



FALKLAND ISLANDS

Offshore Minerals Ordinance 1994

(ORDINANCE No. 16 OF 1994)

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FALKLAND ISLANDS

Offshore Minerals Ordinance 1994

AN ORDINANCE To repeal the Continental Shelf Ordinance 1991; to replace it so as to make further and better provision for the exploration and exploitation of minerals in the Continental Shelf and other controlled waters of the Falkland Islands and for matters connected with or relating to the foregoing matters.

*[DATE OF COMMENCEMENT: 1ST SEPTEMBER 1995]
(Unless otherwise indicated)*

PART I INTRODUCTORY

Short title, Commencement and Interpretation

1 Short title and commencement

- (1) This Ordinance may be cited as the Offshore Minerals Ordinance 1994.
- (2) This Ordinance shall come into force on such day as the Governor may appoint by notice published in the Gazette.
- (3) The Governor may exercise his powers under subsection (2) so as to appoint, by one or more notices so published, differing days for the coming into force of different provisions of this Ordinance.
- (4) Any reference in any provision of this Ordinance to the coming into force of this Ordinance shall be construed as a reference to the day appointed under this section for the coming into force of that provision.

2 Interpretation

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

"clauses of the licence" has the meaning given by section 7(3);

"company" includes any body corporate;

"concession owner" has the meaning given by subsection (2) of this section;

"the continental shelf" has the meaning ascribed to that phrase for the purposes of international law in the first recital to Proclamation No. 1 of 1991;

"contravene" includes a failure to comply;

"controlled pipe-line" has the meaning given by section 38(1);

"controlled waters" means any or all of the following-

- (a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limits of the territorial sea;
- (b) any designated area of the continental shelf; and
- (c) such inland waters as may be prescribed for the purposes of this paragraph by Order made by the Governor;

"designated area" means-

- (a) any area which is within the definition of designated area in Proclamation No 1 of 1991; and
- (b) any area to which Proclamation No 1 of 1997 relates;

[S. 3(1)(a)/Ord. 16/97/w.e.f. 24/12/97.]

"director" includes-

- (a) any person who occupies in relation to a company the position of director, by whatever name called;
- (b) a shadow director;
- (c) in the case of a body corporate incorporated other than in the Falkland Islands or under the laws of the Falkland Islands, any person, including a member of a managing board or committee, (however the managing board or committee is described) who occupies in relation to the body corporate a position analogous to that of a director of a company incorporated under the laws of the Falkland Islands; and
- (d) where the affairs of a body corporate, whether incorporated in the Falkland Islands or under the laws of the Falkland Islands or not, are managed by the members of the body corporate, in relation to such management (but not otherwise) any of its members engaged in managing its affairs;

and "shadow director", for the purposes of paragraph (b) of this definition means any person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act;

"document" includes information recorded in any form and, in relation to any information recorded otherwise than in legible form, any reference in this Ordinance to its production includes reference to producing a copy of the document in legible form;

"enactment"-

- (a) in relation to any Act or statutory instrument of the United Kingdom, includes every provision of such an Act or such statutory instrument; and
- (b) in relation to any Ordinance or subsidiary legislation of the Falkland Islands, includes every provision of such an Ordinance or such subsidiary legislation;

"exploit", in relation to any mineral, means to do anything which, by virtue of this Ordinance, can only lawfully be done under the authority of, and in accordance with the conditions of, a production licence, and "exploitation" has a corresponding meaning;

"exploration licence" means a licence granted under section 6 authorising the holder to search for a mineral or minerals;

"explore", in relation to any mineral, means to search or explore for any mineral and without prejudice to the generality of the foregoing, includes-

- (a) field observations, geological and geophysical investigations and the use of remote sensing techniques;
- (b) the obtaining of any sample; and
- (c) any other operation which may be authorised by an exploration licence and which is not, in relation to any mineral, the exploitation of that mineral;

"Governor" means the Governor or other officer for the time being administering the Government of the Falkland Islands acting after consultation with the Executive Council except in any case where the Constitution authorises or requires him to act otherwise than after such consultation where it shall mean the Governor acting in his discretion;

"the inland waters" means waters within the Falkland Islands other than tidal waters and parts of the sea;

"inspector" means an inspector appointed under section 29 of this Ordinance;

"installation" includes-

- (a) any floating structure or device maintained on a station by whatever means; and
- (b) in such cases and subject to such exceptions as may be prescribed by Order, any apparatus or works which are by virtue of section 38(1) to be treated as associated with a pipe or a system of pipes for the purposes of Part IV of this Ordinance,

but subject to paragraph (b) of this definition, does not include any part of a pipe-line within the meaning of that definition;

"installation manager" has the meaning given by section 25(3);

"licensee" means any person-

- (a) to whom a licence under this Ordinance has been granted; or
- (b) to whom a licence was granted under section 4 of the repealed Ordinance where that licence continues to have effect as if it had been granted under section 6 of this Ordinance;

"mineral" means any substance, other than water, and whether that substance is in solid, liquid or gaseous form, formed by or subject to geological process and being in or on the sea-bed of or in the subsoil of the controlled waters;

"offshore installation" has the meaning given by section 36(5)(a);

[S. 3(1)(b)/Ord. 16/97/w.e.f. 24/12/97.]

"Order" means any Order made under any provision of this Ordinance;

"model clauses" and "the model clauses" mean a model clause or model clauses prescribed by regulations made under section 7;

"this Ordinance" means this ordinance as from time to time amended and includes a reference to any subsidiary legislation made under this Ordinance;

"notice" means notice in writing;

"owner", in relation to an offshore installation means the person who has registered the installation pursuant to regulations requiring such registration, or if there is no such person, or if no such regulations have for the time being been made or have effect, the person for the time being having the management of the installation, or of its main structure;

"person" includes a body corporate, an unincorporated body of persons and a partnership;

"personal injury" includes any disease and any impairment of a person's physical or mental condition and any fatal injury;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in any strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"pipe-line" and "pipe-line works" have the meaning given by section 38(1);

"prescribed" means prescribed by regulations under this Ordinance;

"regulations" means regulations made under any provision of this Ordinance;

"relevant offshore activity" means an activity mentioned in sub-paragraphs (i) to (iv) of paragraph (a) of section 36(5);

[S. 3(1)(c)/Ord. 16/97/w.e.f. 24/12/97.]

"the repealed Ordinance" means the Continental Shelf Ordinance 1991;

"Secretary of State" means Her Majesty's Secretary of State for Foreign and Commonwealth Affairs;

"statutory instrument" has the same meaning as it has for the purposes of the Statutory Instruments Act 1946; and

"subsidiary legislation" means any Order or regulation made under this or any other Ordinance.

(2) Subject to subsection (3), a person who whether as a licensee or otherwise, has the right to exploit any mineral in any area, or to store gas in any area and to recover gas so stored, shall be a "concession owner" for the purposes of this Ordinance in relation to any offshore installation if, at that time, he carries on any relevant offshore activity on, by means of or from that installation.

(3) The fact that an installation has been maintained for the carrying on of an activity falling within the definition of "relevant offshore activity" in subsection (1) shall be disregarded if, since it was last so maintained the installation-

- (a) has been outside controlled waters; or
- (b) has been maintained for the carrying on of any activity which does not fall within that definition:

(4) Except where the context otherwise requires, any reference in this Ordinance to an enactment, whether of the Falkland Islands or of the United Kingdom, shall include a reference to-

- (a) any enactment for the time being replacing that enactment, and whether by way of re-enactment or otherwise; and
- (b) any enactment for the time being amending or modifying that enactment

(5) ...

[S.R. & O. 20/2017/w.e.f. 31/07/2017]

(6) Where any word or expression is defined in subsection (1), that definition shall extend to the grammatical variations and cognate expressions of that word or expression.

(7) In this Ordinance

- (a) words and expressions used in the masculine gender include the female gender and the neuter gender;
- (b) words and expressions used in the neuter gender include the masculine gender and the female gender; and
- (c) words and expressions used in the singular include the plural and vice versa.

(8) Subject to this Ordinance, the Interpretation and General Clauses Ordinance 1977 applies in relation to this Ordinance and to expressions used in this Ordinance.

PART II EXPLORATION FOR AND EXPLOITATION OF MINERALS

Prohibition of exploration for or exploitation of minerals

3 Prohibition of exploration for and exploitation of minerals in the controlled waters

(1) It is unlawful for any person to explore for or exploit any mineral in the controlled waters or in the sea-bed or subsoil thereof unless he does so under and in accordance with the terms and conditions of a licence granted under this Ordinance or having effect as if granted under this Ordinance

(2) This section does not bind the Crown.

4 Licences granted under repealed Ordinance to have effect as if granted under this Ordinance (S.R. & O. No. 25 of 1992)

(1) A licence granted under section 4 of the repealed Ordinance shall with effect from the commencement of this Ordinance have effect as if it were as an exploration licence granted under section 6 of this Ordinance upon the same terms and conditions as it was granted.

(2) In subsection (1), the reference to the terms and conditions of a licence includes a reference to any model clauses incorporated in that licence by virtue of the provisions of the Petroleum Survey (Model Clauses) Regulations 1992.

Application for and grant of licences

5 Kinds of licences

(1) For the purposes of this Ordinance there shall in relation to the exploration for and exploitation of minerals be the following kinds of licences-

- (a) exploration licences; and
- (b) production licences.

(2) An exploration licence shall authorise the licensee in accordance with its terms, to search for the mineral or minerals specified therein in the sea-bed and subsoil of or under the area or areas of the controlled waters specified in the licence but shall not authorise the licensee, unless the contrary is stated in the licence-

- (a) to bore for any mineral in the course of exploration; or
- (b) to get any mineral in the course of exploration,

and, in any case, an exploration licence shall not authorise the licensee to get any mineral in any greater quantity or for any purpose other than is incidental to exploration for that mineral.

(3) A production licence shall authorise the licensee in accordance with its terms to search and bore for, and get, the mineral or minerals specified in the licence in the sea-bed and subsoil under the area or areas of the controlled waters specified in the licence.

6 Grant of licences

(1) Subject to this Ordinance, and with the consent of the Secretary of State, the Governor may on behalf of Her Majesty, grant to any person a licence of a kind provided for by section 5(1) of this Part in respect of the whole or part of the area to which that person's application for that kind of licence relates.

(2) Any such licence shall be granted for such consideration as the Governor with the consent of the Secretary of State may determine, and upon such other terms and conditions as the Governor, with the approval of the Secretary of State, sees fit to grant the licence.

(3) The Governor shall, as soon as may be after granting a licence under this section, publish notice of the fact in the Gazette stating the name of the licensee and the situation of the area in respect of which the licence has been granted.

7 Model clauses regulations to be made (24 & 25 Geo 5, c.36 s. 6)

(1) The Governor shall, before granting any licence under section 6 in respect of any mineral, under this section make regulations approved by the Secretary of State in relation to that mineral prescribing-

- (a) the manner in which and the persons by whom applications for licences under that section may be made;
- (b) the fees to be paid on such applications;
- (c) the conditions as to the size and shape of areas in respect of which licences may be granted;
- (d) model clauses which shall, unless he, with the approval of the Secretary of State sees fit to exclude them in any particular case, be incorporated in any such licence,

and different regulations may be made under this section-

- (i) for different kinds of licence, or
- (ii) different kinds of mineral.

(2) Regulations made under this section shall not be revoked amended or replaced without the consent of the Secretary of State.

(3) A reference in this Ordinance to "the clauses of the licence" is a reference to the model clauses incorporated in a licence pursuant to regulations made under this section together with any conditions imposed, in addition to any such model clauses, on the grant of the licence or otherwise in accordance with this Ordinance.

8 Petroleum to be a single mineral for the purposes of sections 6 and 7

Notwithstanding the definition of "mineral" in section 2(1), all minerals falling within the definition of "petroleum" in section 2(1) shall for all purposes of sections 6, and 7 be treated as if they were a single mineral.

9 General duty of the Governor in relation to licensing powers. Power to alter conditions of licence (cf 1964, c.29, s. 1(6) applying 8 & 9 Geo.6, c.19, s. 1(1))

(1) It shall be the general duty of the Governor in the exercise of his powers-

- (a) under section 6, to grant licences;
- (b) under section 7, to make regulations prescribing model clauses; and
- (c) otherwise under this Ordinance,

to secure the effective and co-ordinated development of petroleum and other minerals in the sea-bed and subsoil of the controlled waters, but nothing in this subsection shall be construed as placing upon the Governor any obligation to grant any licence under section 6 to any person.

(2) The Governor may, with the approval of the Secretary of State and with the consent of the licensee, amend, vary, add to or augment the conditions of a licence he has granted under section 6.

10 Offences in relation to licences for exploration for or exploitation of minerals

Any person who-

- (a) explores for or exploits any mineral in the controlled waters when he is not authorised by a licence issued under, or having effect as if issued under section 6 of this Ordinance to do so;
- (b) for the purpose of obtaining such a licence (for himself or for another) knowingly or recklessly makes a statement which is false in a material particular; or
- (c) fails to comply with such provisions of any regulations as may be prescribed for the purposes of this section;

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) In any proceedings for an offence under paragraph (a) or (c) of subsection (1), it shall be a defence for the accused to prove that he took all reasonable precautions to avoid the commission of the offence.

11 Requirement of consent for certain works in controlled waters (cf 1964 c.29 s. 4 applying provisions of Geo.6, 12, 13 & 14)(Cap. 12 Laws of the Falkland Islands 1950 Edition)

(1) Subject to this section no person shall, without the consent in writing of the Governor-

- (a) deposit any object or material on the sea-bed of the controlled waters;

- (b) construct, alter or improve any works on, under or over any part of the controlled waters; or
- (c) remove any object or materials from the sea-bed or subsoil of the controlled waters,

if the operation (whether while being carried out or subsequently) causes or is likely to result in an obstruction or danger to navigation.

(2) Subsection (1)-

- (a) does not apply where the person carries out the operation pursuant to a consent granted by or pursuant to the clauses of a licence granted under section 6;
- (b) does not apply to the construction, alteration or improvement of any works more than fifty feet below the surface of the sea in connection with the getting of minerals; and
- (c) has effect without prejudice to the provisions of this Ordinance relating to submarine pipe-lines or the abandonment of installations (but no consent under subsection (1) is required where the consent in writing of the Governor has been obtained pursuant to any such provisions).

(3) The Governor may, as a condition of considering an application for consent under this section, require to be furnished with such plans and particulars of the proposed operation as he considers necessary; and on receipt of any such application he may-

- (a) cause notice of the application to be published, and of the time within which and the manner in which objections thereto may be made, to be published in such manner as he may consider appropriate for informing persons affected thereby, and
- (b) before granting his consent, may, if he thinks fit, appoint a Commission of Inquiry to enquire into the matter under the provisions of the Commissions of Inquiry Ordinance and report to him thereon and shall take such report into account in determining whether or not to consent to the proposed operation and, if he decides to consent to it, upon what conditions, if any.

(4) If the Governor (and, if appropriate, after taking into account any report made to him pursuant to subsection (3)), considers that any operation in respect of which his consent is required under this section will cause or is likely to result in obstruction or danger to navigation he shall either-

- (a) refuse his consent; or
- (b) grant his consent subject to such conditions as he thinks fit, having regard to the nature and extent of the obstruction or danger which appears to him would otherwise be caused or be likely to result.

