

LEGISLATIVE ASSEMBLY

OF THE

FALKLAND ISLANDS



ORDER PAPER

09.00 AM

THURSDAY 29 JANUARY 2015

IN THE COURT AND ASSEMBLY CHAMBER

STANLEY

LEGISLATIVE ASSEMBLY

THURSDAY 29 JANUARY 2015

IN THE LEGISLATIVE ASSEMBLY CHAMBER

TOWN HALL

**ORDER PAPER
09.00**

1. Prayers
2. Confirmation of the Record of Legislative Assembly held on 18 December 2014.
3. Papers to be laid on the Table by the Honourable Chief Executive
4. Questions for Oral Response
5. Motions

Motion Number 1 of 2015 by the Honourable the Financial Secretary

6. Portfolio Reports:
 - The Honourable Gavin Short
 - The Honourable Mike Summers OBE
7. Order of the day: Bills
 - Falkland Islands Pensions Scheme (Amendment) Bill 2014
8. Motion for Adjournment

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 18 DECEMBER 2014

PAPERS LAID ON THE TABLE BY THE HONOURABLE CHIEF EXECUTIVE

Copies of Subsidiary Legislation published in the Falkland Islands Gazette since the last sitting of the Legislative Assembly and Laid on the Table pursuant to section 35 (1) of the Interpretation and General Clauses Ordinance 1977.

- Stone Corral on Stanley Common Designation Order 2014
- Falkland Islands Tourist Board (Operative Date) Order 2014
- Taxes and Duties (Defence Contractors' Employees Exemption) Order 2014
- Misuse of Drugs (Controlled Drugs) Order 2014
- Children Ordinance 2014 (Correction) Order 2014

SUBSIDIARY LEGISLATION

PLANNING AND BUILDING

Stone Corral on Stanley Common Designation Order 2014

S. R. & O. No: 17 of 2014

Made: 19 December 2014

Published: 23 December 2014

Coming into force: upon publication

I make the following order under section 65(1) of the Planning Ordinance (Title 55.3) —

- (a) on the advice of Executive Council;
- (b) having determined that there is no-one else to whom an opportunity to make written representations needs to be given under section 65(2)(a); and
- (c) on the recommendation of the Historic Buildings Committee (composed as required by section 63(2)), as required by section 65(2)(b) —

1. Title

This Order is the Stone Corral on Stanley Common Designation Order 2014.

2. Commencement

This Order comes into force upon publication in the Gazette.

1.3. Designation of Stone Corral

The structure on Stanley Common, south of Sapper Hill, known as the Stone Corral is designated as a building of special architectural and historic interest.

Made 19 December 2014

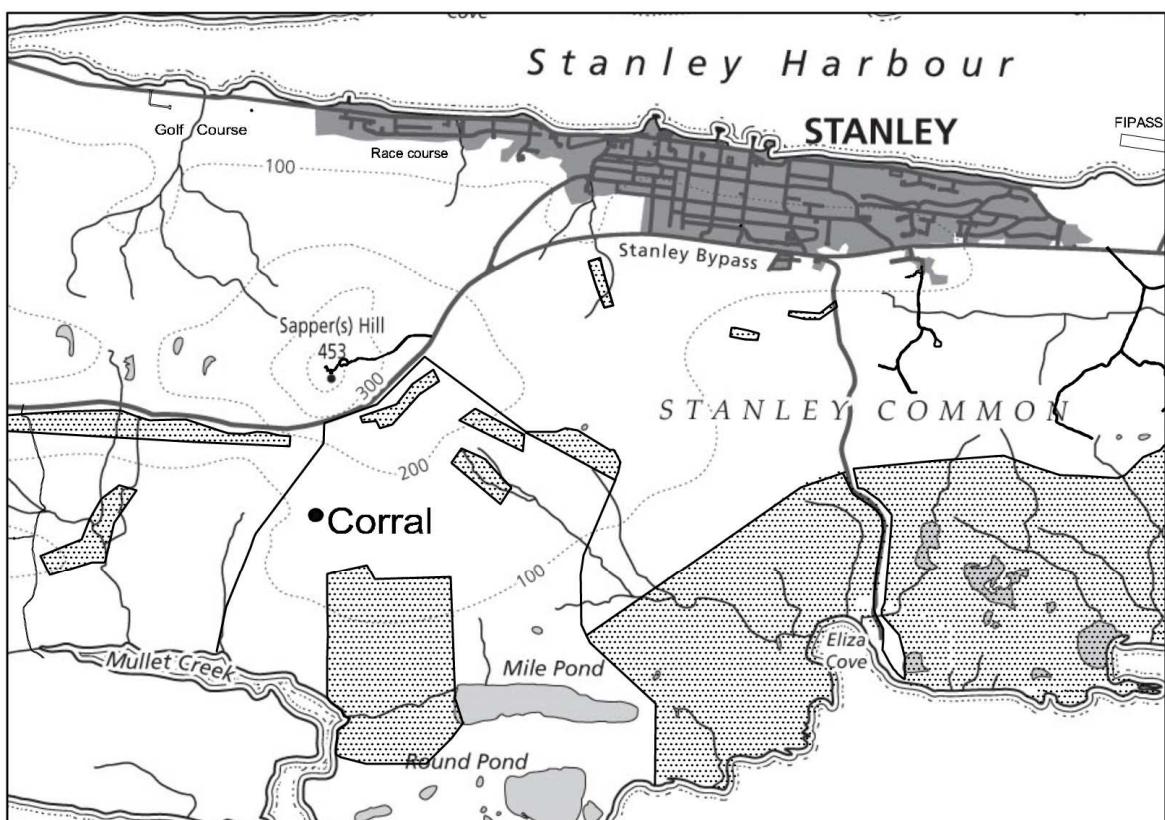
C. Roberts C.V.O.,
Governor.

