



FALKLAND ISLANDS

National Parks Ordinance 1998

(ORDINANCE No. 6 OF 1998)

ARRANGEMENT OF PROVISIONS

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FALKLAND ISLANDS

National Parks Ordinance 1998

AN ORDINANCE To make provision for National Parks and the right to roam therein and matters connected with either of the foregoing matters.

[DATE OF COMMENCEMENT: 1ST FEBRUARY 2000]

Introductory

1 Short title and commencement

This Ordinance may be cited as the National Parks Ordinance 1998 and shall come into force on such date as is notified by the Governor in a notice published in the Gazette.

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"Crown entity" ...;

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

"designation and access agreement" has the meaning given by section 6(1) of this Ordinance;

"excepted land" has the meaning given by section 5(5) of this Ordinance;

"national park" means land which has been designated as a national park by Order made under section 4(1);

"occupier", in relation to any land, means a person, other than a mortgagee, lawfully in possession of land but in section 4(2) does not include any person in possession of the land under any lease, agreement or licence which will by its terms expire within eighteen months of the time in question or which is determinable at the instance of another party thereto within that period;

"open country" means an area of land consisting wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore);

"owner", in relation to land, means a person other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

"the right to roam" means the right to pass and repass, on foot or, except where prohibited by regulations, on horseback, (but not, except where permitted under this Ordinance or any other law, by vehicle), to stop, look and watch and rest, and, subject to this Ordinance, to do such other things, not including the playing of organised games, as may be done without damage to the land concerned or anything on it or in it.

3 National Parks

(1) This Ordinance shall have effect for the purposes-

- (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in subsection (2) of this section;
- (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public; and
- (c) conferring upon the public at large the right to roam in national parks.

(2) The areas referred to in subsection (1) of this section are those extensive tracts of country in the Falkland Islands as to which it appears to the Governor by reason of-

- (a) their natural beauty; and
- (b) the opportunities they afford for open-air recreation, having regard to their character and their geographical location,

that it is especially desirable that measures shall be taken for the purposes mentioned in subsection (1).

Designation of, and rights of access to and in, national parks

4 Designation of National Parks

(1) Subject to subsection (2) of this section, the Governor may by Order designate as a national park any area of countryside in the Falkland Islands which he is satisfied is an area to which section 3(2) applies.

(2) The Governor may not designate any area to be a national park-

- (a) without the consent of every person, other than the Crown, who is an owner or occupier of any land comprised within that area;

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

- (b) unless it appears to him to be open country;
- (c) if there is an owner or occupier, other than the Crown, of any land comprised within that area, unless the Governor has entered into a designation and access agreement with that owner or occupier in respect of that land and the Governor designates that land as a national park in accordance with the provisions of that agreement.

(3) An Order under subsection (1) of this section shall describe the area designated as a national park by reference to a map and such other descriptive matter as may appear to the Governor to be appropriate.

(4) The designation of any land as a national park shall not prevent or restrict the use by the owner or occupier of the land in any way not inconsistent with the public's right to roam upon that land under section 5, any provisions of any designation and access agreement applicable to that land and subsection (5) of this section.

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

(5) Without prejudice to subsection (4) of this section, a person interested in any land comprised in a designation and access agreement, not being excepted land, shall not carry out any work thereon whereby the area to which the public are able to have access by virtue of section 5 is substantially reduced, but nothing in this subsection shall affect the doing of anything whereby any land becomes excepted land.

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

5 Rights of public access

(1) Subsection (2) of this section applies so as to confer upon the public at large the right to roam in respect of land comprised in a national park which is not excepted land.

(2) Subject to subsections (3) and (4) of this section and to the provisions of any regulations made under this Ordinance for the purpose of giving effect to any access agreement applying to the land in question, a person who enters upon any land comprised in a national park for the purpose of exercising the right to roam without breaking or damaging any wall, fence, hedge or gate, or is on such land for that purpose after having so entered thereon, shall not be treated as a trespasser on that land or incur any other liability by reason only of so entering or being on the land.

(3) Nothing in subsection (2) of this section entitles a person to enter or be on any land, or to do anything thereon, in contravention of any prohibition contained in or having effect under any enactment.

(4) Subsection (1) of this section does not apply so as to prevent the person for the time being entitled to occupation of the land subject to the right to roam treating as a trespasser a person who, in or upon the land in question does anything prohibited by the Schedule to this Ordinance.

