

SCHEDULE

The Constitution of the Falklands Islands

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual

1. Whereas—

- (a) all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;
- (b) the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;
- (c) every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—
 - (i) life, liberty, security of the person, the enjoyment of property and the protection of the law;
 - (ii) freedom of conscience, of expression (including freedom of the press), of movement and of peaceful assembly and association;
 - (iii) protection for his or her family, his or her personal privacy, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid individual rights and freedoms, and to related rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

2.—(1) No person shall be deprived intentionally of his or her life.

(2) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny,

or if he or she dies as the result of a lawful act of war.

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Protection from inhuman treatment

3. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

Protection from slavery and forced labour

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (c) any labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

Protection of right to personal liberty

5.—(1) Every person has the right to liberty and security of person.

(2) No person shall be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his or her unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether established for the Falkland Islands or some other country, in respect of a criminal offence of which that person has been convicted;
- (c) in execution of an order of a court punishing that person for contempt of that court or of another court;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on that person by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
- (e) for the purpose of bringing that person before a court in execution of the order of a court;
- (f) on reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;
- (g) in the case of a minor, under the order of a court or in order to bring that person before a court or with the consent of his or her parent or guardian, for his or her education or welfare;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;

- (j) for the purpose of preventing the unlawful entry of that person into the Falkland Islands or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Falkland Islands or for the purpose of restricting that person while he or she is being conveyed through the Falkland Islands in the course of his or her extradition or removal as a convicted prisoner from one country to another; or
- (k) to such extent as may be necessary in the execution of an order of a court requiring that person to remain within a specified area within the Falkland Islands or prohibiting him or her from being within such an area or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or relating to such an order after it has been made, or to such an extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of the Falkland Islands in which, in consequence of any such order, his or her presence would otherwise be unlawful.

(3) Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands, of the reason for his or her arrest or detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal representative of his or her own choice, and to hold private communication with him or her, and in the case of a minor, he or she shall also be afforded a reasonable opportunity for communication with his or her parent or guardian; but when the person arrested or detained is unable to retain a legal representative of his or her own choice or be represented by a legal representative at the public expense, he or she may be represented, and hold private communication with, such person as the court may approve.

(5) Every person who is arrested shall be informed, as soon as reasonably practicable and in a language that he or she understands, of his or her rights under subsection (4); and that person shall also have the right, and shall be informed at the same time that he or she has the right, to remain silent and to have one person informed by the quickest practicable means of his or her arrest and his or her whereabouts.

(6) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, shall be brought promptly before a court.

(7) If any person arrested or detained as mentioned in subsection (6)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or on reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

(8) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation for such unlawful arrest or detention from that other person, from any person or authority on whose behalf that other person was acting or from them both; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

(9) For the purposes of subsection (2)(b), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission shall be regarded as a person who

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has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

Provisions to secure protection of law

6.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, he or she shall have the right to a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he or she is proved to be or has pleaded guilty;
- (b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his or her defence;
- (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, when the interests of justice so require, by a legal representative at the public expense;
- (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter at any court hearing at which that person is required to be present if he or she cannot understand or speak English; and
- (g) shall, when charged on information or indictment in the Supreme Court, have the right to trial by jury or before a judge sitting alone, as he or she may choose.

(3) Except with his or her own consent, the trial of a person charged with a criminal offence shall not take place in his or her absence, unless—

- (a) that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed and the trial to proceed in his or her absence; or
- (b) the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or the involuntary illness or incapacity of that person.

(4) When a person is tried for any criminal offence, that person or any person authorised by him or her in that behalf shall, if he or she (the accused person) so requires and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(6) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal, or save where a court makes an order under an Ordinance permitting a person to be retried

for an offence of which he or she has been acquitted where in all the circumstances a retrial is in the interests of justice.

(7) No person shall be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.

(8) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(9) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, his or her conviction has been quashed, or he or she has been pardoned, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(10) For the determination of the existence of extent or his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

(11) Except with the agreement of all the parties to them, all proceedings for the trial of any criminal charge or for the determination of the existence or extent of any person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(12) Nothing in subsection (11) shall prevent the court or other authority from excluding from the proceedings persons other than the parties to them and their legal representatives to such an extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, internal security, public safety, public order or public morality.

(13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (6), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, but any court so trying such member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

Protection of rights of prisoners to humane treatment

7. All persons deprived of their liberty have the right to be treated with humanity and with respect for the inherent dignity of the human person.