EXPLANATORY NOTE
(not part of the order)

This Order designates the Stone Corral on Stanley Common as a building of special architectural and historic interest.

Planning permission or consent is required for its demolition, alteration or extension.

This map shows the location of the Stone Corral:



SUBSIDIARY LEGISLATION

ECONOMIC DEVELOPMENT

Falkland Islands Tourist Board (Operative Date) Order 2014

S. R. & O. No. 18 of 2014

Made: 19 December 2014

Published: 23 December 2014

Coming into force: 1 January 2015

IN EXERCISE of my powers under section 4(4) of the Falkland Islands Tourist Board Ordinance (No. 10 of 2014) and on the advice of Executive Council, I make the following order —

1. Title and commencement

This order is the Falkland Islands Tourist Board (Operative Date) Order 2014 and comes into operation on 1 January 2015.

2. Operative date

1 January 2015 is appointed as the operative date for purposes of section 4 of the Falkland Islands Tourist Board Ordinance 2014 (transition of existing company to new body corporate).

Made 19 December 2014

C. Roberts C.V.O.,
Governor

EXPLANATORY NOTE (*This note is not part of the Order*)

This order is made under section 4 of the Falkland Islands Tourist Board Ordinance 2014 (No. 10 of 2014). 1 January 2015 is fixed as the operative date on which the existing company will transition into a body corporate. 1 January 2015 is also fixed as the date on which all rights, obligations, assets and liabilities will pass from the company to the new statutory corporation.

SUBSIDIARY LEGISLATION

TAXATION

Taxes and Duties (Defence Contractors' Employees Exemption) Order 2014

S. R. & O. No. 19 of 2014

Made: 19 December 2014

Published: 23 December 2014

Coming into force: on publication

I make this order under section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) —

- (a) on the advice of the Standing Finance Committee, as required by section 9A(1) of the Ordinance; and
- (b) on the advice of Executive Council.

1. Title

This order is the Taxes and Duties (Defence Contractors' Employees Exemption) Order 2014.

2. Commencement

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

3. Interpretation

In this order —

“designated employer” means an employer listed in the Schedule;

“qualifying employee” means a person who —

- (a) satisfies the requirements of section 9A of the Ordinance; and
- (b) is employed by a designated employer;

“relevant employment” means —

(a) employment only for the purpose of providing services in the Falkland Islands to either —

- (i) Her Majesty’s regular armed forces; or
- (ii) the Ministry of Defence of Her Majesty’s Government in the United Kingdom; or

(b) employment only for the purposes of providing services to persons who are themselves in relevant employment by virtue of paragraph (a) of this definition or by virtue of this paragraph of this definition;

“relevant income” means income from relevant employment; and

“retirement pension contributions” means contributions that an employee is required to pay under the Retirement Pensions Ordinance (No. 20 of 1996).

4. Application

(1) Subject to article 5, a qualifying employee is exempt from liability under any law of the Falkland Islands to pay —

- (a) income tax on relevant income from a designated employer; and
- (b) retirement pension contributions in respect of that employment.

(2) The exemption applies whether the liability arises before or after this order comes into force.

5. Duration

Nothing in this order confers any exemption to pay either —

- (a) income tax in relation to earnings after 31 December 2015; or
- (b) retirement pension contributions in respect of employment after that date.

6. Revocation

The Taxes and Duties (Defence Contractors’ Employees Exemption) Order 2013 (No. 13 of 2013) is revoked.

