



## FALKLAND ISLANDS

---

### Prohibited Goods Ordinance 1992

(ORDINANCE No. 7 OF 1992)

#### ARRANGEMENT OF PROVISIONS

*Section*

1. Short title
2. Interpretation
3. Seizure, forfeiture and destruction of prohibited goods
4. Forfeiture in other cases
5. Storage of goods
6. Forfeited goods to be destroyed
7. Costs of storage and destruction
8. Absence of Senior Magistrate
9. Compensation for forfeiture, destruction or disposal of goods
10. Warrant to search, etc.
11. Saving for other Ordinances
12. Obstruction



## FALKLAND ISLANDS

---

### Prohibited Goods Ordinance 1992

AN ORDINANCE To provide that the importer of any prohibited goods shall be liable to pay the cost of their storage and destruction and for related purposes.

*[DATE OF COMMENCEMENT: 10TH JULY 1992]  
(Unless otherwise indicated)*

#### 1 Short title

This Ordinance may be cited as the Prohibited Goods Ordinance 1992.

#### 2 Interpretation

In this Ordinance-

**"authorized person"** means-

- (a) a customs officer in all cases;
- (b) all public officers employed in the Department of Agriculture in relation to any animal, bird, fish or reptile or other creature whatsoever, any meat or dairy product, fresh or frozen, any egg, any foodstuff intended for consumption whether by humans or otherwise, any tree, plant, bush or shrub, any semen, any seed and any medicine, drug or poison intended for use upon or in relation to any creature, plant, tree or shrub whatsoever, other than a human, any fertiliser, insecticide, pesticide or other substance intended to be applied on or upon the soil or to any creature (other than a human) or to a plant, tree, bush or shrub;

*[S.R. & O. 13/96/w.e.f. 17/5/96.]*

- (c) the Chief Medical Officer and every Government Medical Officer in relation to any foodstuff apparently intended for human consumption, any substance apparently intended to be used as a medicine or drug, and whether upon or in relation to humans or not, and any substance which is or appears to be a controlled substance under the provisions of the Misuse of Drugs Ordinance 1987;

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

- (d) any police officer in relation to any gun, ammunition, crossbow, flick knife, or substance which is or appears to be a controlled substance under the said Ordinance, or any material which appears to be obscene;
- (e) a member of Her Majesty's armed forces; and

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

- (f) so far as he is so authorized in relation to goods of the kind in question, any public officer authorized by the Governor in writing;

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

**"owner"** means-

- (a) in relation to goods which have been brought to the Falkland Islands from elsewhere but have not been released pursuant to the Customs Ordinance 2003 for delivery to the consignee of the goods, the consignee;

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

- (b) in any other case, the person who appears to be in possession of the goods other than for the purpose of carriage of the goods to another person in the Falkland Islands, when it means that other person;

**"prohibited goods"** means anything whatsoever-

- (a) the importation of which is prohibited under any written law of the Falkland Islands (including, without prejudice to the generality of the foregoing, a proclamation under section 35 of the repealed Customs Ordinance 2003, and the provisions of section 36 of that Ordinance);

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

- (b) the carriage coastwise of which is prohibited under any written law of the Falkland Islands except under the authority of a licence or permission granted under that or any other written law of the Falkland Islands, but where such a licence or permission has been granted if and only if any conditions of that licence or permission, stated therein either explicitly or by reference or applying by reason of the provisions of any written law, have not been complied with in relation to the importation or carriage coastwise of the goods;
- (c) any thing liable to forfeiture under the Customs Ordinance 2003 or any enactment which is a relevant enactment for the purposes of that Ordinance; and

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04 and Revision w.e.f. 31/07/2017.]*

- (d) any dutiable goods seized or detained by any authorized person other than a customs officer notwithstanding that they were not liable to forfeiture by virtue of paragraph (c).

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

### **3 Seizure, forfeiture and destruction of prohibited goods**

(1) Subject to this section, an authorized person may seize, and take possession in the name of the Crown of, any goods which he reasonably believes to be prohibited goods and, subject to subsection (2), shall deliver them as soon as reasonably possible to the Collector of Customs.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(2) Where the person seizing or taking possession of anything under subsection (1) is a police officer and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under an enactment which is for the purposes of the Customs Ordinance a relevant enactment, that thing may, subject to subsection (3), be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings should be brought.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(3) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (2):

- (a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars of the thing, shall be given to the Collector;
- (b) any customs officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police; and
- (c) nothing in the Police (Property) Act 1897 in its application to the Falkland Islands shall apply in relation to the thing.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(4) Where the person seizing or detaining any thing as liable to forfeiture under any relevant enactment is a customs officer and that thing is or may be required for use in connection with any proceedings to be brought under a relevant enactment that thing may be retained in the custody of the Collector until either those proceedings are completed or it is decided that no such proceedings shall be brought.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(5) Whenever an authorized person exercises powers under subsection (1) he shall forthwith by notice in writing inform the owner of those goods of that seizure and the reasons for it.

(6) A person upon whom a notice under subsection (5) has been served may within two days of its service upon him by notice in writing appeal to the Magistrate's Court against the seizure of the goods.

(7) On receipt of a notice of appeal under subsection (6), the court shall subject to subsection (8) proceed to determine the appeal as expeditiously as may be possible in all the circumstances of the case.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(8) Where subsection (2) or subsection (4) applies in relation to any goods the court shall not proceed to hear and determine the appeal unless it is satisfied that the proceedings referred to in such of those subsections as is relevant in the circumstances of the case have been completed or that it has been decided that no such proceedings shall be brought.

