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**Domestic Abuse (Civil and Family Proceedings) Ordinance 2024 (No 7 of 2024); and
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FALKLAND ISLANDS

Domestic Abuse (Civil and Family Proceedings) Ordinance 2024

(ORDINANCE No. 7 OF 2024)

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FALKLAND ISLANDS

Domestic Abuse (Civil and Family Proceedings) Ordinance 2024

(assented to: 18 June 2024)
(commencement: in accordance with section 2)
(published: 21 June 2024)

AN ORDINANCE

To promote the safety and wellbeing of individuals who are, or fear becoming, victims of domestic abuse by enabling civil and family courts to grant domestic abuse protection orders.

ENACTED by the Legislature of the Falkland Islands —

PART 1 - Introductory

1. Title

This Ordinance is the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024.

2. Commencement

This Ordinance comes into force on a date to be appointed by the Governor by notice in the *Gazette*.

3. Protection, safety and wellbeing of victims are paramount

A court or person exercising or performing functions, duties or powers under this Ordinance must be guided by the principle that the protection, safety and wellbeing of individuals who are, or fear becoming, victims of domestic abuse are paramount and must be given priority.

4. Interpretation

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

“**abusive**” has the meaning given by section 5;

“**child**” means a person under the age of 18 years;

“**Court of Appeal**” means the Court of Appeal for the Falkland Islands established by section 87(1) of the Constitution;

“**Crimes Ordinance DAP order**” means a domestic abuse protection order made under sections 102 to 108Z of the Crimes Ordinance 2014;

“**domestic abuse**” has the meaning given by section 5;

“**domestic abuse protection order**” has the meaning given by section 7(1);

“**electronic monitoring requirement**” has the meaning given by section 12(6);

“**family proceedings**” means civil proceedings —

- (a) under the Children Ordinance 2014 or this Ordinance; or
- (b) under any other enactment relating to divorce, separation or dissolution of a civil partnership, family homes, domestic abuse or adoption;

“**home address**”, in relation to a person, means —

- (a) the address of the person’s sole or main residence in the Falkland Islands; or
- (b) if the person has no such residence —
 - (i) the address or location of a place in the Falkland Islands where the person can regularly be found; or
 - (ii) if there is more than one such place, the address or location of whichever one of those places the person selects;

“**parental responsibility**” has the same meaning as in section 6 of the Children Ordinance 2014;

“**personally connected**” has the meaning given by section 6;

“**police officer**” means a member of the police force, including a police cadet and a reserve police officer performing police duties under any enactment;

“**premises**” includes —

- (a) land and buildings;
- (b) any vehicle, vessel, aircraft or hovercraft;
- (c) any airport;
- (d) any offshore installation;
- (e) any renewable energy installation;

- (f) any stall, tent or moveable structure; and
- (g) any other place whatever, whether or not occupied as land;

“**relative**” means —

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or
- (b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other;

“**requirement**”, in relation to a domestic abuse protection order, includes a prohibition or restriction;

“**specified**” in relation to a domestic abuse protection order, means specified in the order.

- (2) Any reference to changing home address includes a reference to a case where —
 - (a) a person acquires a home address at any time; and
 - (b) immediately before that time, the person did not have a home address.

5. Definition of “domestic abuse”

- (1) This section defines “**domestic abuse**” for the purposes of this Ordinance.
- (2) Behaviour of a person (“**P**”) towards another person (“**V**”) is “**domestic abuse**” if —
 - (a) P and V are each aged 16 or over and are personally connected to each other; and
 - (b) the behaviour is abusive.
- (3) Behaviour is “**abusive**” if it consists of any of the following —
 - (a) physical or sexual abuse;
 - (b) violent or threatening behaviour;
 - (c) controlling or coercive behaviour;
 - (d) economic abuse (see subsection (4)); or
 - (e) psychological, emotional or other abuse,

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “**Economic abuse**” means any behaviour that has a substantial adverse effect on V’s ability to —

- (a) acquire, use or maintain money or other property; or
- (b) obtain goods or services.

(5) P’s behaviour may be behaviour “**towards**” V despite the fact that it consists of conduct directed at another person (for example, V’s child).