SCHEDULE DESIGNATED EMPLOYERS

(article 3)

Agrimarine Limited

Babcock Aerospace Limited

Babcock Communications Limited

BAE Systems (Military Air) Overseas Limited

British International Helicopter Services Limited

COLAS Limited

David Lomas Limited

Fujitsu Services Limited

Gifford Global Limited

Interserve Defence Limited

Mott MacDonald Limited
MPI Aviation Limited
Navy, Army and Air Force Institutes
Satec Limited
Serco Limited
Services Sound and Vision Corporation
Sodexho Defence Services Limited
Trant Construction Limited
Van Wijngaarden Marine Services b.v.
Westland Helicopters Limited

Made 19 December 2014

C. Roberts C.V.O.,
Governor.

EXPLANATORY NOTE
(not part of the order)

Section 9A of the Taxes and Duties (Special Exemptions) Ordinance (Title 69.2) gives the Governor power to make orders granting exemptions from income tax and retirement pension contributions to certain individuals engaged in defence-based employment.

This order means that employees who work for one of the employers listed in the Schedule are exempt from income tax and retirement pension contributions until the end of 2015, provided that they are engaged in relevant employment (as defined) and the other requirements set out in section 9A of the Ordinance are met.

The effect of section 21(1)(e) of the Medical Services Tax Ordinance (No 13 of 2010) provides that the earnings and benefits in kind that are exempt from income tax under this order are also exempt from Medical Services Tax.

This order (which replaces a previous order) extends the life of the exemption (which was due to expire on 31 December 2014) for another year.

Under section 9A, orders have to be made on the advice of the Standing Finance Committee. However, Executive Council specifically approved the extension of the life of the exemption and, so, to that extent, the order is made on the advice of Executive Council in addition to that of the Standing Finance Committee.

SUBSIDIARY LEGISLATION

MEDICINE AND PHARMACY

Misuse of Drugs (Controlled Drugs) Order 2014

S. R. & O. No. 20 of 2014

Made: 19 December 2014

Published: 23 December 2014

Coming into force: on publication

I make this order under section 2(4) of the Misuse of Drugs Ordinance (Title 49.3) on the advice of Executive Council —

1. Title

This order is the Misuse of Drugs (Controlled Drugs) Order 2014.

2. Commencement

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

3. Amendment of Schedule to the Misuse of Drugs Ordinance

(1) This order amends the Schedule to the Misuse of Drugs Ordinance.

(2) The Schedule to the Misuse of Drugs Ordinance is repealed and replaced with the following new Schedule —

“CONTROLLED DRUGS

PART 1 CLASS A DRUGS

1. The following substances and products:

- (a) Acetorphine
- Alfentanil
- Allylprodine
- Alphacetylmethadol
- Alphameprodine
- Alphamethadol
- Alphaprodine
- Anileridine
- Benzethidine
- Benzylmorphine (3-benzylmorphine)
- Betacetylmethadol
- Betameprodine

Betamethadol
Betaprodine
Bezitramide
Bufotenine
Cannabinol, except where contained in cannabis or cannabis resin
Cannabinol derivatives
Carfentanil
Clonitazene
Coca leaf
Cocaine
Desomorphine
Dextromoramide
Diamorphine
Diamprodine
Diethylthiambutene
Difenoxin (1-(3-cyano-3, 3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid)
Dihydrocodeineone O-carboxy-methyloxime
Dihydromorphine
Dimenoxadole
Dimepheptanol
Dimethylthiambutene
Dioxaphetyl butyrate
Diphenoxylate
Dipipanone
Drotebanol (3,4-dimethoxy-17-methylmorphinan-6 β , 14-diol)
Ecgonine, and any derivative of ecgonine which is convertible to ecgonine or to cocaine
Ethylmethylthiambutene
Eticyclidine
Etonitazene
Etorphine
Etoxeridine
Etryptamine
Fentanyl
Furethidine
Hydrocodone
Hydromorphenol
Hydromorphone
Hydroxypethidine
Isomethadone
Ketobemidone
Levomethorphan
Levomoramide
Levophenacylmorphan
Levorphanol
Lofentanil
Lysergamide
Lysergide and other N-alkyl derivatives of lysergamide
Mescaline
Metazocine

Methadone
Methadyl acetate
Methyldesorphine
Methyldihydromorphine (6-methyldihydromorphine)
Metopon
Morpheridine
Morphine
Morphine methobromide, morphine N-oxide and other pentavalent nitrogen morphine derivatives
Myrophine
Nicomorphine (3,6-dinicotinoylmorphine)
Noracymethadol
Norlevorphanol
Normethadone
Normorphine
Norpipanone
Opium, whether raw, prepared or medicinal
Oxycodone
Oxymorphone
Pethidine
Phenadoxone
Phenampromide
Phenazocine
Phencyclidine
Phenomorphan
Phenoperidine
Piminodine
Piritramide
Poppy-straw and concentrate of poppy-straw
Proheptazine
Properidine (1-methyl-4-phenyl-piperidine-4-carboxylic acid isopropyl ester)
Psilocin
Racemethorphan
Racemoramide
Racemorphan
Rolicyclidine
Sufentanil
Tenocyclidine
Thebacon
Thebaine
Tilidate
Trimeperidine
4-Bromo-2,5-dimethoxy-a-methyl-phenethylamine
4-Cyano-2-dimethylamino-4,4-diphenylbutane
4-Cyano-1-methyl-4-phenyl-piperidine
N,N-Diethyltryptamine
N,N-Dimethyltryptamine
2,5-Dimethoxy-a,4-dimethylphenethylamine
N-Hydroxy-tenamphetamine

