



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

---

---

*Vol. 35*

*8 April 2024*

*No. 4*

---

---

The following is published in this Supplement —

**Criminal Laws (Amendment) Bill 2024.**

# **Criminal Laws (Amendment) Bill 2024**

## **(ORDINANCE No. OF 2024)**

### ARRANGEMENT OF PROVISIONS

Clause

#### **PART 1 - INTRODUCTORY**

1. Title
2. Commencement

#### **PART 2 - AMENDMENT OF CRIMES ORDINANCE 2014**

3. Amendment of Crimes Ordinance 2014
4. New section 70B inserted (time limit for prosecution of common assault or battery in domestic abuse cases)
5. Sections 72 and 72A replaced
6. Section 76 repealed (certificate of dismissal)
7. Section 77 amended (causing or allowing the death of or harm to a child or vulnerable adult)
8. Section 82 replaced (cruelty to or neglect of person under 16) and new sections 82A to 82F inserted
9. New section 87A inserted (interpretation)
10. Section 89 amended (female genital mutilation: ancillary offences)
11. New sections 89A to 89F inserted
12. Heading before section 153 replaced
13. Section 153 amended (offence of sending letters etc. with intent to cause distress or anxiety)
14. New sections 153A to 153G inserted
15. Section 154 amended (offence of improper use of public electronic communications network)
16. Section 155 amended (interpretation of Part)
17. Section 156 amended (unlawful marketing of knives)
18. Section 157 amended (publications)
19. Section 160 amended (manufacture and sale of flick knives, etc.)
20. Section 161 amended (sale of knives etc. to persons under 16)
21. New section 161A inserted (limitations on defence for remote sales)
22. Section 165 amended (sale, etc. of crossbows to young persons)
23. Section 169 amended (having an article with blade or point in a public place)

24. Section 170 amended (having an offensive weapon, etc. on school premises)
25. Section 171 amended (threatening with offensive weapon, etc. on school premises)
26. Section 172 amended (entry and search of school premises for offensive weapons, etc.)
27. New sections 173A and 173B inserted
28. Section 174 amended (dealing in offensive weapons)
29. New section 176A inserted (surrender of offensive weapons)
30. Section 202 amended (interpretation of Part)
31. Section 222 amended (positions of trust)
32. New section 223A inserted (further positions of trust: sport or religion)
33. Section 269 replaced (prostitution offences: interpretation)
34. New sections 283A to 283C inserted
35. New section 284A inserted (sending or giving photograph or film of genitals)
36. Section 285A amended (voyeurism: additional offences)
37. Sections 285B and 285C replaced
38. New section 294A inserted (continuity of sexual offences law)
39. Section 295 amended (interpretation of Part)
40. New section 300A inserted (notification requirements: absence from notified residence)
41. Section 305 amended (offences relating to notification)
42. New sections 305A and 305B inserted
43. New sections 314A to 314D and cross headings inserted
44. Section 321 amended (sexual harm prevention orders: applications and grounds – Schedules 3 and 4)
45. Section 323 replaced (effect of a SHPO)
46. Sections 325 and 326 replaced and new section 326A inserted
47. Section 330 replaced (SHPOs and interim SHPOs: guidance)
48. Section 332 amended (sexual risk orders: applications, grounds and effect)
49. New section 332A inserted (SRO: requirements included in order etc.)
50. Section 334 amended (SRO: variation, renewal and discharge)
51. Section 335 amended (interim SROs)
52. New section 335A inserted (SROs and interim SROs: electronic monitoring requirements)
53. Section 340 replaced (SROs and interim SROs: guidance)
54. Part 22 replaced (hate crimes)
55. Schedule 3 amended (sexual offences for purposes of Part 11)
56. Schedule 4 amended (other offences for the purposes of Part 11)

**PART 3 - AMENDMENT OF CRIMINAL PROCEDURE AND EVIDENCE  
ORDINANCE 2014**

57. Amendment of Criminal Procedure and Evidence Ordinance 2014
58. Section 53 amended (bail under section 51: supplementary)
59. Sections 61 to 63 replaced
60. Section 64 amended (release on bail under sections 61 and 62: further provision)
61. Section 67 amended (review of police detention)
62. Section 69 amended (limits on period of detention without charge)
63. Section 70 amended (authorisation of continued detention)
64. Section 71 amended (warrants of further detention)
65. Section 77 amended (conditions of police bail)
66. Section 78 amended (re-arrest of persons on bail)
67. Chapter 3 heading replaced
68. Section 129 amended (attaching of conditions)
69. New section 130A inserted (foreign offender conditions)
70. Section 133 amended (consequences of failure to comply)
71. New Part 8A inserted (penalty notices)
72. Section 196 repealed (public notice of outcome)
73. Section 210 amended (committal for sentence by Summary Court)
74. Section 267 amended (non-appearance of prosecutor)
75. Section 268 amended (non-appearance of defendant: general provisions)
76. New sections 339A to 339H and cross-heading inserted
77. Section 342 repealed (onus of proving exceptions, etc.)
78. Section 436 amended (evidence given in private)
79. Section 465 amended (restrictions on reporting of identity of victims in certain proceedings)
80. Section 478 amended (determining the seriousness of an offence)
81. Section 585 replaced (warrants for imprisonment)
82. Section 699 amended (arrest and charge)
83. New section 699A (police detention and charge)
84. Section 700 amended (bail and custody before application)
85. New section 725A to 725G inserted
86. New section 786A inserted (regulations about fees)
87. New Schedule 3A inserted (penalty notice offences)
88. Schedule 10 replaced (table of rehabilitation periods)

89. Schedule 12 amended (offences against youths to which protective provisions apply)

**PART 4 - AMENDMENT OF ROAD TRAFFIC ORDINANCE 1948**

90. Amendment of Road Traffic Ordinance 1948
91. Section 18A amended (causing death by dangerous driving)
92. Section 18M amended (causing death by driving without due care and attention when under influence of drink or drugs)
93. Section 59 amended (regulations)

**PART 5 – MINOR AMENDMENTS AND REGULATIONS**

*Minor amendments*

94. Minor amendments  
*Children (Fostering) Regulations 2019*
95. Children (Fostering) Regulations 2019 amended  
*Road Traffic (Fixed Penalty Notices) Regulations 2017*
96. Road Traffic (Fixed Penalty Notices) Regulations 2017 revoked

**SCHEDULE - MINOR AMENDMENTS**

**Part A - Crimes Ordinance 2014**

**Part B - Criminal Procedure and Evidence Ordinance 2014**

**Part C - Criminal Justice (International Co-operation) Ordinance 1991**

**Part D - Prisons Ordinance 2017**

**Part E - Criminal Justice Ordinance 1989**

# **Criminal Laws (Amendment) Bill 2024**

(assented to: 2024)  
(published: 2024)  
(commencement: on publication)

A BILL

for

AN ORDINANCE

To amend the Crimes Ordinance 2014, Criminal Procedure and Evidence Ordinance 2014, Criminal Justice (International Co-operation) Ordinance 1991 and Road Traffic Ordinance 1948.

BE IT ENACTED by the Legislature of the Falkland Islands —

## **PART 1 - INTRODUCTORY**

### **1. Title**

This Ordinance is the Criminal Laws (Amendment) Ordinance 2024.

### **2. Commencement**

This Ordinance comes into force on publication in the *Gazette*.

## **PART 2 - AMENDMENT OF CRIMES ORDINANCE 2014**

### **3. Amendment of Crimes Ordinance 2014**

This Part amends the Crimes Ordinance 2014.

### **4. New section 70B inserted (time limit for prosecution of common assault or battery in domestic abuse cases)**

After section 70A, insert —

**“70B. Time limit for prosecution of common assault or battery in domestic abuse cases**

(1) This section applies to proceedings for an offence of common assault or battery under section 70 if —

- (a) the alleged behaviour of the accused amounts to domestic abuse; and
- (b) the condition in subsection (2) or (3) is met.

(2) The condition in this subsection is that —

- (a) the complainant has made a witness statement with a view to its possible admission as evidence in the proceedings; and
  - (b) the complainant has provided the statement to —
    - (i) a police officer; or
    - (ii) a person authorised by a police officer to receive the statement.
- (3) The condition in this subsection is that —
- (a) the complainant has been interviewed by —
    - (i) a police officer; or
    - (ii) a person authorised by a police officer to interview the complainant; and
  - (b) a video recording of the interview has been made with a view to its possible admission as the complainant’s evidence in chief in the proceedings.
- (4) Proceedings to which this section applies may be commenced at any time which is both —
- (a) within 2 years from the date of the offence to which the proceedings relate; and
  - (b) within 6 months from the first date on which either of the conditions in subsection (2) or (3) was met.
- (5) This section has effect despite section 182(4) of the Criminal Procedure and Evidence Ordinance 2014 (time for commencement of criminal proceedings).
- (6) In this section —
- “**domestic abuse**” has the meaning given by section 102 (definition of “domestic abuse”);
- “**video recording**” has the meaning given by section 2(1) of the Criminal Procedure and Evidence Ordinance 2014;
- “**witness statement**” means a written statement that satisfies the conditions in section 408(2)(a) and (b) of the Criminal Procedure and Evidence Ordinance 2014.
- (7) This section does not apply to an offence committed before this section comes into force.

*[UK Police, Crime, Sentencing and Courts Act 2022 s. 49].*

## 5. Sections 72 and 72A replaced

Replace sections 72 and 72A with —

### “72. Assaulting or obstructing emergency worker

- (1) A person commits an offence if they assault —
  - (a) an emergency worker who is acting in the exercise of their functions as such a worker; or
  - (b) a person who is assisting such an emergency worker.

Penalty: Imprisonment for 2 years or a fine, or both.

- (2) A person commits an offence if they wilfully obstruct —

- (a) an emergency worker who is acting in the exercise of their functions as such a worker; or
- (b) a person who is assisting such an emergency worker.

Penalty: Imprisonment for 12 months or a fine, or both.

(3) In this section —

“**emergency worker**” means —

- (a) a police officer;
- (b) a member of the police reserve enlisted under section 9 of the Police Ordinance 2000 or any other person employed or engaged to provide services for police purposes;
- (c) an Officer in Charge, a prison officer, or another member of prison staff appointed under section 6 of the Prisons Ordinance 2017;
- (d) a person employed or engaged to provide fire, search or rescue services; or
- (e) a person employed or engaged to provide medical care, including in a para medical capacity;

“**employed or engaged**” means employed or engaged in any capacity (whether full-time, part-time, casual, or otherwise, and whether paid or not).

(4) In this section, an emergency worker who is not at work or on duty is still “**acting in the exercise of their functions as such a worker**” if they are performing functions which would, if they were at work or on duty, be in the exercise of their functions as an emergency worker.

*[UK Police, Crime, Sentencing and Courts Act 2022 s. 2 and Assaults on Emergency Workers (Offences) Act 2018]*”.

## **6. Section 76 repealed (certificate of dismissal)**

Repeal section 76.

## **7. Section 77 amended (causing or allowing the death of or harm to a child or vulnerable adult)**

(1) In section 77(6), insert in its appropriate alphabetical order —

“**“vulnerable adult”** means a person aged 16 or over whose ability to protect themselves from physical or psychological harm is significantly impaired through physical or mental disability, illness, old age, or otherwise.”.

(2) In section 77(7) —

- (a) in paragraph (a), replace “14 years” with “life”; and
- (b) in paragraph (b), replace “10 years” with “14 years”.

## **8. Section 82 replaced (cruelty to or neglect of person under 16) and new sections 82A to 82F inserted**

Replace section 82, insert —



## “82. Cruelty to persons under 16

(1) If any person who has attained the age of 16 years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes child or young person, or causes or procures them to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause them unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature), that person commits an offence.

Penalty: imprisonment for a term not exceeding 14 years or a fine, or both.

(2) For the purposes of this section —

- (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected them in a manner likely to cause injury to their health if the person has failed to provide adequate food, clothing, medical aid or lodging for the child or young person, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, the person has failed to take steps to procure it to be provided under the enactments applicable in that behalf;
- (b) where it is proved that the death of an infant under 3 years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 16 years, that other person shall, if the person was, when they went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected the infant in a manner likely to cause injury to their health.

(3) For the purposes of this section, the following shall be presumed to have responsibility for a child or young person —

- (a) any person who —
  - (i) has parental responsibility for them (within the meaning of the Children Ordinance 2014); or
  - (ii) is otherwise legally liable to maintain them; and
- (b) any person who has care of them.

(4) A person who is presumed to be responsible for a child or young person by virtue of subsection (3)(a) shall not be taken to have ceased to be responsible for them by reason only that the person does not have care of them.

(5) The reference in subsection (2)(b) to the infant being “**in bed**” with another (the “**adult**”) includes a reference to the infant lying next to the adult in or on any kind of furniture or surface being used by the adult for the purpose of sleeping (and the reference to the time when the adult “**went to bed**” is to be read accordingly).

(6) A drug is a prohibited drug for the purposes of subsection (2)(b) in relation to a person if the person’s possession of the drug immediately before taking it constituted an offence under section 5(1) of the Misuse of Drugs Ordinance 1987.

(7) A person may be convicted of an offence under this section —

- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;
- (b) notwithstanding the death of the child or young person in question.

*[UK Children and Young Persons Act 1933 s. 1]*

*Offences involving ill-treatment or wilful neglect*

**82A. Ill-treatment or wilful neglect: care worker offence**

(1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.

Penalty: imprisonment for a term not exceeding 5 years or a fine, or both.

(2) “**Care worker**” means an individual who, as paid work, provides —

- (a) health care for an adult or a youth; or
- (b) social care for an adult, including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.

(3) An individual does something as “**paid work**” if he or she receives or is entitled to payment for doing it other than payment —

- (a) in respect of the individual’s reasonable expenses;
- (b) they are entitled to as a foster parent (within the meaning of the Children Ordinance 2014);
- (c) of a benefit payable under the Financial Assistance Ordinance 2023; or
- (d) under any other Ordinance to assist people to select, train for, obtain or retain employment.

(4) “**Health care**” includes —

- (a) all forms of health care provided for individuals, including health care relating to physical health or mental health and health care provided for or in connection with the protection or improvement of public health; and
- (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

(5) “**Social care**” includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or any other similar circumstances.

(6) References in this section to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person.

*[UK Criminal Justice and Courts Act 2015 s. 20]*

**82B. Ill-treatment or wilful neglect: care provider offence**

(1) A care provider commits an offence if —

- (a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual;
- (b) the care provider’s activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected; and
- (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

Penalty: a fine.

(2) “**Care provider**” means —

- (a) a body corporate or unincorporated association which provides or arranges for the provision of —
  - (i) health care for an adult or youth; or
  - (ii) social care for an adult; or
- (b) an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist him or her in providing such care.

(3) An individual is “**part of a care provider’s arrangements**” where the individual —

- (a) is not the care provider, but
- (b) provides health care or social care as part of health care or social care provided or arranged for by the care provider,

including where the individual is not the care provider but supervises or manages individuals providing health care or social care as described in paragraph (b) or is a director or similar officer of an organisation which provides health care or social care as described there.

(4) A “**relevant duty of care**” means —

- (a) a duty owed under the law of negligence; or
- (b) a duty that would be owed under the law of negligence but for a provision contained in an Ordinance, or an instrument made under an Ordinance, under which liability is imposed in place of liability under that law,

but only to the extent that the duty is owed in connection with providing, or arranging for the provision of, health care or social care.

(5) For the purposes of this section, there is to be disregarded any rule of the common law that has the effect of —

- (a) preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct; or
- (b) preventing a duty of care being owed to a person by reason of that person’s acceptance of a risk of harm.

(6) A breach of a duty of care by a care provider is a “**gross**” breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.

(7) In this section —

- (a) references to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person; and
- (b) references to a person arranging for the provision of such care do not include a person who makes arrangements under which the provision of such care is merely incidental to the carrying out of other activities.

(8) References in this section to providing or arranging for the provision of health care or social care do not include making payments under an Ordinance in relation to the provision of care.

(9) In this section, “**health care**” and “**social care**” have the same meaning as in section 82A.

*[UK Criminal Justice and Courts Act 2015 s. 21]*

### **82C. Care provider offence: other orders**

(1) A court before which a person is convicted of an offence under section 82B may make either or both of the following orders —

- (a) a remedial order;
- (b) a publicity order;(whether instead of or as well as imposing a fine).

(2) A “**remedial order**” is an order requiring the person to take specified steps to remedy one or more of the following —

- (a) the breach mentioned in section 82B(1)(b) (the “**relevant breach**”);
- (b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect;
- (c) any deficiency in the person’s policies, systems or practices of which the relevant breach appears to the court to be an indication.

(3) A “**publicity order**” is an order requiring the person to publicise in a specified manner —

- (a) the fact that the person has been convicted of the offence;
- (b) specified particulars of the offence;
- (c) the amount of any fine imposed;
- (d) the terms of any remedial order made.

(4) A remedial order —

- (a) may be made only on an application by the prosecution which specifies the terms of the proposed order;
- (b) must be made on such terms as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to its terms by the prosecution or by or on behalf of the person convicted; and
- (c) must specify a period within which the steps specified in the order must be taken.

(5) A publicity order must specify a period within which the requirements specified in the order must be complied with.

(6) A person who fails to comply with a remedial order or a publicity order commits an offence.

Penalty: a fine.

*[UK Criminal Justice and Courts Act 2015 s. 23]*

### **82D. Care provider offence: application to public bodies**

(1) An organisation that is a servant or agent of the Crown is not, by virtue of its status, immune from prosecution under sections 82A to 82F.

(2) For the purposes of sections 82A to 82F —

(a) every department of the Government; and

(b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government or servant or agent of the Crown.

(3) For the purposes of sections 82A to 82F, a person who is —

(a) employed by or under the Crown for the purposes of a department of the Government; or

(b) employed by a person whose staff constitute such a department,

is to be treated as employed by that department.

(4) For the purposes of sections 82A to 82F, any premises occupied for the purposes of —

(a) a department of the Government; or

(b) a person whose staff constitute such a department,

are to be treated as occupied by that department.

(5) For the purposes of sections 82A to 82F, anything purporting to be done by a department or body of the Government, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

*[UK Criminal Justice and Courts Act 2015 s. 22]*

### **82E. Care provider offence: application to unincorporated associations**

(1) For the purposes of sections 82A to 82F, an unincorporated association is to be treated as owing whatever duties of care it would owe if it were a body corporate.

(2) Proceedings for an offence under those sections alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) In relation to such proceedings, rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.

(4) In proceedings under section 82B to 82F brought against an unincorporated association, all laws, rules of court, and other practices and procedures relevant to the conduct of the proceedings apply as if the association were a corporate body.

(5) A fine imposed on an unincorporated association on its conviction of an offence under section 82B to 82F is to be paid out of the funds of the association.

*[UK Criminal Justice and Courts Act 2015 s. 24]*

### **82F. Care provider offence: liability for ancillary and other offences**

(1) An individual cannot be guilty of an offence under section 31 (encouragement), 42 (aiding and abetting) or 43 (assisting offenders) by reference to an offence under section 82B.

(2) Where, in the same proceedings, there is —

- (a) a charge under section 82B arising out of a particular set of circumstances; and
- (b) a charge against the same defendant of a relevant offence arising out of some or all of those circumstances,

the defendant may, if the interests of justice so require, be convicted of both offences.

(3) A person convicted of an offence under section 82B arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a relevant offence arising out of some or all of those circumstances.

(4) “**Relevant offence**” means an offence under an Ordinance, or an instrument made under an Ordinance, dealing with —

- (a) health and safety matters; or
- (b) the provision of health care or social care.

(5) In this section, “**health care**” and “**social care**” have the same meaning as in section 82A.

*[UK Criminal Justice and Courts Act 2015 s. 25]*

*Tattooing”.*

### **9. New section 87A inserted (interpretation)**

Before section 88 (after the heading “*Female genital mutilation*”), insert —

#### **“87A. Interpretation for sections 88 to 89F**

In sections 88 to 89F —

“**Falkland Islands resident**” means an individual who is habitually resident in the Falkland Islands;

“**girl**” means a female person of any age.

*[UK Female Genital Mutilation Act 2003]”.*

### **10. Section 89 amended (female genital mutilation: ancillary offences)**

(1) In section 89(2), replace “a person to” with “another person (**person B**) to”.

(2) Replace section 89(3)(a) with —

- “(a) it is done in relation to a person who has Falkland Islands status or is a Falkland Islands resident; and”.

- (3) In section 89(3)(b), replace “such a person” with “person B”.
- (4) Repeal section 89(4).

## 11. New sections 89A to 89F inserted

After section 89, insert —

### **“89A. Offence of failing to protect girl from genital mutilation**

(1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time commits an offence.

Penalty: Imprisonment for 7 years or a fine, or both.

(2) For the purposes of this section, a person is “**responsible**” for a girl in the following two cases.

(3) The first case is if the person —

- (a) has parental responsibility for the girl (within the meaning of the Children Ordinance 2014); and
- (b) has frequent contact with her.

(4) The second case is if the person —

- (a) is aged 18 or over; and
- (b) has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.

(5) It is a defence for a person charged with an offence under this section to show that —

- (a) at the relevant time, the person did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk; or
- (b) the person took such steps as they could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.

(6) For the purposes of subsection (3)(b), if a person has frequent contact with a girl which is interrupted by her going to stay somewhere temporarily, that contact is treated as continuing during her stay there.

(7) In this section —

“**genital mutilation offence**” means an offence under section 88 or 89 (and for the purposes of subsection (1), the prosecution does not have to prove which section it is);

“**relevant time**” means the time when the mutilation takes place.

*[UK Female Genital Mutilation Act 2003 s. 3A]*

### **89B. Extension of sections 88 to 89A to extra-territorial acts or omissions**

(1) Sections 88 and 89 extend to any act done outside the Falkland Islands by a person who has Falkland Islands status or is a Falkland Islands resident.

(2) An offence under section 89A can be committed wholly or partly outside the Falkland Islands by a person who has Falkland Islands status or is a Falkland Islands resident.

- (3) If an offence under section 88 to 89A is committed outside the Falkland Islands —
- (a) proceedings may be taken in the Falkland Islands; and
  - (b) for incidental purposes the offence may be treated as having been committed in the Falkland Islands.

*[UK Female Genital Mutilation Act 2003 s. 4]*

*FGM protection orders*

**89C. FGM protection order**

- (1) The Attorney General may apply to the Magistrate’s Court for a female genital mutilation protection order (an “**FGM protection order**”).
- (2) The Magistrate’s Court may make an FGM protection order for the purposes of —
- (a) protecting a girl against the commission of a genital mutilation offence; or
  - (b) protecting a girl against whom any such offence has been committed.
- (3) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl.
- (4) An FGM protection order may contain —
- (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms,
- as the court considers appropriate for the purposes of the order.
- (5) The terms of an FGM protection order may, in particular, relate to —
- (a) conduct outside the Falkland Islands as well as (or instead of) conduct within the Falkland Islands;
  - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (6) For the purposes of subsection (5), examples of involvement in other respects are —
- (a) encouraging, aiding, abetting or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
  - (b) conspiring to commit, or to attempt to commit, such an offence.
- (7) An FGM protection order may be made for a specified period or until varied or discharged.
- (8) In this section and section 89D, “**genital mutilation offence**” means an offence under section 88, 89 or 89A.