6. Definition of “personally connected”

(1) For purposes of this Ordinance, two people are “**personally connected**” to each other if any of the following applies —

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another (whether or not the agreement has been terminated);
- (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (e) they are, or have been, in an intimate personal relationship with each other;
- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (2)); or
- (g) they are relatives.

(2) For the purposes of subsection (1)(f) a person has a parental relationship in relation to a child if —

- (a) the person is a parent of the child; or
- (b) the person has parental responsibility for the child.

PART 2 - Making domestic abuse protection orders

7. Meaning of “domestic abuse protection order”

(1) A “**domestic abuse protection order**” is an order which, for the purpose of preventing a person (“**P**”) from being abusive towards a person aged 16 or over to whom P is personally connected —

- (a) prohibits P from doing things described in the order; or
- (b) requires P to do things described in the order.

- (2) A domestic abuse protection order may be made —
 - (a) on application under section 8; or
 - (b) by a court on its own initiative without an application under section 9.
- (3) Section 10 sets out the conditions for making a domestic abuse protection order.

8. Applying for an order

- (1) An application for a domestic abuse protection order may be made to the Summary Court by —
 - (a) the person seeking to be protected by the order;
 - (b) the Attorney General; or
 - (c) with the leave of the court, any other person.
- (2) If the Summary Court is not sitting, the application may be made to the Magistrate’s Court.
- (3) If family proceedings or other civil proceedings are in progress in any court, a person who is a party to those proceedings may apply to that court for a domestic abuse protection order to protect them from domestic abuse by another person who is also a party to the proceedings.
- (4) If an application is made under subsection (3), the court must deal with the application in the way it considers most appropriate having regard to the principles in section 3.
- (5) Without limiting subsection (4), the court may do any of the following —
 - (a) deal with the application as part of the existing proceedings;
 - (b) treat the application as an application commencing separate proceedings in the court’s family proceedings jurisdiction;
 - (c) adjourn the other proceedings while the application for the order is dealt with;
 - (d) make any other orders the court considers appropriate.

9. Order may be made without application

- (1) This section applies if —
 - (a) family proceedings or other civil proceedings are in progress in any court;
 - (b) it appears to the court that a person who is a party to the proceedings needs to be protected from domestic abuse from another person who is also a party to the proceedings; and
 - (c) no application is made under section 8(3).
- (2) The court may consider making (and if appropriate make) a domestic abuse protection order on its own initiative without an application being made.

(3) For that purpose, this Ordinance and all other applicable laws (including the laws of evidence and court rules) apply as if the person to be protected by the order had made an application under section 8(3).

10. Conditions for making an order

(1) The court may make a domestic abuse protection order (on application under section 8 or under section 9) against a person (“**P**”) if conditions A and B are met.

(2) Condition A is that the court is satisfied on the balance of probabilities that —

- (a) P has been abusive towards another person (“**V**”) aged 16 or over and to whom P is personally connected; or
- (b) there is a risk that P will be so abusive if the order is not made.

(3) Condition B is that the order is necessary and proportionate to protect V from domestic abuse, or the risk of domestic abuse, carried out by P.

(4) It does not matter —

- (a) whether the abusive behaviour referred to in subsection (2) took place in the Falkland Islands or elsewhere; or
- (b) whether it took place before or after the coming into force of this Ordinance.

11. Matters to be considered before making an order

(1) Before making a domestic abuse protection order against a person (“**P**”), the court must, among other things, consider the following —

- (a) the welfare of any child whose interests the court considers relevant to the making of the order (whether or not the child and P are personally connected);
- (b) any opinion of the person for whose protection the order would be made (“**V**”) —
 - (i) which relates to the making of the order; and
 - (ii) of which the court is made aware;
- (c) in a case where the order includes provision relating to premises lived in by V, any opinion of a relevant occupant —
 - (i) which relates to the making of the order; and
 - (ii) of which the court is made aware.

(2) In subsection (1)(c) “**relevant occupant**” means a person (other than P or V) who —

- (a) lives in the premises; and
- (b) is personally connected to V, or if P also lives at the premises, to P.

(3) It is not necessary for V to consent to the making of the order.

12. Provision that may be made by order

(1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made (“V”) from domestic abuse or the risk of domestic abuse.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect V from different kinds of abusive behaviour.