1-Methyl-4-phenylpiperidine-4-carboxylic acid
2-Methyl-3-morpholino-1,1-diphenylpropanecarboxylic acid
4-Methyl-aminorex
4-Phenylpiperidine-4-carboxylic acid ethyl ester

(b) any compound (not being a compound for the time being specified in subparagraph (a) above) structurally derived from tryptamine or from a ring-hydroxy tryptamine by substitution at the nitrogen atom of the side chain with one or more alkyl substituents but no other substituent;

(c) any compound (not being methoxyphenamine or a compound for the time being specified in subparagraph (a) above) structurally derived from phenethylamine, an N-alkylphenethylamine, alpha-methylphenethylamine, an N-alkyl-alpha-methylphenethylamine, alpha-ethylphenethylamine, or an N-alkyl-alpha-ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylene-dioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents;

(d) any compound (not being a compound for the time being specified in subparagraph (a) above) structurally derived from fentanyl by modification in any of the following ways:

- (i) by replacement of the phenyl portion of the phenethyl group by any heteromonocycle whether or not further substituted in the heterocycle;
- (ii) by substitution in the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halogeno, haloalkyl, amino or nitro groups;
- (iii) by substitution in the piperidine ring with alkyl or alkenyl groups;
- (iv) by substitution in the aniline ring with alkyl, alkoxy, alkylenedioxy, halogeno or haloalkyl groups;
- (v) by substitution at the 4-position of the piperidine ring with any alkoxycarbonyl or alkoxyalkyl or acyloxy group;
- (vi) by replacement of the N-propionyl group by another acyl group; and

(e) any compound (not being a compound for the time being specified in subparagraph (a) above) structurally derived from pethidine by modification in any of the following ways —

- (i) by replacement of the 1-methyl group by an acyl, alkyl whether or not unsaturated, benzyl or phenethyl group, whether or not further substituted;
- (ii) by substitution in the piperidine ring with alkyl or alkenyl groups or with a propano bridge, whether or not further substituted;
- (iii) by substitution in the 4-phenyl ring with alkyl, alkoxy, aryloxy, halogeno or haloalkyl groups;
- (iv) by replacement of the 4-ethoxycarbonyl by any other alkoxycarbonyl or any alkoxyalkyl or acyloxy group;

- (v) by formation of an N-oxide or of a quaternary base.
- 2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 not being dextromethorphan or dextrorphan.
- 3. Any ester or ether of a substance for the time being specified in paragraph 1 or 2 not being a substance for the time being specified in Part 2 of this Schedule.
- 4. Any salt of a substance for the time being specified in any of paragraphs 1 to 3.
- 5. Any preparation or other product containing a substance or product for the time being specified in any of paragraphs 1 to 4.
- 6. Any preparation designed for administration by injection which includes a substance or product for the time being specified in any of paragraphs 1 to 3 of Part 2 of this Schedule.

PART 2 CLASS B DRUGS

- 1. The following substances and products:

(a) Acetyldihydrocodeine
Amphetamine
Cannabis and cannabis resin
Codeine
Dihydrocodeine
Ethylmorphine (3-ethylmorphine)
Glutethimide
Lefetamine
Mecloqualone
Methaqualone
Methcathinone
Methylamphetamine
Methylphenidate
Methylphenobarbitone
Nicocodine
Nicodicodine (6-nicotinoyldihydrocodeine)
Norcodeine
Pentazocine
Phenmetrazine
Pholcodine
Propiram
Zipeprol

(b) any 5,5 disubstituted barbituric acid;

- 2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule.

3. Any salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.
4. Any preparation or other product containing a substance or product for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule, not being a preparation falling within paragraph 6 of Part 1 of this Schedule.

PART 3
CLASS C DRUGS

1. The following substances:

- (a) Alprazolam
Aminorex
Benzphetamine
Bromazepam
Brotizolam
Buprenorphine
Camazepam
Cathine
Cathinone
Chlordiazepoxide
Chlorphentermine
Clobazam
Clonazepam
Clorazepic acid
Clotiazepam
Cloxazolam
Delorazepam
Dextropropoxyphene
Diazepam
Diethylpropion
Estazolam
Ethchlorvynol
Ethinamate
Ethyl loflazepate
Fencamfamin
Fenethylline
Fenproporex
Fludiazepam
Flunitrazepam
Flurazepam
Halazepam
Haloxazolam
Ketazolam
Loprazolam
Lorazepam
Lormetazepam