*[UK Female Genital Mutilation Act 2003 s. 5A]*



### **89D. FGM protection orders without notice**

- (1) The court may, if it is just and convenient to do so, make an FGM protection order even though the respondent has not been given notice of the proceedings.
- (2) In deciding whether to do so the court must have regard to all the circumstances including —
  - (a) the risk of the girl, or to another person, becoming a victim of a genital mutilation offence if the order is not made immediately;
  - (b) whether it is likely that a person will be deterred or prevented from supporting an application if an order is not made immediately; and
  - (c) whether there is reason to believe that —
    - (i) the respondent is aware of the proceedings but is deliberately evading service; and
    - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl.
- (3) If the court makes an order without notice having been given to the respondent, it must give them an opportunity to make representations about the order —
  - (a) as soon as just and convenient; and
  - (b) at a hearing of which notice has been given in accordance with rules of court.

*[UK Female Genital Mutilation Act 2003 s. 5A]*

### **89E. Offence of breaching a FGM protection order**

- (1) A person commits an offence if they do not comply with an FGM protection order, unless they have a reasonable excuse for doing so.

Penalty: Imprisonment for 5 years or a fine or both.

- (2) A person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the FGM protection order.

*[UK Female Genital Mutilation Act 2003 s. 5A]*

### **89F. Variation and discharge of FGM protection orders**

- (1) The court may vary or discharge an FGM protection order on an application by —
  - (a) the Attorney General;
  - (b) the respondent;
  - (c) the girl being protected by the order; or
  - (d) any person affected by the order.
- (2) Before deciding whether to vary or discharge an order under this section, the court must hear from —
  - (a) the Attorney General if they wish to be heard; and
  - (b) in a case where the girl protected by the order is seeking to discharge the order, or to amend it to be less onerous on the person bound by it, the girl.

(3) Sections 89C and 89D apply (with any necessary modifications) to the variation of an FGM protection order as they apply to the making of such an order.

*[UK Female Genital Mutilation Act 2003 s. 5A]*”.

## 12. Heading before section 153 replaced

Replace the heading before section 153 with —

*“Communication offences”.*

## 13. Section 153 amended (offence of sending letters etc. with intent to cause distress or anxiety)

(1) In the heading to section 153, replace **“Offence of sending letters etc.”** with **“Indecent or grossly offensive communications”**.

(2) Replace section 153(1)(a) with —

“(a) a letter, communication, or article of any description which conveys a message which is indecent or grossly offensive; or”.

(3) In section 153(1), replace the penalty provision with —

**“Penalty: Imprisonment for 2 years or a fine or both.”.**

(4) Repeal section 153(3).

*[UK Online Safety Act 2023]*

## 14. New sections 153A to 153G inserted

After section 153, insert —

### **“153A. Interpretation for sections 153B to 153G**

(1) This section applies for the purposes of sections 153B to 153G, and references in this section to an offence are to an offence under section 153B or 153G.

(2) A person **“sends a message”** if the person —

(a) sends, transmits or publishes a communication (including an oral communication) by electronic means; or

(b) sends, or gives to an individual, a letter or thing of any other description.

(3) A person also **“sends a message”** if the person —

(a) causes a communication (including an oral communication) to be sent, transmitted or published by electronic means; or

(b) causes a letter or a thing of any other description to be —

(i) sent; or

(ii) given to an individual.

(4) But a provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends a message.

(5) “**Encounter**”, in relation to a message, means read, view, hear or otherwise experience the message.

(6) It does not matter whether the content of a message is created by the person who sends it (so for example, in the online context, an offence may be committed by a person who forwards another person’s direct message or shares another person’s post).

(7) In the application of sections 153B to 153G to the sending by electronic means of a message consisting of or including a hyperlink to other content —

- (a) references to the message are to be read as including references to content accessed directly via the hyperlink; and
- (b) an individual who is a likely audience in relation to the hyperlink for the purposes of section 153B is to be assumed to be a likely audience in relation to the linked content.

(8) In the application of sections 153B to 153G to the sending of an item on which data is stored electronically, references to the message are to be read as including content accessed by means of the item to which the recipient is specifically directed by the sender (and in this subsection “**sending**” includes giving, and “**sender**” is to be read accordingly).

(9) In sections 153B to 153G, a “**recognised news publisher**” means any of the following —

- (a) the Falkland Islands Media Trust under the Media Trust Ordinance 1989;
- (b) Falkland Islands Television Limited;
- (c) BFBS Media Limited;
- (d) any other entity which —
  - (i) has as its principal purpose the publication of news;
  - (ii) has a registered office or other business address in the Falkland Islands; and
  - (iii) has been prescribed by the Governor by Order for the purposes of this section.

*[UK Online Safety Act 2023 Part 10]*

### **153B. False communications offence**

(1) A person commits an offence if —

- (a) the person sends a message;
- (b) the message conveys information that the person knows to be false;
- (c) at the time of sending it, the person intended the message, or the information in it, to cause non-trivial psychological or physical harm to a likely audience; and
- (d) the person has no reasonable excuse for sending the message.

Penalty: Imprisonment for 2 years or a fine or both.

(2) For the purposes of this offence an individual is a “**likely audience**” of a message if, at the time the message is sent, it is reasonably foreseeable that the individual —

- (a) would encounter the message; or

(b) in the online context, would encounter a subsequent message forwarding or sharing the content of the message.

(3) If several or many individuals are a likely audience, it is not necessary for the purposes of subsection (1)(c) that the person intended to cause harm to any one of them in particular (or to all of them).

*[UK Online Safety Act 2023 s 179]*

### **153C. Threatening communications offence**

(1) A person commits an offence if —

- (a) the person sends a message;
- (b) the message conveys a threat of death or serious harm; and
- (c) at the time of sending it, the person —
  - (i) intended an individual encountering the message to fear that the threat would be carried out; or
  - (ii) was reckless as to whether an individual encountering the message would fear that the threat would be carried out.

Penalty: Imprisonment for 5 years or a fine or both.

(2) “**Serious harm**” means —

- (a) serious injury amounting to grievous bodily harm within the meaning of Part 4;
- (b) rape;
- (c) assault by penetration within the meaning of section 204; or
- (d) serious financial loss.

(3) In proceedings for an offence under this section relating to a threat of serious financial loss, it is a defence for the person to show that —

- (a) the threat was used to reinforce a reasonable demand; and
- (b) the person reasonably believed that the use of the threat was a proper means of reinforcing the demand.

*[UK Online Safety Act 2023 s181]*

### **153D. Flashing electronic images offences**

(1) A person (“**A**”) commits an offence if —

- (a) A sends a communication by electronic means which consists of, or includes, flashing images;
- (b) either condition 1 or condition 2 is met; and
- (c) A has no reasonable excuse for sending the communication.

Penalty: Imprisonment for 5 years or a fine or both.

(2) Condition 1 is that —

- (a) at the time the communication is sent, it is reasonably foreseeable that an individual with epilepsy would be among the individuals who would view it; and

- (b) A sends the communication with the intention that such an individual will suffer harm as a result of viewing the flashing images.
  - (3) Condition 2 is that, when sending the communication —
    - (a) A believes that an individual (“**B**”) —
      - (i) whom A knows to be an individual with epilepsy; or
      - (ii) whom A suspects to be an individual with epilepsy, will, or might, view it; and
    - (b) A intends that B will suffer harm as a result of viewing the flashing images.
  - (4) In subsections (2)(a) and (3)(a), references to viewing the communication are to be read as including references to viewing a subsequent communication forwarding or sharing the content of the communication.
  - (5) For the purposes of subsection (1), a provider of an internet service by means of which a communication is sent is not to be regarded as a person who sends a communication.
  - (6) In the application of subsection (1) to a communication consisting of or including a hyperlink to other content, references to the communication are to be read as including references to content accessed directly via the hyperlink.
  - (7) A person (“**A**”) commits an offence if —
    - (a) A shows an individual (“**B**”) flashing images by means of an electronic communications device;
    - (b) when showing the images —
      - (i) A knows that B is an individual with epilepsy; or
      - (ii) A suspects that B is an individual with epilepsy;
    - (c) when showing the images, A intends that B will suffer harm as a result of viewing them; and
    - (d) A has no reasonable excuse for showing the images.
- Penalty: Imprisonment for 5 years or a fine or both.
- (8) An offence under subsection (1) or (7) cannot be committed by a healthcare professional acting in that capacity.
  - (9) For the purpose of this section, it does not matter whether flashing images may be viewed at once (for example, a GIF that plays automatically) or only after some action is performed (for example, pressing play).
  - (10) In this section —
    - (a) references to sending a communication include references to causing a communication to be sent; and
    - (b) references to showing flashing images include references to causing flashing images to be shown.
  - (11) In this section —

“**electronic communications device**” means equipment or a device that is capable of transmitting images by electronic means;

“**flashing images**” means images which carry a risk that an individual with photosensitive epilepsy who viewed them would suffer a seizure as a result;

“**harm**” means —

- (a) a seizure; or
- (b) alarm or distress;

“**individual with epilepsy**” includes, but is not limited to, an individual with photosensitive epilepsy;

“**send**” includes transmit and publish.

*[UK Online Safety Act 2023 s 183]*

### **153E. Exemptions from false communications and flashing images offences**

(1) An offence under section 153B or 153D cannot be committed by a recognised news publisher.

(2) An offence under section 153B or 153D cannot be committed by the holder of —

- (a) a licence under the Broadcasting Ordinance 2004; or
- (b) a licence under Part 5 or 7 of the Communications Ordinance 2017,

in connection with anything done under the authority of the licence.

(3) An offence under section 153B or 153D cannot be committed in connection with the showing of a film made for cinema to members of the public.

*[UK Online Safety Act 2023 s 180]*

### **153F. Encouraging or assisting serious self-harm**

(1) A person (“**A**”) commits an offence if —

- (a) A does a relevant act capable of encouraging or assisting the serious self-harm of another person; and
- (b) A’s act was intended to encourage or assist the serious self-harm of another person.

Penalty: Imprisonment for 5 years or a fine or both.

(2) A “**does a relevant act**” if A —

- (a) communicates in person;
- (b) sends, transmits or publishes a communication by electronic means;
- (c) shows a person such a communication;
- (d) publishes material by any means other than electronic means;
- (e) sends, gives, shows or makes available to a person —
  - (i) material published as mentioned in paragraph (d); or
  - (ii) any form of correspondence; or

- (f) sends, gives or makes available to a person an item on which data is stored electronically.
- (3) “**Serious self-harm**” means self-harm amounting to grievous bodily harm within the meaning of Part 4, and includes successive acts of self-harm which cumulatively reach that threshold.
- (4) The person referred to in subsection (1)(a) and (b) need not be a specific person (or class of persons) known to, or identified by, A.
- (5) A may commit an offence under this section whether or not serious self-harm occurs.
- (6) If a person (“**A1**”) arranges for another person (“**A2**”) to do an act that is capable of encouraging or assisting the serious self-harm of a third person and A2 does that act, A1 is to be treated as also having done it.
- (7) In the application of subsection (1) to an act by A involving an electronic communication or a publication in physical form, it does not matter whether the content of the communication or publication is created by A (so for example, in the online context, the offence under this section may be committed by forwarding another person’s direct message or sharing another person’s post).
- (8) In the application of subsection (1) to the sending, transmission or publication by electronic means of a communication consisting of or including a hyperlink to other content, the reference in subsection (2)(b) to the communication is to be read as including a reference to content accessed directly via the hyperlink.
- (9) In the application of subsection (1) to an act by A involving an item on which data is stored electronically, the reference in subsection (2)(f) to the item is to be read as including a reference to content accessed by means of the item to which the person in receipt of the item is specifically directed by A.
- (10) A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends, transmits or publishes it.
- (11) Any reference in this section to doing an act that is capable of encouraging the serious self-harm of another person includes a reference to doing so by threatening another person or otherwise putting pressure on another person to seriously self-harm.
- (12) Any reference to an act in this section, except in subsection (3), includes a reference to a course of conduct, and references to doing an act are to be read accordingly.
- (13) In subsection (3) “**act**” includes omission.

*[UK Online Safety Act 2023 s 184]*

### **153G. Extra-territorial application**

- (1) Sections 153, 153B(1), 153C(1) and 153D(1) apply to an act done outside the Falkland Islands, but only if the act is done by a person within subsection (2).
- (2) A person is within this subsection if the person is —
- (a) an individual who is habitually resident in the Falkland Islands; or
  - (b) a body incorporated or constituted under the law of the Falkland Islands.

(3) Section 153F(1) applies to an act done outside the Falkland Islands, but only if the act is done by a person within subsection (4).

(4) A person is within this subsection if the person is —

(a) an individual who is habitually resident in the Falkland Islands; or

(b) a body incorporated or constituted under the law of the Falkland Islands.

*[UK Online Safety Act 2023 s 185]*”.

### **15. Section 154 amended (offence of improper use of public electronic communications network)**

(1) In section 154(1), replace the penalty provision with —

“Penalty: Imprisonment for 2 years or a fine or both.”.

(2) Replace section 154(2) with —

“(2) A person who persistently makes use of a public electronic communications network for the purpose of causing annoyance, inconvenience or needless anxiety to another person commits an offence.

Penalty: Imprisonment for 2 years or a fine or both.”.

*[UK Online Safety Act 2023]*

### **16. Section 155 amended (interpretation of Part)**

In section 155, insert in its appropriate alphabetical order —

“ **“further education premises”** means a college or other institution conducting further education;”.

### **17. Section 156 amended (unlawful marketing of knives)**

In section 156(1), in the penalty provision, replace “2 years” with “4 years”.

*[UK Offensive Weapons Act 2019]*

### **18. Section 157 amended (publications)**

In section 157, in the penalty provision, replace “2 years” with “4 years”.

*[UK Offensive Weapons Act 2019]*

### **19. Section 160 amended (manufacture and sale of flick knives, etc.)**

(1) In the heading to section 160, replace “**Manufacture and sale of flick**” with “**Flick**”.

(2) In section 160(1), replace the penalty provision with —

“Penalty: Imprisonment for 1 year or a fine or both.”.

(3) After section 160(1), insert —

“(1A) It is an offence for a person to have possession of a weapon to which this section applies.



Penalty: Imprisonment for 1 year or a fine, or both.

(1B) The importation of a weapon to which this section applies is prohibited.”.

(4) Replace section 160(2)(a) with —

“(a) any knife which has a blade which opens automatically —

(i) from the closed position to the fully opened position; or

(ii) from a partially opened position to the fully opened position,

by manual pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife” or “flick gun”; or”.

(5) After section 160(2), insert —

“(3) It is a defence for a person charged with an offence under subsection (1) to show that the conduct was only for the purposes of making the weapon available to a museum or gallery.

(4) It is a defence for a person charged with an offence under subsection (1A) to show that they possessed the weapon only in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery.

(5) If the operator of, or a person acting on behalf of, a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for them to show that they had reasonable grounds for believing that the person to whom they hired or lent it would use it only for cultural, artistic or educational purposes.

(6) It is a defence for a person charged with an offence under section 43(2) or (3) of the Customs Ordinance 2003 in respect of a weapon to which this section applies to show that the conduct was only for the purposes of making the weapon available to a museum or gallery.

(7) Subsections (3), (5), and (6) apply to a museum or gallery only if it does not distribute profits.

(8) In this section, “**museum or gallery**” includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.”.

*[UK Offensive Weapons Act 2019 s 43 and 44]*

## **20. Section 161 amended (sale of knives etc. to persons under 16)**

(1) After section 161(2), insert —

“(2A) This section does not apply to —

(a) a weapon to which section 160 applies;

(b) a folding knife if the cutting edge of its blade does not exceed 7.62 centimetres (3 inches); or

(c) razor blades permanently enclosed in a cartridge or housing where less than 2 millimetres of any blade is exposed beyond the place which intersects the highest point of the surfaces preceding and following such blades.”.

(2) In section 161(3), replace “It” with “Subject to section 161A, it”.

## **21. New section 161A inserted (limitations on defence for remote sales)**

After section 161, insert —

### **“161A. Limitations on defence for remote sales**

(1) This section applies if —

- (a) a person (the “**seller**”) is charged with an offence under section 161 (sale of knives etc. to persons under 16); and
- (b) the seller was not in the presence of the person (the “**buyer**”) to whom the article to which the charge relates was sold at the time of the sale.

(2) For the purposes of subsection (1)(b), the seller was not in the presence of the buyer at the time of the sale if —

- (a) if the seller is an individual, the seller or a person acting on the seller’s behalf was not in the presence of the buyer at that time; or
- (b) if the seller is not an individual, a person acting on the seller’s behalf was not in the presence of the buyer at that time.

(3) The seller is not to be regarded as having proved that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence unless, as a minimum, they show that the following conditions are met.

(4) Condition A is that, at the time the offence is alleged to have been committed —

- (a) the seller operated a system for checking that persons who bought articles to which section 161 applied by the same or a similar method of purchase to that used by the buyer were not under the age of 16; and
- (b) that system was likely to prevent persons under the age of 16 from buying such articles by that method.

(5) Condition B is that when the package containing the article was dispatched by the seller, it was clearly marked to indicate —

- (a) that it contained an article with a blade or which was sharply pointed (as the case may be); and
- (b) that, when finally delivered, it should only be delivered into the hands of a person aged 16 or over.

(6) Condition C is that the seller took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 16 or over.

(7) Condition D is that the seller did not deliver the package, or arrange for its delivery, to a locker.

(8) If the article was dispatched by the seller to a place from which it was to be collected by the buyer or a person acting on behalf of the buyer, references in subsections (5) and (6) to the final delivery of the article are to be read as its supply to the buyer or a person acting on behalf of the buyer from that place.

(9) In subsection (7) “**locker**” means a lockable container to which the package was delivered with a view to its collection by the buyer, or a person acting on behalf of the buyer, in accordance with arrangements made between the seller and the buyer.

*[UK Criminal Justice Act 1988 s. 141B]*”.

## **22. Section 165 amended (sale, etc., of crossbows to young persons)**

Replace section 165(2) with —

“(2) It is a defence for a person (“**A**”) charged with an offence under subsection (1) to show that —

- (a) A believed the person (“**B**”) to whom the crossbow or part was sold or let on hire was aged 17 or over; and
- (b) either —
  - (i) A had taken reasonable steps to establish B’s age; or
  - (ii) no reasonable person could have suspected from B’s appearance that they were under the age of 17.

(2A) For the purposes of subsection (2)(b)(i), A is to be treated as having taken reasonable steps to establish B’s age if, and only if —

- (a) A was shown a document purporting to be a passport or driving licence; and
- (b) the document would have convinced a reasonable person.”.

*[UK Crossbows Act 1987 s. 1A]*

## **23. Section 169 amended (having an article with blade or point in a public place)**

In section 169(1), replace the penalty provision with —

“Penalty: Imprisonment for 4 years or a fine, or both.”.

## **24. Section 170 amended (having an offensive weapon, etc. on school premises)**

(1) In the heading to section 170, after “**premises**”, insert “**or further education premises**”.

(2) Replace section 170(1) and (2) with —

“(1) A person who has an article to which section 169 applies in their possession on school premises or further education premises commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) A person who has any other offensive weapon in their possession on school premises or further education premises commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.”.

(3) In section 170(3), replace “with him or her on the school” with “in their possession on those”.

## **25. Section 171 amended (threatening with offensive weapon, etc. on school premises)**

(1) In the heading to section 171, after “**premises**”, insert “**or further education premises**”.

- (2) In section 171(1)(a), replace “with him or her on school” with “in their possession on school premises or further education”.
- (3) In section 171(1)(b), after “person”, insert “(“A”)”.
- (4) Replace section 171(1)(c) with —
  - “(c) does so in such a way that a reasonable person (“B”) who was exposed to the same threat as A would think that there was an immediate risk of physical harm to B.”.
- (5) Repeal section 171(3).

## **26. Section 172 amended (entry and search of school premises for offensive weapons, etc.)**

- (1) In the heading to section 172, after “**premises**”, insert “**or further education premises**”.
- (2) In section 172(1), after “school”, insert “premises or further education”.
- (3) Replace section 172(1)(a) and (b) with —
  - “(a) an article to which section 169 applies;
  - (b) an offensive weapon; or
  - (c) a corrosive substance (as defined in section 173B),”.
- (4) In section 172(1), replace “section 170 or section 171” with “section 170 or 171 or, in relation to a corrosive substance, section 173B”.
- (5) In section 172(2), replace “or weapon which he or she has reasonable grounds for suspecting to be an article or weapon” with “, weapon or substance which they have reasonable grounds for suspecting to be an article, weapon or substance”.

## **27. New sections 173A and 173B inserted**

After section 173, insert —

### **“173A. Threatening with offensive weapon in public place**

A person commits an offence if they —

- (a) have an offensive weapon in their possession in a public place;
- (b) unlawfully and intentionally threaten another person (“A”) with the weapon; and
- (c) do so in such a way that a reasonable person (“B”) who was exposed to the same threat as A would think that there was an immediate risk of physical harm to B.

Penalty: Imprisonment for 4 years or a fine, or both.

*[UK Prevention of Crime Act 1953 s. 1A and Offensive Weapons Act 2019 s.50]*

### **173B. Threatening with offensive weapon or corrosive substance in private place**

(1) A person (“A”) commits an offence if —

- (a) while in a private place, A unlawfully and intentionally threatens another person (“B”) with an article or substance to which this subsection applies; and
- (b) they do so in such a way that there is an immediate risk of serious physical harm to B.

Penalty: Imprisonment for 4 years or a fine, or both.

(2) Subsection (1) applies to an article or substance if it is —

- (a) an offensive weapon;
- (b) an article to which section 169 (having article with blade or point in public place) applies; or
- (c) a corrosive substance.

(3) In the application of subsection (1) to an article within subsection (2)(a) or (b), “**private place**” means a place other than —

- (a) a public place;
- (b) a place which is part of school premises; or
- (c) a place which is part of further education premises.

(4) In the application of subsection (1) to a corrosive substance, “**private place**” means a place other than a public place.

(5) For the purposes of subsection (1) physical harm is “**serious**” if it amounts to grievous bodily harm for the purposes of section 64.

(6) In this section, “**corrosive substance**” means a substance that is capable of burning human skin by corrosion.

*[UK Offensive Weapons Act 2019 s.52]*”.

## **28. Section 174 amended (dealing in offensive weapons)**

(1) In the heading to section 174, replace “**Dealing in**” with “**Listed**”.

(2) In section 174(1), replace the penalty provision with —

“Penalty: Imprisonment for 4 years or a fine, or both.”.

(3) After section 174(1), insert —

“(1A) A person who has possession of a weapon to which this section applies in private commits an offence.

Penalty: Imprisonment for 4 years or a fine, or both.

(1B) For the purposes of subsection (1A), a person has possession of a weapon “**in private**” if they have possession of it at a place other than —

- (a) a public place;
- (b) school premises;
- (c) further education premises; or
- (d) a prison.”.

(4) In section 174(2), replace “weapons —” with “weapons, other than weapons of those descriptions which are antique weapons —”.

(5) After section 174(2)(r), insert —

- “(s) the weapon sometimes known as a “zombie knife”, “zombie killer knife” or “zombie slayer knife”, being a blade with —
  - (i) a cutting edge;
  - (ii) a serrated edge; and
  - (iii) images or words (whether on the blade or handle) that suggest that it is to be used for the purpose of violence;
- (t) the weapon sometimes known as a “cyclone knife” or “spiral knife” being a weapon with —
  - (i) a handle;
  - (ii) a blade with two or more cutting edges, each of which forms a helix; and
  - (iii) a sharp point at the end of the blade.”.

(6) Replace section 174(3) with —

“(3) The Governor, after consulting the Criminal Justice Council, may by order amend subsection (2), but not so as to include in subsection (2) anything that is —

- (a) a firearm (as defined in the Firearms and Ammunition Ordinance 1987); or
- (b) a crossbow.