(3) Subsections (4) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be made.

(4) A domestic abuse protection order may provide that the person against whom the order is made (“P”) —

- (a) may not contact V;
- (b) may not come within a specified distance of any premises in which V lives;
- (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description.

(5) If P lives in the premises in which V lives, the order may contain provision —

- (a) prohibiting P from evicting or excluding V from the premises;
- (b) prohibiting P from entering the premises; or
- (c) requiring P to leave the premises.

(6) A domestic abuse protection order may require P to submit to electronic monitoring (“**electronic monitoring requirement**”) of P’s compliance with other requirements imposed by the order.

(7) Sections 13 and 14 contain further provision about the requirements that may be imposed by a domestic abuse protection order.

13. Further provision about requirements that may be imposed by order

(1) Requirements imposed on a person (“P”) by a domestic abuse protection order must, so far as practicable, be such as to avoid —

- (a) conflict with P’s religious beliefs;
- (b) interference with P’s work or attendance at an educational establishment; and
- (c) conflict with the requirements of any other court order or injunction to which P may be subject.

(2) A domestic abuse protection order that imposes a requirement that P must do something must specify the person who is to be responsible for supervising compliance with that requirement (the “**supervisor**”).

(3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person who is to be the supervisor.

(4) Subsections (2) and (3) do not apply in relation to electronic monitoring requirements (see instead section 14(3) to (5)).

(5) It is the duty of a supervisor —

(a) to make any necessary arrangements in connection with the requirements for which the supervisor has responsibility (the “**relevant requirements**”);

(b) to promote P’s compliance with the relevant requirements; and

(c) if the supervisor considers that P has failed to comply with a relevant requirement, to inform a police officer.

(6) A person (“**P**”) who is subject to a requirement imposed by a domestic abuse protection order —

(a) must keep in touch with the supervisor in relation to that requirement, in accordance with any instructions given by that person;

(b) if P changes home address, must notify the supervisor of the new home address; and

(c) if P ceases to have any home address, must notify the supervisor of that fact.

(7) The obligations under subsection (6) have effect as requirements of the order.

14. Further provision about electronic monitoring requirement

(1) Subsections (2) to (4) apply for the purpose of determining whether a court may impose an electronic monitoring requirement on a person (“**P**”) in a domestic abuse protection order.

(2) The requirement may not be imposed in P’s absence.

(3) If there is a person (other than P) 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.

(4) 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.

- (5) A domestic abuse protection order that includes an electronic monitoring requirement must specify the person who is to be responsible for the monitoring (the “**responsible person**”).
- (6) Where a domestic abuse protection order imposes an electronic monitoring requirement on P, P must (among other things) —
- (a) submit, as required 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 purposes of the monitoring.
- (7) The obligations under subsection (6) have effect as requirements of the order.

PART 3 - Complying with domestic abuse protection orders

15. Duration of order

- (1) Subject to subsection (2), a domestic abuse protection order takes effect on the day on which it is made.
- (2) If, on the day on which a domestic abuse protection order (the “**new order**”) is made against a person, the person is subject to another domestic abuse protection order (the “**previous order**”), the new order may be made so as to take effect on the previous order ceasing to have effect.
- (3) A domestic abuse protection order has effect —
- (a) for a specified period;
 - (b) until the occurrence of a specified event; or
 - (c) until further order.
- (4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.
- (5) A domestic abuse protection order may not provide for an electronic monitoring requirement to have effect for more than 12 months.
- (6) Subsection (5) is subject to any variation of the order under section 20.

16. Breach of order

(1) A person who is subject to a domestic abuse protection order commits an offence if, without reasonable excuse, the person fails to comply with any requirement imposed by the order.

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

(2) Where a person is convicted of an offence under this section in respect of any behaviour, that behaviour is not punishable as a contempt of court.

(3) A person may not be convicted of an offence under this section in respect of any behaviour which has been punished as a contempt of court.

(4) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order under section 502(1)(b) of the Criminal Procedure and Evidence Ordinance 2014 (conditional discharge).

17. Notification requirements

(1) Subsections (2) to (6) apply where a person (“P”) is subject to a domestic abuse protection order.