(5) A consent of the Governor under this section may be given so as to continue in force, unless renewed, only if the operation for which consent is given is begun or completed within such period as may be specified in the consent, and any renewal of such consent may be limited in a similar manner, and any condition subject to which the Governor has given his consent-

- (a) shall subject to paragraph (d), either remain in force for a specified period or remain in force without limit of time;

- (b) shall (in addition to binding the person to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies or enjoys any works to which the consent relates;
- (c) may, if the condition related-
 - (i) to the provision of lights, signals or other aids to navigation, or
 - (ii) to the stationing of guard ships in the vicinity of the works in question or the taking of any other measures for the purpose of, or in connection with, controlling the movement of ships in the vicinity of those works,

be varied by the Governor in the interests of the safety of navigation (whether or not the operation has been completed) in such manner as he thinks fit for the purpose of enhancing the effectiveness of any such aids or measures as are mentioned in subparagraph (i) or (ii) of this paragraph; and

- (d) may, if the Governor thinks fit, be varied or discharged by him.

12 Supplementary to section 11 (12, 13 & 14 Geo 6, c.74 s. 36A)

(1) Where at any time after the Governor has given his consent for an operation falling within section 11(1) ("the relevant consent"), it appears to him-

- (a) that any danger to navigation has arisen by reason of-
 - (i) any substantial damage to any works to which that consent relates; or
 - (ii) any other substantial and unforeseen change in the state or position of any such works, and
- (b) that it is urgently necessary to do so in the interests of safety or navigation,

he may, by notice served on the person to whom the consent was given, impose on that person such requirements as he thinks fit with respect to any of the matters referred to in subsection (2) of this section.

(2) Those matters are-

- (a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and
- (b) the stationing of guard ships in the vicinity of those works.

(3) Where the person on whom a notice is served under subsection (1) of this section fails to comply with any requirements of the notice within 24 hours beginning with the time when it is served on him or as soon after that period as is reasonably practicable, the Governor may make such arrangements as he thinks fit for the purpose of securing that those requirements are implemented.

(4) Where under subsection (3) of this section the Governor makes any such arrangements, he shall be entitled to recover the cost, as certified by the Financial Secretary, of making those arrangements from such one or more of-

- (a) the person to whom the relevant consent was given, and
- (b) any other person who is, in accordance with section 11 (5) (b), bound by any condition subject to which that consent was given,

as he thinks fit.

(5) Once the requirements of a notice under subsection (1) of this section have been complied with by the person on whom it was served, or implemented in accordance with arrangements made by the Governor under subsection (3) of this section, those requirements shall, subject to subsection (6) of this section, be treated as conditions subject to which the relevant consent was given.

(6) Paragraphs (a) and (d) of section 11(5) shall not apply to such requirements; but if it appears to the Governor (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, he shall revoke them by notice served on the person to whom the relevant consent was given.

(7) Where the Governor has served a notice under subsection (1) of this section in respect of any particular circumstances, subsection (5) of this section shall not preclude him from serving a further notice under subsection (1) of this section in respect of those circumstances.

(8) A notice may be served by the Governor under subsection (1) of this section whether or not-

- (a) the operation in question has been completed, or
- (b) any condition was imposed by him, on giving the relevant consent, with respect to any of the matters referred to in subsection (2) of this section.

13 Offences

(1) Any person who-

- (a) carries out any operation in contravention of section 11(1), or
- (b) fails to comply with any condition subject to which any consent of the Governor has been given under that section,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) Where a person is bound by any condition subject to which any such consent has been given under that section but is not the person to whom the consent was given, then, for the purposes of subsection (1) of this section, he shall not be taken to have failed to comply with the conditions unless-

- (a) he has been served by the Governor with a notice requiring him to comply with the condition within such period (not being less than thirty days) as may be specified in the notice; and
- (b) he has failed to comply with the conditions within that period.

(3) Without prejudice to any proceeding under subsection (1) or (2), where any person has, in contravention of section 11-

- (a) deposited any object or material on the sea-bed of the controlled waters, or
- (b) constructed, altered or improved any works in the controlled waters; or
- (c) failed to comply with any condition subject to which any consent of the Governor has been given under section 11,

the Governor may serve a notice on that person requiring him, within such period (not being less than thirty days) as may be specified in the notice, to remove the works or to make such alterations therein as may be so specified or to remove the object or materials, as the case may be, or, if it appears to the Governor urgently necessary to do so, may himself remove or alter the works or remove the object or materials.

(4) If within the period specified in any notice under subsection (3) the person served fails to comply with it, the Governor may himself remove or alter the works or remove the object or materials specified in the notice.

(5) Where under either subsection (3) or (4) the Governor removes or alters any works or removes any object or materials, he shall be entitled to recover the cost, as certified by the Financial Secretary, from the person by whom the works were constructed, altered or improved, or the object or materials was or were deposited.

Environmental protection

14 Strict liability for certain loss or damage etc (1989 c.21, s. 12 and Schedule)

(1) Schedule 1 to this Ordinance shall have effect so as to impose upon Operators strict liability for loss or damage in the circumstances and in the events provided for by that Schedule.

(2) In this section and in Schedule 1 to this Ordinance, "Operator" means any licensee and any concession owner.

15 Orderly payment for environmental damage

(1) Without prejudice to the generality of his powers under-

- (a) section 6(2), to impose terms and conditions on the grant of a licence; and
- (b) section 7, to make regulations prescribing model clauses,

it is declared that the Governor may exercise those powers so as to require a licensee to effect and maintain in being throughout the term of the licence such policy or policies of insurance approved by the Governor or be party to such an arrangement in respect of the licensee's obligations, in the events provided for by Schedule 1 of this Ordinance or otherwise arising to pay damages or compensation or make re-imbusement to any person as the Governor sees fit.

(2) In subsection (1) and (3) "such an arrangement" means an arrangement having an effect similar so far as is reasonably practicable, to the application of the arrangements afforded by the Offshore Pollution Liability Agreement as amended from time to time by the parties thereto or

such other arrangement of a similar kind to that the arrangements afforded by that Agreement as the Governor may approve.

(3) Where a licensee is party to such an arrangement but the provisions of that arrangement do not provide for payment in relation to all of the obligations referred to in subsection (1) of this section, the Governor may exercise either of the powers referred to in that subsection so as to require the licensee to effect and maintain in being a policy or policies of insurance approved by the Governor in relation to the remainder of those obligations.

(4) In subsection (2), "the Offshore Pollution Liability Agreement" means the agreement of that name applying in relation to the Offshore Pollution Liability Association Limited (a company incorporated under the laws of England with liability limited by guarantee and members of which are companies engaged in offshore petroleum exploration and exploitation operations and activities).

16 Oil pollution from certain operations

(1) In this section, "the 1971 Act" means the Prevention of Oil Pollution Act 1971 in the manner and so far as it applies to the Falkland Islands by virtue of the Prevention of Oil Pollution Act (Overseas Territories) Order 1982, but as if section 3 of the 1971 Act (which was not applied to the Falkland Islands by the said Order) had been so applied in terms corresponding to those of subsections (2) and (3) of this section.

(2) If any oil to which section 1 of the 1971 Act applies, or any mixture containing such oil, is discharged into any part of the sea-

- (a) from a pipe-line; or
- (b) (otherwise than from a ship) as the result of any operation for the exploration of the seabed and subsoil or the exploitation of their natural resources in a designated area,

then, subject to the provisions of the 1971 Act, the owner of the pipe-line or, as the case may be, the person carrying on the operations commits an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(3) A person convicted of an offence under subsection (2) is liable on conviction of that offence to a fine without limit.

Application of criminal and civil law

17 Application of criminal law

(1) The Governor may by Order made with the consent of the Secretary of State provide that, in such cases and subject to such exceptions as may be prescribed by the Order, any act or omission which-

- (a) takes place on, under, or above an installation to which this section applies or any waters within 500 metres of any such installation; and

- (b) would, if taking place in the Falkland Islands constitute an offence under the law of the Falkland Islands,

shall be treated for the purposes of that law as taking place in the Falkland Islands.

(2) The Governor may by Order made with the consent of the Secretary of State provide that in such cases and subject to such exceptions as may be prescribed by the Order, a police officer shall on, under or above any installation in waters to which this section applies or any waters within 500 metres of such an installation have all the powers, protection and privileges which he has under the law of the Falkland Islands.

(3) Subsection (2) has effect without prejudice to any other enactment or rule of law affording any power, protection or privilege to police officers or constables.

(4) Proceedings for anything that is an offence by virtue of an Order under this section may be taken, and the offence may be treated as having been committed, in the Falkland Islands.

(5) The waters to which this section applies are-

- (a) the territorial sea; and
- (b) waters in the designated area.

(6) This section applies to installations notwithstanding that they are for the time being in transit.

18 Application of civil law (1982 c.23 s. 23)

(1) The Governor may by Order made with the consent of the Secretary of State-

- (a) provide that in such cases and subject to such exceptions as may be prescribed by the Order, questions arising out of acts or omissions taking place on, under or above waters to which this section applies in connection with any activity mentioned in subsection (2) shall be determined in accordance with the law of the Falkland Islands; and
- (b) make provision for conferring jurisdiction with respect to such questions on courts in the Falkland Islands.

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

- (a) activities connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of waters to which this section applies or the subsoil beneath it; and
- (b) without prejudice to the generality of paragraph (a) of this subsection, activities carried on from, by means of or on, or for the purposes connected with, installations to which subsection (3) applies.

(3) This subsection applies to offshore installations (as defined in section 2(1) of this Ordinance by reference to the carrying on of a relevant offshore activity (as defined in section 2(1)) and as section 2(3) has effect in relation to that definition).

(4) Any jurisdiction conferred on any court under this section is without prejudice to any jurisdiction exercisable apart from this section by that or any other court.

- (5) The waters to which this section applies are-
- (a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limit of the territorial sea; and
 - (b) waters in the designated area.
- (6) This section applies to installations notwithstanding that they are for the time being in transit.

Miscellaneous matters

19 Wireless telegraphy (cf 1964 c.29 s. 6)

The Governor may by Order in Council made with the consent of the Secretary of State apply the Wireless Telegraphy Act 1949 and any regulations made thereunder (with such modifications and exceptions as may be specified in such Order) to any installation in waters to which an Order under section 18 applies and any waters within 500 metres of an installation.

20 Radioactive substances

The Governor may by Order in Council made with the consent of the Secretary of State apply the Radioactive Substances Act 1960 to any installation in an area or part to which an Order under section 18 applies and waters within 500 metres of such an installation and may by an Order under this section modify the provisions of that Act in their application to such an installation or waters.

21 Submarine cables and pipelines (1964 c.29, 2.8(1))

Section 3 (punishment for damaging cables) of the Submarine Telegraph Act 1885 in its application to the Falkland Islands and Article IV and paragraph 1 of Article VII (liability to pay compensation for damage to cables and for loss of gear sacrificed to avoid such damage) of the Convention set out in the Schedule to that Act (which by virtue of section 2 of that Act has the force of law) shall apply in relation to all submarine cables under the high seas (and not only to those to which that Convention applies) and to pipe-lines under the high seas; and the said section 3 shall be construed as referring to telephonic as well as telegraphic communication, and, in relation to high-voltage power cables and to pipe-lines, as if the words "in such manner" to the end of subsection (1) were omitted.

PART III SAFETY, HEALTH AND SAFETY AT WORK ETC

CHAPTER 1 OFFSHORE INSTALLATIONS

22 ...

[S. 22/S.R. & O. 8/1998/w.e.f. 1/2/1998]

23 Registration of offshore installations (1971, c.61, s.2)

(1) The Governor may with the consent of the Secretary of State make regulations for the registration of offshore installations.

(2) Regulations under this section may make provision -

(a) for all matters relevant to the maintenance of a register of offshore installations;

(b) without prejudice to paragraph (a) of this subsection, for the cases in which an installation is to be or may be exempted from registration, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemptions or of any conditions attached thereto, the persons by whom and manner in which applications in connection with any registration or exemption are to be made, and the information and evidence to be furnished in connection with any such application;

(c) for the marking or other means of identification of any installation, whether registrable or exempted from registration;

(d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;

(e) for requiring the payment of fees in connection with the making of applications under the regulations, the issue of certificates or other matters;

(f) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto; and

(g) for other incidental matters.

24 ...

[S. 25/S.R. & O. 13/1998/w.e.f. 1/2/1998]

25 ...

[S. 22/S.R. & O. 8/1998/w.e.f. 1/2/1998]

26 ...

[S. 22/S.R. & O. 8/1998/w.e.f. 1/2/1998]

Safety regulations as to offshore installations

27 Safety regulations as to offshore installations (1971, c.61, s.6)

(1) The Governor may with the consent of the Secretary of State make regulations for the safety, health and welfare of persons on offshore installations in controlled waters, and generally, and whether or not by supplementing the preceding sections of this Part, for the safety of such installations and the prevention of accidents on or near them.

(2) The regulations may have effect as respect -

(a) persons whether or not present in the course of their employment;

(b) the transport of persons and things to and from an installation;

(c) vessels, aircraft or hovercraft in the neighbourhood of an installation;

(d) vessels on which accommodation is provided for persons who work on or from installations; and

(e) any operation or work whether on or near an installation, or in the water, or on or below the shore or bed of the sea or other waters.

(3) Without prejudice to the generality of the preceding provisions of this section, the regulations may provide for any of the matters set out in Schedule 2 to this Ordinance, and may contain such supplemental or incidental provisions as appear to the Governor to be expedient.

(4) The Governor may appoint as inspectors to discharge the functions conferred by regulations, and generally to assist the Governor in the execution of the foregoing provisions of this Part, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient.

CHAPTER 2 PIPE-LINES

Safety and inspection of pipelines

28 Safety etc of pipe-lines (1975, c.74, s.26)

(1) The Governor may by regulations make such provision as he considers appropriate for the purpose of securing the proper construction and safe operation of pipe-lines, preventing damage to pipe-lines, preventing damage to pipe-line works; and, without prejudice to the generality of the preceding provisions of this subsection, regulations in pursuance of this subsection may include provision with respect to the use of any aircraft, vessel, vehicle, structure, plant, equipment or other thing for the purposes of any pipe-line works and with respect to the movement of and the precautions to be taken on or in connection with any of those things which are used for the purposes of any pipe-line works or are in the vicinity of a pipe-line or pipe-line works.

(2) In subsection (1) of this section "pipe-line works" means works of any of the following kinds, namely -

- (a) assembling or placing a pipe-line or length of pipe-line;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipe-line or length of pipe-line;
- (c) changing the position of or dismantling or removing a pipe-line or length of pipe-line;
- (d) opening the bed of the sea for the purposes of works mentioned in the preceding paragraphs, tunnelling or boring for those purposes and other works needed for or incidental to those purposes;
- (e) works for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line, and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line.

(3) References in subsection (1) and (2) are to a controlled pipe-line but shall be construed as excluding -

- (a) the equipment of a vessel or vehicle; and
- (b) any apparatus and works associated with a pipe or system of pipes and prescribed for the purposes of this paragraph.

29 Inspectors etc (1975, c.74, s.27)

(1) The Governor may appoint, as inspectors to assist him in the execution of this Chapter of this Part ("the relevant provisions") such number of persons appearing to him to be qualified for the purpose as he considers appropriate from time to time.

(2) Provision may be made by regulations with respect to the powers and duties of inspectors appointed in pursuance of the preceding subsection and of any other persons acting on the directions of the Governor in connection with the execution of the relevant provisions and with respect to the facilities to be accorded to such inspectors and other persons; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in exercise of that power may include provisions as to -

- (a) powers to inspect pipe-lines;
- (b) powers to enter upon premises, vessels and installations used or intended to be used in connection with a pipe-line or with activities relating to a pipe-line or a proposed pipe-line;
- (c) powers to inspect and test equipment and, in special circumstances, to dismantle, test to destruction or take possession of articles of equipment;
- (d) powers to require, in connection with the inspection of a pipe-line, the carrying out of procedures and the conduct of tests and, in special circumstances, the shutting down of the pipe-line or the discontinuance of the conveyance of things through the pipe-line;
- (e) powers exercisable in case of immediate or apprehended danger;
- (f) powers to require the conveyance of persons and things to and from, and the provision for persons of reasonable accommodation and means of subsistence while they are on or in transit to or from, any vessel or installation;
- (g) duties of persons to keep and produce records and to furnish information.