Mazindol
Medazepam
Mefenorex
Mephentermine
Meprobamate
Mescocarb
Methyprylone
Midazolam
Nimetazepam
Nitrazepam
Nordazepam
Oxazepam
Oxazolam
Pemoline
Phendimetrazine
Phentermine
Pinazepam
Pipradrol
Prazepam
Pyrovalerone
Temazepam
Tetrazepam
Triazolam
N-Ethylamphetamine

(b) Atamestane
Bolandiol
Bolasterone
Bolazine
Boldenone
Bolenol
Bolmantelate
Calusterone
4-Chloromethandienone
Clostebol
Drostanolone
Enestebol
Epitiostanol
Ethyloestrenol
Fluoxymesterone
Formebolone
Furazabol
Mebolazine
Mepitiostane
Mesabolone
Mestanolone
Mesterolone
Methandienone
Methandriol

Methenolene
Methyltestosterone
Metribolon
Mibolerone
Nandrolone
Norboletone
Norclostebol
Norethandrolone
Ovandrotone
Oxabolone
Oxandrolone
Oxymesterone
Oxymetholone
Prasterone
Propetandrol
Quinbolone
Roxibolone
Silandrone
Stanolone
Stanozolol
Stenbolone
Testosterone
Thiomesterone
Trenbolone

(c) any compound (not being Trilostane or a compound for the time being specified in sub-paragraph (b) of this paragraph) structurally derived from 17-hydroxyandrostan-3-one or from 17-hydroxyestran-3-one by modification in any of the following ways –

- (i) by further substitution at position 17 by a methyl or ethyl group;
- (ii) by substitution to any extent at one or more of positions 1, 2, 4, 6, 7, 9, 11 or 16 but at no other position;
- (iii) by unsaturation in the carbocyclic ring system to any extent, provided that there are no more than two ethylenic bonds in any one carbocyclic ring;
- (iv) by fusion of ring A with a heterocyclic system;

(d) any substance which is an ester or ether (or, where more than one hydroxyl function is available, both an ester or an ether) of a substance specified in sub-paragraph (b) of this paragraph or described in sub-paragraph (c) of this paragraph;

(e) Chorionic Gonadotrophin (HCG)
Clenbuterol
Non-human chorionic gonadotrophin
Somatotropin
Somatrem
Somatropin

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule not being phenylpropanolamine.
3. Any salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.
4. Any preparation or other product containing a substance for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule.

PART 4 MEANING OF CERTAIN EXPRESSIONS USED IN THIS SCHEDULE

For the purposes of this Schedule the following expressions have the meanings assigned to them respectively —

“cannabinol derivatives” means the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

“coca leaf” means the leaf of any plant of the genus *Erythroxylon* from whose leaves cocaine can be extracted either directly or by chemical transformation;

“concentrate of poppy-straw” means the material produced when poppy-straw has entered into a process for the concentration of its alkaloids;

“medicinal opium” means raw opium which has undergone the process necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“opium poppy” means the plant of the species *Papaver somniferum* L;

“poppy-straw” means all parts, except the seeds, of the opium poppy after mowing; and

“raw opium” includes powdered or granulated opium but does not include medicinal opium.”

Made 19 December 2014

C. Roberts C.V.O.,
Governor

EXPLANATORY NOTE *(not part of the order)*

Section 2(4) of the Misuse of Drugs Ordinance allows the Governor to make an Order to make amendments to the Schedule for purposes of adding any substance(s) or product(s) from any of Parts 1 to 3 of the Schedule.

This order repeals the Schedule and replaces it with a new Schedule to take care of the following—

- (a) to add new drugs so that the Schedule contains an-up-to-date list of controlled drugs (*up-to-date with the UK Controlled Drugs list*);
- (b) corrects the spelling of some substances listed under the Schedule; and
- (c) corrects some entries which appeared in the Revised Laws but not in the original copy of the Schedule to the Ordinance (as gazetted) and which have been confirmed to be errors (as the specific substances do not exist in the combinations listed).

SUBSIDIARY LEGISLATION

FAMILY LAW

Children Ordinance 2014 (Correction) Order 2014

S. R. & O. No: 21 of 2014

Made: 19 December 2014

Published: 23 December 2014

Coming into force: see article 2

IN EXERCISE of my powers under section 93 of the Interpretation and General Clauses Ordinance (Title 67.2) I make the following order—

1. Title

This order is the Children Ordinance 2014 (Correction) Order 2014.

2. Commencement

This order is deemed to have come into force on 31 October 2014.