(2) P must, within the period of three days beginning with the day on which the order is made, notify the police of the information in subsection (3).

(3) The information referred to in subsection (2) is —

(a) P’s name and, if P uses one or more other names, each of those names; and

(b) P’s home address.

(4) If P uses a name which has not been notified under this section, P must, within the period of three days beginning with the day on which P first uses that name, notify the police of that name.

(5) If P changes home address, P must, before the end of the period of three days beginning with the day on which that happens, notify the police of the new home address.

(6) If P ceases to have any home address, P must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.

(7) The requirements imposed by subsections (2) to (6) do not apply where —

(a) P is subject to another domestic abuse protection order (and accordingly those requirements already apply); or

(b) P is subject to notification requirements under Part 11 or section 154I of the Crimes Ordinance 2014.

(8) If on any day P ceases to be subject to any notification requirements as mentioned in subsection (7)(a) or (b), the requirements imposed by subsections (2) to (6) apply to P on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day.

(9) For provision about how to give a notification under subsection (2), (4), (5) or (6), see section 18.

18. Further provision about notification under section 17

- (1) A person gives a notification under section 17(2), (4), (5) or (6) by —
 - (a) attending at a police station; and
 - (b) giving an oral notification to —
 - (i) a police officer; or
 - (ii) any person authorised for the purpose by the officer in charge of the station.
- (2) A notification given in accordance with this section must be acknowledged in writing.
- (3) When a person (“P”) gives a notification under section 17, P must, if requested to do so by the person to whom notification is given, allow that person to do any of the following things —
 - (a) take P’s fingerprints;
 - (b) photograph, or otherwise produce an image of, P or any part of P.
- (4) The power in subsection (3) is exercisable for the purpose of verifying P’s identity.

19. Offences relating to notification

- (1) A person (“P”) commits an offence if P —
 - (a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 17; or
 - (b) notifies the police, in purported compliance with such a requirement, of any information which P knows to be false.

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

- (2) A person who fails, without reasonable excuse, to comply with section 18(3) commits an offence.

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

- (3) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 17.
- (4) The person continues to commit the offence throughout any period during which the failure continues.
- (5) The person may not be prosecuted more than once in respect of the same failure.

PART 4 - Varying or discharging domestic abuse protection orders

20. Variation and discharge of orders

- (1) A domestic abuse protection order (made under this Ordinance) may be varied or discharged —
 - (a) on application under section 21(1), (2), or (3);
 - (b) by a court on its own initiative without an application under section 22; or
 - (c) by a criminal court under sections 108Q to 108R of the Crimes Ordinance 2014.
- (2) A Crimes Ordinance DAP order may be varied or discharged (under this Ordinance) —
 - (a) on application under section 21(3); or
 - (b) by a court on its own initiative without an application under section 22.
- (3) Subsection (2) does not limit sections 108Q to 108R of the Crimes Ordinance 2014.
- (4) An order that is varied under this Part —
 - (a) remains an order of the court that originally made it even if it is varied by a different court; and
 - (b) in the case of a Crimes Ordinance DAP order, remains an order made under the Crimes Ordinance 2014 even if it is amended under this Ordinance.

21. Application to vary or discharge order

- (1) An application to vary or discharge a domestic abuse protection order may be made to the court that made the order by —
 - (a) the person for whose protection the order was made;
 - (b) the person against whom the order was made;
 - (c) the Attorney General (if they were the applicant under section 8(1)(b)); or
 - (d) with the leave of the court, any other person.
- (2) If the order was made by the Summary Court and that court is not sitting, the application may be made to the Magistrate's Court.
- (3) If —
 - (a) family proceedings or other civil proceedings are in progress in any court;
 - (b) a domestic abuse protection order or Crimes Ordinance DAP order is in force; and

- (c) the person for whose protection the order was made and the person against whom the order was made are both parties to those proceedings,

either of those persons may apply to the court referred to in paragraph (a) to vary or discharge the order.

(4) If an application is made under subsection (3), the court must deal with the application in the way it considers most appropriate having regard to the principles in section 3.

(5) Without limiting subsection (4), the court may do any of the following —

- (a) deal with the application as part of the proceedings referred to in subsection (3)(a);
- (b) refer the application to the court that made the order;
- (c) adjourn the proceedings referred to in subsection (3)(a) while the application is dealt with;
- (d) make any other orders the court considers appropriate.