Protection of freedom of movement

8.—(1) A person shall not be deprived of his or her freedom of movement, that is to say—

- (a) the right to move freely throughout the Falkland Islands;

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- (b) the right to reside in any part of the Falkland Islands; and
 - (c) the right of a person who belongs to the Falkland Islands, or to whom a permanent right to remain has been granted, to enter, remain in and leave the Falklands Islands.
- (2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of this section.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—
- (a) for the imposition of restrictions on the movement or residence in the Falkland Islands or on the right to leave the Falkland Islands of persons generally or any class of persons that are reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society;
 - (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Falkland Islands of any person or on any person's right to leave the Falkland Islands either in consequence of his or her having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court at a later date for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Falkland Islands;
 - (c) for the imposition of restrictions on the freedom of movement of persons who do not belong to the Falkland Islands or who have not been granted a permanent right to remain; but—
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Falkland Islands, to move freely throughout the Falkland Islands and to reside anywhere within the Falkland Islands;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Falkland Islands; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Falkland Islands unless the requirements specified in subsection (4) are satisfied;
 - (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Falkland Islands;
 - (e) for the imposition of restrictions on the movement or residence within the Falkland Islands or on the right to leave the Falkland Islands of any public officer that are reasonably required for the proper performance of his or her functions;
 - (f) for the removal of a person from the Falkland Islands to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted;
 - (g) for the imposition of restrictions on the right of any person to leave the Falkland Islands that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or
 - (h) for the removal of a person suffering from a mental disorder from the Falkland Islands for treatment or detention in the United Kingdom or such other place as may be decided, where the removal is ordered by a court which is satisfied that the disorder cannot be effectively treated in the Falkland Islands and that removal is necessary in the interests of the person or to protect the public.

(4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) (that is to say, before a person who does not belong to the Falkland Islands or who has not been granted a permanent right to remain may be expelled from the Falkland Islands) are as follows—

- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
- (b) he or she has the right, save where the interests of defence, internal security, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
- (c) he or she has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) he or she has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person designated in that behalf by the competent authority.

Protection for private and family life and for privacy of home and other property

9.—(1) Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence and, except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons;
- (b) to enable an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be;
- (c) to authorise, for the purpose of enforcing the judgment or order of a court in any proceedings, the search of any person or property by order of the court or the entry on any premises by such order; or
- (d) that is reasonably required for the purpose of preventing or detecting breaches of the criminal, customs or immigration law,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of right to marry and found a family

10.—(1) Every man and woman of marriageable age (as determined by or under any law) has the right to marry and found a family.

(2) No person shall be compelled to marry, that is to say, to do so without his or her free and full consent.

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(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law makes provision that is reasonably required—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

Protection of freedom of conscience

11.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and either in public or in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

(2) Except with his or her own consent (or, if he or she is under the age of sixteen years, the consent of his or her parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his or her own.

(3) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

(4) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of right to education

12.—(1) This section is without prejudice to section 11.

(2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (3), be free.

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(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless the law otherwise provides, in a private school (that is to say a school or teaching facility other than one established by a public authority) and in such school to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression

13.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression.

(2) For the purposes of this section, a person's freedom of expression includes his or her freedom to hold opinions without interference, his or her freedom to receive information and ideas without interference, his or her freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and his or her freedom from interference with his or her correspondence or other means of communication.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Legislative Assembly and the courts, or regulating telecommunications, post, broadcasting or public shows; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association

14.—(1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

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- (a) that is reasonably required—
 - (i) in the interests of defence, internal security, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

Protection from deprivation of property

15.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with the provisions of a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is in the public interest; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right to or over the property; and
- (c) provision is made by a law applicable to the taking of possession or acquisition—
 - (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right to or over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed in respect of its remission) to any country of his or her choice outside the Falkland Islands.

(3) Without prejudice to the generality of the expression “in the public interest” in subsection (1), nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law makes provision for the taking of possession or the acquisition of any property, interest or right—

- (a) for the purpose of controlling its use in accordance with the general interest;
- (b) as a consequence of a breach of the law;
- (c) to secure the payment of taxes or other like impositions; or
- (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons *inter se* in respect of property.

Protection from discrimination

16.—(1) Subject to subsections (4), (5) and (6), no law shall make any provision which is discriminatory either in itself or in its effect.