(3) Provision may also be made by regulations with respect to the notification of and the holding of public inquiries into accidents connected with pipe-lines; and, without prejudice to the generality of the power conferred by the preceding provisions of this subsection, regulations made in the exercise of that power may include provisions as to -

- (a) powers of entry and inspection for the purposes of an inquiry;
- (b) powers for such purposes of summoning witnesses to give evidence or produce documents, of taking evidence on oath and of administering oaths or requiring the making of declarations;
- (c) the making by the Governor of payments to a person holding an inquiry, to any assessor appointed to assist him and to any witness at an inquiry;

(d) the persons by whom and the manner in which the costs of an inquiry, including the remuneration of a person holding the inquiry, are to be defrayed.

(4) The provision as to costs in pursuance of paragraph (d) of the preceding subsection may include -

(a) provision for the payment of any costs out of money appropriated by the Legislative Assembly;

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

(b) provision requiring any costs to be defrayed by any person who appears to the person holding the inquiry to be responsible in any degree for the accident in question by reason of any act or default of the first-mentioned person or of any servant or agent of his.

(5) References to a pipe-line in the preceding provisions of this section are to a controlled pipe-line.

CHAPTER 3 SAFETY ZONES

Establishment of safety zones

30 Automatic establishment of safety zones (1987, c.12, s. 21)

(1) The Governor may, by Order made with the consent of the Secretary of State, provide that the following provisions of this section shall have effect, but otherwise they shall not have effect.

(2) Subject to subsection (1) and to subsections (4) and (5), there shall be a safety zone around any installation which, or part of which, is in the controlled waters if-

- (a) it is stationed there so that any of the activities mentioned in subsection (3) may be carried out on, from or by means of it, or
- (b) it is being assembled at a station where it is to be used for such a purpose, or
- (c) it remains or is being dismantled at a station where it has been used for such a purpose.

(3) The activities referred to in subsection (2) are-

- (a) the exploitation or exploration of mineral resources in or under the shore or bed of the controlled waters;
- (b) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored;
- (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters;

(d) the provision of accommodation for persons who work on or from an installation satisfying the condition in paragraph (a), (b) or (c) of subsection (2).

(4) Subsection (2) shall not apply to an installation in respect of which an order under section 31 has effect, or to one which-

(a) is connected with dry land by a permanent structure providing access at all times and for all purposes, or

(b) does not project above the sea at any state of the tide.

(5) The Governor may by Order made with the consent of the Secretary of State exclude any installation of any description from the operation of subsection (2), and may do so generally or by reference to specified activities or locations or in any other way.

(6) A safety zone established by subsection (2) shall extend to every point within 500 metres of any part of the installation (ignoring any moorings) and to every point in the water which is vertically above or below such a point.

(7) A safety zone established by subsection (2) may extend to waters outside the controlled waters.

(Date of commencement: 30th March 1988.^{i*})

31 Special orders (1987, c.12, s. 22)

(1) The Governor may by order made with the consent of the Secretary of State establish a safety zone around any installation which, or part of which, is stationed in the controlled waters, or is being assembled or dismantled in such waters.

(2) The area of a safety zone established by an Order under this section shall be defined in the Order and may extend outside the controlled waters, but shall not extend to any point which would be outside a zone defined in accordance with subsection (6) of that section.

(3) An order under this section may be made in anticipation of an installation's arriving at its station, so as to come into force when it does so.

Offences in relation to safety zones

32 Safety zones: offences (1987, c.12, s. 23)

(1) Where by virtue of an Order under section 30 or 31 there is a safety zone around an installation, no vessel shall enter or remain in the zone except-

(a) in the case of a safety zone established by an Order under section 31, in accordance with that Order; or

(b) in that or in any other case, in accordance with regulations made by the Governor.

(2) If a vessel enters or remains in a safety zone in contravention of subsection (1) then, subject to subsection (3), its owner and its master each commit an offence and are liable on conviction of that offence to a fine without limit.

(3) It is a defence for a person charged with an offence under this section to prove that the presence of the installation or the existence of the safety zone was not, and would not on reasonable enquiry have become, known to the master.

(4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person has also committed that offence and is liable to be proceeded against and punished accordingly.

(5) In this section, "vessel" includes a hovercraft, submersible apparatus (within the meaning of section 16(2) of the Merchant Shipping Act 1974) and an installation in transit; and "master"-

- (a) in relation to a hovercraft, means the captain;
- (b) in relation to submersible apparatus, means the person in charge of the apparatus;
- (c) in relation to an installation in transit, means the person in charge of the transit operation.

33 Safety zones: supplementary (1987, c.12, s. 24(1) and (3))

(1) For the purposes of this Chapter-

- (a) any floating structure or device maintained on a station by whatever means, and
- (b) any apparatus or works treated as associated with a pipe or system of pipes by section 38 of this Ordinance (but not anything else within the definition of pipe-line in that section),

shall be taken to be an installation.

(2) Sections 30 to 32-

- (a) so far as they apply to individuals apply to them whether or not they are British citizens or British dependent territories citizens; and
- (b) so far as they apply to bodies corporate apply to them whether or not they are incorporated in the Falkland Islands.

CHAPTER 4 GENERAL

Provisions as to civil and criminal liability

34 Civil liability for breach of statutory duty (1971, c.61, s. 11)

(1) This section has effect as respects-

- (a) a duty imposed by any foregoing provision of this Part;

(b) a duty imposed on any person by any provision of regulations or other subsidiary legislation made under any or for the purpose of any preceding provision of this Part which expressly applies the provisions of this section.

(2) Breach of any such duty shall be actionable so far, and only so far, as it causes personal injury, and references in section 1 of the Fatal Accidents Act 1846, as it applies in the Falkland Islands, to a wrongful act, neglect or default shall include references to any breach of a duty which is so actionable.

(3) Subsection (2) is without prejudice to any action which lies apart from the foregoing provision of this Part.

(4) Neither section 35, nor any defences afforded by regulations which afford, in respect of any description of offence created by those regulations, such defence as may be specified by those regulations, shall afford a defence in any civil proceedings, whether brought by virtue of this section or not.

(5) So far as the provisions of this section impose a liability on a concession owner, those provisions and the other provisions of this Part to which they relate shall bind the Crown, and accordingly, for the purposes of those provisions, and of any regulations or conditions having effect under those provisions, persons in the service of the Crown shall be taken to be employed whether or not they would be apart from this section, except that this subsection shall not give any right of action to a person as being a member of the armed forces of the Crown.

(6) Nothing in subsection (5) shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Ordinance.

35 Special defence in criminal proceedings under sections 24, 25 or 26 (1971, c.61, s. 9(3))

(1) In proceedings for an offence under section 24, 25 or 26, it shall be a defence for the accused to prove-

- (a) that he used all due diligence to enforce the execution of Chapter 1, and of any relevant regulation made under Chapter 1; and
- (b) that any relevant contravention was committed without his consent, connivance or default.

(2) Proceedings for any offence under Chapter 1 may be taken and the offence may for all incidental purposes be treated as having been committed in the Falkland Islands.

CHAPTER 5 REPLACEMENT OR MODIFICATION OF FOREGOING PROVISIONS OF THIS PART

Application of Part I of Health and Safety at Work etc. Act 1974

36 Application for certain purposes of Part I of the Health and Safety at Work Act etc 1974

(1) The Governor may, with the consent of the Secretary of State, by Order apply the provisions of the Offshore Safety Act 1992 to the Falkland Islands, with such modifications and exceptions as the Governor, with the consent of the Secretary of State, thinks fit, so that Part I of the Health and Safety at Work etc. Act 1974 applies to things and matters to which Chapters 1 to 4 of this Part relates as they do to the matters and things which, by virtue of its provisions, the Offshore Safety Act 1992 applies the said Part I of the Health and Safety at Work etc. Act 1974, but with such modifications and exceptions, in relation to the provisions of the said Part I of the Health and Safety at Work etc. Act 1974, as may be stated in such an Order.

(2) The Governor may by an Order under this subsection-

- (a) repeal or modify some or all of the provisions of Chapters 1 to 4 of this Part and any other provision of this Ordinance so far only as it relates to those provisions in such manner and to such extent as may appear to the Governor to be necessary or expedient; and
- (b) apply all or any regulations made under section 15(1) of the Health and Safety at Work etc. Act 1974 (with such modifications and exceptions as may be stated in the Order) which apply to such things and matters as the Offshore Safety Act 1992 relates to the corresponding things or matters to which Chapters 1 to 4 of this Part relate (and, in particular, but without prejudice to the generality of the foregoing, the Governor may by such an Order apply with such modifications and exceptions as he thinks fit, the provisions of the Offshore Installations (Safety Case) Regulations 1992).

(3) For the purposes of this section and any Order under this section Chapters 1 to 4 of this Part, together with the provisions of Part VI of this Ordinance so far as they relate to powers to make regulations and or to offences under those Chapters shall be taken to correspond with the United Kingdom legislation mentioned in section 1(3) of the Offshore Safety Act 1992.

(4) Without prejudice to subsection (1), the Governor may by an Order under this subsection made with the consent of the Secretary of State apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 and any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in relation to-

- (a) oil refineries;
- (b) pipe-lines within the wider definition given in subsection (5); and
 - (aa) any pipe-line works;

[S. 3(2)(a)/Ord. 16/97/w.e.f. 24/12/97.]

(bb) the following activities in connection with pipe-line works-

- (i) the loading, unloading, fuelling or provisioning of a vessel;
- (ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel,

being in either case a vessel which is engaged in pipe-line works;

[S. 3(2)(a)/Ord. 16/97/w.e.f. 24/12/97.]

- (c) gas (as defined in subsection (5));
- (d) any offshore installation and any activity on it;

[S. 3(2)(b)/Ord. 16/97/w.e.f. 24/12/97.]

- (e) any activity, including diving operations, in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, on or from a vessel or in any other manner, other than-
 - (i) transporting, towing or navigating the installation; and
 - (ii) any activity on or from a vessel being used as a stand-by vessel;

[S. 3(2)(b)/Ord. 16/97/w.e.f. 24/12/97.]

- (f) diving operations involving the survey and preparation of the sea-bed for an offshore installation;

[S. 3(2)(b)/Ord. 16/97/w.e.f. 24/12/97.]

- (g) any of the following activities within the territorial sea of the Falkland Islands-
 - (i) the construction, reconstruction, alteration, repair, maintenance, cleaning, demolition and dismantling of any building or other structure not being a vessel, or any preparation for any such activity;
 - (ii) the loading, unloading, fuelling or provisioning of a vessel;
 - (iii) diving operations;
 - (iv) the maintaining on station of a vessel which would be an offshore installation were it not a structure to which sub-paragraph (iv) of paragraph (a) of subsection (5) applies,

but nothing in this paragraph shall enable the Governor to make any Order applying to any vessel which is registered outside the Falkland Islands and is on passage through the territorial sea; and

[S. 3(2)(b)/Ord. 16/97/w.e.f. 24/12/97.]

- (h) a well and any activity connected with it, and any activity immediately preparatory to any such activity (and for the purposes of this paragraph "activity" and "activity immediately preparatory to any such activity" both include keeping a vessel on station for the purpose of working on a well but do not otherwise include navigation or an activity connected with navigation),

[S. 3(2)(b)/Ord. 16/97/w.e.f. 24/12/97.]

and, if they are within the Falkland Islands, notwithstanding that they are not within the controlled waters and notwithstanding that (even if they are within the controlled waters) in the circumstances of the case, they would not fall within the provisions of Chapters 1 to 4 of this Part.

(5) For the purposes of subsection (4) and this subsection-

- (a) "offshore installation" means a structure which is not within the definition of "excepted structure" contained in paragraph (b) of this subsection and which is, or is to be, or has

been, used while standing or stationed in water, or on the foreshore or other land intermittently covered by water-

- (i) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;
 - (ii) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored;
 - (iii) for the conveyance of things by means of a pipe; or
 - (iv) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this paragraph and which is not an excepted structure;
- (b) "excepted structure" means a structure which is any of the following-
- (i) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;
 - (ii) a well;
 - (iii) a structure which has ceased to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection and has since been used for a purpose not so specified;
 - (iv) a mobile structure which has been taken out of use and is not for the time being intended to be used for any of the purposes specified in sub-paragraph (ii) of paragraph (a) of this subsection; and
 - (v) any part of a pipe-line;
- (c) "pipe-line" means a pipe or system of pipes for the conveyance of any thing, together with-
- (i) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;
 - (ii) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;
 - (iii) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
 - (iv) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding sub-paragraphs of this paragraph;
 - (v) apparatus for the transmission of information for the operation of the pipe or system;
 - (vi) apparatus for the cathodic protection of the pipe or system; and
 - (vii) a structure used or to be used solely for the support of a part of the pipe or system,

but does not include a pipe-line of which no initial or terminal point is situated in the Falkland Islands or within the territorial sea or a designated area;

- (d) "pipe-line works" means-
- (i) assembling or placing a pipe-line or length of pipe-line including the provision of internal or external protection for it;
 - (ii) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipe-line;
 - (iii) changing the position of or dismantling or removing a pipe-line or a length of pipe-line;
 - (iv) opening the bed of the sea for the purposes of the works mentioned in sub-paragraphs (i) to (iii) of this definition, and tunnelling or boring for those purposes;
 - (v) any activities incidental to the activities described in sub-paragraphs (i) to (iv) of this definition;
 - (vi) diving operations in connection with any of the works mentioned in sub-paragraphs (i) to (v) of this definition or for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for settling the route of a proposed pipe-line;
- (e) "gas" means any gas derived from natural strata (including gas originating outside the Falkland Islands and the controlled waters), but does not include such gas in the course of supply (whether by pipes or otherwise) by a public utility or in containers in which it is intended to be supplied to members of the public or other retail consumers.

[S. 3(2)(c)/Ord. 16/97/w.e.f. 24/12/97.]

- (6) An Order under any preceding provision of this section may-
- (a) contain such transitional provisions and savings as appear to the Governor, acting with the consent of the Secretary of State, to be necessary or expedient;
 - (b) so far as is necessary or expedient to give further or better effect to the provisions of the Order, apply the provisions of Part I of the Health and Safety at Work etc. Act 1974 or any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order, in and to the Falkland Islands.

[S. 3(2)(d)/Ord. 16/97/w.e.f. 24/12/97.]

37 Supplementary to section 36

- (1) If an Order has been or is about to be made under section 36, the Governor, with the consent of the Secretary of State, may-
- (a) enter into an agreement or arrangement with the Health and Safety Executive established by the Health and Safety at Work etc. Act 1974 for and relating to the exercise by the Executive on behalf the Crown in the Falkland Islands of the like functions in the application of Part I of that Act under section 36 as it has under that Part in the United Kingdom and the United Kingdom's continental shelf;

- (b) make such Order as it appears necessary to him or expedient to make to give effect in the law of the Falkland Islands to any agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Health and Safety Executive in the performance of any functions under and by virtue of such an agreement or arrangement as is referred to in subsection (1), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except in so far as may be permitted by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

PART IV SUBMARINE PIPE-LINES

Interpretation

38 Interpretation of Part IV (1975, c.74, s. 33)

(1) Except where the context otherwise requires, in this Part of this Ordinance "pipe-line" means a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system; and for the purposes of this Part of this Ordinance the following apparatus and works and no other shall be treated as associated with such a pipe or system-

- (a) any apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;
- (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;
- (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
- (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding paragraphs;
- (e) apparatus for the transmission of information for the operation of the pipe or system;
- (f) apparatus for the cathodic protection of the pipe or system; and
- (g) a structure used or to be used solely for the support of a part of the pipe or system.

and "controlled pipe-line" means so much of any pipe-line as is in, over or under controlled waters.