(6) If an application is referred to another court under subsection (5)(b), that court is to deal with it as an application made under subsection (1) or section 108Q of the Crimes Ordinance 2014 (as the case requires).

22. Order may be varied or discharged without application

(1) This section applies if —

- (a) family proceedings or other civil proceedings are in progress in any court;
- (b) a domestic abuse protection order or Crimes Ordinance DAP order is in force;
- (c) the person for whose protection the order was made and the person against whom the order was made are both parties to those proceedings;
- (d) it appears to the court that it may be appropriate to vary or discharge the order; and
- (e) no application is made under section 21(3).

(2) The court may consider varying or discharging (and if appropriate vary or discharge) the order on its own initiative without an application being made.

(3) For that purpose, this Ordinance and all other applicable laws (including the laws of evidence and court rules) apply as if the person protected by the order had made an application under section 21(3).

23. Consideration of applications to vary or discharge

(1) This section applies in relation to the variation or discharge of a domestic abuse protection order or Crimes Ordinance DAP order under sections 20 to 22.

(2) If an application is made by the person for whose protection the order was made (“V”) to discharge the order or to remove or make less onerous any requirement imposed by the order, the court must hear from V before deciding whether to vary or discharge the order.

(3) Section 11 (matters to be considered before making an order) applies in relation to the variation or discharge as it applies in relation to the making of an order, but as if references to the person for whose protection the order would be made were references to V.

(4) Subject to subsections (5) to (9), the court may vary or discharge the order as it considers appropriate.

(5) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect only if it is satisfied that it is necessary and proportionate for the purposes set out in section 12(1).

(6) The court must not extend the period for which an electronic monitoring requirement has effect by more than 12 months at a time.

(7) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary and proportionate for the purposes set out in section 12(1).

(8) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court —

- (a) must not extend the requirement; and
- (b) must remove the requirement.

(9) The court may discharge the order only if satisfied that the order is no longer necessary for the purposes set out in section 12(1).

PART 5 - Appeals

24. Appeals

(1) A person listed in subsection (2) may appeal against any decision of a court —

- (a) to grant, vary, or discharge a domestic abuse protection order (whether that decision was made on an application or by the court on its own initiative); or
- (b) to refuse an application to grant, vary or discharge a domestic abuse protection order.

(2) The persons referred to in subsection (1) are —

- (a) the person for whose protection the order was sought or made;
- (b) the person against whom the order was made;

- (c) in the case of application made by another person under section 8(1)(c) or 21(1)(d), that person; and
- (d) the Attorney General.

(3) An appeal is to be made —

- (a) in the case of a decision made by the Summary Court, to the Magistrate’s Court;
- (b) in the case of a decision made by the Magistrate’s Court, to the Supreme Court; and
- (c) in the case of a decision made by the Supreme Court, to the Court of Appeal.

25. Further provision about appeals

(1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 24), the court must hear from the Attorney General (if they wish to be heard).

(2) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against —

- (a) confirm, vary or revoke any part of the decision;
- (b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;
- (c) make any order which the court that made the decision appealed against could have made; or
- (d) make any incidental or consequential orders that appear to it to be just.

(3) For the purposes of section 21 (application to vary or discharge order) —

- (a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (2)(a) or otherwise) remains an order of the court that first made it; and
- (b) a domestic abuse protection order made by a court on an appeal (whether under subsection (2)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

PART 6 - General

26. Court procedure

(1) For the purposes of all laws, practices and procedures relating to court procedure and practice, proceedings under this Ordinance are taken to be family proceedings and those laws, practices and procedures apply accordingly (subject to the other provisions of this Ordinance).

(2) If —

- (a) a domestic abuse protection order has been made against a person; and
- (b) it appears to the court that the person is using the court's process in a way that amounts to domestic abuse towards the person protected by the order (for example, by making repeated groundless applications to vary or discharge the order),

the court may make any orders it considers appropriate (for example, to strike out the application).

(3) The court's powers under subsection (2) are in addition to its other powers relating to any abuse of the court's process.