(3A) An order under subsection (3) which has the effect that possession in private of a weapon of a particular description is, or is to become, an offence under subsection (1A) may make provision —

- (a) enabling arrangements to be made for the surrender of weapons of that description;
- (b) as to the procedure to be followed in relation to the surrender of such weapons;
- (c) for the payment of compensation in respect of weapons surrendered in accordance with the arrangements;
- (d) as to the requirements that must be met by a person making a claim for compensation;
- (e) as to the procedure to be followed in respect of a claim and for the determination of a claim;
- (f) enabling a person to exercise a discretion in determining whether to make a payment in response to a claim and the amount of such a payment.

(3B) The importation of a weapon to which this section applies is prohibited.”.

(7) In section 174(4), after “this section”, insert “or a customs offence”.

(8) After section 174(4), insert —

“(4A) It is a defence for a person charged with an offence under subsection (1A) to show that the weapon is one of historical importance.

(4B) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only in their capacity as the operator of, or as a person acting on behalf of, a museum or gallery.”.

(9) Replace section 174(6) with —

“(5A) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only for educational purposes.

(5B) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence to show that their conduct was only for the purpose of making the weapon available for one or more of the purposes specified in subsection (5D).

(5C) It is a defence for a person charged with an offence under subsection (1A) to show that they had possession of the weapon only for one or more of the purposes specified in subsection (5D).

(5D) The purposes are —

- (a) the purposes of theatrical performances and of rehearsals for such performances;
- (b) the production of films; and
- (c) the production of programme service.

(6) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that the weapon —

- (a) was made before 1954; or
- (b) was made at any other time according to traditional methods of making swords by hand.

(6A) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence to show that their conduct was only for the purpose of making the weapon available for the holding of a permitted activity by an organisation which holds public liability insurance in relation to liabilities to third parties arising from or in connection with the organisation and the holding of the activity.

(6B) It is a defence for a person charged with an offence under subsection (1A) in respect of a curved sword to show that their conduct was only for the purpose of participating in a permitted activity of a kind mentioned in subsection (6A).

(6C) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that their conduct was only for the purpose of making the sword available for the purposes of use in religious ceremonies for religious reasons.

(6D) It is a defence for a person charged with an offence under subsection (1A) in respect of a curved sword to show that the person had possession of the sword only for religious reasons.

(6E) It is a defence for a person charged with an offence under subsection (1) or (1A) or a customs offence in respect of a curved sword to show that their conduct was only for the purpose of making the sword available for presentation by a Sikh to another person at a religious ceremony or other ceremonial event.

(6F) It is a defence for a person charged with an offence under subsection (1) of giving a curved sword to another person to show that their conduct consisted of the presentation of the sword by a Sikh to another person at a religious ceremony or other ceremonial event.

(6G) It is a defence for a person charged with an offence under subsection (1A) of possession of a curved sword in private to show that —

- (a) they were a Sikh at the time the offence is alleged to have been committed and possessed the sword only for the purpose of presenting it to another person at a religious ceremony or other ceremonial event; or
- (b) the sword was presented to the person by a Sikh at a religious ceremony or other ceremonial event.”.

(10) In section 174(8), insert in its appropriate alphabetical order —

“**“antique weapon”** means a weapon that is more than 100 years old;

“**curved sword**” means a weapon referred to in subsection (2)(r);

“**customs offence**” means an offence under section 43(2) or (3) of the Customs Ordinance 2003 in respect of an offensive weapon to which this section applies;

“**film**” means a recording on any medium from which a moving image may by any means be produced and the sound track accompanying a film shall be treated as part of the film;

“**Sikh**” means a follower of the Sikh religion;

“**visiting force**” means any body, contingent or detachment of the forces of a country to which the Visiting Forces Act 1952 applies (as defined in section 1 of that Act) that is present in the Falkland Islands with the permission of the Government or the Government of the United Kingdom.”.

*[UK Criminal Justice Act 1988 (Offensive Weapons) Order 1988]*

## **29. New section 176A inserted (surrender of offensive weapons)**

After section 176, insert —

### **“176A. Surrender of offensive weapons**

(1) The Chief Police Officer may make such arrangements (a “**surrender scheme**”) as they think fit to secure the orderly surrender of offensive weapons or other things to which provisions of this Part apply.

(2) A surrender scheme must provide for a payment to be made in respect of a surrendered weapon if —

- (a) it is a weapon possession of which became unlawful by virtue of the amendments made to section 160 or 174 by the Criminal Laws (Amendment) Ordinance 2023;
- (b) it is surrendered within the period (if any) specified in the surrender scheme;
- (c) a person who, when that Ordinance commenced, owned the weapon or had a contractual obligation to acquire it applies for the payment in the manner and within the time (if any) specified in the surrender scheme.

(3) A surrender scheme may provide for a payment to be made in respect of any other surrendered weapon if the Chief Police Officer considers it appropriate in the circumstances.

(4) The amount payable under subsection (2) or (3) is an amount determined by the Chief Police Officer to be reasonable having regard to all of the circumstances (including, but not limited to —

- (a) the price, if any, that was paid for the weapon by the person surrendering it; and



(b) the current value of the weapon in so far as it can reasonably be ascertained).

(5) It is a defence for a person charged with an offence under this Part in relation to the possession of a weapon or other thing to show that the person has surrendered the weapon in accordance with a surrender scheme (whether that surrender occurred before or after the offence is alleged to have been committed).

*[UK Offensive Weapons Act 2019 s. 48]*’.

### **30. Section 202 amended (interpretation of Part)**

In section 202(3), replace “section 292” with “sections 217A and 283A to 288”.

### **31. Section 222 amended (positions of trust)**

(1) Repeal section 222(1).

(2) In section 222(2), replace “The positions which are positions of trust are —” with “For the purposes of sections 218 to 221, a person (“A”) is in a position of trust in relation to another person (“B”) if —”.

### **32. New section 223A inserted (further positions of trust: sport or religion)**

After section 223, insert —

#### **“223A. Further positions of trust: sport or religion**

(1) For the purposes of sections 218 to 221, a person (“A”) is in a position of trust in relation to another person (“B”) if —

(a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion; and

(b) A knows that they coach, teach, train, supervise or instruct B, on a regular basis, in that sport or religion.

(2) This section does not apply if A is in a position of trust in relation to B by virtue of circumstances within section 222.

(3) In this section —

“**religion**” includes —

(a) a religion which involves belief in one or more gods; and

(b) a religion which does not involve belief in a god;

“**sport**” includes —

(a) any game in which physical skill is the predominant factor; and

(b) any form of physical recreation which is also engaged in for purposes of competition or display.

*[UK Sexual Offences Act 2003 s. 22A]*’.

### **33. Section 269 replaced (prostitution offences: interpretation)**

Replace section 269 with —

### **“269. Prostitution offences: Interpretation**

In sections 264 to 268 and this section —

**“gain”** means —

- (a) any payment; or
- (b) the goodwill of any person which is or appears likely, in time, to bring payment;

**“payment”** means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount;

**“prostitute”** means a person (**“B”**) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person;

**“prostitution”** means the activity of being a prostitute;

**“street”** includes —

- (a) any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public;
- (b) any doorways and entrances of premises abutting on a street; and
- (c) any ground adjoining and open to a street.”.

### **34. New sections 283A to 283C inserted**

Before section 284, insert —

#### **“283A. Interpretation for sections 283A to 288**

(1) In this section and sections 283B to 288 —

**“breast-feeding”** a child includes re-arranging clothing —

- (a) in the course of preparing to breast-feed the child; or
- (b) having just finished breast-feeding the child;

**“consent”**, in relation to the sharing of a photograph or film, includes general consent covering the particular act of sharing as well as specific consent to the particular act of sharing;

**“film”** means a moving image;

**“intimate state”** has the meaning given in section 283B;

**“operate equipment”** includes to enable or secure its activation by another person without that person’s knowledge;

**“photograph”** includes the negative as well as the positive version;

**“photograph or film”** includes —

- (a) an image, whether made or altered by computer graphics or in any other way, which appears to be a photograph or film;
- (b) a copy of a photograph, film or image within paragraph (a); and

- (c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a);

“**send or give**” in relation to a photograph or film, includes —

- (a) to send it to another person by any means, electronically or otherwise;
- (b) to show it to another person; and
- (c) to place it for a particular person to find;

“**share**”, in relation to a photograph or film, means to give or show it, or make it available, to another person (but see subsection (2));

“**structure**” includes a tent, vehicle or vessel or other temporary or movable structure.

(2) A provider of an internet service by means of which a photograph or film is shared is not to be regarded as a person who shares it.

*[UK Sexual Offences Act 2003 s. 68]*

### **283B. Meaning of “intimate state”**

(1) In sections 283A to 288, a person is in an “**intimate state**” if —

- (a) the person is participating or engaging in an act which a reasonable person would consider to be a sexual act;
- (b) the person is doing a thing which a reasonable person would consider to be sexual;
- (c) all or part of the person’s genitals, buttocks or breasts are exposed;
- (d) the person is in an act of urination or defecation; or
- (e) the person is carrying out an act of personal care associated with the person’s urination, defecation or genital or anal discharge.

(2) Despite subsection (1), a photograph or film does not show a person in an intimate state to the extent that it shows or appears to show something, other than breast-feeding a child, that is of a kind ordinarily seen in public.

(3) In this section —

“**exposed**”, in relation to a person’s genitals, buttocks or breasts, includes —

- (a) being visible through wet or otherwise transparent clothing;
- (b) being exposed but for the fact of being covered only with underwear; and
- (c) being exposed but for the fact of being obscured, if the area obscured is similar to or smaller than an area that would typically be covered by underwear worn to cover a person’s genitals, buttocks or breasts (as the case may be);

“**obscured**” means obscured by an object, by part of a person’s body, by digital alteration or by any means (other than by clothing that a person is wearing).

*[UK Sexual Offences Act 2003 s. 68]*

### **283C. Sex-based harassment in a public place**

A person commits an offence if the person —

- (a) is in a public place;

- (b) behaves in relation to another person (“**B**”) in a way that causes B alarm, distress or humiliation;
- (c) behaves in that way because of B’s sex (or presumed sex); and
- (d) knew, or ought to have known, that the behaviour would cause B alarm, distress or humiliation.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Protection from Sex-Based Harassment in Public Act 2023]*”.

### **35. New section 284A inserted (sending or giving photograph or film of genitals)**

After section 284, insert —

#### **“284A. Sending or giving photograph or film of genitals**

A person (“**A**”) who intentionally sends or gives a photograph or film of any person’s genitals to another person (“**B**”) commits an offence if —

- (a) A intends that B will see the genitals and be caused alarm, distress or humiliation; or
- (b) A sends or gives the photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation.

Penalty: Imprisonment for 2 years or a fine, or both.

*[UK Online Safety Act 2023 s 187]*”.

### **36. Section 285A amended (voyeurism: additional offences)**

(1) After section 285A(2), insert —

“(2A) A person (“**A**”) commits an offence if —

- (a) A operates equipment;
- (b) A does so with the intention of enabling A or another person (“**C**”), for a purpose mentioned in subsection (3), to observe a third person (“**B**”) while B is breast-feeding a child; and
- (c) A does so —
  - (i) without B’s consent; and
  - (ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

(2B) A person (“**A**”) commits an offence if —

- (a) A records an image of another person (“**B**”) while B is breast-feeding a child;
- (b) A does so with the intention that A or a third person (“**C**”) will look at the image for a purpose mentioned in subsection (3); and
- (c) A does so —
  - (i) without B’s consent; and

- (ii) without reasonably believing that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.”.

- (2) In section 285A(3), delete “referred to in subsections (1) and (2)”.

- (3) After section 285A(3), insert —

“(4) For the purposes of subsections (2A) and (2B), it is irrelevant —

- (a) whether or not B is in a public place while B is breast-feeding the child;
- (b) whether or not B’s breasts are exposed while B is breast-feeding the child; and
- (c) what part of B’s body —
  - (i) is, or is intended by A to be, visible in the recorded image; or
  - (ii) is intended by A to be observed.”.

*[UK Sexual Offences Act 2003 s. 66 and 67A]*

### **37. Sections 285B and 285C replaced**

Replace sections 285B and 285C with —

#### **“285B. Sharing or threatening to share intimate photograph or film**

- (1) A person (“A”) commits an offence if —

- (a) A intentionally shares a photograph or film that shows, or appears to show, another person (“B”) in an intimate state;
- (b) B does not consent to the sharing of the photograph or film; and
- (c) A does not reasonably believe that B consents.

Penalty: Imprisonment for 1 year or a fine, or both.

- (2) A person (“A”) commits an offence if —

- (a) A intentionally shares a photograph or film that shows, or appears to show, another person (“B”) in an intimate state;
- (b) A does so with the intention of causing B alarm, distress or humiliation; and
- (c) B does not consent to the sharing of the photograph or film.

Penalty: Imprisonment for 2 years or a fine, or both.

- (3) A person (“A”) commits an offence if —

- (a) A intentionally shares a photograph or film that shows, or appears to show, another person (“B”) in an intimate state;
- (b) A does so for the purpose of A or another person obtaining sexual gratification;
- (c) B does not consent to the sharing of the photograph or film; and
- (d) A does not reasonably believe that B consents.

Penalty: Imprisonment for 2 years or a fine, or both.

- (4) A person (“A”) commits an offence if —

- (a) A threatens to share a photograph or film that shows, or appears to show, another person (“**B**”) in an intimate state; and
- (b) A does so —
  - (i) with the intention that B or another person who knows B will fear that the threat will be carried out; or
  - (ii) being reckless as to whether B or another person who knows B will fear that the threat will be carried out.

Penalty: Imprisonment for 2 years or a fine, or both.

(5) For the purposes of subsections (1) to (3), whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consents.

(6) If a person is charged with an offence under subsection (4), it is not necessary for the prosecution to prove —

- (a) that the photograph or film mentioned in the threat exists; or
- (b) if it does exist, that it is in fact a photograph or film which shows or appears to show a person in an intimate state.

(7) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for sharing the photograph or film.

*[UK Sexual Offences Act 2003 s. 66B]*

### **285C. Sharing or threatening to share intimate photograph or film: exemptions**

(1) A person (“**A**”) who shares a photograph or film that shows, or appears to show, another person (“**B**”) in an intimate state does not commit an offence under section 285B(1), (2) or (3) if —

- (a) the photograph or film was taken in a place to which the public or a section of the public had or were permitted to have access (whether on payment or otherwise);
- (b) B had no reasonable expectation of privacy from the photograph or film being taken; and
- (c) B was, or A reasonably believes that B was, in the intimate state voluntarily.

(2) For the purposes of subsection (1)(b), whether a person had a reasonable expectation of privacy from a photograph or film being taken is to be determined by reference to the circumstances that B reasonably believes to have existed at the time the photograph or film was taken.

(3) A person (“**A**”) who shares a photograph or film that shows, or appears to show, another person (“**B**”) in an intimate state does not commit an offence under section 285B(1), (2) or (3) if —

- (a) the photograph or film had, or A reasonably believes that it had, previously been publicly shared; and
- (b) B had, or A reasonably believes that B had, consented to the previous sharing.

(4) For the purposes of subsection (3)(b), whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consented.

(5) A person (“A”) who shares a photograph or film that shows, or appears to show, another person (“B”) in an intimate state does not commit an offence under section 285B(1) if —

- (a) B is under 16;
- (b) B lacks, or A reasonably believes that B lacks, capacity to consent to the sharing of the photograph or film; and
- (c) the photograph or film is shared —
  - (i) with a healthcare professional acting in that capacity; or
  - (ii) otherwise in connection with the care or treatment of B by a healthcare professional.

(7) A person who shares a photograph or film that shows, or appears to show, a child in an intimate state does not commit an offence under section 285B(1) if the photograph or film is of a kind ordinarily shared between family and friends.

(8) A person who threatens to share a photograph or film that shows, or appears to show, another person in an intimate state does not commit an offence under section 285B(4) if, by reason of this section, the person would not commit an offence under section 285B(1), (2) or (3) by sharing the photograph or film in the circumstances conveyed by the threat.

*[UK Sexual Offences Act 2003 s. 66C]*”.

### **38. New section 294A inserted (continuity of sexual offences law)**

After section 294, insert —

#### **“294A. Continuity of sexual offences law**

- (1) This section applies in proceedings against a person (the “**defendant**”) if —
  - (a) the defendant is charged, in respect of the same conduct, with 2 offences (“**offence A**” and “**offence B**”);
  - (b) either —
    - (i) offence A is an offence under a provision of the Sexual Offences Act 1956 as it applied in the Falkland Islands and offence B is an offence under a provision of the Sexual Offences Ordinance 2005; or
    - (ii) offence A is an offence under a provision of the Sexual Offences Ordinance 2005 and offence B is an offence under a provision of Part 10 of the Crimes Ordinance 2014;
  - (c) the only thing preventing the defendant from being found guilty of offence A is that it has not been proved that the time of the offence was before the changeover date; and

- (d) the only thing preventing the defendant from being found guilty of offence B is that it has not been proved that the time of the offence was on or after the changeover date.
- (2) For the purpose of determining the guilt of the defendant —
- (a) if the penalty for offence A is less than the penalty for offence B, the time of the offence is conclusively presumed to have been before the changeover date;
  - (b) if the penalties for offence A and offence B are the same, the time of the offence is conclusively presumed to have been on or after the changeover date; or
  - (c) if the penalty for offence A is greater than the penalty for offence B, the time of the offence is conclusively presumed to have been on or after the changeover date.
- (3) This section applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of offence A or offence B before the commencement of this section.

(4) In this section —

“**changeover date**” means —

- (a) if subsection (1)(b)(i) applies, 10 June 2005 (being the date on which the Sexual Offences Ordinance 2005 came into force); or
- (b) if subsection (1)(b)(ii) applies, 21 April 2017 (being the date on which Part 10 of the Crimes Ordinance 2014 came into force);

“**inchoate offence**”, in relation to offence A or offence B, means any of the following offences —

- (a) inciting the commission of offence A or offence B;
- (b) encouraging the commission of offence A or offence B;
- (c) aiding, abetting or assisting the commission of offence A or offence B;
- (d) conspiracy to commit offence A or offence B;
- (e) attempting to commit offence A or offence B;

“**penalty**” in relation to an offence, means the maximum penalty on conviction for the offence;

“**time of the offence**” means the time when the conduct constituting the offence occurred.

(5) In this section —

- (a) a reference to an offence (the “**substantive offence**”) includes a reference to an inchoate offence in relation to the substantive offence; and
- (b) in relation to such an inchoate offence, a reference to provision A or provision B (as the case requires) is a reference to the provision that would be provision A or provision B for the substantive offence.

*[UK Violent Crime Reduction Act 2006 s. 55]*”.

### **39. Section 295 amended (interpretation of Part)**

In section 295(1), insert in its appropriate alphabetical order —



“ **notification provision**” means a provision that imposes any of the notification requirements of this Part;”.

**40. New section 300A inserted (notification requirements: absence from notified residence)**

After section 300, insert —

**“300A. Notification requirements: absence from notified residence**

(1) This section applies to a relevant offender if the last address they notified under a notification provision was a home address within paragraph (a) of the definition of that term in section 295(1).

(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (the “**relevant period**”), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is —

- (a) the date on which the relevant offender will leave that home address;
- (b) such details as the relevant offender holds about —
  - (i) their travel arrangements during the relevant period;
  - (ii) their accommodation arrangements during that period; and
  - (iii) their date of return to that home address.

(4) If —

- (a) a relevant offender has given a notification under subsection (2); and
- (b) before the relevant offender leaves that address, any of that information (including the intended departure date) becomes inaccurate or incomplete, the relevant offender must give a further notification under subsection (2).

(5) If a relevant offender —

- (a) has notified a date of return to their home address; but
- (b) returns to that address on a different date,

the relevant offender must notify the date of their actual return to the police within 3 days of returning.

(6) Nothing in this section requires a relevant offender to notify any information they are required to notify under section 301.

(7) In calculating the relevant period for the purposes of this section the following periods are to be disregarded —

- (a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 298(5)(g) that they have notified to the police under section 298 or 300;
- (b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if their stay at those premises would give rise to a requirement to notify the address of those premises under section 299(1)(c).

(8) In this section —

“**travel arrangements**” include, in particular, details of the means of transport to be used and the dates of travel;

“**accommodation arrangements**” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

*[UK Sexual Offences Act 2003 s. 85A]*”.

#### **41. Section 305 amended (offences relating to notification)**

(1) Replace section 305(1)(a) with —

“ (a) fails, without reasonable excuse, to comply with a notification provision or 302(3) or 303(2)(b); or”.

(2) In section 305(1)(b), replace “section 298(1), 299(1) or 300(1) or any requirement imposed by or under section 301” with “a notification provision”.

*[UK Sexual Offences Act 2003 s. 91]*

#### **42. New sections 305A and 305B inserted**

After section 305, insert—

##### **“305A. Driving passengers for hire or reward prohibited**

(1) A person who is subject to the notification requirements of this Part commits an offence if they drive a motor vehicle carrying a passenger for hire or reward or they agree or offer to do so.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) However, this section does not apply to a person who is subject to the notification requirements of this Part only because of section 303.

(3) A motor vehicle is taken to be carrying a passenger for hire or reward if any payment is made, or is payable, in relation to the carriage of a passenger in the vehicle.

(4) For the purposes of subsection (3) the following are immaterial —

- (a) who the payment is made by or to;
- (b) whether the payment is made in money or anything else of value;
- (c) whether the payment is made in respect of other matters as well as the carriage of the passenger;
- (d) whether the payment is made as a direct payment of a fare or as an indirect payment (for example, as a membership subscription);
- (e) whether the payment is made in respect of the carriage of a particular person or a class of persons (for example, anyone who is at a specified place);
- (f) whether any passenger is in fact carried (provided that the payment entitles a person to be carried).

(5) In this section, “**motor vehicle**” has the same meaning as in section 3 of the Road Traffic Ordinance 1948.

### **305B. Supervising provisional driver for payment prohibited**

(1) A person who is subject to the notification requirements of this Part commits an offence if, for payment or reward, they supervise the driving of a provisional driver or they agree or offer to do so.

Penalty: Imprisonment for 2 years or a fine, or both.

(2) However, this section does not apply to a person who is subject to the notification requirements of this Part only because of section 303.

(3) Supervision of a provisional driver is taken to be for payment or reward if any payment is made, or is payable, in relation to the supervision.

(4) For the purposes of subsection (3) the following are immaterial —

- (a) who the payment is made by or to;
- (b) whether the payment is made in money or anything else of value;
- (c) whether the payment is made in respect of other matters as well as the supervision;
- (d) whether the payment is made as a direct payment (for example, payment per lesson) or as an indirect payment (for example, paying for a training course which includes being taught to drive certain vehicles);
- (e) whether the payment is made in respect of the supervision of a particular person or a class of person;
- (f) whether any person is in fact supervised (provided that the payment entitles a person to be supervised).

(5) In this section —

“**motor vehicle**” has the same meaning as in section 3 of the Road Traffic Ordinance 1948;

“**provisional driver**” means the holder of a provisional driving licence within the meaning of the Road Traffic (Provisional) Regulations Order 1986.”.

### **43. New sections 314A to 314D and cross headings inserted**

After section 314, insert —

*“Offences outside the Falkland Islands: notification requirements*

#### **314A. Offences outside Falkland Islands: notification requirements**

(1) If this section applies to a person, the person is subject to the notification requirements of this Part for the notification period set out in section 297. This is subject to sections 314B (young offenders: parental notices) and 314C (modifications of notification requirements).

(2) This section applies to a person if they have been given a notice under subsection (3) and that notice has not been cancelled.