(5) For the purposes of subsection (1), "excepted land" means-

- (a) land covered by buildings or the curtilage of such land;
- (b) any land in use as a lambing paddock at the time in question;

- (c) land used for the getting of minerals by surface working (including quarrying) or land used as a golfcourse, racecourse or aerodrome;
- (d) land within one hundred metres of any building used as a dwelling;
- (e) land under cultivation;
- (f) land in the occupation of any statutory undertaking or used for the purposes of any telecommunications system;
- (g) land which is indicated by fences, signs or otherwise to be a minefield; and
- (h) land specified as excepted land by any regulations made under this Ordinance

6 National Park designation and access agreements

(1) The Governor may enter into an agreement with the owner or occupier of any land providing for the designation of the land specified therein as a national park and any restrictions subject to which persons may enter into or be upon that land ("a designation and access agreement").

(2) Without prejudice to the generality of subsection (1), the Governor may in a designation and access agreement agree to make regulations under this Ordinance imposing restrictions excluding the land or any part thereof at times or seasons to be specified in those regulations from the operation of section 5(2) of this Ordinance.

(3) Subsection (2) of this section has effect without prejudice to the provisions of section 5 of this Ordinance in relation to excepted land.

(4) Where a designation and access agreement contains provisions as to access agreed with one or some, but not all, of the persons having interests in the land to which the agreement relates, those provisions and the provisions of section 5 of this Ordinance apply as respects the interests of the persons with whom the access provisions were agreed, and shall continue to apply notwithstanding any change in the persons entitled to the same interests in the land, but do not operate as against the person for the time being entitled to any other interest in the land so as to prejudice his rights as owner of that interest.

Regulations and offences

7 Regulations

The Governor may by regulations made under this section-

- (a) prohibit the doing of any thing specified in those regulations in any national park or any specified national park or part of a national park and either absolutely, subject to restrictions or at particular times or seasons of the year and constitute the doing of any prohibited thing specified in the regulations for that purpose an offence punishable by such fine, not exceeding the maximum of level four on the standard scale, as is specified in relation thereto in such regulations;

- (b) add to the categories of land which are to be excepted land or which are to be excepted land in the circumstances or subject to the conditions specified in regulations so made;
- (c) exclude a national park or part or parts thereof from the operation of section 5(2) of this Ordinance at times or seasons specified in those regulations; and
- (d) prescribe any matter or thing which it is necessary or convenient to prescribe for the purposes of any foregoing provision of this Ordinance.

8 Offences

A person who does any thing mentioned in the Schedule to this Ordinance commits an offence and on conviction of that offence is liable to a fine not exceeding the maximum of level 5 on the standard scale.

SCHEDULE

A person commits an offence who, in a national park, except in so far as he may be permitted by regulations under this Ordinance or any other written law to do so, does any of the following things-

- (a) lights any fire except in a place he is permitted by the occupier of the land to light a fire or which is designated by regulations made under this Ordinance for the lighting of fires or does any act which, except as aforesaid, is likely to cause a fire;
- (b) takes, or allows to enter or remain, any dog not under proper control;
- (c) other than with the consent of the person for the time being entitled to occupation of the land or other person entitled to give such consent, engages in any operations of or connected with hunting, shooting, fishing, snaring, taking or destroying of animals, birds or fish, or brings or has any apparatus or thing whatsoever used or designed to be used for hunting, shooting, fishing, snaring, taking or destroying animals, birds or fish;
- (d) except where he is lawfully permitted so to do by the person for the time being entitled to occupation of the land, wilfully damages the land or anything thereon or therein;
- (e) wilfully injures, removes or destroys any plant, shrub, tree or root or any part of any of the foregoing;
- (f) obstructs the flow of any drain or watercourse, opens, shuts or otherwise interferes with any sluice-gate or other apparatus, breaks through any hedge, fence, wall or gate, or neglects to shut any gate or fasten it if any means of fastening it is provided;
- (g) affixes or writes any advertisement, bill, placard or notice;
- (h) deposits any rubbish or leaves any litter;
- (i) engages in riotous, disorderly or indecent conduct;
- (j) wantonly disturbs, annoys or obstructs any person engaged in any lawful occupation;

- (k) worries any cattle or sheep or allows any dog he takes with him in or on the land to worry any cattle or sheep; or
- (l) does any other thing prohibited by regulations made under this Ordinance and having effect in relation to the land in question.