27. Special measures for witnesses

(1) In proceedings under this Ordinance, the court may give directions or do anything else that a court could give or do under Part 22 of Criminal Procedure and Evidence Ordinance 2014 (vulnerable witnesses) if the proceedings were criminal proceedings.

(2) For that purpose, the Criminal Procedure and Evidence Ordinance 2014 applies with all necessary modifications.

(3) The court's powers under this section are in addition to its other powers relating to witnesses (including those applying under section 26).

28. Making of orders without notice

(1) This section applies if an application is made —

- (a) under section 8 to make a domestic abuse protection order; or
- (b) under section 21 to vary a domestic abuse protection order or Crimes Ordinance DAP order.

(2) The court may hear the application and make appropriate orders without notice having been given to the person against whom the order is to be, or was, made (“**P**”) if the court considers it just and appropriate to do so.

(3) In deciding whether to do so, the court must have regard to all the circumstances, including —

- (a) whether, if the application is not heard and determined immediately, —
 - (i) P will cause significant harm to the person for whose protection the order is sought or was made (“**V**”); or
 - (ii) V will be deterred or prevented from pursuing the application; and
- (b) whether there is reason to believe that —
 - (i) P is aware of the proceedings but is deliberately evading service; and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to V.

(4) If a court makes an order without notice having been given to P, it must give P 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 to all the parties in accordance with rules of court.

29. Guidance

(1) The Governor may issue guidance relating to the exercise of powers or performance of functions under this Ordinance.

(2) If guidance has been issued under section 108Z of the Crimes Ordinance 2014 in relation to the exercise by police of functions under that Ordinance, that guidance also applies in relation to the exercise by police of any equivalent functions under this Ordinance.

(3) Any person exercising the power or performing the function must have regard to the guidance.

(4) The Governor must publish all guidance made under subsection (1).

30. Regulations

The Governor may make regulations generally for giving effect to this Ordinance.

31. Repeal and transitional provision

(1) The Matrimonial Proceedings (Domestic Violence) Ordinance 1994 (the “**repealed Ordinance**”) is repealed.

(2) An injunction granted under the repealed Ordinance and in force immediately before this Ordinance commenced, remains in force and may be enforced as if the repealed Ordinance were still in force.

(3) An application made under the repealed Ordinance and not determined before this Ordinance commenced must be finalised in accordance with the repealed Ordinance as if it were still in force.

PART 7 - Amendments to other legislation

Children Ordinance 2014

32. Children Ordinance 2014 amended

(1) This section amends the Children Ordinance 2014.

(2) Replace section 12(3)(iv) with —

“(iv) the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024;”.

33. Crimes Ordinance 2014 amended

Sections 34 to 40 amend the Crimes Ordinance 2014.

34. Section 104 repealed (children as victims of domestic abuse)

Repeal section 104.

35. Section 108G amended (conditions for making an order)

In section 108G —

(a) replace subsection (2) with —

“(2) Condition A is that the court is satisfied on the balance of probabilities that —

(a) P has been abusive towards another person (“V”) aged 16 or over and to whom P is personally connected; or

(b) there is a risk that P will be so abusive if the order is not made.”;

(b) in subsection (3), replace “that person” with “V”; and

(c) repeal subsection (5).

36. Section 108L amended (duration of orders)

In section 108L(6), replace “section 108Q” with “sections 108Q to 108R”.

37. Sections 108Q and 108R replaced

Replace section 108Q and 108R with —

“108Q. Variation and discharge of orders

(1) A domestic abuse protection order (made under this Ordinance) may be varied or discharged —

(a) on application under section 108QA(1), (2) or (3);

(b) by a court on its own initiative without an application in accordance with section 108QB; or

(c) by a civil or family court under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024.

(2) A Civil or Family DAP order may be varied or discharged (under this Ordinance) —

(a) on application under section 108QA(3); or

(b) by a court on its own initiative without an application in accordance with section 108QB.

(3) Subsection (2) does not limit Part 4 of the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024.

(4) An order that is varied under this section and sections 108QA to 108R —

- (a) remains an order of the court that originally made it even if it is varied by a different court; and
- (b) in the case of a Civil or Family DAP order, remains an order made under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024 even if it is amended under this Ordinance.