(2) The Governor may by Order under this subsection provide that a part of a pipe-line, specified in the Order shall be treated for the purposes of this Part of this Act, except this subsection, as a pipe-line.

(3) For the purposes of this Part of this Ordinance, "owner" in relation to a pipe-line and "proposed owner" in relation to a proposed pipe-line, mean the person designated for the time being as the owner of the pipe-line, or as the case may be as the proposed owner of the proposed pipe-line, by an Order made by the Governor, and an Order designating a person as the proposed owner of a proposed pipe-line may also contain provision for him to be designated as the owner of the pipe-line in question at a time designated by or under the Order, but the Governor-

- (a) shall, before designating a person in pursuance of this subsection, give him an opportunity of being heard in respect of the matter; and
- (b) shall, if a person designated in pursuance of this subsection requests the Governor in writing to cancel the designation, consider the request and, if the Governor considers it appropriate to do so, give that person an opportunity of being heard by a person appointed by the Governor in connection with the request.

(4) The Governor may by order revoke any order made in pursuance of subsection (2) or (3) of this section.

(5) Except where the context otherwise requires, in this Part of this Ordinance the following expressions have the following meanings-

"authorisation" means an authorisation required by section 39 of this Ordinance;

"construction", in relation to a pipe-line, includes placing and cognate expressions shall be construed accordingly;

"heard" means heard on behalf of the Governor by a person appointed by him for the purpose;

"holder", in relation to an authorisation, means the person to whom the authorisation was issued;

"pipe-line", in relation to an application for a works authorisation means the proposed pipe-line in respect of which the application is made; and

"works authorisation" means an authorisation for works for the construction of a pipe-line or for such works and for the use of the pipe-line.

(6) For the purposes of this Part of this Ordinance, works at any place in, under or over controlled waters for the purpose of determining whether the place is suitable as part of the site of a proposed pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line are not works for the construction of a pipe-line.

(7) Any reference in this Part of this Ordinance to a contravention of a provision of that Part or of regulations made or directions given by virtue of the Part includes a reference to a failure to comply with that provision.

(8) Any reference in this Part of this Act, except this subsection, to that Part includes a reference to Schedule 3 to this Ordinance.

(9) This Part of this Ordinance, so far as it applies to individuals or bodies corporate, applies to them notwithstanding that they are not British citizens or British dependent territories citizens or, as the case may be, are not incorporated under the law of the Falkland Islands.

Construction and use of pipe-lines

39 Control of construction and use of pipe-lines in controlled waters (1975, c.74, s. 20)

No person shall execute in, under or over any controlled waters any works for the construction of a pipe-line, unless he is authorised by the Governor in writing to do so.

40 Authorisations for pipe-lines (1975, c.74, s. 21)

(1) The provisions of Part I of Schedule 3 to this Ordinance shall have effect with respect to applications for and notices of works authorisations, and the provisions of Part II of that Schedule shall have effect with respect to notice of other authorisations.

(2) The Governor shall not issue an authorisation except to a body corporate.

(3) An authorisation in respect of a controlled pipe-line may contain such terms as the Governor thinks appropriate including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms as to-

- (a) the duration of the authorisation, including the method of ascertaining its duration;
- (b) the persons or kinds of persons who are authorised to execute the works in question or to use the pipe-line or are so authorised if the Governor consents to the execution of the works or the use of the pipe-line by them;
- (c) in the case of a works authorisation, the route of the pipe-line, the boundaries within which any works may be executed in pursuance of the authorisation, the design and capacity of the pipe-line or of part of it and the steps to be taken to avoid or reduce interference by the pipe-line with fishing or with other activities connected with the sea or the sea-bed and subsoil;
- (d) the things authorised to be conveyed by the pipe-line;
- (e) the steps to be taken for the purpose of ensuring that funds are available to discharge any liability for damage attributable to the release or escape of any thing from the pipe-line;
- (f) the transactions relating to the pipe-line which are not to be entered into, and the other things relating to the pipe-line which are not to be done, without the consent of the Governor;
- (g) the persons who may be permitted to acquire an interest in the pipe-line and who may not be permitted to retain such an interest;
- (h) the operation of the pipe-line, including the methods by which it is to be operated and the person by whom it may be operated;

- (i) the information to be furnished in respect of the pipe-line; and
- (j) the giving by the Governor, with respect to the matters specified by the authorisation, of directions which shall have effect as terms of the authorisation.

(4) Except in a case where the Governor considers that there are special circumstances by reason of which the duration of an authorisation should be limited, the terms as to its duration which are included in an authorisation shall provide for its duration to be unlimited unless the authorisation ceases to be in force by virtue of the following provisions of this Part of this Ordinance.

(5) Where a works authorisation contains a term requiring that the capacity of the controlled pipe-line to which it relates or of any part of the pipe-line shall be greater than that proposed in the application for the authorisation or requiring that any of the route of the pipe-line shall be different from that so proposed then, subject to section 42(4) of this Ordinance, the Governor may serve on the holder of the authorisation, and on any other person who made representations to the Governor that the capacity proposed as aforesaid should be greater or that any of the route so proposed should be different, a notice-

- (a) specifying the sums or the method of determining the sums which the Governor considers should be paid to the holder by the other person for the purpose of defraying so much of the cost of constructing the pipe-line as is attributable to the term;
- (b) requiring the other person to make, within the period specified in that behalf in the notice, arrangements which the Governor considers are appropriate for the purpose of securing that those sums will be paid to the holder if he constructs the pipe-line or a relevant part of it in accordance with the term or satisfies the Governor that he will so construct it;
- (c) providing that the holder may, if such arrangements are not made by the other person within that period, elect in the manner specified in the notice that-
 - (i) the term shall have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the other person, and
 - (ii) the provisions included in the notice by virtue of the following paragraph shall cease to have effect; and
- (d) authorising the holder, if he satisfies the Governor that the pipe-line or a relevant part of it has been or will be constructed in accordance with the term, to recover those sums from the other person.

41 Compulsory increase in the capacity of pipe-lines (1975, c.74, s. 22)

(1) If in the case of a controlled pipe-line it appears to the Governor, on the application of a person other than the owner of the pipe-line-

- (a) that the capacity of the pipe-line can and should be increased by modifying apparatus and works associated with the pipe-line; or
- (b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line;

then, subject to section 42(5) of this Ordinance, the Governor may, after giving to the owner of the pipe-line an opportunity of being heard about the matter, serve on the owner and the applicant a notice-

- (i) specifying the modification which the Governor considers should be made in consequence of the application;
- (ii) specifying the sums or the method of determining the sums which the Governor considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modification;
- (iii) requiring the applicant to make, within a period specified in that behalf in the notice, arrangements which the Governor considers appropriate for the purpose of securing that those sums will be paid to the owner if he carries out the modifications or satisfies the Governor that he will carry them out;
- (iv) requiring the owner, if the applicant makes those arrangements within the period aforesaid, to carry out the modifications within a period specified in that behalf in the notice; and
- (v) authorising the owner, if he satisfies the Governor that he has carried out or will carry out the modifications, to recover those sums from the applicant.

(2) References in the preceding subsection to modifications include, in the case of modification of any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.

(3) It is hereby declared that for the purposes of section 39 of this Ordinance a notice in pursuance of this section requiring a person to carry out modifications authorises him to carry out the modifications; but nothing in Schedule 3 to this Ordinance shall apply to such a notice.

42 Acquisition by persons of rights to use pipe-lines belonging to others (1975 c.74, s. 23)

(1) If a person applies to the Governor for a notice in pursuance of this section which secures to the applicant a right to have conveyed by a controlled pipe-line of which he is not the owner, quantities specified in the application of things which are of a kind so specified and which the pipe-line is designed to convey, the Governor shall consider the application and, before he considers it, to give to the owner of the pipe-line and the applicant-

- (a) notice that he proposes to consider it; and
- (b) an opportunity, after the expiration of the period of twenty-one days beginning with the date of service of the notice, of being heard with respect to the application.

(2) Where after considering an application in pursuance of the preceding subsection the Governor is satisfied that, if he served notice in accordance with the following subsection in consequence of the application, the pipe-line in question could be operated in accordance with the notice without prejudicing the efficient operation of it for the purpose of conveying, on behalf of its owner, the quantities and qualities which the owner requires or may reasonably be expected to require of the things which may be conveyed by it in pursuance of an authorisation (or, if no authorisation for the use of the pipe-line is required by section 39 of this Ordinance, of

the things which the pipe-line is designed to convey), the Governor may serve such a notice on the owner and the applicant.

(3) A notice served in pursuance of the preceding subsection may contain such provisions as the Governor considers appropriate for all or any of the following purposes, namely-

- (a) for securing to the applicant, without prejudicing the efficient operation of the pipe-line for the purpose mentioned in subsection (2), the right to have conveyed by the pipe-line the quantities specified in the application of the things so specified;
- (b) for securing that the exercise of the right is not prevented or impeded;
- (c) for regulating the charges which may be made for the conveyance of things by virtue of the right;
- (d) for securing to the applicant the right to have a pipe-line of his connected to the pipe-line by the applicant or the owner;

and such a notice may also authorise the owner to recover from the applicant payments by way of consideration for any such right of such amounts as may be specified in the notice or determined in accordance with provisions in that behalf contained in the notice.

(4) Where the Governor proposes to serve a notice in pursuance of subsection (5) of section 40 of this Ordinance on a person other than the holder of the relevant authorisation, he shall before doing so give that person an opportunity of making an application in pursuance of subsection (1) of this section in respect of the proposed pipe-line to which the authorisation relates; and subsections (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line and the owner of it there were substituted references to the proposed pipe-line and the proposed owner of it.

(5) Where the Governor proposes to serve a notice in pursuance of subsection (1) of the preceding section on a person other than the owner of the relevant pipe-line, it shall be his duty before doing so to give that person particulars of the modifications which he proposes to specify in the notice and an opportunity of making an application in pursuance of subsection (1) of this section in respect of the pipe-line; and subsection (1) to (3) of this section shall have effect in relation to such an application made by virtue of this subsection as if for references to a pipe-line there were substituted references to the pipe-line as it would be with those modifications.

(6) The use of a pipe-line by any person in accordance with a right secured to him by virtue of this section is not a contravention of section 39 of this Ordinance; but a person to whom a right is so secured shall not be entitled to assign the right to any other person.

43 Termination of authorisations (1975, c.74, s. 24)

(1) An authorisation shall cease to be in force-

- (a) in the case of an authorisation which does not contain terms providing for its duration to be unlimited, on the expiration of the period of its duration as specified by or ascertained under the terms of the authorisation unless it has previously ceased to be in force by virtue of the following provisions of this subsection; or

- (b) if the holder and the Governor agree in writing that the authorisation, is to cease to be in force at a particular time during its currency, at that time; or
- (c) if the Governor serves a notice on the holder in pursuance of-
 - (i) the duty imposed on the Governor by the following subsection, or
 - (ii) the provisions of subsection (4) of this section,

at the time specified in the notice.

(2) If it appears to the Governor that the execution of works authorised by a works authorisation (disregarding the execution of any of the works which he considers should be disregarded for the purposes of this subsection) has not been begun at the expiration of-

- (a) the period of three years beginning with the date when the authorisation is expressed to come into force; or
- (b) such longer period beginning with that date as the Governor has, on the application of the holder, specified in a notice served for the purposes of this paragraph on the holder during the said period of three years,

the Governor shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

(3) The Governor shall not serve notice in pursuance of an application made by virtue of paragraph (b) of the preceding subsection unless-

- (a) he is satisfied that notice of the application has been served on-
 - (i) the persons on whom, in pursuance of Schedule 3 to this Ordinance, notice was served of the application in consequence of which the relevant authorisation was issued or on such of those persons as the Governor considers appropriate in the circumstances, and
 - (ii) such other persons, if any, as he considers appropriate in the circumstances; and
- (b) he has considered any representations about the application made by virtue of the said paragraph (b) which were made to him in writing, during such a period as he considers reasonable, by any of the persons as to whom he is satisfied as mentioned in the preceding paragraph.

(4) If the Governor is of opinion, after giving the holder of an authorisation an opportunity of making representations in writing to him about the matter and considering any such representations then made by the holder, that the holder-

- (a) has contravened a term of the authorisation; or
- (b) has contravened any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance, was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the authorisation relates,

the Governor may serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice; but the Governor shall not serve such a notice on the

holder in consequence of a contravention if the Governor considers that, having regard to the nature and consequences of the contravention and to any previous contravention, it would be unreasonable to terminate the authorisation in consequence of the contravention and that the holder has taken adequate steps to prevent similar contraventions in future.

44 Vesting of pipe-lines on termination or subsequent issue of authorisation (1975, c.74, s. 25)

(1) When an authorisation ceases to be in force the controlled pipe-line to which it relates shall, by virtue of this subsection, be transferred to and vest in the Crown free from encumbrances, except that nothing in this subsection prejudices any right conferred by a notice served in respect of the pipe-line in pursuance of section 42 of this Ordinance.

(2) Where the Governor proposes to issue an authorisation to any person in respect of a pipe-line vested in the Crown by virtue of subsection (1) he may agree with that person, on terms which may include provision for the making of payments by that person to the Governor, that the authorisation is to include a statement that this subsection applies to the authorisation; and where an authorisation includes such a statement the pipe-line to which the authorisation relates shall, by virtue of this subsection and at the time specified in that behalf in the authorisation, be transferred to and vest in the holder of the authorisation subject to any interest or right then subsisting in respect of the pipe-line by virtue of subsection (1).

45 Enforcement (1975, c.74, s. 28)

(1) Any person who-

- (a) contravenes any provision of section 39 of this Ordinance; or
- (b) contravenes any provision of a notice which, in pursuance of section 41 or 42 of this Ordinance was served on him in his capacity as the owner of the pipe-line or the proposed owner of the proposed pipe-line to which the notice relates in a case where no authorisation for the use of the pipe-line is required by section 39 of this Ordinance; or
- (c) makes a statement which he knows is false in a material particular, or recklessly makes a statement which is false in a material particular, for the purpose of inducing the Governor-
 - (i) to issue any authorisation; or
 - (ii) to agree in pursuance of section 43(1)(b) of this Ordinance that an authorisation is to cease to be in force; or
 - (iii) to specify a period in pursuance of section 43(2)(b) of this Ordinance; or
 - (iv) not to serve a notice in pursuance of section 43(4) of this Ordinance,

commits an offence and is liable on conviction of that offence to a fine without limit.

(2) If a person executes any works in contravention of section 39 of this Ordinance the Governor may at any time serve on him a notice requiring him to comply with one or both of the following requirements, namely-

- (a) to remove such of the works as are specified in the notice as works to be removed;

- (b) to take, in respect of such of the works as are specified in the notice as works which the Governor considers are unsafe, such steps as are specified in the notice as steps which the Governor considers are needed in order to make the works safe.

(3) It shall be the duty of the recipient of a notice in pursuance of the preceding subsection to comply with the notice within the period specified in that behalf in the notice; and if he fails to perform that duty the Governor may comply with the notice on his behalf and recover from him any expenses reasonably incurred in doing so.

(4) If a person executes any works in contravention of section 39 of this Ordinance and the Governor considers that it is urgently necessary to do such things in relation to the works as he could have required that person to do by a notice in pursuance of subsection (2) of this section, the Governor may do those things and recover from that person any expenses reasonably incurred in doing so.

(5) The fact that any thing is done or omitted-

- (a) by the recipient of a notice served in pursuance of subsection (2) of this section for the purpose of complying with the notice; or
- (b) by the Governor in pursuance of subsection (3) or (4) of this section,

shall not relieve him from liability for any damage which is attributable to the act or omission and for which he would have been liable had the act or omission not been authorised by this section; but the Governor shall be entitled to recover from the person who executed the works in question the amount of any damages which, in consequence of the works, are paid by the Governor by virtue of this subsection.