(3) A police officer may give a notice to a person (“**P**”) if —

- (a) the conditions in subsections (6), (7) and (8) are met in respect of P; and

- (b) a police officer of at least the rank of inspector has authorised the giving of the notice to P.
- (4) A notice given to P under subsection (3) must be given to P in person and must contain details of —
- (a) the notifications that P is required to give under this Part;
  - (b) when those notifications must be given; and
  - (c) where or how those notifications may be given.
- (5) A notice given under subsection (3) may be cancelled by a police officer giving notice in writing to P in person but such a cancellation must be authorised by an officer of at least the rank of inspector.
- (6) The first condition is that under the law in force in a country outside the Falkland Islands —
- (a) P has been convicted of a relevant offence (whether or not P has been punished for it);
  - (b) a court exercising jurisdiction under that law has made, in respect of a relevant offence, a finding equivalent to a finding that P is not guilty by reason of insanity;
  - (c) a court exercising jurisdiction under that law has made, in respect of a relevant offence, a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence; or
  - (d) P has been cautioned in respect of a relevant offence.
- (7) The second condition is that —
- (a) the first condition is met because of a conviction, finding or caution which occurred on or after 10 June 2005; or
  - (b) the first condition is met because of a conviction or finding which occurred before that date, but P was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it.
- (8) The third condition is that the period set out in section 297 (as it would have effect as modified by section 314C(2) and (3) if this section applied to P) in respect of the relevant offence has not expired.
- (9) In this section, “**relevant offence**” means an act which —
- (a) constituted an offence under the law in force in the country outside the Falkland Islands; and
  - (b) would have constituted an offence listed in Schedule 3 if it had been done in the Falkland Islands.
- (10) For the purposes of subsection (9)(a), an act punishable under the law in force in that place constitutes an offence under that law however it is described in that law.

*[UK Sexual Offences Act 2003 s. 96ZA]*

### **314B. Young offenders: parental notices**

- (1) If the person (“**P**”) given a notice under section 314A is under 18, a police officer may also give a notice (a “**parental notice**”) to a person (the “**parent**”) with parental responsibility for P.
- (2) Section 314A(3)(b), (4), and (5) apply to the giving and cancellation of a parental notice as if references to P were references to the parent.
- (3) If a parental notice has been given to the parent and has not been cancelled or ceased to have effect —
  - (a) the obligations that would (apart from this section) be imposed on P by section 314A are to be treated instead as obligations on the parent; and
  - (b) the parent must ensure that P attends with them at the police station when a notification under this Part is being given.
- (4) The parental notice ceases to have effect when P reaches the age of 18.
- (5) If a parental notice is to be given, section 314A(4)(a) has effect in relation to the notice given to P as if the reference to the notifications that P is required to give under this Part were a reference to —
  - (a) the notifications that the parent is required to give under this Part; and
  - (b) the notifications (if any) that P is required to give under this Part once the parental notice ceases to have effect.

*[UK Sexual Offences Act 2003 s. 96ZB]*

### **314C. Modifications of notification requirements**

- (1) The application of this Part to a person (“**P**”) to whom section 314A applies in respect of a conviction, finding or caution is subject to the modifications set out in this section.
- (2) References to the “**relevant date**” —
  - (a) if P is within section 314A(6)(a), are to the date of the conviction;
  - (b) if P is within section 314A(6)(b) or (c), are to the date of the finding; and
  - (c) if P is within section 314A(6)(d), are to the date of the caution.
- (3) In section 297 —
  - (a) references, except in the Table, to a person (or relevant offender) within any provision of section 296 are to be read as references to P;
  - (b) references to an order of any description are to be read as references to any corresponding disposal made in relation to P in respect of an offence or finding by reference to which a notice has been given to P under section 314A; and
  - (c) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences (as defined in section 314A(9)).
- (4) Section 298 has effect as if, after subsection (1), there were inserted —
  - “(1A) In the case of a relevant offender who is subject to the notification requirements of this Part by virtue of a notice being given to the relevant offender under section 314A, the reference in subsection (1) to the period of 3 days beginning with the

relevant date (or if later the commencement of this Part) is to be read as a reference to the period of 3 days beginning with the day on which the notice was given to the relevant offender.”.

- (5) Section 298(4) has effect as if —
- (a) for the words “If a notification order is made” there were substituted “If a relevant offender is subject to the notification requirements of this Part by virtue of a notice given under section 314A”; and
  - (b) in paragraph (a) for the words “the order was made” there were substituted “the notice was given to the relevant offender”.

*[UK Sexual Offences Act 2003 s. 96ZC]*

### **314D. Appeal against the issue of a notice under section 314A or 314B**

- (1) A person (“**P**”) may appeal to the Magistrate’s Court against a decision to give them a notice under section 314A.
- (2) The grounds for bringing an appeal under subsection (1) include —
- (a) that one or more of the conditions for the giving of the notice were not met in respect of P at the time the notice was given; and
  - (b) that the conviction, finding or caution by reason of which P was given the notice falls within subsection (3).
- (3) A conviction, finding or caution falls within this subsection if —
- (a) any investigations or proceedings leading to it were conducted in a way which contravened any rights under Chapter 1 of the Constitution or Convention rights (within the meaning of section 1 of the Human Rights Act 1998) which P would have had if those investigations or proceedings had taken place in the Falkland Islands; and
  - (b) that contravention was such that the conviction, finding or caution cannot be safely relied on for the purposes of meeting the condition in section 314A(6).
- (4) A person (the “**parent**”) may appeal to the Magistrate’s Court against a decision to give them a parental notice under section 314B.
- (5) The grounds for bringing an appeal under subsection (4) include —
- (a) that one or more of the conditions for the giving of a notice under section 314A to the person (“**P**”) for whom the parent has parental responsibility were not met in respect of P at the time the notice under section 314A was given;
  - (b) that the conviction, finding or caution by reason of which P was given a notice under section 314A falls within subsection (3); and
  - (c) that one or more of the requirements for giving the parent a parental notice under section 314B were not met at the time the parental notice was given.
- (6) On an appeal under subsection (1) or (4) the Magistrate’s Court may cancel or confirm the notice which is the subject of the appeal.

*[UK Sexual Offences Act 2003 s. 96ZD]*

*Entry and examination of home address”.*

#### **44. Section 321 amended (sexual harm prevention orders: applications and grounds – Schedules 3 and 4)**

(1) Replace section 321(2)(a) with —

“(a) the defendant has been convicted of an offence listed in Schedule 3 or 4; and”.

(2) In section 321(2)(b), replace “is satisfied”, insert “dealing with the defendant is satisfied on the balance of probabilities”.

(3) In section 321(3)(b), after “satisfied”, insert “on the balance of probabilities”.

*[UK Sexual Offences Act 2003 s. 103A]*

#### **45. Section 323 replaced (effect of a SHPO)**

Replace section 323 with —

##### **“323. Effect of a SHPO**

A SHPO —

(a) prohibits the defendant from doing the things specified in the order as prohibitions; and

(b) requires the defendant to do the things specified in the order as requirements, for the period specified in the order.

*[UK Sexual Offences Act 2003 s. 103C]*

##### **323A. SHPO: matters to be specified**

(1) A SHPO must specify —

(a) the prohibitions and requirements imposed on the defendant by the order; and

(b) for each prohibition or requirement, the period for which it is to have effect (the “**specified period**”).

(2) A specified period must be —

(a) a fixed period of not less than 5 years; or

(b) an indefinite period (so that the prohibition or requirement has effect until further order).

This is subject to sections 324(1) (prohibition on foreign travel) and 326A(7) (SHPOs and interim SHPOs: electronic monitoring requirements).

(3) A SHPO —

(a) may specify fixed periods for some of its prohibitions or requirements and an indefinite period for others;

(b) may specify different periods for different prohibitions or requirements.

(4) The only prohibitions and requirements that may be included in a SHPO are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from sexual harm from the defendant; or

- (b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from sexual harm from the defendant outside the Falkland Islands.
- (5) A SHPO order may require the defendant to submit to electronic monitoring of the defendant’s compliance with the prohibitions and requirements imposed by the order (see section 326A for further provision about such a requirement).
- (6) The prohibitions or requirements which are imposed on the defendant by a SHPO must, so far as practicable, be such as to avoid —
- (a) any conflict with the defendant’s religious beliefs;
  - (b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and
  - (c) any conflict with any other court order or injunction to which the defendant may be subject (but see subsection (7)).
- (7) If a court makes a SHPO in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

*[UK Sexual Offences Act 2003 s. 103C]*

**323B. SHPO: requirements included in order etc.**

- (1) A SHPO that imposes a requirement to do something on a defendant must specify a person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation.
- (2) Before including such a requirement in a SHPO, the court must receive evidence about its suitability and enforceability from —
- (a) if an individual is to be specified under subsection (1), that individual; or
  - (b) if an organisation is to be specified under subsection (1), an individual representing the organisation.
- (3) Subsections (1) and (2) do not apply in relation to an electronic monitoring requirement (see instead, section 326A).
- (4) It is the duty of a person specified under subsection (1) —
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (“**relevant requirements**”);
  - (b) to promote the defendant’s compliance with the relevant requirements; and
  - (c) if the person considers that —
    - (i) the defendant has complied with all the relevant requirements; or
    - (ii) the defendant has failed to comply with a relevant requirement, to inform the Chief Police Officer.
- (5) A defendant subject to a requirement imposed by a SHPO must —
- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time; and



(b) notify that person of any change of the defendant's home address.

These obligations have effect as requirements of the order.

*[UK Sexual Offences Act 2003 s. 103CA]".*

#### **46. Sections 325 and 326 replaced and new section 326A inserted**

Replace sections 325 and 326 with —

##### **“325. SHPOs: Variation, renewal and discharge**

(1) The defendant or the Attorney General may apply to the Magistrate's Court for an order varying, renewing or discharging a SHPO.

(2) Subject to subsections (3) to (5), on the application the court, after hearing the person making the application and (if that person wishes to be heard) the other person mentioned in subsection (1), may make any order varying, renewing or discharging the SHPO that the court considers appropriate.

(3) Sections 323A, 323B, 324 and 326A apply in relation to a renewed or varied order and any new or varied prohibitions or requirements.

(4) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and the Attorney General.

(5) Subsection (4) does not apply to an order containing a prohibition on foreign travel and no other prohibitions or requirements.

*[UK Sexual Offences Act 2003 s. 103E]*

##### **326. Interim SHPOs**

(1) This section applies if an application under section 321(4) (the “**main application**”) has not been determined.

(2) The Attorney General may apply to the court for an interim SHPO.

(3) The court may, if it considers it just to do so, make an interim SHPO —

(a) prohibiting the defendant from doing the things specified in the order as prohibitions; and

(b) requiring the defendant to do the things specified in the order as requirements.

(4) The prohibitions or requirements which are imposed on the defendant by an interim SHPO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant's religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject.

(5) An interim SHPO may require the defendant to submit to electronic monitoring of the defendant's compliance with the prohibitions and requirements imposed by the order (see section 326A for further provision about such a requirement).

- (6) An interim SHPO —
- (a) has effect only for a fixed period, specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (7) The Attorney General or defendant may apply to the court for an interim SHPO to be varied, renewed, or discharged.

*[UK Sexual Offences Act 2003 s. 103F]*

### **326A. SHPOs and interim SHPOs: Electronic monitoring requirements**

- (1) Subsections (2) and (3) apply for the purpose of determining whether a court may impose, under section 323A(5) or section 326(5), an electronic monitoring requirement on the defendant in a sexual harm prevention order or interim sexual harm prevention order.
- (2) If there is a person (other than the defendant) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person's consent.
- (3) The court may impose the requirement only if —
- (a) electronic monitoring arrangements are available; and
  - (b) it is satisfied that the necessary provision can be made under the arrangements currently available.
- (4) A SHPO or interim SHPO that includes an electronic monitoring requirement must specify the person (the “responsible person”) who is to be responsible for the monitoring.
- (5) Where a SHPO or interim SHPO imposes an electronic monitoring requirement on the defendant, the defendant must (among other things) —
- (a) submit, as required from time to time by the responsible person, to —
    - (i) being fitted with, or the installation of, any necessary apparatus, and
    - (ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,
  - (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and
  - (c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purpose of the monitoring.

These obligations have effect as requirements of the sexual harm prevention order or interim sexual harm prevention order under which the electronic monitoring requirement is imposed.

- (6) A SHPO or interim SHPO must not provide for an electronic monitoring requirement to have effect for more than 12 months.
- (7) Subsection (6) does not prevent an electronic monitoring requirement from being extended for a further period (of no more than 12 months each time) under section 325.

*[UK Sexual Offences Act 2003 s. 103FA]”.*

**47. Section 330 replaced (SHPOs and interim SHPOs: Guidance)**

Replace section 330 with —

**“330. SHPOs and interim SHPOs: Guidance**

The Attorney General may issue guidance for police officers in relation to the exercise of their functions under sections 321 to 331.”.

**48. Section 332 amended (sexual risk orders: applications, grounds and effect)**

(1) In section 332(4), after “satisfied”, insert “on the balance of probabilities”.

(2) Replace section 332(5) to (8) with —

“(5) A SRO —

(a) prohibits the defendant from doing the things specified in the order as prohibitions; and

(b) requires the defendant to do the things specified in the order as requirements, for the period specified in the order.

(6) A SRO must specify —

(a) the prohibitions and requirements imposed on the defendant by the order; and

(b) for each prohibition or requirement, the period for which it is to have effect (the “**specified period**”).

(7) A specified period must be —

(a) a fixed period of not less than 2 years; or

(b) an indefinite period (so that the prohibition or requirement has effect until further order).

This is subject to sections 333(1) (SROs: prohibition on foreign travel) and 335A(8) (SROs and interim SROs: electronic monitoring requirements).

(8) A SRO —

(a) may specify fixed periods for some of its prohibitions or requirements and an indefinite period for others;

(b) may specify different periods for different prohibitions or requirements.

(9) The only prohibitions and requirements that may be imposed are those necessary for the purpose of —

(a) protecting the public or any particular members of the public from harm from the defendant; or

(b) protecting youths or vulnerable adults generally, or any particular youths or vulnerable adults, from harm from the defendant outside the Falkland Islands.

(10) A SRO may require the defendant to submit to electronic monitoring of the defendant’s compliance with the prohibitions and requirements imposed by the order (see section 335A for further provision about such a requirement).

(11) The prohibitions or requirements which are imposed on the defendant by a SRO must, so far as practicable, be such as to avoid —

- (a) any conflict with the defendant’s religious beliefs;
- (b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and
- (c) any conflict with any other court order or injunction to which the defendant may be subject (but see subsection (12)).

(12) If a court makes a SRO in relation to a person who is already subject to such an order, the earlier order ceases to have effect.”.

*[UK Sexual Offences Act 2003 s. 122A]*

**49. New section 332A inserted (SRO: requirements included in order etc.)**

After section 332, insert —

**“332A. SRO: Requirements included in order etc.**

(1) A SRO that imposes a requirement to do something on a defendant must specify a person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation.

(2) Before including such a requirement in a SRO, the court must receive evidence about its suitability and enforceability from —

- (a) if an individual is to be specified under subsection (1), that individual; or
- (b) if an organisation is to be specified under subsection (1), an individual representing the organisation.

(3) Subsections (1) and (2) do not apply in relation to an electronic monitoring requirement (see instead, section 335A).

(4) It is the duty of a person specified under subsection (1) —

- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (“**relevant requirements**”);
- (b) to promote the defendant’s compliance with the relevant requirements; and
- (c) if the person considers that —
  - (i) the defendant has complied with all the relevant requirements; or
  - (ii) the defendant has failed to comply with a relevant requirement, to inform the Chief Police Officer.

(5) A defendant subject to a requirement imposed by a SRO must —

- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time; and
- (b) notify that person of any change of the defendant’s home address.

These obligations have effect as requirements of the order.

*[UK Sexual Offences Act 2003 s. 122BA]*”.

## **50. Section 334 amended (SRO: variation, renewal and discharge)**

Replace section 334(3) and (4) with —

“(3) Sections 332(6) to (11), 332A, 330 and 335A apply in relation to a renewed or varied order and any new or varied prohibitions or requirements.”.

*[UK Sexual Offences Act 2003 s. 122D]*

## **51. Section 335 amended (interim SROs)**

Replace section 335(2) and (3) with —

“(2) The Attorney General may apply to the court for an interim SRO.

(3) The court may, if it considers it just to do so, make an interim SRO —

(a) prohibiting the defendant from doing the things specified in the order as prohibitions; and

(b) requiring the defendant to do the things specified in the order as requirements.

(3A) The prohibitions or requirements which are imposed on the defendant by an interim SRO must, so far as practicable, be such as to avoid —

(a) any conflict with the defendant’s religious beliefs;

(b) any interference with the times, if any, at which the defendant normally works or attends any educational establishment; and

(c) any conflict with any other court order or injunction to which the defendant may be subject.

(3B) An interim SRO may require the defendant to submit to electronic monitoring of the defendant’s compliance with the prohibitions and requirements imposed by the order (see section 335A for further provision about such a requirement).”.

*[UK Sexual Offences Act 2003 s. 122E]*

## **52. New section 335A inserted (SROs and interim SROs: electronic monitoring requirements)**

After section 335, insert —

### **“335A. SROs and interim SROs: Electronic monitoring requirements**

(1) Subsections (2) and (3) apply for the purpose of determining whether a court may impose, under section 332(10) or section 335(3B), an electronic monitoring requirement on the defendant in a SRO or interim SRO.

(2) If there is a person (other than the defendant) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person’s consent.

(3) The court may impose the requirement only if —

(a) electronic monitoring arrangements are available; and

- (b) it is satisfied that the necessary provision can be made under the arrangements currently available.
- (4) A SRO or interim SRO that includes an electronic monitoring requirement must specify the person (the “responsible person”) who is to be responsible for the monitoring.
- (5) Where a SRO or interim SRO imposes an electronic monitoring requirement on the defendant, the defendant must (among other things) —
  - (a) submit, as required from time to time by the responsible person, to —
    - (i) being fitted with, or the installation of, any necessary apparatus; and
    - (ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring;
  - (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring; and
  - (c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purpose of the monitoring.

These obligations have effect as requirements of the SRO or interim SRO under which the electronic monitoring requirement is imposed.

(6) A SRO or interim SRO must not provide for an electronic monitoring requirement to have effect for more than 12 months.

(7) Subsection (6) does not prevent an electronic monitoring requirement from being extended for a further period (of no more than 12 months each time) under section 334.

*[UK Sexual Offences Act 2003 s. 103FA]”.*

### **53. Section 340 replaced (SROs and interim SROs: guidance)**

Replace section 340 with —

#### **“340. SHPOs and interim SROs: Guidance**

The Attorney General may issue guidance for police officers in relation to the exercise of their functions under sections 332 to 341.”.

### **54. Part 22 replaced (hate crimes)**

Replace Part 22 with —

#### **“PART 22 - HATE CRIMES**

*[UK Hate Crime and Public Order (Scotland) Act 2021, Public Order Act 1986, Racial and Religious Hatred Act 2006, Sentencing Act 2020, Hate Crime Law: Law Commission Final Report 2021 No. 402]*

#### **526. Interpretation for Part**

(1) In this Part —

“**aggravated by hostility**” has the meaning set out in section 536;

“**behaviour**” means behaviour of any kind, including doing something, saying something, or communicating information or material of any kind;

**“communicate”** in relation to information or material, means to disseminate it or make it available in any way, including by —

- (a) displaying, publishing or distributing it; or
- (b) giving, sending, showing or playing it;

**“disability”** includes —

- (a) a physical or mental impairment of any kind; and
- (b) a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature;

**“material”** means anything that is capable of being looked at, read, watched, or listened to (either directly in its current form, or after conversion from another form);

**“protected characteristic”** means each of the following —

- (a) race;
- (b) disability;
- (c) religion;
- (d) sexual orientation;
- (e) transgender identity; and
- (f) variations in sex characteristics;

**“race”** includes colour, nationality (including citizenship), or ethnic or national origins;

**“religion”** includes, in the case of a social or cultural group, perceived religious affiliation; also see subsection (2);

**“sexual orientation”** means sexual orientation towards —

- (a) persons of the same sex;
- (b) persons of a different sex; or
- (c) both persons of the same sex and persons of a different sex;

**“transgender identity”**, see subsection (3);

**“variations in sex characteristics”**, see subsection (4).

(2) A group is defined by reference to religion if it is defined by reference to —

- (a) religious belief or lack of religious belief;
- (b) membership of, or adherence to, a church or religious organisation;
- (c) support for the culture or traditions of a church or religious organisation; or
- (d) participation in activities associated with the culture or traditions of a church or religious organisation.

(3) A person is a member of a group defined by reference to transgender identity if the person is —

- (a) a female-to-male transgender person;
- (b) a male-to-female transgender person;

- (c) a non-binary person;
  - (d) a person who cross-dresses, and references to transgender identity are to be construed accordingly.
- (4) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither —
- (a) those typically associated with males, nor
  - (b) those typically associated with females, and references to variations in sex characteristics are to be construed accordingly.

*Offences of stirring up hatred*

**527. Intent to stir up hatred**

A person commits an offence if they engage in behaviour with intent to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.

Penalty: Imprisonment for 7 years or a fine, or both.

**528. Stirring up hatred**

- (1) A person commits an offence if —
- (a) the person engages in behaviour that —
    - (i) is threatening or abusive; and
    - (ii) is likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic; and
  - (b) the person knew, or ought to have known, that the behaviour —
    - (i) was threatening or abusive; and
    - (ii) was likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.

Penalty: Imprisonment for 7 years or a fine, or both.

- (2) Whether —
- (a) behaviour is of a kind referred to in subsection (1)(a); and
  - (b) a person knew or ought to know of the matters referred to in subsection (1)(b),
- is to be determined having regard to all of the circumstances in which the behaviour occurs.
- (3) If the behaviour is part of the public performance of a dramatic, literary, artistic or journalistic work, that includes having regard to the work as a whole.

**529. Possession of material**

A person commits an offence if the person —

- (a) has possession of material that —
  - (i) is threatening or abusive; and



- (ii) is likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic; and
- (b) has possession of the material with the intention that it be used (by them or another person) to stir up such hatred.

Penalty: Imprisonment for 7 years or a fine, or both.

### **530. Protection of freedom of expression**

- (1) This section applies for the purpose of determining whether behaviour or material —
  - (a) is threatening or abusive; or
  - (b) is intended or likely to stir up hatred against a group of persons based on the group being defined by reference to a protected characteristic.
- (2) Particular regard must be had to the importance of the right to freedom of expression protected by section 13 of the Constitution.
- (3) To avoid doubt, behaviour or material is not to be taken to be threatening or abusive, or intended or likely to stir up such hatred, solely because it is or includes —
  - (a) discussion or the expression of views or opinions relating to any of the following —
    - (i) race;
    - (ii) cultural beliefs or practices (whether a particular belief or practice, the beliefs or practices of a particular culture, or cultural beliefs or practices generally);
    - (iii) the position of not holding cultural beliefs (whether a particular belief, the beliefs of a particular culture, or cultural beliefs generally);
    - (iv) a country, its political system or its government;
    - (v) immigration, citizenship or asylum;
    - (vi) disability;
    - (vii) religion (whether a particular religion, all religions, or religion generally);
    - (viii) religious beliefs or practices (whether a particular religious belief or practice, the beliefs and practices of a particular religion, or religious beliefs or practices generally);
    - (ix) the position of not holding religious beliefs (whether a particular religious belief or religious beliefs generally);
    - (x) sexual orientation;
    - (xi) transgender identity;
    - (xii) variations in sex characteristics;
    - (xiii) sexual behaviour or practices;
    - (xiv) marriage which concerns the sex of the parties to marriage;
    - (xv) the view that sex is binary and immutable and the use of language which expresses this;

- (b) proselytising or promoting religious, cultural, or sexual beliefs, practices, or behaviours; or
- (c) urging persons to cease holding, practising or engaging in, or to change, their religious, cultural, or sexual beliefs, practices or behaviours.