108QA. Application to vary or discharge

(1) An application to vary or discharge a domestic abuse protection order may be made to the court that made the order by —

- (a) the person for whose protection the order was made;
- (b) the person against whom the order was made;
- (c) the Attorney General.

(2) If the order was made by the Summary Court and that court is not sitting, the application may be made to the Magistrate's Court.

(3) If the defendant in any criminal proceedings is subject to a domestic abuse protection order or a Civil or Family DAP order, the Attorney General may apply to the court hearing those proceedings to vary or discharge the order.

(4) If an application is made under subsection (3), the court must deal with the application in the way it considers most appropriate in the circumstances.

(5) Without limiting subsection (4), the court may do any of the following —

- (a) deal with the application as part of the criminal proceedings referred to in subsection (3);
- (b) refer the application to the court that made the order;
- (c) adjourn the proceedings referred to in subsection (3) while the application is dealt with;
- (d) make any other orders the court considers appropriate.

(6) If an application is referred to another court under subsection (5)(b), that court is to deal with it as an application made under subsection (1) or section 21 of the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024 (as the case requires).

108QB. Order may be varied or discharged without application

(1) This section applies if —

- (a) the defendant in any criminal proceedings is subject to a domestic abuse protection order or a Civil or Family DAP order;

- (b) it appears to the court that it may be appropriate to vary or discharge the order; and
- (c) no application is made under section 108QA(3).

(2) The court may consider varying or discharging (and if appropriate vary or discharge) the order on its own initiative without an application being made.

(3) For that purpose, this Ordinance and all other applicable laws (including the laws of evidence and court rules) apply as if the Attorney General had made an application under section 108QA(3).

108R. Consideration of applications to vary or discharge

(1) This section applies in relation to the variation or discharge of a domestic abuse protection order or a Civil or Family DAP order under sections 108Q to 108QB.

(2) Before deciding whether to vary or discharge the order, the court must hear from —

- (a) the Attorney General, if they wish to be heard; and
- (b) in a case where the person for whose protection the order was made (“V”) is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, V.

(3) Section 108H (matters to be considered before making an order) applies in relation to the variation or discharge as it applies in relation to the making of an order, but as if references to the person for whose protection the order would be made were references to V.

(4) Subject to subsections (5) to (9), the court may vary or discharge the order as it considers appropriate.

(5) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect only if it is satisfied that it is necessary and proportionate for the purposes set out in section 108I(1).

(6) The court must not extend the period for which an electronic monitoring requirement has effect by more than 12 months at a time.

(7) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary and proportionate for the purposes set out in section 108I(1).

(8) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court —

- (a) must not extend the requirement; and
- (b) must remove the requirement.

(9) The court may discharge the order only if satisfied that the order is no longer necessary for the purposes set out in section 108I(1).”.

38. Section 108S amended (appeals)

In section 108S —

(a) replace subsection (1) with —

“(1) A person listed in subsection (2) may appeal against any decision of a court —

- (a) to grant, vary, or discharge a domestic abuse protection order (whether that decision was made on an application or by the court on its own initiative); or
- (b) to refuse an application to grant, vary or discharge a domestic abuse protection order.”; and

(b) in subsection (2) —

- (i) in paragraph (a), after “sought”, insert “or made”; and
- (ii) in paragraph (b), after “was”, insert “sought or”.

39. Section 108U amended (nature of certain proceedings)

In section 108U, in subsections (1) and (3), after “108Q”, insert “to 108R”.

40. Section 108V amended (interpretation of sections 105 to 108U)

In section 108V(1), insert in its appropriate alphabetical order —

“ **“Civil or Family DAP order”** means a domestic abuse protection order made under the Domestic Abuse (Civil and Family Proceedings) Ordinance 2024;”.

Licensing Ordinance 1994

41. Licensing Ordinance 1994 amended

- (1) This section amends the Licensing Ordinance 1994.
- (2) In section 2(1), delete the definition of “spouse”.

Passed by the Legislature of the Falkland Islands on 5 June 2024.

CHERIE YVONNE CLIFFORD,
Clerk of the Legislative Assembly.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD,
Clerk of the Legislative Assembly.