3. Correction of Children Ordinance 2014

This article amends the Children Ordinance 2014 (No 7 of 2014) in —

- (a) subsection 72(7) “; and” is removed and replaced with “.” where it appears at the end of the subsection;
- (b) Schedule 1, paragraph 7(3) “or the application” is replaced with “of the application”;
- (c) Schedule 1, paragraph 7(8) “paragraph (c) of (d)” is replaced with “paragraph (c) or (d);
- (d) Schedule 1, paragraph 8(1) “discharge of the other” is replaced with “discharge of the order”;
- (e) Schedule 1, paragraph 9 —
 - (i) “(1)” is inserted before the words “This paragraph applies” in the first sub-paragraph; and
 - (ii) “other then” is replaced with “other than”;
- (f) Schedule 1, paragraph 10(3) “specified or the purposes” is replaced with “specified for the purposes”;
- (g) Schedule 2, paragraph 12(3) “subsection (2)” is replaced with “sub-paragraph (2)”;

- (h) Schedule 2, paragraph 16(2)(b) “is” is inserted after “Crown”;
- (i) Schedule 2, paragraph 19(2) “are” is replaced with “is”;
- (j) Schedule 2, paragraph 21 “the” is inserted after “promoting”;
- (k) Schedule 3, paragraph 9(1)(a)(i) “an” is replaced with “and”; and
- (l) Schedule 3, paragraph 9(3)(a) “child’s” where it appears for the second time is replaced with “child”.

Made 19 December 2014

C. P. Judge MBE,
Attorney General.

EXPLANATORY NOTE
(not forming part of the above order)

This order corrects typographical errors.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 29 JANUARY 2015

QUESTION FOR ORAL RESPONSE

Question Number 01/15 by the Honourable Jan Cheek

Will the Honourable Barry Elsby please explain the long delay in publication of the report of the Ofsted type inspection of schools done some months ago and which, if it meets the same criteria as an official inspection, should have been available to the public within weeks of the inspection?

Question Number 02/15 by the Honourable Jan Cheek

Can the Honourable Barry Elsby confirm whether or not teachers and other staff were offered oral feedback by the inspector at the time of the inspection as would happen in a normal Ofsted?

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 29 JANUARY 2015

MOTIONS

Motion Number 1 of 2015 by the Honourable the Financial Secretary:

“That this House refers the on-going deliberations on the 2015/16 budget to a Select Committee on the Estimates for presentation to the Assembly in June 2015 and therefore for the Select Committee on the Estimates to be established at this time”.

Proposed: The Honourable the Financial Secretary

Seconded: The Honourable Roger Edwards

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 29 JANUARY 2015

Portfolio Reports:

The Honourable Gavin Short

The Honourable Mike Summers OBE

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 29 JANUARY 2015

Order of the Day: Bills

Falkland Islands Pensions Scheme (Amendment) Bill 2014

Falkland Islands Pensions Scheme (Amendment) Bill 2014

(No: of 2014)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 - INTRODUCTION

1. Title
2. Commencement

PART 2 – AMENDMENT OF FALKLAND ISLANDS PENSIONS SCHEME ORDINANCE

3. Amendment of Falkland Islands Pensions Scheme Ordinance
4. Section 2 amended — Interpretation
5. Section 3 replaced and new section 3A inserted — Meaning of “normal retirement age”
6. Section 5 amended — The Pensions Board
7. Section 10 amended — Appointment of professional advisers
8. Section 15 amended — Whistle-blowing
9. Section 17 amended — Membership of the Scheme
10. Section 20 amended — Contributions under section 17(2)(c) or (e)
11. Section 26 amended — Refund of contributions in certain cases
12. Section 28 amended — Benefits which must be provided under the Scheme
13. Section 30 amended — The discretionary trusts
14. Section 31 amended — Qualifying annuities
15. Section 33 amended — Benefits payable on death
16. Section 33A amended — Early retirement on grounds of ill-health or disablement: benefits for FIG employees
17. New Part 4A inserted — Pension Sharing
18. Section 39 amended — Information and records required for purposes of Ordinance
19. Schedule 2 amended — Power to act on advice and determination
20. Schedule 3 amended — Persons employed in government service on 1 January 1997

PART 3 – AMENDMENT OF MATRIMONIAL CAUSES ORDINANCE

21. Amendment of Matrimonial Causes Ordinance

FALKLAND ISLANDS PENSIONS SCHEME (AMENDMENT) BILL 2014

(No: of 2014)

(assented to: 2014)
(commencement: in accordance with section 2)
(published: 2014)

A BILL

for

AN ORDINANCE

To amend the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997).

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 INTRODUCTION

1. Title

This Ordinance is the Falkland Islands Pensions Scheme (Amendment) Ordinance 2014.

2. Commencement

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

PART 2 AMENDMENT OF FALKLAND ISLANDS PENSIONS SCHEME ORDINANCE

3. Amendment of Falkland Islands Pensions Scheme Ordinance

(1) This Part amends the Falkland Islands Pensions Scheme Ordinance (No. 18 of 1997).

(2) The Ordinance is amended by replacing “Director of Corporate Resources” in each place where it appears with “Financial Secretary”.