*[S. 134(2)/Ord. 9/03/w.e.f. 1/7/04.]*

(9) The court shall not allow an appeal under subsection (6) unless it is satisfied, on the balance of probabilities, that the goods are not prohibited goods. Where it is so satisfied it-

- (a) shall order the release of the goods to the appellant or other person entitled to immediate possession of the goods;
- (b) may order the Crown to pay to the appellant (or if he is not the person entitled to immediate possession of the goods, to that person) such sum as it appears to the court will reasonably compensate him for any loss he has suffered by reason of the detention of the goods,

but unless it is so satisfied, the court shall order that the goods be forfeit to the Crown. No appeal shall lie from a decision of the court under this section.

(10) Nothing in subsection (1) enables the seizure of any goods after the expiry of a period of fourteen days from the day on which they were first landed in the Falkland Islands.

#### **4 Forfeiture in other cases**

Where-

- (a) a notice has been served under section 3(5); and
- (b) two days have expired since the service of that notice and no notice of appeal has been lodged under section 3(6),

*[S.R. & O. 13/96/w.e.f. 17/5/96.]*

the authorized person who served the notice under section 3(5) or any other authorized person may by further written notice to the same person upon whom the first-mentioned notice was served declare the goods to be forfeit to the Crown whereupon the goods shall be so forfeit and shall be dealt with in accordance with section 6.

#### **5 Storage of goods**

(1) Where a notice has been served under section 3(5) the authorized person who served the notice shall secure that the goods are stored in some place in the possession of or under the control of the Crown until such time as they are-

- (a) released under section 3(9)(a);
- (b) ordered to be forfeit to the Crown under section 3(9); or
- (c) declared to be forfeit under section 4,

whichever, in the circumstances of the case, is appropriate.

(2) Where goods are stored under subsection (1) they shall so far as is reasonably possible be stored in such a manner that they are preserved from theft, damage or deterioration, but neither the Crown nor any servant of the Crown shall be liable for any damage or deterioration to the goods-

- (a) occasioned by any third party;
- (b) due to the deterioration of goods which, of their nature, are perishable;

- (c) which are not due to the wilful act or default of the Crown or the servant of the Crown in question; or
- (d) for which a gratuitous bailee of the goods would not be liable.

## **6 Forfeited goods to be destroyed**

(1) Unless otherwise directed by the Chief Executive the head of the relevant department of the Government shall so soon as is reasonably possible destroy or arrange for the destruction of any goods forfeited to the Crown under this Ordinance.

(2) Where the head of the relevant department of the Government has been directed by the Chief Executive to deal with the goods in some manner other than by destroying them or arranging for their destruction he shall deal with them in that manner.

(3) In this section, "head of the relevant department of the Government" means the head of that department of the Government of which the authorized person who served the notice under section 3(5) was a member at the time of service of that notice.

## **7 Costs of storage and destruction**

(1) Where goods are forfeited to the Crown under this Ordinance, the owner of the goods shall repay to the Crown, on demand-

- (a) the costs of their storage until they are dealt with under section 6;
- (b) the costs of the destruction or otherwise dealing with the goods,

and if he fails to do so they are recoverable from him by the Crown as a civil debt.

(2) In subsection (1) "costs" includes-

- (a) any sum the Crown has paid to any other person in connection with the storage, destruction or other disposal of the goods;
- (b) such sums as may be reasonable charged by the Crown in relation to the storage or preservation of the goods, including, in the case of perishable goods, charges for electricity or other energy consumed in connection with their preservation.

## **8 Absence of Senior Magistrate**

(1) In the absence from the Falkland Islands of the Senior Magistrate or his unavailability for any reason to exercise the functions of the Magistrate's Court under section 3 and in the case of a vacancy for the time being in the post of Senior Magistrate, those powers shall be had and may be exercised by the Summary Court.

(2) The certificate of the Chief Executive that the jurisdiction of the Summary Court conferred by subsection (1) is, at the date of the certificate, exercisable shall be conclusive as to that matter.

## **9 Compensation for forfeiture, destruction or disposal of goods**

(1) No person shall be entitled to compensation from the Crown or any Crown servant for the forfeiture, destruction or other disposal of any goods under the provisions of this Ordinance.

(2) Subsection (1) shall not affect any rights any person has in contract against the person who sold or disposed of the goods to him.

## **10 Warrant to search, etc.**

(1) An authorized person may if he has reasonable cause to believe-

- (a) there are upon any land or premises any goods which are prohibited goods under this Ordinance; and
- (b) those goods were first landed in the Falkland Islands within the preceding fourteen days,

apply to the Senior Magistrate or a justice of the peace for a warrant authorizing him to enter upon that land or those premises and search for those goods and seize the same, and the Senior Magistrate or justice of the peace if satisfied by evidence given on oath that that belief is reasonable shall grant such a warrant.

(2) A warrant granted under subsection (1) shall have effect to authorize the applicant for it and every other authorized person to enter upon the land or premises specified in the warrant and there seize under section 3(1) any prohibited goods he may find, whereupon that authorized person shall comply with section 3(5).

*[S.R. & O. 13/96/w.e.f. 17/5/96.]*

## **11 Saving for other Ordinances**

Where any prohibited goods may be seized, forfeited or destroyed under any provision of any other written law of the Falkland Islands, nothing in this Ordinance shall be construed as precluding the exercise of powers under any such provision in respect of those goods.

*[S.R. & O. 13/96/w.e.f. 17/5/96.]*

## **12 Obstruction**

A person who obstructs an authorized person-

- (a) in the exercise of his powers under section 3(1); or
- (b) in the execution of a warrant granted under section 10(1),

commits an offence and is liable on conviction thereof to a fine not exceeding the maximum of level 5 on the standard scale.