### **531. Defence if behaviour is in private conversation**

- (1) It is a defence to a charge of an offence under section 527 or 528 for the defendant to show that they engaged in the behaviour as part of a private conversation.
- (2) It is a defence to a charge of an offence under section 529 for the defendant to show that their intention (referred to in section 529(b)) was that the material be used only as part of a private conversation.
- (3) A conversation is “**private**” if —
  - (a) the defendant intends the conversation to only be seen or heard by the parties to the conversation; and
  - (b) it occurs in circumstances in which it is reasonable for the defendant to expect that it will only be seen or heard by those parties.

### **532. Defence for fair journalistic reporting**

It is a defence to a charge of an offence under section 528 for the defendant to show that —

- (a) they engaged in their behaviour for the purpose of journalistic reporting about behaviour engaged in by another person; and
- (b) the reporting —
  - (i) fairly and accurately conveys the other person’s behaviour; and
  - (ii) if it reports on the other person’s intention, fairly and accurately conveys that intention.

### **533. Protection for performers**

- (1) This section applies if a person (“**P**”) commits an offence under section 527, 528, or 529 in respect of behaviour that is part of the public performance of a dramatic, literary, artistic or journalistic work.
- (2) A person (other than P) who is a performer in the work is not to be treated as a party to the offence committed by P, or as having committed a related inchoate offence, solely by reason of being such a performer.
- (3) In this section, “**related inchoate offence**”, means any of the following —
  - (a) encouraging the commission of an offence under section 527, 528 or 529;
  - (b) aiding, abetting or assisting the commission of an offence under section 527, 528 or 529;
  - (c) conspiracy to commit an offence under section 527, 528 or 529.

### **534. Defence of reporting proceedings in Legislative Assembly or court**

- (1) It is a defence to a charge of an offence under sections 527 to 529 for the defendant to show that —

- (a) they engaged in their behaviour for the purpose of reporting on proceedings of the Legislative Assembly; and
  - (b) the report is a fair and accurate report of those proceedings.
- (2) It is a defence to a charge of an offence under sections 527 to 529 for the defendant to show that —
- (a) they engaged in their behaviour for the purpose of reporting on public proceedings in a Falkland Islands court or tribunal exercising judicial authority;
  - (b) the report is a fair and accurate report of those proceedings; and
  - (c) the report is made —
    - (i) contemporaneously with the proceedings; or
    - (ii) if contemporaneous reporting is not lawful or reasonably practicable, as soon as reporting is lawful and reasonably practicable.

### **535. Commencing proceedings**

No proceedings for an offence under sections 527 to 529 may be commenced except by, or with the consent of, the Attorney General.

#### *Aggravation of offences by hostility*

### **536. Aggravation of offences by hostility**

- (1) An offence is “**aggravated by hostility**” if the offence is motivated (wholly or partly) by hostility towards a group of persons based on the group being defined by reference to a protected characteristic.
- (2) If there is a specific victim of the offence, the offence is also aggravated by hostility if —
- (a) at the time of committing the offence, or immediately before or afterwards, the offender demonstrates hostility towards the victim; and
  - (b) the hostility is (wholly or partly) based on the victim’s membership (or presumed membership) of a group of persons that is defined by reference to a protected characteristic.
- (3) If an offence is aggravated by hostility, section 537 applies when the offender is convicted and sentenced.
- (4) In this section —

“**membership**” of a group, includes association with members of the group;

“**presumed**” means presumed by the offender.

### **537. Sentencing when offence aggravated by hostility**

- (1) This section applies if —
- (a) a person is convicted of an offence;
  - (b) it was alleged in the indictment, or specified in the information, that the offence was aggravated by hostility; and
  - (c) it is proved that the offence was aggravated by hostility.

- (2) The court must state on conviction —
  - (a) that the offence was aggravated by hostility; and
  - (b) which of the protected characteristics the hostility was based on.
- (3) When sentencing the offender, the court must —
  - (a) take the aggravation into account; and
  - (b) increase the sentence as a result of the aggravation, unless there are exceptional circumstances justifying not doing so.
- (4) The court must state —
  - (a) if the sentence is increased as a result of the aggravation, the extent of the increase and reasons for it; or
  - (b) if the sentence is not increased, the exceptional circumstances that justify that.”.

**55. Schedule 3 amended (sexual offences for purposes of Part 11)**

(1) In Schedule 3, under the heading “**Offences under Part 10 of this Ordinance**”, in item 8, after “section 217” insert “or 217A”.

(2) In Schedule 3, under the heading “**Offences under Part 10 of this Ordinance**”, after item 22, insert —

“22A. An offence under section 284A (sending or giving photograph or film of genitals) if —

- (a) if the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months; or
- (b) in any other case —
  - (i) the victim was under 18; or
  - (ii) the offender, in respect of the offence or finding, is or has been —
    - (A) sentenced to a term of imprisonment;
    - (B) detained in a hospital; or
    - (C) made the subject of a community sentence of at least 12 months.

22B. An offence under section 285B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification) if —

- (a) if the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case —
  - (i) the victim was under 18; or
  - (ii) the offender, in respect of the offence or finding, is or has been —
    - (A) sentenced to a term of imprisonment;
    - (B) detained in a hospital; or
    - (C) made the subject of a community sentence of at least 12 months.”.

**56. Schedule 4 amended (other offences for the purposes of Part 11)**

In Schedule 4, insert in their appropriate numerical order —

“An offence under 153B (false communications)

An offence under 153C (threatening communications)”.

**PART 3 - AMENDMENT OF CRIMINAL PROCEDURE AND EVIDENCE  
ORDINANCE 2014**

**57. Amendment of Criminal Procedure and Evidence Ordinance 2014**

This Part amends the Criminal Procedure and Evidence Ordinance 2014.

**58. Section 53 amended (bail under section 51: supplementary)**

After section 53(3), insert —

“(4) In subsection (3), “**new evidence**” includes evidence obtained from a further examination or analysis of existing evidence which could not reasonably have been carried out before the person’s release.”.

**59. Sections 61 to 63 replaced**

Replace sections 61 to 63 with —

**“61. Duties of custody officer before charge**

(1) If a person is arrested for an offence —

- (a) without a warrant; or
- (b) under a warrant not endorsed for bail,

the custody officer at the place of lawful custody where the person is detained after arrest must deal with the person in accordance with this section.

(2) If the custody officer considers that there is sufficient evidence to enable the Attorney General to make a charging decision under section 62, the custody officer —

- (a) may detain the person at a place of lawful custody pending the Attorney General’s decision (subject to section 69);
- (b) may release the person on bail pending the Attorney General’s decision; or
- (c) otherwise must release the person without bail.

(3) If the custody officer considers that there is not sufficient evidence to enable the Attorney General to make a charging decision under section 62, the custody officer —

- (a) may, if satisfied that detaining the person is necessary to secure or preserve evidence relating to the offence or to obtain such evidence by questioning the person, detain the person at a place of lawful custody for that purpose;

- (b) may release the person on bail pending further investigation; or
  - (c) otherwise, must release the person without bail.
- (4) If the custody officer decides to release the person but they are not in a fit state to be released, the custody officer may detain them at a place of lawful custody until they are fit to be released, notwithstanding section 69.
- (5) The custody officer —
- (a) must comply with this section as soon as practicable after the person arrives at the place of lawful custody (or, if they are arrested at that place, as soon as practicable after the arrest); and
  - (b) may detain the person while the officer complies with this section.
- (6) This section does not require the custody officer to release the person, or to release them without bail, if they can lawfully be detained or released on bail in relation to another offence or for any other reason.

#### **61A. Decision to be recorded and person informed**

- (1) The custody officer must make a written record of their decision under section 61 and the reasons for it (if the person is to be detained, also see subsection (4)).
- (2) If section 61(2) applies, the custody officer must inform the person —
- (a) that the case is being referred to the Attorney General who will decide whether they will be charged;
  - (b) that they are to be detained, released on bail, or released without bail (as the case requires) while the Attorney General makes that decision; and
  - (c) if the person is to be detained or released on bail, the reasons for the detention or bail.
- (3) If section 61(3) applies, the custody officer must inform the person —
- (a) that a decision has not yet been made about whether they will be charged; and
  - (b) that —
    - (i) if the person is to be detained under section 61(3)(a), they are being detained to secure or preserve evidence or for questioning;
    - (ii) if the person is to be released on bail under section 61(3)(b), they are being released on bail pending further investigation; or
    - (iii) if the person is to be released without bail under section 61(3)(c), they are being released without bail but that investigations may continue.
- (4) If the person is to be detained under section 61(2)(a) or (3)(a) the custody officer must, as soon as practicable after the decision to detain them is made —
- (a) inform the person as required by subsection (2) or (3); and
  - (b) at the same time and in the presence of the person, make the written record required by subsection (1).
- (5) However, the officer may defer informing the person as required by subsection (4) if the person —

- (a) is incapable of understanding what is said to them;
  - (b) is, or is likely to become, violent; or
  - (c) is in urgent need of medical attention.
- (6) In that case, the person must be informed as soon as it is practicable to do so.
- (7) If the person is to be released under section 61(2)(a), (3)(a), or (4), the custody officer must inform them as required by subsection (2) or (3) before they are released.

#### **61B. Detention for purpose of drug testing**

- (1) This section applies if —
- (a) the offence for which the person is arrested is one in relation to which a sample may be taken under section 96 (testing for Class A or Class B drugs); and
  - (b) the custody officer decides under section 61 to release the person (with or without bail).
- (2) The custody officer may detain the person to enable a sample to be taken in accordance with section 96.
- (3) If necessary for that purpose, the person may be detained for up to 24 hours after the relevant time (as defined in section 69(2)).

#### **61C. Request for decision on charge**

- (1) The officer in charge of an investigation of a person for an offence must request the Attorney General for a decision on whether the person should be charged —
- (a) if the person has been arrested and then detained or released under section 61(2), as soon as practicable after the arrest; or
  - (b) otherwise, as soon as practicable after the officer considers that there is sufficient evidence to enable the Attorney General to make their decision.
- (2) When making the request, the officer must send to the Attorney General sufficient information (in writing) about the case to enable the Attorney General to decide whether the person should be charged with an offence.
- (3) The Attorney General may issue to the Chief Police Officer written guidelines as to the information that must be provided under this section.

#### **62. Attorney General to decide on charging etc**

- (1) On receipt of a request under section 61C or 63, the Attorney General must decide whether the person should be charged with, or other enforcement action should be taken against them for, one or more offences.
- (2) Notice of the Attorney General's decision must be given to the officer in charge of the investigation. The notice must be in writing (but may initially be given orally and then confirmed in writing).
- (3) If the decision is that the person should not be charged and no other enforcement action should be taken, the custody officer —
- (a) must give the person a written notice to that effect; and
  - (b) must —

- (i) if the person is in custody, release them without bail; or
  - (ii) if the person is on bail under section 61, release them from bail.
- (4) However, the custody officer is not required to release the person, or to release them without bail, if they can lawfully be detained or released on bail in relation to another offence or for any other reason.
- (5) If the decision is that the person should be charged with one or more offences, the person must be charged —
- (a) with that offence or offences; and
  - (b) either —
    - (i) while the person is in police detention after answering to bail or otherwise; or
    - (ii) by summons on an information laid before a justice of the peace.
- (6) If the decision is that other enforcement action should be taken, that action must be taken accordingly.
- (7) However, if it turns out that taking that other action is not possible, the case must be referred back to the Attorney General for a further decision.
- (8) In this section —
- “other enforcement action”** includes —
- (a) giving a caution under Part 8;
  - (b) giving a caution, conditional caution or reprimand under any other written law;
  - (c) issuing a penalty notice under Part 8A; and
  - (d) in the case of a youth, diverting them to the Youth Diversion Scheme.

### **63. Breach of bail following release**

- (1) This section applies if a person is arrested for an offence, is released on bail under section 61, and is then arrested under section 75 for breaching that bail.
- (2) The officer in charge of the investigation of the person for the offence must request the Attorney General for a further decision on whether the person should be charged in relation to that offence.
- (3) Pending the Attorney General’s decision, the custody officer may —
- (a) detain the person at a place of lawful custody (subject to section 69);
  - (b) release the person on bail; or
  - (c) release the person without bail.
- (4) The custody officer must then comply with section 61A as if their decision under this section were a decision under section 61(2).”.

### **60. Section 64 amended (release on bail under sections 61 and 62: further provision)**

Replace section 64(4) to (6), with —



“(4) If a person released on bail under section 61 or 63 returns to a place of lawful custody to answer bail or is otherwise in police detention at such a place, the custody officer may detain them at a place of lawful custody to enable them to be dealt with in accordance with section 61 to 63 or subsection (1).

(5) If the person is not in a fit state to be so dealt with, the custody officer may detain them at a place of lawful custody to until they are fit to be dealt with, notwithstanding section 69.

(6) If a person is kept in detention under subsection (4) or (5), sections 61 to 61C do not apply in connection with the offence in relation to which the bail referred to in subsection (1) was granted.”.

#### **61. Section 67 amended (review of police detention)**

Replace section 67(7) with —

“(7) Subject to subsection (8), if the person whose detention is under review has not been charged before the time of the review, sections 61(2), (3), (4) and (6) and 61A apply in relation to the person with the following modifications —

- (a) “the person” means the person whose detention is under review;
- (b) “the custody officer” is to be read as “the reviewing officer”; and
- (c) after section 61A(5)(a), insert —  
    “(aa) asleep;”.’.

#### **62. Section 69 amended (limits on period of detention without charge)**

(1) Replace section 69(1) with —

“(1) A person must not be kept in police detention for more than 24 hours without being charged unless that is expressly permitted by this section or another provision of this Ordinance.”.

(2) In section 69(6), replace “section 70 or 71” with “another provision of this Ordinance”.

(3) After section 69(7), insert —

“(8) In subsection (7), “**new evidence**” includes evidence obtained from a further examination or analysis of existing evidence which could not reasonably have been carried out before the person’s release.”.

#### **63. Section 70 amended (authorisation of continued detention)**

After section 70(11), insert —

“(12) In subsection (11), “**new evidence**” includes evidence obtained from a further examination or analysis of existing evidence which could not reasonably have been carried out before the person’s release.”.

#### **64. Section 71 amended (warrants of further detention)**

After section 71(19), insert —

“(20) In subsection (19), “**new evidence**” includes evidence obtained from a further examination or analysis of existing evidence which could not reasonably have been carried out before the person’s release.”.

#### **65. Section 77 amended (conditions of police bail)**

Replace section 77(3) with —

“(3) If a person has been granted bail under this Part (with or without conditions), a custody officer may impose, vary, or remove any of the conditions of bail at the request of the person or a police officer or on the custody officer’s own initiative.

(3A) Any new or varied conditions may be more onerous than the previous conditions.”.

#### **66. Section 78 amended (re-arrest of persons on bail)**

(1) In the heading to section 78, delete “**of persons on bail**”.

(2) Replace section 78(1) and (2) with —

“(1) If a person is arrested for an offence and is released under this Part (whether on bail or not) without being charged, nothing in this Part or Part 9 prevents them being re-arrested without warrant for the same offence if new evidence justifying a further arrest has come to light since they were released.

(2) If they are re-arrested, this Part applies in the same way as it applies to a person arrested for an offence the first time.”.

(3) After section 78(3), insert —

“(4) In subsection (1), “**new evidence**” includes evidence obtained from a further examination or analysis of existing evidence which could not reasonably have been carried out before the person’s release.”.

#### **67. Chapter 3 heading replaced**

Replace the Chapter 3 heading with —

“**CHAPTER 3 - ALTERNATIVES TO PROSECUTION**”.

#### **68. Section 129 amended (attaching of conditions)**

(1) Replace section 129(3) with —

“(3) The conditions attached to a conditional caution —

(a) must have as their object one or more of the following —

- (i) facilitating the offender’s rehabilitation;
- (ii) ensuring that the offender makes reparation for the offence; or
- (iii) in the case of a foreign offender (as defined in section 130A), ensuring that they leave the Falkland Islands;

(b) must not be intended to punish the offender; and

(c) must be appropriate, proportionate and achievable.”.

(2) After section 129(4)(c), insert —

“(d) (subject to section 130A) a condition that the offender leave the Falkland Islands by a specified date.”.

#### **69. New section 130A inserted (foreign offender conditions)**

After section 130, insert —

##### **“130A. Foreign offender conditions**

(1) If the offender is a foreign offender, a condition may be attached to a conditional caution requiring them to leave the Falkland Islands by a specified date.

(2) If so, a condition may also be attached requiring the offender not to return to the Falkland Islands for a specified period.

(3) If a condition is attached under subsection (2), the expiry of the specified period does not, of itself, give the offender a right to return to the Falkland Islands.

(4) In this section, “**foreign offender**” means a person to who —

(a) does not have Falkland Islands status (as defined in section 22(5) of the Constitution);

(b) does not hold a permanent resident permit, work permit, or other permit issued under the Immigration Ordinance 1999 that entitles them to live in the Falkland Islands; and

(c) does not otherwise have lawful authority to live in the Falkland Islands.

*[UK Police, Crime, Sentencing and Courts Act 2022 s. 103]*’.

#### **70. Section 133 amended (consequences of failure to comply)**

(1) In section 133(2)(b), replace “as to whether the person should be charged with the offence” with “under section 62 (Attorney General to decide on charging etc)”.

(2) Replace section 133(5), with —

“(5) If a person is arrested under this section, the custody officer may detain them at a place of lawful custody —

(a) to enable them to be dealt with in accordance with this section; or

(b) if applicable, to enable the power under section 64(1) (power of custody officer to vary time for answering to police bail), to be exercised.

(5A) If the person is not in a fit state to be so dealt with, or for that power to be exercised, the custody officer may detain them until they are in a fit state.”.

#### **71. New Part 8A inserted (penalty notices)**

After section 137, insert —

##### **“PART 8A - PENALTY NOTICES**

##### **137A. Interpretation for Part**

In this Part —

“**court**”, in relation to a penalty notice for an offence, means the court in which a prosecution of the alleged offender for the offence would be commenced;

“**penalty amount**”, for an offence for which a penalty notice has been issued, means the amount set out in the notice in under section 137C(1)(b);

“**penalty notice**” means a notice issued under section 137B;

“**penalty notice offence**” means an offence under a provision of an enactment listed in Schedule 3A;

“**response date**”, in relation to a penalty notice, means the date set out in the notice under section 137C(1)(c) or any later date allowed under section 137D(3).

### **137B. Issue of penalty notice**

(1) The Attorney General may issue a penalty notice to a person in respect of a penalty notice offence if satisfied that —

- (a) there is sufficient evidence to provide a realistic prospect of conviction if the person were prosecuted for the offence; and
- (b) in the circumstances, it is in the public interest to issue a penalty notice to the person for the offence.

(2) A single penalty notice may be issued to a person for 2 or more offences.

(3) A penalty notice must be served on the alleged offender (see section 137I).

### **137C. Content of penalty notice**

(1) A penalty notice must set out the following —

- (a) details of the circumstances alleged to constitute the offence sufficient to reasonably inform the alleged offender about the offence;
- (b) the amount of the penalty payable in respect of the offence;
- (c) the date on or before which the penalty may be paid;
- (d) a summary of the effect of this Part sufficient to reasonably inform the alleged offender about —
  - (i) the effect of the penalty notice;
  - (ii) the options available to them in responding to the notice;
  - (iii) how those options may be exercised;
  - (iv) the consequences of each of those options; and
  - (v) what will happen if they do nothing.

(2) The amount specified under subsection (1)(b) —

- (a) must be determined by the Attorney General having regard to all of the circumstances of the case; and
- (b) must be not more than the lesser of —
  - (i) one third of the maximum fine that could be imposed on the alleged offender by the Summary Court or Youth Court (as the case requires) if the alleged offender were convicted of the offence; and

- (ii) £300.

**137D. Alleged offender must pay penalty or notify Attorney General**

- (1) The alleged offender may, on or before the response date —
  - (a) pay the penalty amount; or
  - (b) notify the Attorney General that they do not accept the penalty notice.
- (2) They must pay the amount or notify the Attorney General in the way set out in the penalty notice.
- (3) The Attorney General may, at the request of the alleged offender, allow them extra time to comply with this section.
- (4) A request for extra time must be made before the response date.

**137E. Effect of issue of penalty notice**

If a penalty notice has been issued, a prosecution cannot be commenced against the alleged offender for the offence unless —

- (a) the alleged offender notifies the Attorney General that they do not accept the penalty; or
- (b) the penalty notice is withdrawn under section 137F(4)(a) or 137G.

**137F. Effect of response to penalty notice**

- (1) If the alleged offender pays the penalty amount, the payment —
  - (a) discharges any criminal liability they may have in relation to the offence (unless the penalty notice is withdrawn under section 137G);
  - (b) is not an admission for the purposes of any proceedings, whether civil or criminal; and
  - (c) is not a conviction.
- (2) However, subsection (1) does not prevent the fact of the payment being disclosed in subsequent proceedings.
- (3) If the alleged offender notifies the Attorney General that they do not accept the penalty notice, they may be prosecuted for the offence in the normal way.
- (4) If the alleged offender does not pay or notify the Attorney General on or before the response date —
  - (a) the penalty notice is withdrawn automatically at the end of that day; and
  - (b) the alleged offender may be prosecuted for the offence in the normal way.

**137G. Withdrawal of penalty notice**

- (1) The Attorney General may withdraw a penalty notice at any time before the penalty amount has been paid.
- (2) The Attorney General may withdraw a penalty after the penalty amount has been paid if —

- (a) new information has come to light since the notice was issued and the Attorney General is satisfied that, had it been available at the time, the penalty notice would not have been issued; or
  - (b) after reviewing the case, the Attorney General is satisfied that —
    - (i) the decision to issue the notice was wrong; and
    - (ii) in order to maintain confidence in the criminal justice system, the alleged offender should be prosecuted for the offence.
- (3) The Attorney General must serve notice of the withdrawal on the alleged offender (see section 137I).
- (4) If the notice is withdrawn after any part of the penalty amount has been paid, that amount must be refunded.
- (5) If the penalty notice is withdrawn, the alleged offender may be prosecuted for the offence in the normal way.

#### **137H. Limitation period for prosecution**

- (1) This section applies if a penalty notice is issued for an offence and —
- (a) the alleged offender notifies the Attorney General that they do not accept the penalty notice; or
  - (b) the penalty notice is withdrawn under section 137F(4)(a) or 137G.
- (2) For the purposes of determining (under section 182) the period within which proceedings for the offence must be commenced, the period starting on the day on which the penalty notice was served on the alleged offender and ending on the response date is to be disregarded.

#### **137I. Service of notices**

- (1) A notice required under this Part to be served on an alleged offender must be served in accordance with the criminal procedure rules relating to the service of a summons in a prosecution.
- (2) The provisions of those rules relating to the date of service and proof of service apply (with any necessary modifications) to the service of the notice.”.

### **72. Section 196 repealed (public notice of outcome)**

Repeal section 196.

### **73. Section 210 amended (committal for sentence by Summary Court)**

Replace section 210(1) with —

- “(1) This section applies if a person is convicted of an offence the maximum penalty for which exceeds the maximum penalty that can be imposed by the Summary Court.
- (1A) If it appears to the Summary Court that a sentence should be imposed that is greater than it can impose, it may commit the person to the Magistrate’s Court for sentence.
- (1B) The Summary Court may require that a pre-sentence report be prepared and made available to the Magistrate’s Court to inform its sentencing decision.”.