46 Civil liability for breach of statutory duty (1975, c.74, s. 30)

(1) Breach of a duty imposed on any person by a provision of regulations which are made in pursuance of this Part of this Ordinance and which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury; and references in section 1 of the Fatal Accidents Act 1846 to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

(2) Nothing in the preceding subsection prejudices any action which lies apart from the provisions of that subsection.

(3) A defence to a charge which is available by virtue of regulations made under this Ordinance in relation to any provision of this Part creating the offence charged shall not be a defence in any civil proceedings which are brought either in pursuance of this section or otherwise.

(4) For the purposes of subsection (1) of this section any such regulations as are mentioned in that subsection shall bind the Crown, and references in those regulations to employees shall for those purposes include persons in the service of the Crown.

PART V
ABANDONMENT OF OFFSHORE INSTALLATIONS

47 Interpretation of Part V (1987, c.12, s. 16)

(1) In this Part-

- (a) "abandonment programme" has the meaning given by section 48;
- (b) "offshore installation" has the meaning given by section 2(1); and
- (c) "submarine pipe-line" means a pipe-line within the meaning given by section 38(1) which is in, under or over the controlled waters.

(2) This Part applies-

- (a) so far as it applies to individuals, applies to them whether or not they are British citizens or British dependent territories citizens.
- (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of the Falkland Islands.

(3) Any reference in any provision of this Part to a provision of this Ordinance includes a reference to any provision which, by virtue of any Order or regulation made or having effect by virtue of section 36, for the time being replaces that provision and where a provision of this Ordinance referred to in a subsequent provision of this Part has been modified by such or any such regulation the reference to it includes a reference to that provision as so modified.

48 Preparation of programmes (1987, c.12, s. 1)

(1) The Governor may by written notice require-

- (a) the person to whom the notice is given, or
- (b) where notices are given to more than one person, those persons jointly,

to submit to the Governor a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or submarine pipe-line (an "abandonment programme").

(2) A notice under subsection (1) shall either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Governor may direct.

(3) A notice under subsection (1) may require the person to whom it is given to carry out such consultations as may be specified in the notice before submitting an abandonment programme.

(4) An abandonment programme-

- (a) shall contain an estimate of the cost of the measures proposed in it;
- (b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;

- (c) if it proposes that an installation or pipe-line be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.

(5) A person who submits an abandonment programme to the Governor under this section shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(6) The Governor may exercise his powers under this section notwithstanding that an abandonment programme has previously been submitted for the installation or pipe-line in question, but only if he rejected that programme under section 51 or has withdrawn his approval of it under section 54.

49 Persons who may be required to submit programmes (1987, c.12, s. 2)

(1) A notice under section 48(1) shall not be given to a person in relation to the abandonment of an offshore installation unless at the time when the notice is given he is within any of the following paragraphs-

- (a) the person who has registered the installation pursuant to section 23 of this Ordinance (or, if appropriate, that section modified, amended or replaced as may be under section 36) or, if there is no such person, the person having the management of the installation or of its main structure;
- (b) a person who is a concession owner in relation to the installation for the purposes of this Ordinance, or who was a concession owner for those purposes when a relevant offshore activity was last carried on from, by means of or on the installation;
- (c) a person outside paragraphs (a) and (b) who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within paragraph (b);
- (d) a person outside paragraphs (a) and (c) who owns any interest in the installation otherwise than as security for a loan;
- (e) a company which is outside paragraph (a) to (d) but is associated with a company within any of those paragraphs.

(2) A notice under section 49(1) shall not be given to a person in relation to the abandonment of a submarine pipe-line unless at the time when the notice is given he is within any of the following paragraphs-

- (a) a person designated as the owner of the pipe-line by an Order made by the Governor in pursuance of section 38(3) of this Ordinance;
- (b) a person outside paragraph (a) who owns any interest in the whole or substantially the whole of the pipe-line, otherwise than as security for a loan;
- (c) a company which is outside paragraphs (a) and (b) but is associated with a company within one of those paragraphs.

(3) The Governor may by written notice require a person appearing to the Governor to be within any of the paragraphs of subsection (1) or (2) to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice

believes to be within any of those paragraphs in relation to the installation or pipe-line concerned.

(4) A person who without reasonable excuse fails to comply with a notice under subsection (3) commits an offence.

(5) For the purposes of this section, one company is associated with another if one of them controls the other or a third company controls both of them; and one company controls another if it possesses or is entitled to acquire-

- (a) one half or more of the issued share capital of the company,
- (b) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company,
- (c) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders, or
- (d) such rights as would, if the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders,

or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes.

(6) In determining whether, by virtue of subsection (5), one company controls another, the first-mentioned company shall be taken to possess-

- (a) any rights and powers possessed by a person as nominee for it, and
- (b) any rights and powers possessed by a company which it controls (including rights or powers which such a company would be taken to possess by virtue of this paragraph).

50 Section 48 notices: supplementary provisions (1987, c.12, s. 3)

(1) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to an offshore installation to a person within paragraph (d) or (e) of section 49(1) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a), (b) or (c) to ensure that a satisfactory abandonment programme will be carried out.

(2) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to a submarine pipe-line to a person within paragraph (b) or (c) of section 49(2) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a) to ensure that a satisfactory abandonment programme will be carried out.

(3) Subsections (1) and (2) shall not apply if there has been a failure to comply with a notice under section 48(1) or if the Governor has rejected a programme submitted in compliance with such a notice.

(4) The Governor shall not give a notice to a person under section 48(1) without first giving him an opportunity to make written representations as to whether the notice should be given.

(5) Where the Governor has given notice under section 48(1) in relation to an installation or pipe-line, he may at any time before the programme required by it is submitted withdraw the notice or give (subject to the preceding provisions of this section) a further notice under section 48(1) (whether in substitution for or in addition to any notice already given); and if he does so he shall inform the recipients of any other notices which have been given in relation to that installation or pipe-line and not withdrawn.

(6) Neither the withdrawal of a notice given under section 48(1) nor the giving of a further notice shall relieve the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices).

51 Approval of programmes (1987, c.12, s. 4)

(1) The Governor may either approve or reject a programme submitted to him under section 48.

(2) If he approves a programme, the Governor may approve it with or without modifications and either subject to conditions or unconditionally.

(3) Before approving a programme with modifications or subject to conditions, the Governor shall give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions.

(4) If he rejects a programme, the Governor shall inform the persons who submitted it of his reasons for doing so.

(5) The Governor shall act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

52 Failure to submit programmes (1987, c.12, s. 5)

(1) If a notice under section 48(1) is not complied with, or if the Governor rejects a programme submitted in compliance with such a notice, the Governor may himself prepare an abandonment programme for the installation or pipe-line concerned.

(2) With a view to exercising his powers under subsection (1) of this section, the Governor may by written notice require any of the persons to whom notice was given under section 48(1) to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified.

(3) A person who without reasonable excuse fails to comply with a notice under subsection (2) commits an offence.

(4) The Governor may recover from any of the persons to whom a notice was given under section 48(1) any expenditure incurred by the Governor in preparing an abandonment programme under this section, and any fee that would have been payable on the submission of a programme by those persons.

(5) A person liable to pay any sum to the Governor by virtue of subsection (4) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(6) The rate of interest payable in accordance with subsection (5) shall be a rate determined by the Governor to be comparable with commercial rates.

(7) Where the Governor prepares an abandonment programme under this section, he shall inform the persons to whom notice was given under section 48(1) of its terms; and when he has done so, the following provisions of this Part of this Ordinance shall have effect as if the programme had been submitted by those persons and approved by the Governor.

53 Revision of programmes (1987, c.12, s. 6)

(1) Where the Governor has approved a programme submitted to him under section 48-

- (a) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject, and
- (b) either he or any of those persons may propose that any person who by virtue of section 55 has a duty to secure that the programme is carried out shall cease to have that duty, or that a person who does not already have that duty shall have it (either in addition to or in substitution for another person).

(2) In the case of a proposal of the kind mentioned in subsection (1)(b), any person who would if the proposed change were made have a duty to secure that the programme is carried out must be a person who-

- (a) if the programme relates to an offshore installation, is within paragraph (a), (b) (c), (d) or (e) of section 49(1) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the installation, and
- (b) if the programme relates to a submarine pipe-line, is within paragraph (a), (b) or (c) of section 49(2) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the pipe-line.

(3) The Governor shall not propose that a person who is or has been within paragraph (d) or (e) (but no other paragraph) of section 49(1) or paragraph (b) or (c) (but not paragraph (a)) of section 49(2) shall have a duty to secure that a programme is carried out unless it appears to the Governor that a person already under that duty has failed or may fail to discharge it.

(4) A proposal under subsection (1) shall be made by written notice given-

- (a) if the proposal is the Governor's to each of the persons by whom the programme was submitted, and
- (b) in any other case, to the Governor;

and a person giving notice to the Governor shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(5) Where the Governor has made a proposal under subsection (1) (a), he shall give an opportunity to make written representations about it to each of the persons who submitted the programme.

(6) Where a proposal has been made under subsection (1)(b), the Governor shall give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made-

- (a) have a duty to secure that the programme is carried out, or
- (b) cease to have that duty.

(7) The Governor shall determine whether a change proposed under subsection (1) is to be made and shall then give notice of his determination, and of his reasons for it, to-

- (a) every person who, before the determination was made, had a duty to secure the carrying out of the programme, and
- (b) any person who has that duty as a result of the determination.

(8) Where the Governor determines that a change proposed in accordance with this section shall be made, this Part of this Ordinance shall thereafter have effect as if the programme had been approved by the Governor after being submitted under section 48 with the alterations, or as the case may be by the persons, specified in the determination.

54 Withdrawal of approval (1987, c.12, s. 7)

(1) The Governor may at the request of one or more of the persons who submitted an abandonment programme withdraw his approval of the programme.

(2) If a request under subsection (1) is made by some but not all of the persons who submitted the programme, the Governor shall give the others an opportunity to make written representations as to whether his approval should be withdrawn.

(3) The Governor shall after determining whether to withdraw his approval of an abandonment programme give notice of his determination to each of the persons who submitted the programme.

55 Duty to carry out programmes (1987, c.12, s. 8)

Where an abandonment programme is approved by the Governor, it shall be the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with.

56 Default in carrying out programmes (1987, c.12, s. 9)

(1) If an abandonment programme approved by the Governor is not carried out or a condition to which the approval is subject is not complied with, the Governor may by written notice require

any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be so specified.

(2) A person who fails to comply with a notice given to him under subsection (1) commits an offence unless he proves that he exercised due diligence to avoid the failure.

(3) If a notice under subsection (1) is not complied with, the Governor may carry out the remedial action required by the notice, and may recover any expenditure incurred by him in doing so from the person to whom the notice was given.

(4) A person liable to pay any sum to the Governor by virtue of subsection (3) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(5) The rate of interest payable in accordance with subsection (4) shall be a rate determined by the Governor to be comparable with commercial rates.

57 Financial resources (1987, c.12, s. 10)

(1) At any time after the Governor has given a notice under section 48(1) to any person and before he has approved an abandonment programme for the installation or pipe-line concerned, he may by written notice require that person within such time as may be specified in the notice-

- (a) to provide such information relating to the financial affairs of that person, and
- (b) to supply copies of such documents relating to those affairs,

as may be so specified.

[S. R. & O. 24/11/w.e.f. 1/2/95.]

(2) In order to satisfy himself that a person who has a duty to secure that an abandonment programme is carried out will be capable of discharging that duty, the Governor may at any time by written notice require that person, within such time as may be specified in the notice-

- (a) to provide such information, and
- (b) to supply copies of such documents,

as may be so specified.

(3) A person who-

- (a) without reasonable excuse fails to comply with a notice under subsection (1) or subsection (2), or
- (b) in purported compliance with such a notice provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular,

commits an offence.

(4) If the Governor is not satisfied that a person will be capable of discharging the duty imposed on him by section 55, he may by written notice require that person to take such action as may be specified in the notice within such time as may be so specified.

(5) The Governor shall not give notice to a person under subsection (4) without first giving him an opportunity to make written representations as to whether the notice should be given.

(6) A person who fails to comply with a notice under subsection (4) commits an offence unless he proves that he exercised due diligence to avoid the failure.

58 Regulations (1987, c.12, s. 11)

(1) The Governor may make regulations relating to the abandonment of offshore installations and submarine pipe-lines.

(2) Without prejudice to the generality of subsection (1), regulations under this section may-

- (a) prescribe standards and safety requirements in respect of the dismantling, removal and disposal of installations and pipe-line;
- (b) prescribe standards and safety requirements in respect of anything left in the water in cases where an installation or pipe-line is not wholly removed;
- (c) make provision for the prevention of pollution;
- (d) make provision for inspection, including provision as to the payment of the costs of inspection;
- (e) make provision as to the determination of the amount of any fees that are payable to the Governor under this Part of this Ordinance.

(3) The provisions of subsection (2) are without prejudice to the general powers of the Governor in relation to regulations under this Ordinance provided in Part VI of this Ordinance.

59 Offences under Part V (1987, c.12, s. 12)

A person who commits an offence under section 49, 52, 56 or 57 is liable on conviction of that offence to a fine without limit.

60 Validity of Governor's acts (1987, c.12, s. 14)

(1) If any person is aggrieved by any of the acts of the Governor mentioned in subsection (2) and desires to question its validity on the ground that it was not within the powers of the Governor or that the relevant procedural requirements had not been complied with, he may within 42 days of the day on which the act was done make an application to the Supreme Court under this section.

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

- (a) the giving of a notice under section 48(1);
- (b) the approval of a programme under section 51;
- (c) the rejection of a programme under section 51;

- (d) a determination under section 53;
- (e) a determination under section 54; and
- (f) the giving of a notice under section 57(4).

(3) If on an application under this section the Supreme Court is satisfied that the act in question was not within the powers of the Governor or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the Supreme Court may quash the act.

(4) Except as provided by this section, the validity of any of the acts of the Governor referred to in subsection (1) of this section shall not be questioned in any legal proceedings whatsoever.

(5) In this section "the relevant procedural requirements"-

- (a) in relation to the giving of a notice under section 48(1), means the requirements of section 50(4);
- (b) in relation to the approval of a programme under section 51, means the requirements of section 51(3);
- (c) in relation to the rejection of a programme under section 51, means the requirements of section 51(4);
- (d) in relation to a determination under section 53, means the requirements of section 53(5), (6) and (7);
- (e) in relation to a determination under section 54, means the requirements of section 54(2); and
- (f) in relation to the giving of a notice under section 57(4) means the requirements of section 57(5).

