall lie to the Supreme Court from any decision of the Magistrate's Court in the exercise, or purported exercise, of any of its powers under this Ordinance.

(2) An appeal to which subsection (1) of this section relates lies as of right at the instance of any person aggrieved by the decision of the Magistrate's Court.

19 Future effect of section 9(2) of the Land Ordinance

(1) Without prejudice to its continuing application in relation to deeds executed before the coming into force of this Ordinance, section 9(2) of the Land Ordinance shall not have any effect in relation to any deed executed after that time.

(2) In subsection (1), "**deed**" has the same meaning as it has for the purposes of the Land Ordinance 1949.

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