#### **74. Section 267 amended (non-appearance of prosecutor)**

(1) Replace section 267(1) with —

“(1) This section applies if, at the time and place appointed for the trial or adjourned trial of an information —

- (a) the defendant appears; and
- (b) the prosecutor does not appear.

(1A) The court must make reasonable enquiries as to the reason for the prosecutor’s failure to appear.

(1B) The court may then —

- (a) adjourn the trial;
- (b) dismiss the information; or
- (c) if evidence has been received on a previous occasion, proceed in the absence of the prosecutor.”.

(2) In section 267(2), delete “, instead of dismissing the information or proceeding in the absence of the prosecutor,”.

#### **75. Section 268 amended (non-appearance of defendant: general provisions)**

Replace section 268(1) and (2) with —

“(1) This section applies if, at the time and place appointed for the trial or adjourned trial of an information —

- (a) the prosecutor appears; and
- (b) the defendant does not appear.

(1A) If the defendant —

- (a) is 18 or older, the court must proceed in the absence of the defendant; or
- (b) is under 18, the court may proceed in the absence of the defendant.

(2) However, the court must not proceed in the absence of the defendant if it considers that —

- (a) there is an acceptable reason for the defendant’s failure to appear; or
- (b) doing so would be contrary to the interests of justice.”.

#### **76. New sections 339A to 339H and cross-heading inserted**

After the Part 19 heading, insert —

*“Standard and burden of proof*

##### **339A. Legal burden of proof**

The legal burden, in relation to a matter, is the burden of proving the existence of the matter.

*[NT Aust. Criminal Code Act 1983 s. 43BQ]*

##### **339B. Legal burden of proof: prosecution**

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof.

*[NT Aust. Criminal Code Act 1983 s. 43BR]*

### **339C. Standard of proof: prosecution**

A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

*[NT Aust. Criminal Code Act 1983 s. 43BS]*

### **339D. Evidential burden of proof**

The evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

*[NT Aust. Criminal Code Act 1983 s. 43BT]*

### **339E. Evidential burden of proof: defence**

(1) Subject to section 339F, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence (however expressed and whether or not it accompanies the description of the offence) bears an evidential burden in relation to the matter.

(3) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(4) The question whether an evidential burden has been discharged is a question of law.

*[NT Aust. Criminal Code Act 1983 s. 43BU]*

### **339F. Legal burden of proof: defence**

A burden of proof that a law imposes on the defendant is a legal burden only if the law expressly —

(a) specifies that the burden of proof in relation to the matter in question is a legal burden; or

(b) creates a presumption that the matter exists unless the contrary is proved.

*[NT Aust. Criminal Code Act 1983 s. 43BV]*

### **339G. Standard of proof: defence**

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

*[NT Aust. Criminal Code Act 1983 s. 43BV]*

### **339H. Express provision in other laws**

Sections 339A to 339G are subject to any written law of the Falkland Islands or UK enactment that applies in the Falkland Islands that provides (expressly or by necessary implication) for a different burden or standard of proof in relation to a matter.

*[NT Aust. Criminal Code Act 1983 s. 43BW]".*



## 77. Section 342 repealed (onus of proving exceptions, etc.)

Repeal section 342.

## 78. Section 436 amended (evidence given in private)

Replace section 436(3) with —

“(3) If a special measures direction provides for representatives of news gathering or reporting organisations to be excluded, it must allow one such representative, named in the direction, to remain in the court.

(3A) The named person must —

- (a) be a representative of a news gathering or reporting organisation; and
- (b) have been nominated for the purpose by their organisation (unless it appears to the court that no such nomination has been made).”.

## 79. Section 465 amended (restrictions on reporting of identity of victims in certain proceedings)

(1) After section 465(1)(a), insert —

“(aa) where an allegation is made that a female genital mutilation offence has been committed against a person;”.

(2) After section 465(1)(b), insert —

“(ba) where an allegation is made that an offence involving behaviour that amounts to female genital mutilation of a person has been committed;”.

(3) After section 465(1)(c), insert —

“(ca) where a person is accused of a female genital mutilation offence;”.

(4) After section 465(1)(d), insert —

“(da) where a person is accused of an offence involving behaviour that amounts to female genital mutilation of a person;”.

(5) After section 465(1)(e), insert —

“(f) in proceedings relating to an FGM protection order under sections 89C to 89F of the Crimes Ordinance 2014.”.

(6) In section 465(3) —

- (a) in paragraph (a), replace “subsection (1)(a) or (b)” with “subsection (1)(a) to (ba)”; and
- (b) in paragraph (b), replace “subsection (1)(c) or (d)” with “subsection (1)(c) to (da)”.

(7) After section 465(5), insert —

“(6) In this section, “**female genital mutilation offence**” means an offence under section 88, 89 or 89A of the Crimes Ordinance 2014.”.

*[UK Female Genital Mutilation Act 2003 s 4A]*

**80. Section 478 amended (determining the seriousness of an offence)**

(1) Repeal section 478(6).

(2) Replace section 478(9) with —

“(9) In this section, “**disability**” means any physical or mental impairment.”.

**81. Section 585 replaced (warrants for imprisonment)**

Replace section 585 with —

**“585. Giving effect to sentence of imprisonment**

(1) When a person is sentenced to imprisonment —

(a) the sentence comes into effect immediately; and

(b) the person is to be detained in prison as soon as practicable after being sentenced (even if the warrant referred to in subsection (2) has not yet been issued).

(2) A warrant under the hand of the person presiding at the trial (or the Registrar or Clerk of the Court) ordering that the sentence is to be carried out in prison is full authority to all other persons for carrying the sentence into effect.”.

**82. Section 699 amended (arrest and charge)**

(1) In the heading to section 699, delete “**and charge**”.

(2) Repeal section 699(3) to (7).

**83. New section 699A (police detention and charge)**

After section 699, insert —

**“699A. Police detention and charge**

(1) If a person is arrested as permitted by section 697 or 698 or under a warrant issued under section 699(1) the person is to be dealt with in accordance with Part 5 (police detention).

(2) For that purpose, Part 5 applies —

(a) as if references to the Attorney General deciding whether the person should be charged were references to the Attorney General deciding whether to make an application for retrial under section 687 and whether to charge the person;

(b) with all other necessary modifications.”.

**84. Section 700 amended (bail and custody before application)**

(1) Repeal section 700(1).

(2) In section 700(2), replace “, after being charged in accordance with section 699(4), is kept in police detention,” with “is kept in police detention pending the Attorney General deciding whether to make an application under section 687 and whether to charge the person,”.

(3) In section 700(6), replace “section 699(1)” with “section 691(1)”.

## **85. New sections 725A to 725G inserted**

After section 725, insert —

### *“Youth diversion scheme*

#### **725A. Application of sections 725B to 725G**

Sections 725B to 725G apply in any criminal proceedings before the Youth Court in which a youth is charged with an offence (other than an indictment-only offence).

*[Vic Aust Children, Youth and Families Act 2005 s 356B]*

#### **725B. Purposes of diversion**

The following purposes of diversion are to guide the exercise of powers and performance of functions under sections 725C to 725G —

- (a) a youth should be diverted away from the criminal justice system where possible and appropriate;
- (b) the risk of stigma being caused to a youth by contact with the criminal justice system should be reduced;
- (c) a youth should be encouraged to accept responsibility for unlawful behaviour;
- (d) a youth’s offending should be responded to in a manner that acknowledges the youth’s needs and assists with their rehabilitation;
- (e) a youth should be provided with opportunities to strengthen and preserve relationships with family and other persons of importance in their life;
- (f) a youth should be provided with ongoing pathways to connect with education, training and employment.

*[Vic Aust Children, Youth and Families Act 2005 s 356C]*

#### **725C. Adjournment to participate in youth diversion scheme**

(1) At any time before taking a plea from a youth, the court may (on its own motion or on application by the youth or the prosecutor), adjourn the proceedings for a period not exceeding 4 months to enable the youth to participate in the youth diversion scheme.

(2) The court may refuse to accept a plea of guilty, or may allow the youth to withdraw such a plea, if —

- (a) no application for an adjournment has been made under subsection (1);
- (b) the court considers it necessary to consider the appropriateness of diversion;
- (c) the court has not heard any evidence in the proceedings; and
- (d) in the case of a withdrawal of a plea, the court is satisfied that the prosecutor does not object to diversion.

(3) Despite subsection (1), the court must not adjourn proceedings to enable the youth to participate in the youth diversion scheme if —

- (a) the prosecutor does not consent to the adjournment; or
- (b) the youth does not consent to the adjournment in accordance with section 725D.

(4) When determining whether to adjourn proceedings under subsection (1), the court must, as far as practicable, consider the following matters —

- (a) the seriousness and the nature of the offending;
- (b) the seriousness and the nature of any previous offending;
- (c) the impact on the victim (if any); and
- (d) the interests of justice and any other matter the court considers appropriate.

(5) In considering those matters, the court may inform itself in any way it considers appropriate.

(6) A plea withdrawn under subsection (2) is inadmissible as evidence in proceedings for the offence and does not constitute a plea.

*[Vic Aust Children, Youth and Families Act 2005 s 356D]*

#### **725D. Acknowledgement of responsibility and consent to diversion by youth**

(1) The court must not adjourn proceedings under section 725C(1) unless the youth —

- (a) acknowledges to the court responsibility for the offence; and
- (b) consents to the adjournment for the purpose of enabling the youth to participate in the youth diversion scheme.

(2) A youth's acknowledgement to the court of responsibility for an offence is inadmissible as evidence in proceedings for that offence and does not constitute a plea.

*[Vic Aust Children, Youth and Families Act 2005 s 356E]*

#### **725E. Prosecutor's consent to diversion**

When determining whether to consent to an adjournment under section 725C(1), a prosecutor must consider the following matters —

- (a) the seriousness and nature of the offending;
- (b) the impact on the victim (if any);
- (c) any previous failure by the youth to complete the youth diversion scheme;
- (d) the alleged level of involvement of the youth in the offending;
- (e) any other matter that the prosecutor considers relevant.

*[Vic Aust Children, Youth and Families Act 2005 s 356F]*

#### **725F. Extension of adjournment**

(1) If proceedings have been adjourned under section 725C(1), the court may adjourn them for a further period not exceeding 2 months if it considers it to be appropriate to enable the youth to complete the youth diversion scheme.

(2) The total period of the adjournment under section 725C(1) and subsection (1) must not exceed 6 months.

*[Vic Aust Children, Youth and Families Act 2005 s 356H]*

#### **725G. Conclusion of youth diversion scheme**

(1) If a youth completes the youth diversion scheme to the satisfaction of the court —

- (a) no plea to the charge is to be taken, or if a plea to the charge was withdrawn under section 725C(2) no further plea to the charge is to be taken;
- (b) the court must discharge the youth without any finding of guilt;
- (c) the fact that the youth participated in the youth diversion scheme is not to be treated as a finding of guilt or a conviction except for the purposes of —
  - (i) section 615 (restitution orders);
  - (ii) section 617 (deprivation orders); and
  - (iii) section 622 (order for disposal of property); and
- (d) the fact that the youth participated in the scheme and been discharged under paragraph (b) is a defence to a later charge for the same offence or a similar offence arising out of the same circumstances.

(2) If a youth does not complete the youth diversion scheme to the satisfaction of the court and is subsequently found guilty of the charge, when sentencing the youth the court must take into account the extent to which they participated in the scheme.

*[Vic Aust Children, Youth and Families Act 2005 s 356I]*”.

**86. New section 786A inserted (regulations about fees)**

After section 786, insert —

**“786A. Regulations about fees**

- (1) The Governor in Council may make regulations imposing fees payable in respect of matters under this Ordinance or the Criminal Procedure Rules.
- (2) The regulations may authorise a court or clerk to waive or refund a fee in specified circumstances.”.

**87. New Schedule 3A inserted (penalty notice offences)**

After Schedule 3, insert —

**“SCHEDULE 3A  
PENALTY NOTICE OFFENCES**

(section 137B)

<b>Provision</b>	<b>Description of offence</b>
<b>Road Traffic Ordinance 1948</b>	
s 3(4)	Failing to register vehicle Driving unregistered vehicle
s 4(2B)	Failing to display licence label
s 4(4)	Driving unlicensed vehicle

s 5(5)	Using vehicle as public service vehicle without public service vehicle licence
s 6(1)	Driving without driver's licence
s 6(12) or (14)	Failing to produce driver's licence
s 7	Driving with defective eyesight
s 9(1)	Driving without insurance
s 9(2)	Failing to produce certificate of insurance
s 10(3)	Failing to comply with vehicle construction and equipment regulations Driving non-complying vehicle
s 12	Racing
s 18G	Driving without due care and attention
s 29(1)	Driving in excess of speed limit
s 31(2)	Driving on footpath or public jetty
s 32	Tampering with vehicle
s 33	Carrying too many, or improperly seated, passengers on motor cycle
s 37(1)	Riding bicycle without bell or lights
s 37(2)	Riding bicycle on footpath or public jetty
s 39G	Cycling without due care and attention
s 40	Failing to keep cart or carriage to side of road Using cart or carriage without light or reflectors Using cart or carriage on footpath
s 41	Failing to keep animal to side of road Leading or riding animal on footpath
s 42	Holding on to vehicle
s 45	Failing to stop when requested by police officer
s 46(1A)	Failing to give name and address
s 47(1)	Failing to report accident

- s 50(1) Driver failing to obey traffic signs or directions of police officer
- s 51 Pedestrian failing to obey directions of police officer
- s 52 Leaving vehicle in dangerous position
- s 53(5) Failing to give way at pedestrian crossing
- s 55(3) Failing to stop at school crossing

**Smoking (Prohibition) Ordinance 2010**

- s 4(c) and (f) Smoking in designated vehicles or public vehicles and 22

**Car Parks Regulations Order 2003**

- r 3 Failing to comply with parking restrictions

**Highways (Weight Limits on Bridges) Order 2012**

- art 6 Use of overweight vehicle on bridge

**No Waiting (General) Regulations Order 2000**

- r 3 Waiting on yellow line
- r 5 Waiting in temporary no waiting area
- r 6 Waiting at junction

**Pedestrian Crossings Regulations 1996**

- r 7 and 14 Failing to give way to pedestrian at pedestrian crossing
- r 8 and 14 Waiting on pedestrian crossing
- r 9 and 14 Overtaking on pedestrian crossing
- r 11 and 14 Stopping near pedestrian crossing

**Philomel Street Waiting Regulations Order 1994**

- r 3 Waiting in no waiting area

**Road Traffic (Crozier Place, John Street, Reservoir Road and Villiers Street No Waiting) Regulations 2017**

- r 3 Waiting in no waiting area

**Road Traffic (Mobile Devices) Regulations 2024**

r 4 Using mobile device while driving

**Road Traffic (Protective Headgear) Regulations 1983**

r 2 Riding motor cycle without helmet

**Road Traffic (Provisional) Regulations Order 1986**

r 2(4) Failing to register change of ownership

r 3(2) Driving vehicle without identification marks

r 4 and 20 Using overloaded trailer

r 7 and 20 Failing to have taxi or bus marking on public service vehicle

r 8 and 20 Failing to have warning instrument on motor vehicle

r 9 and 20 Failing to have lights on motor vehicle

r 10 and 20 Failing to have mirrors on motor vehicle

r 11 and 20 Failing to have a safety glass windows in motor vehicle

r 12 and 20 Failing to have windscreen wipers on motor vehicle

r 13 and 20 Failing to have silencer on a motor vehicle

r 14 and 20 Failing to have pneumatic tyres on motor vehicle

r 15 and 20 Failing to have required brakes

r 17 and 20 Parking vehicle so as to obstruct road

r 19 and 20 Cyclist failing to obey road signs or direction of police officer

**Ross Road (Clearway) Regulations Order 2004**

r 3 Waiting in clearway

**St Marys Walk (Parking Control) Order 2011**

art 4 and 7 Parking in no parking area

art 5 and 7 Parking for too long in restricted parking area

**Stanley (Various Roads) One Way Traffic Order 2010**

art 4 and 5 Driving wrong way on one way street

**Stanley Street Parking (Prohibited Vehicles) Regulations Order 1996**



r 3 Parking prohibited vehicle in Stanley

### **Vehicle Licence Labels Regulations 1998**

r 4 Failing to display licence label

r 7 Defacing licence label

Removing licence label without owner's consent

Displaying illegible or fake licence label

### **Wearing of Seat Belts Regulations 1996**

r 3 Failing to wear seat belt

r 6 Driving vehicle with unrestrained children".

## **88. Schedule 10 replaced (table of rehabilitation periods)**

Replace Schedule 10 with —

### **“SCHEDULE 10**

### **REHABILITATION PERIODS**

(section 630)

<u>Sentence</u>	<u>End of rehabilitation period for adults</u>	<u>End of rehabilitation period for youths</u>
A custodial sentence of more than 30 months up to 48 months	7 years after completion of the sentence, including any licence period	42 months after completion of the sentence, including any licence period
A custodial sentence of more than 6 months up to 30 months	48 months after completion of the sentence, including any licence period	24 months after completion of the sentence, including any licence period
A custodial sentence of 6 months or less	24 months after completion of the sentence, including any licence period	18 months after completion of the sentence, including any licence period
A fine	12 months after the date of the conviction	When payment is made in full
A compensation order	When payment is made in full	When payment is made in full
A community or youth rehabilitation order*	When the order ceases to have effect	12 months after the order ceases to have effect

A conditional discharge or binding over	When the order ceases to have effect	When the order ceases to have effect
An absolute discharge	No rehabilitation period	No rehabilitation period
Any other sentence not provided for in this Schedule	No rehabilitation period	No rehabilitation period

\*If no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period ends 24 months after the date of conviction.”.

**89. Schedule 12 amended (offences against youths to which protective provisions apply)**

In Schedule 12, after paragraph 3, insert —

“3A. An offence under section 153F of the Crimes Ordinance 2014 (encouraging or assisting serious self-harm) if the relevant act is capable of, and done with the intention of, encouraging or assisting the serious self-harm of a youth.”.

**PART 4 – AMENDMENT OF ROAD TRAFFIC ORDINANCE 1948**

**90. Amendment of Road Traffic Ordinance 1948**

This Part amends the Road Traffic Ordinance 1948.

**91. Section 18A amended (causing death by dangerous driving)**

In section 18A(1), replace “14 years or a fine, or both” with “life”.

**92. Section 18M amended (causing death by driving without due care and attention when under influence of drink or drugs)**

In section 18M(1), replace “14 years or a fine, or both” with “life”.

**93. Section 59 amended (regulations)**

Repeal section 59(1)(nA).

**PART 5 - MINOR AMENDMENTS AND REGULATIONS**

*Minor amendments*

**94. Minor amendments**

The provisions of the Crimes Ordinance 2014, Criminal Procedure and Evidence Ordinance 2014, Criminal Justice (International Co-operation) Ordinance 1991, Prisons Ordinance 2017 and Criminal Justice Ordinance 1989 listed in the Schedule are amended as set out in the Schedule.

*Children (Fostering) Regulations 2019*

**95. Children (Fostering) Regulations 2019 amended**

(1) This section amends the Children (Fostering) Regulations 2019.

(2) In Schedule 5, replace clause 1(b), with —

“(b) section 82 (Cruelty to persons under 16);

(ba) section 82A (Ill-treatment or wilful neglect: care worker offence), if the offence was committed in relation to a person under the age of 16;

(bb) section 82B (Ill-treatment or wilful neglect: care provider offence), if the offence was committed in relation to a person under the age of 16;”.

(3) In Schedule 5, after clause 1(c), insert —

“(ca) sections 88 to 89F (offences relating to female genital mutilation), if the offence was committed in relation to a person under the age of 16;”.

*Road Traffic (Fixed Penalty Notices) Regulations 2017*

**96. Road Traffic (Fixed Penalty Notices) Regulations 2017 revoked**

The Road Traffic (Fixed Penalty Notices) Regulations 2017 are revoked.

## SCHEDULE - MINOR AMENDMENTS

section 94

### PART A - CRIMES ORDINANCE 2014

Provision	Amendment
section 2	<p>(1) In section 2(1), repeal the definitions of “<b>DVPN</b>”, “<b>DVPO</b>”, “<b>play</b>”, “<b>summary offence</b>” and “<b>triable summarily</b>”.</p> <p>(2) In section 2(1), move the definition of “<b>highway</b>” into its appropriate alphabetical order.</p> <p>(3) In section 2(1), in the definition of “<b>person</b>” and “<b>owner</b>”, replace “Her Majesty” with “the Crown”.</p> <p>(4) In section 2(1), in the definition of “<b>programme</b>”, delete “and “television programme” includes a teletext transmission;”.</p> <p>(5) In section 2(1), in the definition of “<b>road</b>”, after “Ordinance”, insert “1948”.</p>
section 14	In section 14(6)(c), replace “guilty;” with “guilty,”.
section 60	In section 60(9), delete “UK”.
section 71A	Repeal section 71A(4).
heading before section 77	Replace “ <i>Endangering the life of</i> ” with “ <i>Death of, or harm to,</i> ”.
section 77	In section 77(6), definition of “ <b>serious physical harm</b> ”, replace “64.” with “64;”.
section 86	<p>(1) In section 86(5)(b), delete “UK”.</p> <p>(2) In section 86(6)(c), replace “person;” with “person.”.</p>
section 88	<p>(1) In section 88(1), in the penalty provision, replace “both” with “both.”.</p> <p>(2) Repeal section 88(6).</p>
section 92	In section 92(6), definition of “ <b>force</b> ”, replace “accordingly); and” with “accordingly;”.
section 101	In section 101(7), renumber paragraphs (i) to (vi) as paragraphs (a) to (f).
section 102	In section 102(3)(e), replace “abuse;” with “abuse,”.
section 108	In section 108(7), definition of “ <b>commanding officer</b> ”, delete “and”.
section 108Q	<p>(1) In section 108Q(2), replace “this section” with “this section —”.</p> <p>(2) In section 108Q(2)(a)(ii), after “(“<b>P</b>”);”, insert “or”.</p>
section 108U	In section 108U(1)(a), replace “acquitted.” with “acquitted; and”.
new heading before section 108W	Before section 108W, insert — <p style="text-align: center;"><i>“Domestic abuse protection: offences”.</i></p>
section 108X	(1) Replace section 108X(2)(a) to (d) with —

	<p>“ (a) A —</p> <p>(i) has parental responsibility for B for the purposes of section 5 of the Children Ordinance 2014;</p> <p>(ii) is otherwise legally liable to maintain B; or</p> <p>(iii) has care of B; and</p> <p>(b) B is under 16.”</p> <p>(2) Repeal section 108X(6).</p>	
new heading before section 108Z	Before section 108Z, insert — <p style="text-align: center;"><i>“Guidance for police”.</i></p>	
section 116	In section 116(6), replace “General” with “General.”.	
section 121	In section 121(1), — <p>(a) in the definition of “<b>partnership</b>”, after “Ordinance”, insert “1922”; and</p> <p>(b) in the definition of “<b>trade union</b>”, after “Ordinance”, insert “1942”.</p>	
section 123	In section 123(2)(c), after “Ordinance”, insert “2010”.	
section 126	In section 126(4)(c), after “Ordinance”, insert “1999”.	
section 130	In section 130(3)(a), replace “department.” with “department; and”.	
section 132	In section 132(1), replace “body corporate” with “corporate body”.	
section 154	In the heading, replace “ <b>Offence of improper</b> ” with “ <b>Improper</b> ”.	
section 155	In the definition of “ <b>offensive weapon</b> ”, paragraph (b), replace “it with him or her for such use by him or her” with “possession of it for such use by them”.	
section 156	In section 156(3)(c), replace “his or her” with “their”.	
section 164	(1) In section 164(3)(a), replace “applies,” with “applies;”.	(2) In section 164(7), after “Ordinance”, insert “2014”.
section 166	In section 166(1), replace “with him or her” with “possession of”.	
section 168	In section 168(1), replace “any of sections 165 to 167” with “section 165, 166, or 167”.	
section 169	In section 169(1), (4) and (5), replace “with him or her” with “in their possession”.	
section 170	In section 170(4), replace “with him or her” with “in their possession”.	
section 171	Repeal section 171(4).	
section 174	(1) In section 174(2)(r), replace “blade.” with “blade;”.	(2) In section 174(5), — <p>(a) replace “a person acting on behalf of” with “the operator of, or a person acting on behalf of;”;</p> <p>(b) replace “he or she” in both places with “they”.</p> <p>(3) Repeal section 174(7).</p>

	(4) In section 174(8), in the definition of “ <b>third parties</b> ”, replace “public.” with “public;”.
section 175	In section 175(4)(a), after “exercisable;”, insert “and”.
section 176	(1) In section 176(2), replace “he or she has” with “they have”. (2) In section 176(7), replace “he or she was” in both places with “they were”. (3) In section 176(9), replace “his or her” with “their”.
section 191	In section 191(2), delete “UK”.
section 192	In section 192(9), delete “UK”.
section 193	In section 193(3), after “Ordinance”, insert “1977”.
section 202	In section 202(1), definition of “ <b>mental disorder</b> ”, after “Ordinance”, insert “2010”.
section 270	In section 270(4)(c), delete “UK”.
section 271	In section 271(3) — (a) in paragraph (b), replace “273,;” with “273;”; and (b) in paragraph (c), delete “UK”.
section 272	In section 272(4) and (7)(c), delete “UK”.
section 273	In section 273(3)(c), delete “UK”.
section 275	In section 275(6), replace the definition of “ <b>relevant offence</b> ” with — “ <b>relevant offence</b> ” means — (a) any offence under this Part; or (b) anything done outside the Falkland Islands which is not an offence within paragraph (a) but would be if done in the Falkland Islands.”.
section 284	In section 284(b), replace “or distress” with “, distress or humiliation”.
section 285	Repeal section 285(6).
section 295	(1) In section 295(1), definition of “ <b>detained in hospital</b> ”, after “Ordinance”, insert “2010”. (2) In section 295(1), definition of “ <b>restriction order</b> ”, after “Ordinance”, insert “2010”. (3) In section 295(2) — (a) replace “the making of complaints in” with “making applications to”; and (b) delete “for an order on a complaint”. (4) In section 295(7), replace “during Her Majesty’s pleasure” with “at the pleasure of the Monarch”.
section 302	(1) In section 302(1) — (a) replace “any of sections 298(1), 299(1), 300(1) or 301(1)” with “a notification provision”; and (b) in paragraph (a), replace “place of lawful custody” with “police station”. (2) In section 302(2), replace “this section” with “a notification provision”.