(2) Subject to subsections (6) and (7), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(4) Subsection (1) shall not apply to any law so far as the law makes provision—

- (a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Falkland Islands of persons who do not belong to the Falkland Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or
- (b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any of the grounds of discrimination referred to in subsection (3)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(7) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.

Derogations from fundamental rights and freedoms under emergency powers

17. Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 3, 4, 6(2)(a), 6(5), 6(6), 6(7) and 6(8) to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Falkland Islands during that period.

Protection of persons detained under emergency laws

18.—(1) When a person is detained by virtue of any such law as is referred to in section 17 the following provisions shall apply, that is to say—

- (a) he or she shall, as soon as reasonably possible, and in any case not more than seven days after the commencement of his or her detention, be informed in a language that he or she understands, and in detail, of the grounds on which he or she is detained and furnished with a written statement, in a language that he or she understands, or if this is not reasonably practicable, in English specifying those grounds in detail;
- (b) not more than fourteen days after the commencement of his or her detention a notification shall be published in a public place (and thereafter as soon as possible in the Gazette) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;

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- (c) not more than one month after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable facilities to consult a legal representative of his or her own choice (or, if he or she is unable to retain a legal representative, such person as the tribunal may approve) who shall be permitted to make representations to the tribunal appointed for the review of his or her case;
- (e) at the hearing of his or her case by the tribunal appointed for its review he or she shall be permitted to appear in person or be represented by a legal representative of his or her own choice or, if he or she is unable to retain a legal representative, by such person as the tribunal may approve.

(2) On any review by a tribunal of the case of a detained person in pursuance of this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(d) or subsection (1)(e) shall be construed as entitling a person to legal representation at public expense, except when the interests of justice so require.

Enforcement of protective provisions

19.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (4),

and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled; but the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

- (a) (3) (a) Without prejudice to the generality of subsection (2), where, in exercise of its powers under that subsection, the Supreme Court determines that one of the foregoing provisions of this Chapter has been contravened in relation to any person, it may order or, as the case may be, declare that the court which made the reference to it under subsection (4) (“the referring court”) has the power to order (within such limits as the Supreme Court may declare) the award to that person of such damages as the Supreme Court or, as the case may be, the referring court considers just and appropriate.
- (b) An award of damages may not be made in pursuance of this subsection in respect of the enactment of any law by the Legislature or the making, under such a law, of any subordinate legislation, but such an award may be made in respect of anything done by any person acting by virtue of any such law or subordinate legislation or in the performance of the functions of any public office or any public authority.

(c) This subsection is without prejudice to section 5(8).

(4) If in any proceedings in any court (other than the Supreme Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(5) Where any question is referred to the Supreme Court in pursuance of subsection (4), the Supreme Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

- (a) (6) (a) In determining any question which has arisen in connection with the interpretation or application of any of the foregoing provisions of this Chapter, every court shall take into account any—
- (i) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
 - (ii) opinion of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the Convention;
 - (iii) decision of the Commission in connection with Article 26 or 27(2) of the Convention;
 - (iv) decision of the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) taken under Article 46 of the Convention;
 - (v) judgment, decision or declaration of a superior court in the United Kingdom on the interpretation or application of the Convention,

whenever made or given, so far as, in the opinion of the court, it is relevant to the proceedings in which that question has arisen.

- (b) In this subsection, references to the Convention are references to it as it has effect for the time being, except that—
- (i) the references in subparagraphs (ii) and (iii) of paragraph (a) to Articles 31, 26 and 27(2) are references to those Articles as they respectively had effect immediately before the coming into force of the Eleventh Protocol;
 - (ii) the reference in subparagraph (iv) of paragraph (a) to Article 46 includes a reference to Articles 32 and 54 as they had effect immediately before the coming into force of the Eleventh Protocol; and
 - (iii) the references in paragraph (a) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).
- (c) In this subsection “the Convention” means the European Convention on Human Rights; “the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by it) agreed at Strasbourg on 11 May 1994; and “a superior court in the United Kingdom” means any of the following—
- (i) the High Court or the Court of Appeal in England;
 - (ii) the High Court of Justiciary or the Court of Session in Scotland;
 - (iii) the High Court or the Court of Appeal in Northern Ireland;
 - (iv) the House of Lords; and

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(v) the Judicial Committee of the Privy Council.