PART VI MISCELLANEOUS AND GENERAL

Gas

61 Liquefaction of natural gas (cf. 1976, c.76, s. 9)

(1) In this section-

- (a) "offshore natural gas" means natural gas won under the authority of a licence granted under section 6 of this Ordinance, but does not include gas derived from offshore crude otherwise than as a by-product of crude stabilisation;
- (b) "offshore crude" means crude liquid petroleum won from any place in offshore waters and whether within the controlled waters or not;

- (c) "crude stabilisation" means the treating of offshore crude to enable it to be safely stored or transported.
- (2) The Governor's consent is required for offshore natural gas to be subjected in the Falkland Islands to any process of liquefaction which results in the production of liquid methane or ethane.
- (3) The Governor's consent under subsection (2) may be given either with reference to particular cases or by an Order or Orders of general application made under this subsection.
- (4) A specific consent given to any person under subsection (2) (that is to say a consent given to him otherwise than by an Order of general application) may be expressed-
- (a) to be irrevocable;
 - (b) to be revocable in the manner and in the circumstances specified in that consent
 - (c) may, subject to paragraph (b) (as to revocation) be expressed to be-
 - (i) so as to be valid for a period specified in that consent, or
 - (ii) so as to be valid indefinitely.
- (5) A general consent (that is to say by Order of general application) may be granted in any manner in which by virtue of paragraphs (a) and (c) of subsection (2) a specific consent may be granted and, in relation to any person undertaking liquefaction of offshore natural gas pursuant thereto, shall be revocable in the manner and in the circumstances specified in the Order but, on the application of any person the Governor may by Order under this subsection provide that in respect of that person and in relation to such liquefaction of offshore natural gas at such place or site as is specified therein, the general consent shall be irrevocable or irrevocable for such period as is specified in that Order.
- (6) The Governor by Order under this subsection may make such provision-
- (a) as to the construction, inspection and safety of operations at installations for the liquefaction of offshore natural gas;
 - (b) as to the health and safety at work of persons working at, or present at such installations, (which shall include power to apply with such modifications and exceptions as may be specified in such an Order Part I of the Health and Safety at Work etc. Act 1974 and any regulations made thereunder);
 - (c) as to the health and safety of persons living or working in the vicinity of any such installation;
 - (d) for the purpose of preventing or reducing the risk of accidental emission of methane or ethane into the atmosphere;
 - (e) for the protection of the environment (including flora or fauna) from damage by reason of the operation of any such installation;
 - (f) for imposing strict liability on the operator of any such installation as to such matters as may be specified therein,

as the Governor considers necessary or expedient, and any such Order may confer power upon the Governor to make regulations as to any matter as to which the Order could be made or for any purpose connected with the Order, including the creation of offences punishable in any manner specified in such regulations, in relation to the operation, construction and safety of such installations or as to the safety, health and welfare of persons working therein or living or working in the vicinity of such installations.

62 Flaring of offshore natural gas (cf. 1976. c.76, s. 12)

(1) In this section "gas" means gas-

- (a) won under the authority of a licence granted under section 6; or
- (b) derived from offshore crude (including gas derived as a product of crude stabilisation)

(2) Subject to subsection (3) the consent of the Governor is required for gas to be disposed of (whether at source or elsewhere) by flaring or by releasing it unignited into the atmosphere.

(3) Disposal of offshore natural gas does not require consent under this section if-

- (a) it is permitted under the conditions of a licence granted under section 6;
- (b) it is of refinery tail gas produced in refining crude liquid petroleum (and "refining" does not, for the purposes of this subsection, include the treatment of crude for the sole purpose of enabling it to be safely stored or transported); or
- (c) it is necessary in order to comply with a requirement imposed under this Ordinance or any other enactment.

(4) The Governor's consent under this section-

- (a) may be given either with reference to a particular case or cases or by an Order under this subsection of general application;
- (b) may (whether given with reference to a particular case or cases or by Order of general application) be made subject to conditions which, without prejudice to the generality of the conditions which may be imposed, may be framed by reference to the quantities of offshore natural gas to be disposed of.

(5) A person who-

- (a) requires consent under this section for the disposal of gas by flaring or release into the atmosphere;
- (b) without such consent or in contravention of the conditions of a consent of a kind mentioned in subsection (4),

disposes of gas by flaring it or releasing it into the atmosphere, commits an offence unless by virtue of the regulations made under this subsection he is excused in the circumstances of the particular case.

(6) A person who commits an offence under subsection (5) is liable on conviction of that offence to a fine without limit.

Planning permission

63 Saving in respect of planning law

(1) For the sake of avoidance of doubt it is hereby declared that nothing in-

- (a) any licence granted under section 6;
- (b) any licence granted under section 11;
- (c) any authorisation to which section 40 relates;
- (d) any approval under section 61 or section 62

shall have effect so as to excuse the person to whom it is granted or given or who for the time being has or shares (and whether directly or indirectly) the benefit of the licence, authorisation, approval or consent, from any obligation under or requirement of or made under the Planning Ordinance 1991 which, apart from that licence, authorisation approval or consent, would have been an obligation or requirement he would have been bound in law to comply with or to perform.

(2) Without prejudice to the generality of the meaning of the words "obligation under or requirement of or made under the Planning Ordinance 1991" those words include-

- (a) any obligation to seek and obtain planning permission for development (within the meaning given by that Ordinance);and
- (b) any obligation to comply with the conditions of any planning permission granted under that Ordinance.

Environmental impact assessments and environmental impact statements

64 Interpretation in sections 64A to 67

In sections 64A to 67-

"applicant" means the person making an application;

"application" means an application to the Governor for a relevant consent;

"effect" includes an effect whether it is-

- (a) direct, indirect, secondary or cumulative;
- (b) short, medium or long-term;
- (c) permanent or temporary; and
- (d) positive or negative;

"environment" means the environment in relation to each of the following (individually or in combination)-

- (a) controlled waters and their dependent and associated ecosystems;
- (b) the seashore and seabed and their dependent or associated ecosystems;
- (c) the atmosphere and its dependent or associated ecosystems;
- (d) the land area of the Falkland Islands and its dependent or associated ecosystems; and
- (e) public amenity in relation to persons residing in the Falkland Islands or present there;

"environmental impact assessment" means an assessment conducted by or on behalf of an applicant in accordance with section 64C(1)(a);

"environmental impact statement" means a statement produced in accordance with section 64C(1)(b);

"project" means the activity, process or works for which the relevant consent is (or are) being sought;

"regulated well" means a well that-

- (a) is not a test well;
- (b) would be drilled for the purposes of (or in connection with) one or more of the following-
 - (i) exploring for petroleum;
 - (ii) establishing the existence of petroleum in a particular location;
 - (iii) appraising the quantity, characteristics or quality of the petroleum in a particular location; and
 - (iv) extracting petroleum;

"relevant consent" means an authority, dispensation, exemption, licence or permission in relation to which both of the following conditions are satisfied-

- (a) either-
 - (i) the Governor has authority to grant it under a provision of this Ordinance; or
 - (ii) it is required under conditions that the Governor lawfully imposed when granting another authority, dispensation, exemption, licence or permission under this Ordinance; and
- (b) it is (or would be) for or in relation to-
 - (i) an activity (including exploration for or exploitation of minerals and the abandonment or proposed abandonment of an offshore installation);
 - (ii) a process (including the liquefaction of gas and the refining of petroleum); or

- (iii) works (including the enlargement or alteration of an offshore installation or the enlargement or alteration of its capacity or capability).

"test well" means a well in relation to which each of the following conditions are satisfied-

- (a) it is being drilled below the surface of the seabed to a depth of no more than 350 metres;
- (b) it is being drilled in connection with exploring for petroleum;
- (c) it is being drilled to obtain geological information about strata or a drilling operation;
and
- (d) its main purpose of drilling is to test of the stability of the seabed; and

"well" includes a borehole.

[S. 4/Ord. 10/11/w.e.f. 2/11/11.]

64A Environmental impact assessment and environmental impact statements required for applications to drill regulated wells in controlled waters

- (1) An environmental impact assessment and an environmental impact statement are required for each application for permission to drill a regulated well in controlled waters.
- (2) An applicant for permission to drill a regulated well in controlled waters must comply with the requirements of section 64C(1) before making the application.

[S. 5/Ord. 10/11/w.e.f. 2/11/11.]

64B Power to require environmental impact assessment and environmental impact statements for other applications

- (1) This section applies to applications other than those for permission to drill regulated wells in controlled waters.
- (2) The Governor must consider in relation to each application whether or not the environment might be significantly affected if the application were to be granted.
- (3) When considering whether or not the environment might be significantly affected if an application were to be granted, the Governor must have regard to the factors set out in schedule 5.
- (4) If the Governor determines that the environment might be significantly affected if an application were to be granted, the Governor must require an environmental impact assessment and an environmental impact statement for that application.

[S. 5/Ord. 10/11/w.e.f. 2/11/11.]

64C Environmental impact assessment and environmental impact statements

(1) If an environmental impact assessment and an environmental impact statement are required for an application-

- (a) the applicant must conduct an environmental impact assessment of the likely adverse and beneficial effects upon the environment that there would be if the application were to be granted;
- (b) the applicant must deliver to the Governor an environmental impact statement that contains (at least) the information required by schedule 4; and
- (c) the applicant must publish that environmental impact statement and consult upon it in accordance with sections 65, 65A and 65B.

(2) The Governor must not determine an application for which an environmental impact assessment and an environmental impact statement are required until the applicant has complied with subsection (1).

(3) If an environmental impact assessment and an environmental impact statement are required for an application and the Governor grants that application-

- (a) the Governor may impose conditions on the consent for one or more of the following purposes-
 - (i) to eliminate or reduce significant adverse effects on the environment of the project and the infrastructure associated with the project;
 - (ii) if possible, to remedy those effects; and
 - (iii) to offset them; and
- (b) the Governor may impose those conditions even if there is no other power to do so.

(4) When considering an application for which an environmental impact assessment and an environmental impact statement are required, the Governor must take the following into account before deciding whether or not to grant it and whether or not to impose conditions-

- (a) the environmental impact statement;
- (b) if the Governor has sent the environmental impact statement to a technical expert for review, the representations made by that technical expert;
- (c) representations from the public (and representations in reply from the applicant) submitted to the Governor in accordance with section 65B; and
- (d) if the Governor has requested additional information or evidence under section 66, that additional information or evidence.

[S. 5/Ord. 10/11/w.e.f. 2/11/11.]

65 Consultation on environmental impact statement: timetable

- (1) Whenever an environmental impact statement is delivered by an applicant to the Governor in accordance with section 64C(1)(b), the applicant must seek to agree with the Governor the date on which the process of consultation on it will start.
- (2) If no agreement is reached within a reasonable period, the Governor may give a direction as to the date on which the process will start.
- (3) In sections 65A and 65B, the following definitions apply in relation to an environmental impact statement-
 - (a) "start date" means either-
 - (i) the date agreed between the applicant and the Governor under subsection (1); or
 - (ii) the date directed by the Governor under subsection (2);
 - (b) "closing date" means the date 42 days after the start date;
 - (c) "consultation period" (during which members of the public may make representations) means the period starting on the start date and ending on the closing date; and
 - (d) "follow-up period" (during which the applicant may make representations in reply) means the period-
 - (i) starting on the date on which confirmation is given to the applicant under section 65B(3) that copies of all of the representations made during the consultation period have been forwarded under section 65B(2); and
 - (ii) ending on the date 28 days after that date.

[S. 6/Ord. 10/11/w.e.f. 2/11/11.]

65A Publicity for environmental impact statement and consultation process

- (1) The Governor must arrange for a notice to be issued in the Gazette on the start date for each environmental impact statement.
- (2) That notice must refer to the publication of the environmental impact statement and describe the consultation process.
- (3) The applicant must make arrangements for each of the following things to happen-
 - (a) throughout the consultation period, a paper copy of the environmental impact statement must be available in Stanley (and, if the Governor directs, at one or more other places in the Falkland Islands) for the public to inspect (without charge) during at least normal government office hours;
 - (b) a paper copy of the non-technical summary of the environmental impact statement must be provided (without charge and as soon as possible) to each member of the public who requests one during the consultation period;

- (c) an electronic copy of the environmental impact statement must be provided (without charge, as soon as possible and in a format that has been approved by or on behalf of the Governor) to each member of the public who requests one during the consultation period; and
 - (d) an electronic copy of the non-technical summary of the environmental impact statement must be provided (without charge, as soon as possible and in a format that has been approved by or on behalf of the Governor) to each member of the public who requests one during the consultation period.
- (4) The applicant must also arrange for the publication of the environmental impact statement and the arrangements made under subsection (3) to be advertised in the following way-
- (a) on the start date, there must be at least one announcement on the broadcast service provided by the Media Trust under section 5(1)(aa) of the Media Trust Ordinance 1989;
 - (b) throughout the rest of the consultation period, there must be further announcements on that radio service either-
 - (i) as agreed with the Governor; or
 - (ii) if an agreement cannot be reached, as directed by the Governor; and
 - (c) throughout the consultation period, there must be a notice in each edition of the newspaper published by the Media Trust under section 5(1)(a) of the Media Trust Ordinance.
- (5) The announcements made and notices given under subsection (4) must also inform members of the public about-
- (a) their right to make representations under section 65B;
 - (b) how to make those representations; and
 - (c) the closing date (by which those representations need to be made).
- (6) The applicant may take other steps to publish the environmental impact statement and publicise the consultation process.

[S. 7/Ord. 10/11/w.e.f. 2/11/11.]

65B Representations

- (1) During the consultation period, anyone who wishes to do so may make written representations to the Governor about-
- (a) the contents of the environmental impact statement; and
 - (b) in particular, the applicant's proposals to protect the environment from adverse effects that there might be if the application were to be granted.
- (2) The Governor must arrange for copies of the written representations made during the consultation period to be forwarded to the applicant as soon as possible after they are received.

(3) The Governor must arrange that, as soon as copies of all of the representations made during the consultation period have been forwarded under subsection (2), this is confirmed to the applicant.

(4) During the follow-up period, the applicant may make written representations to the Governor in reply to representations made under subsection (1).

[S. 7/Ord. 10/11/w.e.f. 2/11/11.]

66 Further information and evidence

(1) Subsection (2) applies to an application if an environmental impact statement has been submitted under section 64C(1)(b) in relation to that application.

(2) If this subsection applies, the Governor may require the applicant to provide further information in relation to the environmental impact statement.

(3) The Governor may require an applicant to produce evidence to verify-

- (a) information contained in the applicant's environmental impact statement; or
- (b) further information provided under subsection (2).

(4) If the Governor requires the applicant to provide further information or produce evidence-

- (a) the Governor must specify what information is to be provided or evidence produced; and
- (b) the Governor may specify-
 - (i) the format in which it is to be provided or produced; and
 - (ii) a reasonable period within which it must be provided or produced.

[S. 8/Ord. 10/11/w.e.f. 2/11/11.]

67 Requests for exemption from requirements on basis that environment would not be significantly affected

(1) The Governor may grant a request from an applicant for exemption from some or all of the requirements of section 64C(1) if the Governor is satisfied that the environment would not be significantly affected even if the application to which the request relates were to be granted.

(2) When deciding whether or not to grant an exemption under subsection (1), the Governor must have regard to the factors set out in Schedule 5.

(3) Before deciding whether or not to grant a request for exemption under subsection (1), the Governor may require the applicant to provide further information in relation to the request.

(4) If the Governor requires the applicant to provide further information-

- (a) the Governor must specify what information is to be provided; and
- (b) the Governor may specify-

- (i) the format in which it is to be provided; and
- (ii) a reasonable period within which it must be provided.

[S. 8/Ord. 10/11/w.e.f. 2/11/11.]

67A Requests for exemption from requirements on basis of previous environmental impact statement

(1) The Governor may grant an exemption from some or all of the requirements of section 64C(1) if both of the following conditions are met-

- (a) the application to which the request relates is already covered by a previous environmental impact statement; and
- (b) the Governor is satisfied that, even if the application were to be granted, there could be no effects on the environment that would be either-
 - (i) substantially different from the effects mentioned in the previous environmental impact statement; or
 - (ii) significantly greater than those effects.

(2) When deciding whether or not to grant an exemption under subsection (1)-

- (a) the Governor must consider-
 - (i) the previous environmental impact statement;
 - (ii) if the Governor sent the previous environmental impact statement to a technical expert for review, the representations made by that technical expert;
 - (iii) representations from the public (and representations in reply from the applicant) made in relation to the previous environmental impact assessment; and
 - (iv) if the Governor requested additional information or evidence in relation to the previous environmental impact statement, that additional information or evidence; and
- (b) the Governor must also consider whether there are material factors that would indicate that the previous environmental impact statement does not provide sufficient information to enable the Governor to determine what the effects on the environment might be if the application to which the request relates were to be granted.