	(3) In section 302(3), replace “any of sections 298(1), 299(1), 300(1) or 301(1)” with “a notification provision”.
section 303	(1) In section 303(1), in the table, replace “SOPO or interim SOPO” with “SHPO or interim SHPO”. (2) In section 303(2)(a), replace “sections 298 to 301” with “a notification provision”.
section 304	Repeal section 304(3).
section 307	(1) In section 307(1), after “section 297(1)”, insert “, 314A or 314B or a notification order made under section 316(4)”. (2) In section 307(5), definition of “ <b>relevant date</b> ”, after “section 297(5)”, insert “, 314C or 317(2) (as the case requires)”.
section 308	In section 308(4)(c), replace “section 307” with “section 305”.
section 316	In section 316(1), replace “by complaint to the Magistrate’s Court or, in the case of a defendant under 18, to the Magistrates Court sitting as the Youth Court, apply” with “apply to the Magistrate’s Court”.
section 321	In section 321(4), replace “by complaint to the Magistrate’s Court, or, in the case of a defendant under 18, the Magistrates Court sitting as the Youth Court, apply” with “apply to the Magistrate’s Court”.
section 322	In section 322(6) and (7), replace “applicant” in each place with “Attorney General”.
section 327	(1) In section 327(5), delete “made by the Attorney General”. (2) In section 327(5)(a), replace “applicant” with “Attorney General”. (3) In section 327(6), delete “made by the Attorney General”.
section 328	In section 328(5), replace “326(5)” with “326(7)”.
section 329	(1) In section 329(1), replace “does anything that the person is prohibited from doing by” with “fails to comply with”. (2) Replace section 329(1)(c) with — “(c) a SOPO;”.
section 332	In section 332(1), replace “by complaint to the Magistrate’s Court, or in the case of a defendant under 18 the Magistrates Court sitting as the Youth Court, apply” with “apply to the Magistrate’s Court”.
section 334	(1) In section 334(1), replace “by complaint to the appropriate court apply” with “apply to the Magistrate’s Court”. (2) Repeal section 334(6).
section 335	Replace section 335(5) with — “(5) The Attorney General or defendant may apply to the court for an interim SRO to be varied, renewed, or discharged.”.
section 338	(1) In section 338(1), replace “does anything that the person is prohibited from doing by” with “fails to comply with”.

	(2) Replace section 338(1)(c) with — “(c) a RSHO;”.
section 345	In section 345(1), delete “UK”.
section 374	(1) In section 374(2)(a) and (3), delete “UK”. (2) In section 374(3) — (a) replace “Ordinance and” with “Ordinance 1922”; and (b) replace “Ordinance.” with “Ordinance 2003”.
section 376	In section 376(1) — (a) in paragraph (a), replace “property;” with “property; and”; and (b) in paragraph (b), replace “permanent;” with “permanent,”.
section 381	(1) In section 381(4), definition of “ <b>account</b> ”, paragraph (c), delete “UK”. (2) In section 381(6)(a), delete “UK”.
section 386	In section 386, definition of “ <b>Register</b> ”, after “Ordinance”, insert “1949”.
section 442	(1) In section 442(1), replace “Her Majesty” in each place it occurs (except paragraph (d)(ii)) with “the Monarch”. (2) In section 442(1)(d)(i), replace “Her Majesty’s” with “their”. (3) In section 442(1)(d)(ii), replace “Her Majesty to change Her” with “the Monarch to change their”. (4) In section 442(2),— (a) in paragraph (b), delete “or”; (b) replace paragraph (c), with— “(c) a judge of the Crown Court, High Court or Court of Appeal in England and Wales; (d) any judge of the Supreme Court of the United Kingdom; (e) the Chief Justice; (f) the Senior Magistrate; (g) the President of the Court of Appeal or any Justice of Appeal; or (h) any other person holding judicial office in the Falkland Islands,”. (5) Repeal section 442(4).
section 443	(1) In section 443(1)(a) — (a) replace “Her Majesty” with “the Monarch”; and (b) replace “Her Majesty’s” with “the Monarch’s”. (2) In section 443(1)(b), — (a) replace “against Her Majesty” with “against the Monarch”; and (b) replace “Her Majesty to change Her” with “the Monarch to change their”.
section 444	In section 444(2), replace “Her Majesty” in each place it occurs with “the Monarch”.
section 445	(1) In the heading to section 445, replace “ <b>Queen</b> ” with “ <b>Monarch</b> ”. (2) In section 445(1), replace “Her Majesty” in each place it occurs with “the Monarch”.
section 446	In section 446(1), replace “Her Majesty” with “the Monarch”.



section 452	In section 452(5) — (a) in the definition of “article of police uniform”, replace “document.” with “document;”; (b) in the definition of “customs officer”, after “Ordinance”, insert “2003”; (c) in the definition of “immigration officer”, after “Ordinance”, insert “1999”.
section 473	In section 473(4)(a), replace “Her Majesty’s” with “the Monarch’s”.
section 478	In section 478, delete “UK”.
section 479	In section 479(b), delete “UK”.
section 485	In section 485(1) and (2), delete “UK”.
section 496	In section 496(5), definition of “ <b>partnership</b> ”, paragraph (a), after “Ordinance”, insert “1922”.
section 502	In section 502(5), definition of “ <b>civilian subject to service discipline</b> ”, delete “UK”.
section 507	In section 507(1), definition of “ <b>private land</b> ”, after “Ordinance”, insert “1949”.
section 556D	In section 556D(10)(b), replace “application;” with “application,”.
section 556K	(1) At the end of section 556K(2), insert — “Penalty: Imprisonment for 5 years or a fine, or both.”. (2) In section 556K(3), replace “show” with “to a charge of an offence under this section for the defendant to show”. (3) Repeal section 556K(4).
section 556L	(1) In section 556L(3), replace “show” with “a charge of an offence under this section for the defendant to show”. (2) Repeal section 556L(4).
section 567	In section 567(1), definition of “ <b>publication</b> ”, after “Ordinance”, insert “1977”.
section 577I	In section 577I(7)(a) and (b), replace “publically” with “publicly”.
section 577J	In section 577J(6)(a) and (b), replace “publically” with “publicly”.
section 578	In section 578(3), replace “body corporate” with “corporate body”.
section 581	(1) In section 581(2), after “Crimes Ordinance”, insert “2014”. (2) In section 581(5), after “Ordinance”, insert “1977”.
Schedule 3	(1) In the heading “ <b>Offences under the UK Sexual Offences Act 1956</b> ”, delete “UK”. (2) Under the heading “ <b>Other Offences</b> ” — (a) in items 1, 2, 3 and 4, delete “UK”; and (b) in item 5, after “Ordinance”, insert “2003”.
Schedule 4	In Schedule 4, in the item for the Aviation Security Act 1982, delete “UK”.

**PART B - CRIMINAL PROCEDURE AND EVIDENCE ORDINANCE 2014**

Provision	Amendment
section 2	<p>(1) In section 2(1), in the definition of “caution”, delete “, when referring to a form of sentencing,”.</p> <p>(2) In section 2(1), move the definition of “Clerk of the court” into its appropriate alphabetical order.</p> <p>(3) In section 2(1), in the definition of “criminal investigation”, paragraph (c), after “with”, insert “, or other enforcement action should be taken against them for,”.</p> <p>(4) In section 2(1), repeal the definition of “Head of Courts”.</p> <p>(5) In section 2(1), in the definition of “Judicial Committee”, replace “Her Majesty’s” with “the”.</p> <p>(6) In section 2(1), in the definition of “offensive weapon”, paragraph (b), replace “having it with him or her for such use by that person” with “who has possession of it for such use by them”.</p> <p>(7) In section 2(1), repeal the definition of “UK”.</p>
section 45	In section 45(5), replace “any of sections 536 to 547” with “Part 22”.
section 59	In section 59(6)(c), replace “Ordinance” with “Ordinance 1948”.
section 60	<p>(1) In section 60(5)(a), replace “his or her” with “their”.</p> <p>(2) In section 60(9), replace “he or she is” with “they are”.</p>
section 64	<p>(1) In the heading to section 64, replace “sections 61 and 62” with “section 61 or 63”.</p> <p>(2) In section 64(1), replace “When a person is released on bail under section 61 or 62” with “If a person arrested for an offence has been released under section 61 or 63,”.</p>
section 65	<p>(1) In section 65(2)(a)(i), replace “as his or her name or address is his or her” with “is their”.</p> <p>(2) In section 65(2)(b)(ii), replace “his or her” with “their”.</p> <p>(3) In section 65(7)(a), replace “him or her” with “them”.</p>
section 66	In section 66(2) and (4)(b)(i), replace “him or her” with “them”.
section 67	<p>(1) In section 67(8), replace “section 61(12) or 64(5), section 61(1) to (6)” with “section 61(4) or 64(5) (because they are not in a fit state), sections 61 and 61A”.</p> <p>(2) In section 67(10)(b)(i), replace “him or her” with “them”.</p> <p>(3) In section 67(11)(a), replace “he or she is” with “they are”.</p> <p>(4) In section 67(12) and (13), replace “his or her” with “their”.</p>
section 70	In section 70(8), replace “his or her” with “their”.
section 80	In section 80(b), replace “Ordinance” with “Ordinance 1999”.
section 126	In section 126(5), replace “he or she considers” with “they consider”.
section 128	(1) In section 128(2), replace “his or her personal circumstances” with “their personal circumstances.”.

	<p>(2) In section 128(3), —</p> <p>(a) replace “warns the person” with “warn them”; and</p> <p>(b) replace “in the person” with “in them”.</p> <p>(3) In section 128(5)(b), replace “that the person” with “that they”.</p>
section 129	<p>(1) In section 129(1), replace “his or her” with “their”.</p> <p>(2) In section 129(4)(c), replace “reparation.” with “reparation;”.</p>
section 133	<p>In section 133(4) —</p> <p>(a) replace “the person that he or she is” with “them that they are”; and</p> <p>(b) replace “the person” with “they”.</p>
section 134	<p>(1) In section 134(3)(b), replace “the person may be kept in police detention until he or she is” with “the custody officer may detain them at a place of lawful custody until they are”.</p> <p>(2) In section 134(4), replace “section 61(7)” with “section 61”.</p>
section 136	<p>In section 136(3)(b), replace “his or her” with “their”.</p>
section 137	<p>(1) In section 137(1)(c), replace “his or her” with “their”.</p> <p>(2) In section 137(2) —</p> <p>(a) replace “he or she has” with “they have”; and</p> <p>(b) replace “the person discloses” with “they disclose”.</p>
section 154	<p>In section 154(1)(d), replace “Ordinance” with “Ordinance 1998”.</p>
section 165	<p>(1) In section 165(2), replace “he or she has” with “they have”.</p> <p>(2) In section 165(3), replace “prosecution” with “case”.</p>
section 177	<p>In section 177(7), delete “UK”.</p>
section 183	<p>Replace section 183(3) with —</p> <p>“(3) However, a judge who is outside the Falkland Islands may exercise judicial functions (by electronic means or otherwise) if permitted to do so by an Ordinance or the criminal procedure rules.”.</p>
section 255	<p>(1) In section 255(2), replace “Head of Courts” with “Clerk of the court”.</p> <p>(2) In section 255(5), replace “himself or herself, he or she” with “themselves, they”.</p>
section 256	<p>(1) In section 256(1)(b), replace “Head of Courts” with “Clerk of the court”.</p> <p>(2) In section 256(3), replace “Head of Courts” with “Clerk”.</p>
section 267	<p>In section 267(2) —</p> <p>(a) replace “he or she” with “the defendant”; and</p> <p>(b) in paragraph (b), replace “his or her” with “their”.</p>
section 268	<p>In section 268(3)(a), delete “, on oath”.</p>
section 408	<p>In section 408(2)(d), delete “, within 7 days after the service of the copy of the statement,”.</p>
section 458	<p>Replace section 458(9) with —</p>

	“(9) In this section, “ <b>offence</b> ” includes an act or omission outside the Falkland Islands which, if committed in the Falkland Islands, would be an offence against the law of the Falkland Islands.”.
section 462	In section 462(3)(a), replace “body corporate” with “corporate body”.
section 465	In section 465(1)(e), replace “Ordinance.” with “Ordinance 2014;”.
section 467	In section 467(1)(b)(i), replace “body corporate” with “corporate body”.
section 495	In section 495(5), replace “Ordinance” with “Ordinance 2010”.
section 577	In section 577(8)(b), replace “during Her Majesty’s pleasure” with “at the pleasure of the Monarch”.
section 582	In section 582(2), replace “during Her Majesty’s pleasure” with “at the pleasure of the Monarch”.
section 589	In section 589(1), replace “or which” with “for which”.
section 627	In section 627(8), replace “Ordinance” with “Ordinance 1989”.
section 629	In section 629(1)(c), replace “during Her Majesty’s pleasure.” with “at the pleasure of the Monarch.”.
section 639	In section 639(2), delete “UK” in each place.
section 717	In section 717(4), replace “revered” with “reversed”.
section 729	In section 729(1), replace “during Her Majesty’s pleasure.” with “at the pleasure of the Monarch.”.
section 732	In section 732(4), replace “during Her Majesty’s pleasure” with “at the pleasure of the Monarch”.
section 775	In section 775(3), replace “fulfill” with “fulfil”.
section 784	In section 784(3), replace “body corporate” with “corporate body”.
section 786	In section 786(2), delete “Her Majesty’s Government in”.
section 790	In section 790(7), replace “Ordinance” with “Ordinance 1989”.
Schedule 6	In Schedule 6, Part 2, — (a) replace “Her Majesty’s pleasure.” with “the pleasure of the Monarch”; (b) in the second paragraph (a), replace “detention” with “detention; or”; and (c) in the section paragraph (b), replace “detention” with “detention,”.
Schedule 7	(1) In Part A, item 10, delete “UK”. (2) In Part B, item 15, delete “UK”.
Schedule 11	(1) In Schedule 11, Part 4, — (a) in item 4, replace “Liquor and Licensing Ordinance” with “Licensing Ordinance 1994”; and (b) repeal item 5.

	<p>(2) In Schedule 11, Part 5, —</p> <p>(a) item 4, replace “Her Majesty’s” with “the British”.</p> <p>(b) repeal item 15.</p>
--	--

**PART C - CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION)  
ORDINANCE 1991**

<b>Provision</b>	<b>Amendment</b>
section 5	In section 5(8), replace “section 25 of the Criminal Justice Act 1988 in its application to the Falkland Islands (exclusion of evidence otherwise admissible)” with “section 340 of the Criminal Procedure and Evidence Ordinance 2014 (principles for admission of statements)”.
section 9	<p>(1) Replace section 9(1) with —</p> <p>“(1) Parts 2 and 3 of the Criminal Procedure and Evidence Ordinance 2014 (powers of entry, search and seizure) have effect as if references in them to offences included any conduct which is an offence under the law of a country or territory outside the Falkland Islands and would constitute an offence if it had occurred in the Falkland Islands.”.</p> <p>(2) In section 9(2)(b), replace “Criminal Justice Ordinance” with “Criminal Procedure and Evidence Ordinance 2014”.</p>
section 10	<p>Replace section 10(5) with —</p> <p>“(5) This section applies to any offence which corresponds to, or is similar to —</p> <p>(a) an offence under the Misuse of Drugs Ordinance 1987; or</p> <p>(b) a drug trafficking offence as defined in section 3(3) of the Drug Trafficking Offences Ordinance 1997.”.</p>

**PART D - PRISONS ORDINANCE 2017**

<b>Provision</b>	<b>Amendment</b>
section 17	<p>After section 17(1), insert —</p> <p>“(1A) The person may be admitted to prison as soon as the sentence is imposed or detention is ordered (even if the warrant of committal or signed order has not yet been issued).”.</p>

**PART E - CRIMINAL JUSTICE ORDINANCE 1989**

<b>Provision</b>	<b>Amendment</b>
section 64	<p>(1) Replace section 64(1)(c)(ii) with —</p> <p>“(ii) section 617 of the Criminal Procedure and Evidence Ordinance 2014 (deprivation orders).”.</p>

	(2) In section 64(3)(a), replace “an order for the payment of compensation under section 53” with “a compensation order under section 608 of the Criminal Procedure and Evidence Ordinance 2014”.
section 69	Replace section 69(2)(a) with — “(a) section 617 of the Criminal Procedure and Evidence Ordinance 2014 (deprivation orders).”.

## OBJECTS AND REASONS

This Bill is the Criminal Laws (Amendment) Bill 2024. When assented to, the Ordinance will come into force on publication in the Gazette.

The Bill amends the Crimes Ordinance 2014, Criminal Procedure and Evidence Ordinance 2014, Criminal Justice (International Co-operation) Ordinance 1991 and Road Traffic Ordinance 1948. The amendments are to reflect recent amendments made to a number of UK Acts and to various minor amendments.

Minor consequential amendments are made to the Children (Fostering) Regulations 2019 and the Road Traffic (Fixed Penalty Notices) Regulations 2017 are repealed as a consequence of amendments to the Criminal Procedure and Evidence Ordinance 2014.

### **Crimes Ordinance 2014**

*Part 2* amends the Crimes Ordinance 2014.

*Clause 4* inserts *new section 70B* to extend the time limit for commencing a prosecution for common assault in certain domestic abuse cases.

The usual time limit for prosecutions for common assault is 6 months from the time of the assault. If the condition in *section 70B(2) or (3)* is met (which requires the complainant to have given a witness statement or interview to the police), a prosecution may be commenced up to 2 years after the assault occurred as long as it is commenced with 6 months after the statement is made or interview is given.

This reflects the changes made by the Police, Crime, Sentencing and Courts Act 2022 to the Criminal Justice Act 1988.

*Clause 5* replaces sections 72 and 72A, which create offences for assaulting or obstructing police and other emergency workers. Currently, section 72 relates to police and section 72A relates to police and other emergency workers. This is unnecessary and confusing duplication, so both sections are replaced with a single *new section 72* that covers all emergency workers, including police. The new provision also extends its application to emergency workers whenever they are carrying out any of their functions (including if they are off duty), whereas the current section 72A only applies when an emergency worker is responding to an emergency. This reflects the changes made to the Assaults on Emergency Workers (Offences) Act 2018.

*Clause 6* repeals section 76, which requires the court to issue a certificate when certain matters are dismissed. This is no longer necessary as the matter is now covered by the criminal procedure rules, the general criminal law of double jeopardy and civil proceedings laws that prevent repeated proceedings and abuse of process.

*Clause 7* amends section 77 to increase the maximum penalties for the offence of causing or allowing the death of, or harm to, a child or vulnerable adult. The penalty for causing or allowing death is increased to imprisonment for life. The penalty for causing or allowing serious physical harm is increased to 14 years.

This reflects the changes made to the Domestic Violence, Crime and Victims Act 2004 and brings the penalties into line with those for other offences that result in death or serious harm.

*Clause 8* replaces section 82 to bring it into line with the equivalent provision in the Children and Young Persons Act 1933, including by increasing the maximum penalty for the offence of cruelty to a person under 16 to imprisonment for 14 years or a fine, or both.

*Clause 8* also inserts *new sections 82A to 82F*, which create new offences relating to ill-treatment and wilful neglect by care workers and care providers of people in health care or social care settings.

In the case of care providers, in addition to a fine a court may impose a remedial order or publicity order (or both) to mitigate the harm done and minimise the chances of future harm.

These offences reflect offences created by the Criminal Justice and Courts Act 2015.

The UK law exempts local authorities and public bodies from the care provider offence because those bodies are regulated under other UK laws. The Falkland Islands do not have equivalent laws, so *new section 82D* applies the new offences to the Crown and public bodies in the same way as they apply to companies and individuals. This mirrors the approach taken in the corporate manslaughter provisions of the Crimes Ordinance 2014.

*Clauses 9, 10 and 11* amend the provisions of the Crimes Ordinance 2014 relating to female genital mutilation to mirror changes made to the Female Genital Mutilation Act 2003 by the Serious Crimes Act 2015. The substantive changes are the addition of *new sections 89A to 89F*.

*New section 89A* creates the offence of failing to protect a girl under the age of 16 from genital mutilation. If a girl under 16 is the victim of a female genital mutilation offence, *new section 89A* means that anyone who was responsible for the girl at the time commits an offence. There are defences where the person did not think that there was a significant risk of a genital mutilation offence being committed against the girl or the person took reasonable steps to prevent such an offence.

*New section 89B* extends the genital mutilation offences in sections 88, 89, and 89A to things done outside the Falkland Islands by a person who has Falkland Islands status or is a Falkland Islands resident.