4. Section 2 amended — Interpretation

Section 2 is amended as follows —

(a) by inserting the following new definition after the definition of “the Board” —

““elected retirement age” means the age at which a member elects to retire within the eligible retirement age;”;

(b) by substituting for the definition of “eligible MLA” the following new definition —

““eligible MLA” means an MLA who has not yet attained the age of 75 years and has not elected to opt out of the Scheme;”;

- (c) by inserting the following new definitions after the definition of “eligible MLA” —
 - ““eligible retirement age” has the meaning given by section 3A”; and
- (d) by inserting the following new definition after the definition of “regulations” —
 - ““spouse” has the meaning assigned to it under section 31(11);”.

5. Section 3 replaced — Meaning of “normal retirement age”

Section 3 is amended —

- (a) by repealing and replacing it with the following —

“3. Meaning of “normal retirement age”

Subject to the provisions of this Ordinance “normal retirement age” means, in relation to any person, the age when the person reaches 64 years.”; and

- (b) by inserting immediately after section 3, the following new section —

“3A Meaning of “eligible retirement age”

(1) Subject to the provisions of this section, “eligible retirement age” means any age, between the ages of 50 and 75.

(2) For purposes of this Ordinance, eligible retirement age must be used to determine the retirement age for any person whose terms of employment —

- (a) provide for the person to retire earlier than the person’s 50th birthday;

- (b) provide for the person to retire after the person’s 75th birthday; or

- (c) whether because the person is unemployed or for any other reason, makes no provision for the person’s retirement age.

(3) For the purposes of this section any provision which makes special provision as to early retirement on grounds of ill-health is to be disregarded.”

6. Section 5 amended — The Pensions Board

Section 5(4)(b) is amended by omitting “or actuary”.

7. Section 10 amended — Appointment of professional advisers

Section 10 is repealed and replaced with the following —

“10. Appointment of professional advisers

(1) The Board must appoint an auditor to the Scheme on such terms and conditions as it may determine.

(2) The Board must not appoint a person as an auditor to the Scheme unless the person —

- (a) qualifies as an auditor in the United Kingdom; or

(b) meets such other requirements as to qualifications and experience as the Governor may by regulations prescribe.”

(3) The Board may appoint any other professional adviser to the Scheme as and when necessary.

8. Section 15 amended — Whistle-blowing

Section 15 is amended by omitting —

(a) “or actuary” in each place where it appears; and

(b) “the actuary”.

9. Section 17 amended — Membership of the Scheme

Section 17 is amended as follows —

(a) by omitting subsection (3) (c) and replacing it with the following —

“(c) beginning on or after the person’s 75th birthday.”;

(b) in subsection (3A) (c) by replacing “Member’s 70th” with “MLA’s 75th”;

(c) by inserting the following new subsection after subsection (3A) —

“(3B) Subject to subsection (3) (c), a contribution may be made by or in respect of a person (*including an MLA*) who takes on new employment on or after the person’s 64th birthday unless the person elects to opt out of the Scheme.”;

(d) by repealing subsection (5); and;

(e) by inserting the following new subsection after subsection (8) —

“(9) Subject to subsection (7), a person who ceases to be a member of the Scheme may rejoin the Scheme where —

(a) the relevant requirements of subsections (1) to (6) are met; and

(b) the person meets other requirements for rejoining as may be prescribed.”

10. Section 20 amended — Contributions under section 17(2)(c) or (e)

Section 20 is amended as follows —

(a) by repealing subsection (2) and replacing it with the following —

“(2) An employee contribution must be made —

(a) from the date upon which the employer notifies the Board that the employee is to be a member of the Scheme; and

(b) on a regular basis,

and the amount of a regular contribution (payable by the employer or by the employee) for any period by or in respect of the employee must be determined by the employer as a percentage of that employee's earnings from the employee's employment with that employer for that period.”; and

(b) by repealing subsection (6) and replacing it with the following —

“(6) An employer who notifies the Board that an employee is to become a member of the Scheme by virtue of a notice given under section 17(2)(c) or (e) must ensure that —

(a) the amount of any contribution payable by the employee expressed as a percentage of the employee's gross earnings cannot be reduced to a lower percentage during the course of that employment unless there is a corresponding and compensating increase in the employer's contributions; and

(b) employee contributions payable by the employee or by the employer (or by both if that is provided for in the contract in the first instance) will continue to be made during the course of the contract.”

11. Section 26 amended — Refund of contributions in certain cases

Section 26 is amended as follows —

(a) by repealing subsection (1) and replacing it with the following —

“(1) Subject to the following provisions of this section, the Board must pay —

(a) to a member of the Scheme within section 17(2)(a), (ba), (c) or (e) whose employment terminates before the member has completed 2 years, an amount equal to the accrued value of the employee's account (*whether the amount is more or less than any contributions which have been made in respect of that member*); and

(b) to a member within any of paragraphs (b), (d), (f), (g) and (h) of section 17(2) who has been a member for less than 2 years and ceases to make contributions to the Scheme with effect from the termination date, an amount equal to the accrued value of the employee's account (*whether the amount is more or less than any contributions which have been made in respect of that member*).”