(3) The material factors referred to in subsection (2)(b) may include (but are not limited to)-

- (a) geographical location;
- (b) lapse of time since the previous environmental impact assessment was conducted;
- (c) new information received since the previous environmental impact assessment was conducted;
- (d) proposed changes to the project;
- (e) proposed changes to measures to protect the environment from adverse effects.

(4) Before deciding whether or not to grant a request for exemption under subsection (1), the Governor may require the applicant to provide further information in relation to the request.

(5) If the Governor requires the applicant to provide further information-

- (a) the Governor must specify what information is to be provided; and
- (b) the Governor may specify-
 - (i) the format in which it is to be provided; and
 - (ii) a reasonable period within which it must be provided.

[S. 9/Ord. 10/11/w.e.f. 2/11/11.]

Diving operations

68 Regulations as to diving operations

(1) The Governor may make regulations in relation to diving operations-

- (a) carried on in the controlled waters in connection with pipe-lines or works associated with pipe-lines in the controlled waters;
- (b) carried on in the controlled waters in or in connection with other offshore installations or proposed offshore installations.

(2) Subsection (1) has effect without prejudice to the exercise by the Governor of any other power under this Ordinance, which might have effect so as to enable him to make such regulations.

(3) The powers of the Governor under subsection (1) to make regulations include power by such regulations to apply, with modifications and exceptions specified in regulations so made-

- (a) the Submarine Pipe-lines (Diving Operations) Regulations 1976; and
- (b) the Diving Operations at Work Regulations 1981, as amended by the Diving Operations at Work (Amendment) Regulations 1992.

General provisions in relation to offences

69 Jurisdiction of the courts

(1) The Magistrate's Court and the Summary Court shall each have jurisdiction to try and determine all offences under this Ordinance.

(2) The Magistrate's Court on convicting a person of an offence under this Ordinance may sentence that person to pay a fine up to the maximum amount provided by this Ordinance in respect of that offence, but the Summary Court shall not on convicting a person of an offence under this Ordinance order him to pay a fine of an amount greater than-

- (a) (subject to an Order under Subsection (3) of this section) level 10 on the standard scale;
or

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

- (b) the maximum fine provided by this Ordinance in respect of that offence, whichever be the less

(3) The Governor may by Order under this subsection substitute an increased sum for the sum of £50,000 appearing in paragraph (a) of subsection (2).

70 Procedure in respect of offences

(1) All offences under this Ordinance shall be tried summarily.

(2) Subject to section 69 and section 72, the general law of the Falkland Islands in respect of the powers and procedure of the Magistrates' Court and of the Summary Court respectively in and in connection with the offences tried summarily shall apply in and in connection with proceedings in respect of offences under this Ordinance commenced in those courts.

71 Limitation on commencement of proceedings for offences

(1) Any proceedings in respect of an offence under this Ordinance shall be commenced within three years from the date on which it is alleged to have been committed and if a court on trying an alleged offence is not satisfied that the offence was committed within the period of three years preceding the commencement of the proceedings, the court shall dismiss the proceedings.

(2) For the purposes of subsection (1), proceedings shall be taken as having been commenced in respect of the accused in question on the date on which the complaint or information by or on behalf of the prosecutor alleging the offence by the accused was delivered to the court.

72 Fines without limit

(1) Any provision of this Ordinance which provides that on conviction of an offence to which that provision relates the offender is to be liable to pay a fine without limit shall have effect so as to enable the convicting court, subject to subsection (2) and (3) of this section-

- (a) in the case of the Summary Court, to order the offender to pay a fine of an amount not exceeding the maximum amount which that court is by virtue of section 69(2) and (3) for the time empowered to order the offender to pay; and
- (b) in the case of the Magistrate's Court, to order the offender to pay a fine of any amount it sees fit without any limitation on the maximum amount it may order the offender to pay by way of fine.

(2) Before ordering a person to pay a fine after convicting him of an offence under this Ordinance, the court shall inquire into and take into account the means of the offender to pay that fine, but if the offender refuses to furnish to the Court such information as to his means as the court may reasonably require or does not furnish that information within such reasonable period of time as the Court may order, the Court may order that person to pay such fine as if considers fit without regard to the preceding provisions of this subsection, but without prejudice to any power of the Court under any other law at any later time to reduce or remit that fine or any part of it upon the offender making application to it so to do and providing to the Court such evidence or information as to his means as the Court may reasonably require.

73 Offences by bodies corporate: liability of directors and others

Where a body corporate has committed an offence under this Ordinance and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity he, as well as the body corporate, has committed that offence and shall be liable to be proceeded against and punished accordingly.

74 Consent for prosecutions

(1) No prosecution for an offence under this Ordinance shall be brought except by, or with the consent of, the Attorney General.

(2) Subsection (1) has effect without prejudice to section 3 of the Territorial Waters Jurisdiction Act 1878 (which in certain cases requires the leave and certificate of the Governor in relation to prosecutions for offences committed within the territorial sea), but subsection (1) has effect in addition to that section.

Subsidiary legislation

75 Subsidiary legislation: general provisions

(1) Any power conferred by any provision of this Ordinance to make any subsidiary legislation ("that power") shall be construed as including power at any later time-

- (a) to revoke any subsidiary legislation made under that power or any provision of that subsidiary legislation;
- (b) to replace any subsidiary made under that power with further subsidiary legislation made under that power; and
- (c) where any subsidiary legislation is not wholly revoked, to amend, modify or augment any provisions of that subsidiary legislation not revoked by further subsidiary legislation made under that power,

but where a provision of this Ordinance provides that subsidiary legislation under it may only be made with the consent or approval of the Secretary of State, the like consent or approval is

required in relation to any subsidiary legislation which does any of the things mentioned in paragraphs (a), (b) and (c) of this subsection.

(2) Where a provision of this Ordinance conferring power to make subsidiary legislation under it requires the consent or approval of the Secretary of State to the exercise of the power or to the provisions of the subsidiary legislation made under that power, and it is shown that subsidiary legislation was made under that power it shall be conclusively presumed that the required consent or approval was obtained before that subsidiary legislation was made.

(3) Any power conferred by this Ordinance to make any subsidiary legislation may be exercised-

- (a) either in relation to all cases to which the power extends, or to all those cases subject to specified exception, or in relation to any specified case or classes of case; and
- (b) so as to make, as respects the case in relation to which it is exercised-
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Ordinance;
 - (iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such incidental or supplemental provision in the orders or regulations as the Governor considers appropriate.

(4) Where any subsidiary legislation is expressed to be made under a particular provision of this Ordinance it shall be deemed also to be expressed to be made under any other provision of this Ordinance enabling it to be made.

(5) Any power contained in this Ordinance to make subsidiary legislation includes power by that subsidiary legislation to apply, with such modifications and exceptions as may be specified in that subsidiary legislation, the provisions of any statutory instrument made under any provision of any United Kingdom enactment corresponding to the provision of this Ordinance under which the subsidiary legislation is made.

76 Subsidiary legislation: creation of offences: provisions imposing civil liability

(1) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by subsidiary legislation made under that power to provide by any provision of that legislation that a contravention of such provision or provisions of that subsidiary legislation as is or are specified by the first mentioned provision shall constitute an offence punishable by such fine, not exceeding level 11 on the standard scale, as is specified in relation to that contravention.

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

(2) Any power conferred by any provision of this Ordinance to make subsidiary legislation includes power by any subsidiary legislation made under that power to provide that a person

contravening such of its provisions as are specified by any provision of that subsidiary legislation shall be civilly liable to any person suffering loss by reason of that contravention.

77 Forms, fees and costs

(1) Any subsidiary legislation made under this Ordinance may prescribe forms to be used for the purposes specified in that subsidiary legislation and may prescribe fees of such amount as are therein specified and in or in connection with the matters mentioned in the subsidiary legislation.

(2) Any subsidiary legislation providing for a public or other inquiry to be held into any matter may confer power upon the person or persons appointed to conduct that inquiry to order such person or persons as he or they think fit to pay such sum as he or they think fit or limited as may be specified therein in relation to the costs of conducting the inquiry (including the costs relating to the representation of other persons at or in relation to the inquiry) and may provide for the enforcement of any such order.

Payments under this Ordinance

78 Payments to and by Governor

(1) All payments made to the Governor under any provision of this Ordinance shall be paid into the Consolidated Fund.

(2) All payments made by the Governor under any provision of this Ordinance shall be paid out of the Consolidated Fund.

(3) Where, by virtue of any provision of this Ordinance, the Governor is under an obligation to make a payment to any person, the amount of that payment, if not provided for by an Appropriation Ordinance, is charged upon the Consolidated Fund.

Notices

79 Notices

(1) Any notice or other communication authorised or required to be given by any provision of this Ordinance may be sent-

- (a) by post;
- (b) or by electronic mail (including telephonic facsimile transmission); or
- (c) delivered to the addressee;

(2) In the case of any notice or other communication sent by post within the Falkland Islands by any person to an addressee in the Falkland Island, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the third business day following the day on which it is proved to have been posted.

(3) In the case of any notice or other communication sent by post where either the sender or the addressee are not within the Falkland Islands, it shall be deemed to have been received by the addressee, unless the contrary is proved, no later than the tenth business day following the day on which it is proved to have been posted.

(4) In the case of any notice or other communication sent by electronic mail, it shall be deemed to have been received at nine in the morning on the business day following the day on which it is proved to have been received by the addressee's receiving equipment or, if earlier acknowledged by or on behalf of the addressee, at the time on the day the sender of the notice or communication received the acknowledgment.

(5) Where under the provisions of section 80(1)(a) or of regulations made under section 80(1)(b) an agent has been appointed and a notice or other communication has been posted, sent by electronic mail or delivered to that agent on account or in respect of the person appointing him pursuant to that section, that person shall be deemed to have received that notice or communication at the same time as he would, in accordance with the foregoing provisions of this section be taken to have received it if he himself were the agent he has appointed.

80 Appointment of person to receive notices

(1) The Governor may-

- (a) by a condition of a licence under 6; or
- (b) by regulations under this section,

require any licensee who is not

- (i) a living person ordinarily resident in the Falkland Islands;
- (ii) a company incorporated under the laws of the Falkland Islands; or
- (iii) a company registered under Part X of the Companies Act 1948 in its application to the Falkland Islands (foreign or overseas company to register and appoint agents for the service of process),

to appoint a person of a kind mentioned in sub-paragraph (i) as or its agent and so often as may be necessary to appoint another person in place of a person so appointed

(2) Where a company has-

- (a) pursuant to Part X of the Companies Act 1948;
- (b) pursuant to a condition of a licence under section 6; or
- (c) pursuant to regulations made under subsection (1) of this section,

appointed a person for the purpose of accepting or receiving service of any notice or proceedings which might otherwise have been given to or served upon the licensee, any notice or communication under this Ordinance or process civil or criminal shall for all purposes be taken to have been duly served or given to the licensee if it is shown to have to have been served upon or given to the person appointed as mentioned in this subsection.

Repeal and saving

81 Repeal of the Continental Shelf Ordinance 1991: saving as to regulations

(1) Subject to subsection (2) of this section, the Continental Shelf Ordinance 1991 is repealed.

(2) Notwithstanding the repeal of the Continental Shelf Ordinance 1991, the Petroleum Survey [Licences] (Model Clauses) Regulations 1992 (which were made under that Ordinance) shall continue to have effect as if they had been made under section 7 of this Ordinance.

SCHEDULE 1
STRICT LIABILITY FOR CERTAIN LOSS OR DAMAGE ETC

(Section 14)

1. Subject to subsequent paragraphs of this Schedule, an operator shall be strictly liable (that is to say liable in law without proof of negligence on his part being necessary so as to establish his liability) for-

- (a) damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems arising from exploration or exploitation of minerals in the controlled waters, including payment in the event that there has been no restoration of the *status quo ante*;
- (b) loss or impairment of an established use referred to in paragraph 7 of this Schedule and arising directly out of damage described in sub-paragraph (a) of this paragraph;
- (c) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in sub-paragraph (a) of this paragraph;
- (d) reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment and clean up and removal measures, and action taken to restore the *statue quo ante* where exploration for or exploitation of minerals undertaken by the operator in the controlled waters result in or threaten to result in damage to the environment of the controlled waters or of the Falkland Islands or their dependent or associated ecosystems.

2. An operator is not liable pursuant to paragraph 1 of this Schedule if the operator proves that the damage has been caused by (but only to the extent that the operator shows that it has been caused directly by)-

- (a) an event constituting in all the circumstances of the controlled waters a natural disaster of an exceptional character which could not have been foreseen; or
- (b) armed conflict or an act of terrorism directed against the activities of the operator and against no reasonable precautionary measures could have been effective.

3. If an operator proves that the damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, the operator is thereby relieved from its obligation by virtue of paragraph 1 of this Schedule to pay compensation in respect of the damage suffered by that party (but this paragraph does not affect any liability of the operator to pay compensation arising other than by virtue of paragraph 1 of this schedule.

4. Where compensation has been paid or is payable otherwise than by virtue of paragraph 1 of this schedule the operator shall be entitled to set-off against-

- (a) any liability to pay compensation under paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation under any liability arising other than by virtue of paragraph 1 of this schedule;

- (b) any liability to pay compensation otherwise than by virtue of paragraph 1 of this Schedule, any payment of compensation the operator or any other operator has made to the party claiming compensation by virtue of paragraph 1 of this Schedule, but only if, and to the extent that, the earlier payment of compensation was in respect of the same damage.

5. Where more than one operator is liable to pay compensation by virtue of paragraph 1 to any party claiming compensation, subject to this Schedule, every operator is jointly and severally liable so to do but each operator is entitled to set-off against his own liability the amount of any compensation already paid by another operator in respect of the same damage to the same claiming party.

6. In this Schedule, "damage to the environment of the controlled waters or of the Falkland Islands" means any impact on the living or non-living components of the environment of the controlled waters or of the Falkland Islands or the ecosystems of the controlled waters or the Falkland Islands and includes harm to atmospheric, marine or terrestrial life, provided always that damage which, in all the circumstances, ought on any reasonable view to be regarded as negligible shall be deemed to be excluded from the foregoing definition.

7. The established uses referred to in sub-paragraph (b) or paragraph 1 are-

- (a) the conservation, including rational use, of living resources of the controlled waters or of the Falkland Islands, and whether those living resources are marine, terrestrial or amphibious;
- (b) tourism; and
- (c) navigation and aviation.

8. Nothing in this Schedule shall have effect so as to relieve any operator of any liability in law he would have had if this Schedule had not been enacted.

Protection of officers

9. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Ordinance if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

SCHEDULE 2
SUBJECT MATTER OF REGULATIONS

(Section 27(3))

1. (1) Measures to ensure the safety of the installation, and of any other structures associated with the operations carried out from the installation.

(2) Measures to ensure safety when an installation or any part of an installation is being assembled or dismantled in the sea or other waters.

2. The movement of, and precautions to be taken by, vessels, aircraft and hovercraft in the neighbourhood of offshore installations.

3. Provisions as to the manner in which or occasions on which any operation or work is to be or may be carried out, or as to the safety or suitability of any place where it is carried out.

4. (1) Provisions as to the equipment, facilities or materials which are to be or may be supplied or used, whether the provision has reference to sufficiency, to suitability, to safety during use or while not in use, or to any other matter.

(2) The application of-

(a) the Anchors and Chain Cables Act 1967,

(b) the Employers' Liability (Compulsory Insurance) Act 1969,

subject to such modifications or extensions as may be prescribed by the regulations.

(3) Any provision corresponding to anything in the Acts mentioned in sub-paragraph (2) above.

5. (1) Limits on hours of employment in any specified operation or in any specified circumstances.

(2) The employment at installations of persons who are under the age of eighteen, or who have not received the prescribed instruction or training.

6. Training.

7. Emergency equipment and emergency procedures.

8.(1) Accidents, injuries and disease.