*New sections 89C to 89F* provide for the Magistrate's Court to make FGM protection orders to protect girls from genital mutilation offences. These orders are comparable to the orders that can be made under Part 11 of the Crimes Ordinance 2014 in relation to sexual offences. Breaching an order is an offence under *new section 89E*.

*Clauses 13, 14 and 15* amend sections 153 and 154 and insert *new sections 153A to 153G* to reflect the communications offences in the Online Safety Act 2023.

The new offences relate to the sending of false or threatening communications, sending or showing flashing images with the intent to cause harm to a person with epilepsy, and engaging in communication-related conduct with intent to encourage or assist the serious self-harm of another person.

*New section 153G* extends the application of these offences to acts done outside the Falkland Islands by a Falkland Islands resident or company.

*Clauses 15 to 29* amend Part 7 (sections 155 to 176), which relates to offensive weapons. The amendments reflect —

- the Offensive Weapons Act 2019;
- amendments made by that Act to the Restriction of Offensive Weapons Act 1959, Criminal Justice Act 1988, Criminal Justice Act 1988 (Offensive Weapons) Order 1988 and Prevention of Crime Act 1953; and
- a number of earlier amendments made to the Knives Act 1997 and Crossbows Act 1997.

*Clauses 17 and 18* amend sections 156 and 157, which relate to marketing and advertising of knives, to increase the maximum penalties from imprisonment for 2 years to 4 years.

*Clause 19* amends section 160, which relates to flick knives etc. Currently it is an offence to manufacture or sell these knives. The section is amended to also make it an offence to have possession of these knives. Importation is also prohibited, which makes importation an offence under the Customs Ordinance 2003. New defences are included in relation to museums and galleries in line with the defences that apply for possession of offensive weapons under section 174.

*Clause 20* amends section 161, which relates to the sale of knives to persons under 16. *New subsection (2A)* disapplies the section in relation to knives covered by section 160 because that section now prohibits possession of those knives.

*Clause 21* inserts *new section 161A*, which limits the defence in section 161. Section 161 makes it an offence to sell various kinds of knives to persons under 16. There is a defence if the seller took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. *New section 161A* imposes minimum requirements for relying on that defence in the case of remote sales.

*Clause 22* amends section 165, which relates to the sale of crossbows to persons under 17, to provide a defence if the seller reasonably relied on a passport or drivers licence to establish that the buyer was over 17.

*Clause 23* amends section 169, which relates to possession of a blade in a public place, to increase the penalty to imprisonment for 4 years in line with other offensive weapons offences.

*Clause 24* amends section 170, which relates to possession of offensive weapons in schools. The offences are extended to cover further education premises (such as Falkland College) and to increase the penalties.

*Clause 25* amends section 171, which relates to threatening with a weapon on school premises, to also apply to further education premises. It also changes the test for the offence from there actually being an immediate risk of harm to being that a reasonable person in the situation would think there was such a threat.

*Clause 26* amends section 172, which relates to searching school premises for offensive weapons. The section is expanded to cover further education premises and to include corrosive substances (because of the offence being included in *new section 173B*).



*Clause 27* inserts *new sections 173A and 173B* to create offences of threatening with an offensive weapon in a public place and threatening with an offensive weapon or corrosive substance in private place.

*Clause 28* amends section 174, which relates to weapons of the kind listed in that section. The amendments increase the penalty, add some new weapons to the list and create a new offence of possession of these weapons in a private place.

The amendments also amend the power of the Governor to amend the list of weapons. Firearms and crossbows cannot be added to section 174 – because they are regulated under other laws. Because *new section 174(1A)* makes mere possession of the listed weapons unlawful, future orders will also be able to make provision for the surrender of weapons possession of which become unlawful. *New section 176A* does this for weapons that become unlawful because of the changes being made by this Bill.

A number of new defences are also added to section 174, primarily because of the introduction of the offence of possession.

*Clause 29* inserts *new section 176A*, which relates to the surrender of offensive weapons. *New sections 160(1A) and 174(1A)* will make possession of certain knives and weapons unlawful. There may be people who are currently lawfully in possession of such knives and weapons. *New section 176A* will enable to Chief Police Office to make arrangements for those people to surrender them and for reasonable compensation to be paid. The section is wide enough to allow the Chief Police Officer to extend the surrender scheme to other offensive weapons, but there is no requirements for compensation to be paid for them. For weapons where mere possession is an offence, *new section 176A* provides a defence for a person who surrenders the weapon against prosecution for a possession offence. This is to ensure that a person with such a weapon will not be deterred from surrendering it by the prospect of being prosecuted for having possession of it. The defence does not apply to the marketing or threatening offences.

*Clauses 30 to 53* amend Parts 10 and 11 (section 202 to 345) of the Crimes Ordinance 2014 (which relate to sexual offences) to reflect changes made to the Sexual Offences Act 2003 and the Sentencing Act 2020.

*Clause 30* amends section 202 which is the interpretation provision for Part 10 (sexual offences). Section 202(3) defines what is meant by an activity being “sexual”. It currently says that this definition does not apply for the purposes of section 292. This is a cross-reference error and ought to refer to section 288 – which has its own definition of that term. In addition, as section 217A also has its own definition of the term, it should also be excluded from section 202(3). Similarly, *new section 283A and 283B* provide definitions of relevant terms for the purposes of the new sex-based harassment, voyeurism, and communication offences. Section 202 is therefore amended to also exclude those provisions.

*Clause 31* amends section 222. Sections 218 to 221 provide for several sexual offences against children involving abuse of a position of trust. Section 222 describes a number of circumstances in which a person is in a position of trust with a child. Section 222(1) and (2) are merged for simplicity and consistency with the equivalent English provision. The ability for other circumstances to be declared ‘positions of trust’ by Order is removed so that any expansion of those sexual offences is effected by amending the Ordinance (as is done by *clause 32*).

*Clause 32* inserts a *new section 223A*. Sections 218 to 221 create several sexual offence against children involving abuse of a position of trust. Section 222 describes a number of circumstances in which a person is in a position of trust with a child. *New section 223A* adds the relationships of

coaching, teaching, training, supervising, or instructing a child as positions of trust for the purposes of those offences.

*Clause 33* replaces section 269, which defines terms for the prostitution offences. The section defines prostitute and prostitution by reference to the definitions in section 263. However, section 263 has been amended and no longer defines those terms. Section 269 is therefore updated to include those terms and the related definition of payment.

*Clause 34* inserts *new sections 283A and 283B*, which define terms for the purposes of the sexual offence provisions in sections 284 to 288, including the various new sections.

*Clause 34* also inserts *new section 283C*, which creates the new offence of sex-based harassment in a public place. This makes it an offence to behave in relation to a person in a way that causes them alarm, distress or humiliation when that is done because of the person's sex and knowing that the behaviour was likely to cause that result or where that ought to have been known.

*Clause 35* inserts *new section 284A*, which creates a new offence of sending or giving a photograph or film of genitals with the intention of causing alarm, distress or humiliation.

*Clause 36* amends section 285A, which creates voyeurism related offences involving observing a person's genitals or buttocks for sexual gratification or to humiliate, alarm or distress the person. The amendments create 2 equivalent offences in relation to observing a person who is breast-feeding a child.

*Clause 37* replaces sections 285B and 285C. *New sections 285B and 285C* create new offences relating to sharing or threatening to share intimate photographs or films without the consent of the person pictured.

*Clause 38* inserts *new section 294A* relating to the continuity of sexual offences law. The sexual offence in Part 10 of the Crimes Ordinance 2014 replaced comparable offences in the Sexual Offences Ordinance 2005, which in turn replaced the offences in the Sexual Offences Act 1956 as it applied in the Falkland Islands.

Sometimes (particularly in relation to historic offences) a person is charged with both an offence under one of two of those Ordinances because it is not clear whether the offending conduct occurred before or after the later Ordinance came into force. For example, it may be possible to establish that the offending occurred in the autumn of 2017 but not whether it was before or after 21 April of that year.

In the absence of *new section 294A* there is a possibility that the person could not be found guilty of either offence solely because it cannot be proved on which day the offence occurred. The effect of *new section 294A* is to deem the offending conduct to have occurred when the offence with the lesser penalty was in force. This ensures that the defendant can be found guilty but gets the benefit of the doubt when it comes to the possible sentence.

*Clause 39* amends section 295, which defines terms for the purposes of Part 10 (sexual offences). The new definition relates to the amendments made to section 305.

*Clause 40* inserts *new section 300A*, which requires a person who is subject to the sex offender notification requirements to notify police if they are going to be away from their home for more than 3 days.

*Clause 41* amends section 305, which creates the offence of failing to comply with the notification requirements. It is amended (together with the new definition in section 295) to ensure that the offence captures any failure to comply with any of the sexual offence notification requirements.

*Clause 42* inserts 2 new sections that prohibit a person who is subject to the sex offender notification requirements from driving a vehicle carrying passengers for hire or reward and supervising a provisional driver for payment or reward. These offences ensure that a person who is subject to the notification requirements cannot drive a taxi or bus or be a driving instructor.

*Clause 43* inserts *new sections 314A to 314D* to enable the sex offence notification requirements under Part 11 to be applied to persons who have committed comparable offences overseas. The application of the reporting requirements will be triggered if the person is given a notice under *new section 314A*.

*Clauses 44 to 47* make various amendments to the provisions relating to sexual harm prevention orders (“SHPO”) to reflect changes made to the Sexual Offences Act 2003.

*Clause 44* amends section 321 to clarify that when a court is deciding whether an SHPO is necessary its decision will be made on the balance of probabilities.

*Clause 45* replaces section 323 with 3 new provisions that set out the effect of SHPO and the requirements for what needs to be included in a SHPO. The main change is that SHPOs will now be able to include requirements that the defendant do stated things as well as prohibitions.

*Clause 46* replaces sections 325 and 326, which relate to variations of SHPOs and interim SHPO. The changes reflect the changes being made in relation to the making of SHPOs.

*Clause 46* also inserts *new section 326A* which sets out requirements relating to the imposition of electronic monitoring requirements included in SHPOs.

The new provisions also require the court imposing an SHPO to avoid imposing obligation that would unnecessarily conflict with the defendant’s religion, interfere with their work or education or other court orders.

*Clause 47* replaces section 330, which relates to guidance for police. This provision currently reflects the Act where guidance is made by the Secretary of State. Guidance at that level is appropriate in the UK, where applications for SHPOs are made by the police. In the Falkland Islands applications are made by the Attorney General and the only role for police in relation to SHPO relates to defendants’ notification requirements. Any guidance required on this matter is more appropriately made by the Attorney General.

*Clauses 48 to 53* amend sections 332 to 340, which relate to sexual risk orders, to make changes mirroring the changes being made in relation to SHPOs.

*Clause 54* replaces Part 22, which relates to hate crimes. Part 22 currently reflects the law as it was in England in 2014. That law had developed piece-meal over many years and is very complicated. The English law has evolved further since 2014 and is now even more complex. In 2021 the English Law Commission produced a report on hate crime laws identifying many issues with the law. The Law Commission made recommendation for addressing these issues although it recognised that for various historical, political, and policy reasons, implementing those recommendation would be very difficult. Some legislative changes have been made in England but, for the reasons identified, the complicated English system has been largely retained.

This Bill takes a different approach and, following the Law Commissions recommended approach, effects a comprehensive overhaul of the hate crimes laws. It creates 3 new, simplified offences and expands the range of protected characteristics.

*New section 527* makes it an offence to engage in behaviour with intent to stir up hatred against a group of persons based on a protected characteristic. *New section 528* makes it an offence to

engage in threatening or abusive behaviour that is likely to stir up hatred against a group of persons based on a protected characteristic when the person knew or ought to have known it was likely to have that effect. *New section 529* makes it an offence to be in possession of threatening or abusive material with the intention that it be used to stir up hatred against a group of persons based on a protected characteristic.

In *new Part 22* the protected characteristics are race, disability, religion, sexual orientation, transgender identity and variation in sex characteristics.

*New section 530* provides express recognition of the constitutional right to freedom of expression and requires that particular regard must be had to that right in deciding whether something is threatening or abusive or is intended or likely to stir up hatred.

The section also makes it clear that discussion or the expression of views or opinions about the listed matters is not, without more, to be regarded as abusive or threatening or likely to stir up hatred. This does not mean that discussion or the expression views or opinions about these matters are absolutely protected and could never be regarded as abusive or threatening or likely to stir up hatred. Each case will depend on its particular circumstances and if what is said or done goes beyond merely a discussion or the expression of views – for example, if it is accompanied by threats or violence – then it may amount to behaviour that is caught by the offences in *new sections 527, 528, and 529*.

*New section 531* provides a defence for things said or done in the course of a private conversation. *New section 532* provides a defence for fair and accurate journalistic reporting. *New section 534* provides a similar defence for reporting on proceedings of the Legislative Assembly or courts.

*New section 533* provides protection for performers in dramatic, literary, artistic or journalistic work. If a person (“P”) engages in behaviour that constitutes an offence under *new sections 527, 528 or 529*, another person who is a performer in that work is not to be treated as a party to P’s offence or as having aided or abetted P in committing that offence solely because they were a performer. For example, if a theatre director stages a public play with the intent that it stir up racial hatred, the director would be committing an offence against *new section 527*. *New section 533* means that an actor in the play is not a party to the director’s offence merely by virtue of being in the play. However, if the actor’s involvement went beyond merely being a performer, or they also intended to stir up hatred, they might be guilty as a party to the director’s offence or separately be guilty of an offence under *new section 527*.

*New sections 536 and 537* address the situation where a person commits an offence (which could be any offence) and is motivated by hatred towards a group of persons, or hostility towards a particular victim, based on the protected characteristics. In such a case, the sentencing court must take the hatred or hostility into account and increase the person’s sentence accordingly (unless there are exceptional circumstances justifying not doing so, in which case those circumstances must be explained).

*Clause 55* amends Schedule 3, which lists offences for the purposes of Part 11 (sexual offences orders), to add the new communications offences and section 217A (sexual communication with children), which had previously been overlooked.

*Clause 56* amends Schedule 4, which lists offences for which sexual harm prevention orders may be made, to add the new communications offences.

## **Criminal Procedure and Evidence Ordinance 2014**

*Part 3* amends the **Criminal Procedure and Evidence Ordinance 2014**.

*Clause 58* amends section 53 to mirror the change made to section 69 (see below).

*Clause 59* replaces sections 61 to 63, which set out the procedure for police officers and the Attorney General when a person is arrested.

These provisions were closely modelled on the equivalent English provisions but cause confusion because they suggest that a police officer can charge a suspect when (unlike in England) that can only be done by the Attorney General. Sections 61 to 63 are replaced to ensure they provide for the correct local procedure.

As a result of these changes, consequential amendments are made to a number of provisions, particularly to update cross-references.

*Clauses 60 and 61* amend sections 64 and 67 in consequence of the replacement of sections 61 to 63.

*Clause 62* amends section 69, which limits the time for which a person may be detained by police without charge. Section 69(7) provides that when a person has been arrested for an offence and released without being charged, the person cannot be rearrested for the same offence unless new evidence has come to light. It is amended to make it clear that new evidence includes new information that has come to light as a result of a further examination or analysis of existing evidence (such as when police have seized a suspect's computer and, after the suspect has been released on bail, further examination of the computer reveals new information).

*Clauses 63 and 64* amend sections 70 and 71 to mirror the change made to section 69.

*Clause 65* amends section 77, which relates to conditions on police bail. It is amended to allow bail conditions to be changed at the request of a police officer (as well as the person who is subject to bail), and to make it clear that conditions may be added, removed, or varied.

*Clause 66* amends section 78, which relates to rearrest after a person who has been released on bail without charge may be re-arrested. The provision is expanded so that it also applies to people who have been released without bail and to mirror the change made to section 69 in relation to new evidence.

*Clause 67* amends the heading to Chapter 3 as a consequence of the *new Part 8A* relating to penalty notices (see below).

*Clause 68* amends section 129, which relates to attaching conditions to a conditional caution. as a consequence of *new section 130A* relating to foreign offenders.

*Clause 69* inserts *new section 130A*. These amendments apply if the offender being cautioned is a non-resident and allow a condition to be imposed requiring them to leave the Falkland Islands.

This reflects provisions included in the Police, Crime, Sentencing and Courts Act 2022.

*Clause 70* amends section 133 in consequence of the amendments made to sections 61 to 63.

*Clause 71* inserts *new Part 8A*, which provides for penalty notices. The use of penalty notices is a mechanism for dealing with alleged offenders without prosecuting them. A prosecution for an offence is only commenced if the Attorney General considers it in the public interest to do so. The cost and resources required to conduct a prosecution can result in prosecution for minor offences not being justified. Penalty notices provide an alternative mechanism for enforcing those offences.

The police will investigate an alleged offence and submit a case file to the Crown Prosecutor as normal. It will then be for the Attorney General to decide whether a penalty notice should be issued.

A person issued with a penalty notice can pay the penalty amount, which disposes of the matter. Or they can notify the Attorney General that they do not accept the penalty notice – in which case the Attorney General can prosecute them in the normal way. If the person does nothing in response to the notice, the notice is automatically withdrawn on the response date and the Attorney General can prosecute in the normal way.

Penalty notices can only be issued for offences that are listed in *new Schedule 3A*, being inserted by *clause 87*.

Regulations were made in 2017 under the Road Traffic Ordinance 1948 to establish a penalty notice regime. However, a number of legal issues have arisen with that regime that has resulted in it not being useable. Those regulations are being repealed by *clause 96*.

*Clause 72* repeals section 196, which requires public notice to be given of the outcome of proceedings. This is no longer necessary as court decisions are published on the court website and the criminal procedure rules now govern notification of the outcome of criminal cases.

*Clause 73* amends section 210, which relates to committal for sentence by the Summary Court. The current wording suggests that the Summary Court must obtain a pre-sentence report before committing the person to the Magistrate's Court for sentencing, but those reports are actually ordered by the Magistrate's Court. Section 210 is amended to remove the words causing the confusion and for clarity.

*Clause 74* amends section 267, which relates to non-appearance of the prosecutor. On the few occasions when the prosecutor does not appear at a criminal hearing, it is almost always merely an administrative error and should not be a basis for the proceedings being dismissed. Section 267 is amended to ensure that the court can, for example, order a short adjournment until the prosecutor can attend.

*Clause 75* amends section 268, which relates to non-appearance of the defendant. This section is amended so that in the case of an adult defendant, the default position will be for the court to proceed in the absence of the defendant. However, this does not apply if the defendant has an acceptable reason for not attending or it would otherwise not be in the interests of justice to proceed. The position for defendants under 18 remains unchanged.

The requirement for proof of service to be on oath is no longer required in the Ordinance as proof of service is now governed by the criminal procedure rules.

*Clause 76* inserts *new sections 339A to 339H*, which relate to the standard and burden of proof in criminal proceedings. Currently the standard and burden of proof is a matter dependent on the common law rather than any generally applying statutory provisions. Various provisions of the Crimes Ordinance 2014 (such as section 71A(4)) and UK Acts contain statements reflecting some of the common law rules. These provisions are not comprehensive or consistent in their terminology. To ensure that there is a clear statement of the standard and burden of proof applying in all criminal proceedings, *new sections 339A to 339H* are inserted and the current provisions (such as section 71A(4)) are repealed. The new sections reflect the common law position so do not change the effect of the current law.

*Clause 77* repeals section 342 which is superseded by *new section 339D*.

*Clause 78* amends section 436, which relates to directions given in court to allow evidence to be given in private. A direction can exclude people from the court room, including the media. The section was intended to provide that, even if the media generally is excluded, one media

representative is to be allowed to remain in the court. As currently worded the section does not achieve that so it is amended to ensure it operates as intended.

*Clause 79* amends section 465, which prohibits the publication of information that might identify the victim of sexual or domestic abuse offences. This is amended to include the female genital mutilation offences.

*Clause 80* amends section 478, as a consequence of the amendments to the hate crimes provisions in the Crimes Ordinance 2014.

*Clause 81* replaces section 585, which provides for the court to issue a warrant of imprisonment as authority for a sentence of imprisonment to be carried out. Currently, a defendant is not taken to the prison until the written warrant has been issued. This leaves a period when the defendant has to wait at the courtroom while the warrant paperwork is done. Section 585 is amended to ensure that the defendant can be taken to the prison as soon as the sentence is imposed with the paperwork to follow.

*Clauses 82, 83 and 84* amend sections 699 and 700 and insert *new section 699A* which relate to the arrest and police detention of a person in the case of a retrial. The changes reflect the amendments made to sections 60 to 64.

*Clause 85* inserts *new sections 725A to 725G*, which relate to the youth diversion scheme. Currently, there is an opportunity for the police and the prosecution service to divert a youth away from the criminal justice system and onto the youth diversion scheme run by the Probation Service. However, this is only available before the youth is charged with an offence and there is no mechanism for the court to divert a young person to the scheme. *New sections 725A to 725G* will enable the Youth Court, in proceedings for an offence, to adjourn the proceedings to enable the youth to participate in the scheme. If they successfully complete the scheme, they will be discharged without conviction. If they do not complete the scheme, the proceedings will return to court and continue as normal.

*Clause 86* amends section 785 to allow the criminal procedure rules to impose fees for matters under those rules.

*Clause 87* inserts *new Schedule 3A* which lists offences as penalty notice offences for the purposes of the *new Part 8A*.

*Clause 88* amends Schedule 10, which sets out the time limits for rehabilitation periods. The periods for an adult sentenced to a fine or a community order are amended for consistency with the UK and so that the relative rehabilitation periods for the different sentences reflect the seriousness of the offences for which they are imposed. The periods for a fine imposed on a youth is changed to when the fine is paid in full, to mirror the periods for other non-custodial sentences.

*Clause 89* amends Schedule 12, which lists offences to which the youth protection provisions apply, to add the new offence of encouraging or assisting serious self-harm.

## **Road Traffic Ordinance 1948**

*Part 4* amends the Road Traffic Ordinance 1948.

*Clauses 91 and 92* amend sections 18A (causing death by dangerous driving) and 18M (causing death by driving without due care and attention when under influence of drink or drugs) to increase the maximum penalties to imprisonment for life. This is the same penalty as applies for the offence of gross negligence manslaughter. This reflects changes made to the Road Traffic Offenders Act 1988 by the Police, Crime, Sentencing and Courts Act 2022.

*Clause 93* repeals section 59(1)(nA) in consequence of the fixed penalty regime being established by *new Part 8A* of the Criminal Procedure and Evidence Ordinance 2014.

### **Miscellaneous**

*Clause 94 and the Schedule* to the Bill make various amendments to the Crimes Ordinance 2014, Criminal Procedure and Evidence Ordinance 2014, Criminal Justice (International Co-operation) Ordinance 1991, Prisons Ordinance 2017 and Criminal Justice Ordinance 1989. These amendments consist of minor amendments arising in consequence of amendments being made by Parts 2 and 3 of the Bill and housekeeping amendments, such as:

- removing wording and provisions that have become redundant (for example, definitions of terms no longer used, matters that are now covered by other legislation, references to legislation that has been repealed);
- updating references to Her Majesty;
- removing gender specific language;
- improving consistency of terminology and readability of the Ordinances; and
- correcting spelling, grammatical, formatting and similar errors.

*Clause 95* amends the Children (Fostering) Regulations 2019 as a consequence of amendments being made to the Crimes Ordinance 2014.

Schedule 5 of those regulations lists offences that disqualify a person from being a foster carer. The new offences relating to ill-treatment or neglect by a care provider or care worker and the female genital mutilation offences are added to the list.

*Clause 96* revokes the Road Traffic (Fixed Penalty Notices) Regulations 2017 as a consequence of the *new Part 8A* (penalty notices) of the Criminal Procedure and Evidence Ordinance 2014.