(7) An appeal shall lie as of right to the Court of Appeal from any final determination of any application or question by the Supreme Court under this section, and an appeal shall lie as of right to Her Majesty in Council from the final determination by the Court of Appeal of the appeal in any such case; but no appeal shall lie from a determination by the Supreme Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(8) The Legislature may by law confer on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

(9) The Legislature may by law make, or provide for the making of, provision with respect to the practice and procedure—

- (a) of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section;
- (b) of the Supreme Court or the Court of Appeal in relation to appeals under this section from determinations of the Supreme Court or the Court of Appeal; and
- (c) of other courts in relation to references to the Supreme Court under subsection (4),

including provisions with respect to the time within which any application, reference or appeal shall or may be made or brought.

Proceedings which might affect freedom of conscience

20. If a court's determination of any question arising under this Chapter might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of conscience as defined and protected by section 11, it must have particular regard to the importance of that right.

Proceedings which might affect freedom of expression

21.—(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the right to freedom of expression as defined and protected by section 13.

(2) If the person against whom the application for the relief is made ("the respondent") is neither present nor represented, no such relief shall be granted unless the court is satisfied—

- (a) that the applicant has taken all available steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief shall be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court shall have particular regard to the importance of the right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
 - (i) the material has become, or is about to become, available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published; and
- (b) any relevant privacy code.

Interpretation

22.—(1) In this Chapter, unless the contrary intention appears—

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“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in the Falkland Islands, including Her Majesty in Council but excepting a court constituted by or under disciplinary law;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force of the Falkland Islands;
- (c) the prison service of the Falkland Islands;

“legal representative” means a person entitled to be in or to enter the Falkland Islands and to practise there before a court;

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline; and

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law.

(2) In relation to any person who is a member of a disciplined force raised under a law enacted, or having effect as if enacted, by the Legislature, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Chapter other than sections 2, 3 and 4.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in the Falkland Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(4) In this Chapter “period of public emergency” means any period during which—

- (a) Her Majesty is at war; or
- (b) the provisions of Part II of the Emergency Powers Order in Council 1939⁽¹⁾, or emergency regulations made under any Ordinance, are in operation in the Falkland Islands.

(5) For the purposes of this Chapter, a person shall be regarded as belonging to the Falkland Islands if he or she has Falkland Islands status and a person has such status if that person is—

- (a) a person who immediately before the commencement of this Constitution had Falkland Islands status—
 - (i) by virtue of section 17(5)(a), (b), (c), (d)(i) or (f) of the former Constitution; or
 - (ii) by virtue of section 17(5)(e) of the former Constitution—
 - (aa) as a spouse, and the person is not living apart from his wife or her husband under a decree of a competent court or a deed of separation; or
 - (bb) as a widow or widower, and the person has not remarried; or
- (b) a person who was born in the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person’s birth; or
- (c) a person who was born outside the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person’s birth; or

(1) See [S.I. 1952/2031](#) (1952 I. p.620). The relevant amending instruments are [S.I. 1956/731](#), [1963/88](#), [1633](#), [1964/267](#), [1199](#), [1965/131](#), [1968/724](#), [1973/759](#).

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- (d) a citizen who was born in or outside the Falkland Islands whose father or mother at the time of the person's birth had Falkland Islands status and was permanently resident in the Falkland Islands; or
- (e) a citizen who was born outside the Falkland Islands whose father or mother was born in the Falkland Islands and had Falkland Islands status at the time of the person's birth; or
- (f) a person who has been granted Falkland Islands status under an Ordinance providing for the grant of that status to persons who have been ordinarily resident in the Falkland Islands for a period of at least seven years, or such period not exceeding seven years as the Ordinance may prescribe, and has not, in accordance with that Ordinance, lost or been deprived of such status.

(6) A person who has Falkland Islands status by virtue of subsection (5)(c) shall be regarded for the purposes of subsection (5)(e) as having been born in the Falkland Islands.

(7) Without prejudice to the right of any person to apply for the grant of Falkland Islands status, the following shall have a right by virtue of this Constitution to apply for such status under an Ordinance referred to in subsection (5)(f)—

- (a) a British overseas territories citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands;
- (b) a spouse, widow or widower of a person who has Falkland Islands status; and
- (c) a person under the age of eighteen years who is the child, stepchild, or child adopted in a manner recognised by law of a person who has Falkland Islands status;

and if an applicant referred to in this subsection is not granted Falkland Islands status, he or she shall, subject to section 9(2), be granted a permanent right to remain in the Falkland Islands.

(8) For the purposes of subsection (5), "citizen" means a person who is a British citizen, a British overseas territories citizen or a British Overseas citizen; or who was, at the material time, a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British subject.