(2) Medical treatment and medical stores.

(3) Accommodation, provisioning and water.

Inspectors and inquiries

9. Powers and duties to be exercised by, and facilities to be accorded to, inspectors appointed by the Governor under section 27(4), and other persons acting at the direction of the Governor, and in particular-

- (a) powers to board, and to obtain access to all parts of, any offshore installation, to obtain information and to inspect and take copies from any log book or other document,
- (b) powers to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment,
- (c) powers to require, in connection with the survey or inspection of any installation, part of an installation or equipment, the carrying out of procedures and the conduct of tests by such person as may be prescribed by the regulations,
- (d) rights to require conveyance to and from any offshore installation, including conveyance of any equipment required by an inspector for testing, or any equipment of which he has taken possession in special circumstances,
- (e) duties to provide inspectors and others with reasonable accommodation and means of subsistence while on any offshore installation,
- (f) any powers exercisable in case of immediate or apprehended danger.

10. (1) Casualties or other accidents involving loss of life or danger to life, and in particular-

- (a) the making of special reports by inspectors, and
- (b) the holding of public inquiries.

(2) In the case of any public inquiry held in pursuance of regulations under the provisions referred to in paragraph 9-

- (a) conferring on the person holding the inquiry, and any person assisting him in the inquiry, powers of entry and inspection,
- (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents,
- (c) powers to take evidence on oath and administer oaths or require the making of declarations,
- (d) authorising the Secretary of State to make payments to the person holding the inquiry to any assessor appointed to assist him and to witnesses summoned to the inquiry,
- (e) as to the persons by whom, and the manner in which, costs of any such inquiry, including the remuneration of the persons holding the inquiry, are to be defrayed.

- (3) The provision as respects costs under sub-paragraph (2)(e) of this paragraph may include-
- (a) provision for the treatment of any such costs as expenses of the Governor under this Ordinance-
 - (b) provision requiring any such costs to be defrayed by any person who appears to the person or persons holding the inquiry to be by reason of any act of default on his part or on the part of any servant or agent of his, responsible in any degree for the occurrence of the accident.

Supplemental

11. (1) The keeping of an official log book, and of other records.
- (2) The creation of any right to inspect, or take extracts from, any such records, and the admissibility in evidence of, or of certified extracts of, any such records.
12. The making of returns and the giving of information, and in particular the making of returns to the Registrar General of Shipping and Seamen of deaths, including presumed deaths; and the duties of the Registrar General as respects such returns.
13. The display and posting of copies of, or of digests of, sections 22 to 29 of this Ordinance and regulations made under sections 23, 24, 25 and 27 of this Ordinance.
14. The punishment of forgery or falsification of documents, and of other offences as respects forged or falsified documents, where the documents are, or purport to be, made under the purposes of the regulations.
15. The regulations may, in prescribing standards of safety, or in imposing other requirements, refer to, and make obligations depend on, the provisions of any recognised industrial code of practice for the time being in force.

SCHEDULE 3
AUTHORISATION IN PURSUANCE OF SECTION 40(1)

(Sections 40(1), 41(3) and 43(3))

PART I
WORKS AUTHORISATIONS

1. Provision may be made by regulations as to the manner in which an application for a works authorisation is to be made and to the information to be included or furnished in connection with an application; and, without prejudice to the generality of the power to make regulations conferred by the preceding provisions of this paragraph, regulations in pursuance of this paragraph may require the payment of fees in connection with an application.

2. On receiving an application for a works authorisation, the Governor shall-

- (a) decide whether the application is to be considered further or rejected;
- (b) serve notice of his decision on the applicant and-
 - (i) if the Governor has decided that the application is to be considered further, he shall in that notice give to the applicant such directions as the Governor, for the purposes of paragraph 3 of this Schedule, considers appropriate, but
 - (ii) if the Governor has decided to reject the application, he shall in that notice include a statement of his reasons for doing so unless, having consulted the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state the reasons for the rejection of the application (and, that in case, the notice shall state that the Governor is of that view).

3. If the Governor has, in pursuance of paragraph 2 of this Schedule notified the applicant that the application is to be considered further, the applicant shall, in compliance with the directions of the Governor contained in that notice-

- (a) publish in such manner as the Governor has directed in that notice, a notice which-
 - (i) contains such particulars of the applicant as the Governor has so directed;
 - (ii) states that representations with respect to the application may be made to the Governor within the period of 28 days beginning with the date of the first publication of the notice or within such longer period as the Governor may have directed in his notice to the applicant;
 - (iii) states where the map mentioned in sub-paragraph (b) of this paragraph may be inspected during the period within which written representations to the Governor may be made;

- (b) secure that a map of such scale and containing such particulars as the Governor has directed in the notice to the applicant may be inspected by the public, free of charge between the hours of 10.00 a.m. to 4.00 p.m. on each day (Saturdays, Sundays and public holidays in the relevant place being excluded) and
- (c) serve a copy of the notice (together, if the Governor has so directed, with a copy of the map) on such persons, if any, as the Governor has directed; and, in any case
- (d) send a copy of the notice so published, together with a copy of the map, to the Governor,

and the Governor shall not further consider the application until-

- (i) he is satisfied that the applicant has complied with sub-paragraphs (a), (b), (c) and (d) of this paragraph, and
- (ii) the period for written representations to be made to the Governor, specified in the applicant's notice in accordance with sub-paragraph (b) (ii) of this paragraph, has expired.

4. Where the Governor has decided that an application for a works authorisation is to be considered further and is of opinion either-

- (i) of his own initiative (except in relation to the purpose mentioned in paragraph 6(b) of this Schedule), or
- (ii) in consequence of written representations made to him by the applicant or by any other person-
 - (a) that the route proposed for the pipe-line or part of it in the application should be altered in a particular manner for any of the purposes mentioned in paragraph 6 of this Schedule; or
 - (b) that the capacity proposed for the pipe-line or part of it in the application should be increased for any of the purposes mentioned in sub-paragraphs (b) to (e) of paragraph 6 to this Schedule,

the Governor shall, before deciding whether to issue an authorisation in consequence of the authorisation, serve notice of his opinion on the applicant and, where the opinion relates to an alteration of the route proposed for the pipe-line or part of it, on any persons whom the Governor considers are likely to be affected by the alteration or any person appearing to the Governor to represent such persons.

5. Where, in pursuance of paragraph 4 of this Schedule, the Governor serves notice of his opinion on any person, the Governor shall-

- (a) where the notice is served on the applicant, give to the applicant an opportunity of being heard with respect to that opinion; and
- (b) where the notice is served on any other person, state in that notice that representations in writing with respect to that opinion may be made to the Governor within a period which shall be stated in that notice,

and where a person is heard in pursuance of sub-paragraph (a) of this paragraph-

- (i) the hearing shall be by a person or persons appointed by the Governor for the purpose of conducting the hearing and of reporting to the Governor or thereon; and
- (ii) the Governor may give to such other persons as he thinks fit, if any, an opportunity to be heard at the hearing.

6. The purposes referred to in paragraph 4 of this Schedule are-

- (a) the avoidance or reduction of danger to-
 - (i) navigation;
 - (ii) persons engaged in fishing;
 - (iii) vessels and equipment used for fishing;
 - (iv) some structure or equipment (which may be the pipe-line); or
 - (v) marine (including littoral) flora or fauna;
- (b) where it appears to the Governor that persons other than the applicant wish to use the pipe-line, the facilitation of the use of the pipe-line by such persons;
- (c) the avoidance or reduction of interference with-
 - (i) fishing;
 - (ii) exploration for or exploitation of mineral resources in the controlled waters or the sea-bed or subsoil thereof;
 - (iii) any other legitimate use of the controlled waters or the sea-bed or subsoil thereof;
- (d) the international obligations of or relating to the Falkland Islands,
- (e) any other purpose which the Governor considers proper,

and the Governor shall state the reasons for his opinion in any notice of his opinion served in pursuance of paragraph 4 of this Schedule, except that the Governor is not obliged to state any reason for his opinion which, after consultation with the Secretary of State and acting in accordance with such advice as the Secretary of State then gives to him, the Governor considers that it would be contrary to the national interest to state.

7. When the Governor-

- (a) is satisfied that the applicant for a works authorisation has complied with his obligation under paragraph 3 of this Schedule;
- (b) has considered any representations relating to the application which were made to the Governor within the period specified in the notice published in accordance with sub-paragraph (a) of paragraph 3 to this Schedule (and, where a hearing has taken place in accordance with paragraph 5, conducted by a person or persons appointed by the Governor to receive oral representations, has also considered the report with relation thereto of the person or persons so appointed)

the Governor shall-

- (i) decide whether to issue an authorisation; and
- (ii) publish his decision in accordance with paragraph 8.

8. (1) Where the Governor has decided not to issue a works authorisation-

- (a) the Governor shall serve a notice stating his decision on the applicant and on each person upon whom he directed a copy of the notice of the application to be served; and
- (b) in the notice to the applicant stating his decision, the Governor shall also state the reason for it, except that the Governor need not state any reason which, after consultation with the Secretary of State and acting in accordance with his advice, he considers if would be contrary to the national interest to state.

(2) Where the Governor has decided to issue a works authorisation-

- (a) the Governor shall serve a notice stating his decision-
 - (i) on the applicant, and
 - (ii) on each person who made representations to which sub-paragraph (b) of paragraph 8 of this Schedule relates;
- (b) the Governor shall publish a copy of the notice in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

9. When the Governor issues a works authorisation he shall-

- (a) serve on the persons (excepting the applicant) on whom notice of his decision to issue a works authorisation is required to be served by paragraph 8(2) of this Schedule, a further notice-
 - (i) stating that he has issued the authorisation;
 - (ii) stating the name and address of the person to whom it was issued;
 - (iii) stating such particulars as the Governor considers appropriate of the route of the pipe-line, the authorised capacity of it, the things authorised to be conveyed by it and the persons authorised to use it, and
 - (iv) containing such other information about the pipe-line (if any) as the Governor considers appropriate; and
- (b) publish a copy of the notice served in pursuance of sub-paragraph (a) of this paragraph in the Gazette and in any other publications (including the London Gazette) he considers appropriate.

PART II
OTHER AUTHORISATIONS

10. When the Governor issues an authorisation other than a works authorisation he shall publish in the Gazette and in any other publications (including the London Gazette) he considers appropriate a notice-

- (a) stating that the authorisation has been issued;
- (b) stating the name and address of the person to whom it has been issued; and
- (c) containing such other information (if any) about the pipe-line as the Governor considers appropriate.

SCHEDULE 4
CONTENTS OF ENVIRONMENTAL IMPACT STATEMENTS

(Section 64C(1))

[S. 10/Ord. 10/11/w.e.f. 2/11/11.]

1 Project description

- (1) Every environmental impact statement must provide a description of the project to which it relates.
- (2) The description of the project must include details of the project's location, design and size.
- (3) Sub-paragraph (4) applies to the following extent-
 - (a) it applies to the extent that it is relevant to either or both of the following-
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and
 - (b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).
- (4) To the extent that this sub-paragraph applies, the description of the project must also include details of each of the following-
 - (a) the land and seabed use requirements during the construction and operational phases of the project;
 - (b) the main characteristics of the production processes, including the nature and quantity of the materials used; and
 - (c) an estimate by type and quantity of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the project.

2 Measures to protect environment

Every environmental impact statement must contain a description of the measures that are envisaged in order to-

- (a) eliminate or reduce significant adverse effects on the environment of the project to which it relates;
- (b) if possible, remedy those effects; and
- (c) offset them.

3 Requirement for data

Every environmental impact statement must include the data required to identify and assess the main effects that the project to which it relates is likely to have on the environment.

4 Environmental effects

(1) Sub-paragraphs (2) and (3) apply to the following extent-

- (a) they apply to the extent that it is relevant to either or both of the following-
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and
- (b) they apply to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain a description of specific aspects of the environment likely to be significantly affected by the project to which it relates, including (in particular)-

- (a) the human population;
- (b) fauna;
- (c) flora;
- (d) soil (including the seabed and its subsoil);
- (e) water (including the sea and aquifers under the seabed);
- (f) air;
- (g) climatic factors;
- (h) the landscape and seascape;
- (i) tangible property;
- (j) architectural and archaeological heritage;
- (k) the interactions between these factors (in any combination).

(3) To the extent that this sub-paragraph applies, every environmental impact statement must also contain a description of the likely significant effects on the environment arising from-

- (a) the existence of the project to which it relates;
- (b) the use of natural resources in it;
- (c) the emission of pollutants from it;
- (d) the creation of nuisances by it; and
- (e) the elimination of waste from it.

5 Forecasting methods

(1) Sub-paragraph (2) applies to the following extent-

- (a) it applies to the extent that it is relevant to either or both of the following-
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and
- (b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain details of the forecasting methods used to assess the effects on the environment of the project to which it relates.

6 Remediation

Every environmental impact statement must contain a description of the measures envisaged upon termination of the project to which it relates (whether or not this includes the abandonment or decommissioning of a well or other infrastructure) in order to-

- (a) eliminate or reduce significant adverse effects on the environment of the project and the infrastructure associated with the project;
- (b) if possible, remedy those effects; and
- (c) offset them.

7 Alternatives

Every environmental impact statement must contain-

- (a) an outline of the main alternatives (if any) that were studied by the applicant; and
- (b) an indication of the main reasons for the applicant's choice (taking into account the environmental effects).

8 Non-technical summary

Every environmental impact assessment must contain a non-technical summary of the information provided in relation to paragraphs 1 to 7.

9 Difficulties encountered

(1) Sub-paragraph (2) applies to the following extent-

- (a) it applies to the extent that it is relevant to either or both of the following-
 - (i) the particular characteristics of the project; or
 - (ii) the environmental features likely to be affected by it; and

(b) it also applies to the extent that the applicant might reasonably be required to compile the information (having regard to current knowledge and methods of assessment).

(2) To the extent that this sub-paragraph applies, every environmental impact statement must contain an indication of difficulties (including technical difficulties and lack of know-how) encountered by the applicant in compiling the required information.

SCHEDULE 5
MATTERS TO BE TAKEN INTO ACCOUNT IN DECIDING WHETHER PROJECT
MIGHT HAVE SIGNIFICANT EFFECT ON ENVIRONMENT

[S. 11/Ord. 10/11/w.e.f. 2/11/11.]

1 Characteristics

The characteristics of the project, having regard (in particular) to-

- (a) its size;
- (b) its cumulative effect;
- (c) the use of natural resources;
- (d) the production of waste, pollution and nuisances; and
- (e) the risk of accidents (having regard, in particular, to substances or technologies used).

2 Location

The environmental sensitivity of geographical sites and areas likely to be affected by the project, having regard (in particular) to-

- (a) existing land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas-
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) landscapes or sites that have historical, cultural, architectural or archaeological significance (including the sites of marine wrecks);
 - (iv) populated areas;
 - (v) National Parks that are designated under section 4(1) of the National Parks Ordinance 1998;
- [Revision w.e.f. 31/07/2017]*
- (vi) National Nature Reserves that are either-
 - (aa) designated under section 13(1) of the Conservation of Wildlife and Nature Ordinance 1998; or

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

- (bb) treated as if they had been (because of the effect of section 13(2) of that Ordinance);
- (vii) areas that are recognised as Important Bird Areas and Important Plant Areas;
- (viii) sites or areas that have an international environmental designation; and
- (ix) sites or areas that are classified or protected under other legislation or in some other way.

3 Potential impact

The potential significant effects of the project in relation to the factors listed in paragraphs 1 and 2, having regard (in particular) to-

- (a) the extent of the impact;
- (b) the magnitude and complexity of the impact;
- (c) the probability of the impact; and
- (d) the duration, frequency and reversibility of the impact.

ⁱ S.R. & O. No. 21 of 1998