FALKLAND ISLANDS

Employment Protection (Amendment) Ordinance 2024

(ORDINANCE No. 8 OF 2024)

ARRANGEMENT OF PROVISIONS

Section

1. Title
2. Commencement
3. Amendment of Employment Protection Ordinance 1989
4. Section 18 amended (limits on amount of and entitlement to guarantee payment)
5. Section 63 amended (qualifying period and upper age limit)
6. Section 71 amended (calculation of basic award)
7. Section 73 amended (limit on compensation)
8. Section 74 amended (calculation of special award)
9. Section 80 amended (general exclusions from right to redundancy payment)
10. Section 100 amended (employee's rights on insolvency of employer)
11. Schedule 3 amended (calculation of redundancy payments)
12. Schedule 6 amended (calculation of normal working hours and a week's pay)
13. Transitional matters



FALKLAND ISLANDS

Employment Protection (Amendment) Ordinance 2024

(assented to: 18 June 2024)
(commencement: on publication)
(published: 21 June 2024)

AN ORDINANCE

To amend the Employment Protection Ordinance 1989.

ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Employment Protection (Amendment) Ordinance 2024.

2. Commencement

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

3. Amendment of Employment Protection Ordinance 1989

This Ordinance amends the Employment Protection Ordinance 1989.

4. Section 18 amended (limits on amount of and entitlement to guarantee payment)

In section 18(1), replace “£23.10.” with “8 times the minimum wage rate specified in section 11 of the Minimum Wage Ordinance 2013 for that day.”.

5. Section 63 amended (qualifying period and upper age limit)

In section 63(1)(b), replace “or, if a man, attained the age of sixty-five, or if a woman, attained the age of sixty.” with “or attained the age of 65.”.

6. Section 71 amended (calculation of basic award)

(1) In section 71(5), replace “£2,100.” with “£6,082.”.

(2) In section 71(8), replace “in relation to a man means the sixty-fourth anniversary of the day of his birth, and in relation to a woman means the fifty-ninth anniversary of the day of her birth,” with “means the person’s 64th birthday.”

7. Section 73 amended (limit on compensation)

(1) In section 73(1), replace “£10,000.” with “£28,901.”

(2) In section 73(2), replace “said limit of £10,000 or that limit” with “sum specified in subsection (1), or that sum”.

8. Section 74 amended (calculation of special award)

(1) In section 74(1) —

(a) in paragraph (b), replace “£12,500,” with “£36,074,”; and

(b) replace “£25,000.” with “£72,200.”

(2) In section 74(2)(b), replace “£18,750,” with “£54,163.”

(3) In section 74(7), delete “of £12,500, £25,000 and £18,750”.

9. Section 80 amended (general exclusions from right to redundancy payment)

Replace section 80(1) with —

“(1) An employee is not entitled to a redundancy payment if, immediately before the relevant date, the employee has attained the age of 65.”

10. Section 100 amended (employee’s rights on insolvency of employer)

In section 100(5) —

(a) replace “£234.08” with “£438.97”; and

(b) replace “£152” with “£285”.

11. Schedule 3 amended (calculation of redundancy payments)

In Schedule 3, paragraph 4(2), replace “, in relation to a man, means the sixty-fourth anniversary of the day of his birth, and, in relation to a woman, means the fifty-ninth anniversary of the day of her birth,” with “means the person’s 64th birthday.”

12. Schedule 6 amended (calculation of normal working hours and a week’s pay)

In Schedule 6, paragraphs 8(1) —

(a) in subparagraphs (a) and (b), replace “£277.20;” with “£519.80;” and

(b) in subparagraph (c), replace “£277.20,” with “£519.80.”

13. Transitional matters

(1) Sections 18, 63, 71, 73, 74, 80 and 100 and Schedules 3 and 6 as amended by this Ordinance apply in relation to a day's employment, a dismissal, a redundancy or an insolvency (as the case requires) that occurs on or after the day on which this Ordinance come into force.

(2) Those provisions as in force before that day continue to apply in relation to day's employment, a dismissal, a redundancy or an insolvency (as the case requires) that occurred before that day.

Passed by the Legislature of the Falkland Islands on 5 June 2024.

CHERIE YVONNE CLIFFORD,
Clerk of the Legislative Assembly.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD,
Clerk of the Legislative Assembly.

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