12. Section 28 amended — Benefits which must be provided under the Scheme

Section 28 is amended as follows —

(a) by repealing subsection (3) and replacing it with the following —

“(3) For purposes of this section a person retires and is entitled to any of the benefits mentioned under subsection (1) —

(a) when the person reaches normal retirement age; or

- (b) on the person's elected retirement age (that is at any age within the eligible retirement age when the person elects to retire)."
- (b) under subsection (3A) by replacing "£500" with "£750".

13. Section 30 amended — The discretionary trusts

Section 30(5) is amended as follows —

- (a) by omitting paragraph (a) and replacing it with the following —
 - "(a) any person who, at the time of the death is ordinarily living with that member as that member's partner, whether or not they are legally married, or"; and
- (b) by adding immediately after subsection (5) the following new subsection —
 - "(6) For the purposes of subsection (5) "partner" means one of a married couple, an unmarried couple or a civil partnership, who at the time of the death is ordinarily living with that member."

14. Section 31 amended — Qualifying annuities

Section 31 is amended as follows —

- (a) by repealing subsection (11) and replacing it with the following —
 - "(11) For the purposes of this section, "spouse", in relation to any member, means a person who, at the time of the retirement of that member or at the time the annuity is purchased if later, is the partner of, and ordinarily living with, that member (whether or not they are legally married), or if there is no such person —
 - (a) the person who has, before the annuity is purchased, been nominated by the member to the Board as the person to be treated as the spouse for the purposes of the payment of benefits under the Scheme and that nomination has been accepted by the Board; or
 - (b) if the Board has reasonable grounds for believing that any other person ought to be treated as the member's spouse, that other person.

If more than one person qualifies for a spouse's pension under paragraphs (a) and (b), the Board has absolute discretion to determine which of them is entitled to the pension."; and

- (b) by adding immediately after subsection (12) the following new subsection —
 - "(13) For the purposes of subsection (11) "partner" means one of a married couple, an unmarried couple or a civil partnership, who at the time of the death is ordinarily living with that member."

15. Section 33 amended — Benefits payable on death

Section 33 is amended as follows —

- (a) in subsection (3) by replacing “(c)” with “(b)”;
- (b) by repealing subsection (4) and replacing it with the following —
 - “(4) An amount equal to the aggregate of the additional voluntary contributions which the deceased member made to the Scheme must be dealt with in accordance with section 30.”; and
- (c) by inserting the following new subsection after subsection (5) —
 - “(6) Where subsection (2A) applies, any amount which is not a contribution paid in respect of the deceased person’s employment in government service nor attributable to any such contribution must be applied in accordance with section 30.”

16. Section 33A amended — Early retirement on grounds of ill-health or disablement: benefits for FIG employees

Section 33A(3)(a) is amended by replacing “1st January 1997” with “1 April 2011”.

17. New Part 4A inserted – Pension Sharing

The following new Part is inserted after section 36 —

**“Part 4A
Pension Sharing**

36A. Pension sharing on divorce, etc.

(1) Pension sharing is available where the court has made a pension sharing order under section 26A of the Matrimonial Causes Ordinance (Title 38(2).3) in relation to a person’s shareable rights under this Ordinance.

(2) Pension sharing is not available in respect of benefits related to protected rights where the sharing of any such rights will result or is likely to result in the distortion of a member’s protected rights.

(3) A member’s protected rights under this section means rights in relation to the protection and calculation of pre-1997 service as provided for under Schedule 3 of this Ordinance.

(4) For purposes of this Part a member’s shareable rights means any rights under that member’s pension arrangement to which pension sharing is available.

(5) In this Part —

“pension arrangement” means —

- (a) any pension on retirement provided for under this Ordinance;
- (b) a retirement annuity contract provided for under this Ordinance; or
- (c) an annuity purchased or transferred, for the purpose of giving effect to rights under this Scheme; and

“pension sharing order” means an order issued by the court under section 26A of the Matrimonial Causes Ordinance.

36B. Pension sharing orders - compliance

(1) The Board must give effect and comply with a pension sharing order made in relation to a member’s shareable rights under this Ordinance.

(2) A pension sharing order is not to take effect unless the decree on or after which it is made has been made absolute.

(3) Where the pension sharing order specifies a percentage or amount to be transferred the Board must transfer from the Scheme Fund the specified amount or the equivalent amount of the specified percentage in relation to the relevant member’s accumulated benefits (less any protected rights benefits) within the time specified by the courts in the pension sharing order.

(4) The Governor may prescribe regulations —

(a) on the procedure for payments and other processes to be used by the Board in giving effect to the pension sharing order including transfers to pension funds outside the Falkland Islands; and

(b) any other relevant information as may be necessary to give effect to pension sharing orders.”

18. Section 39 amended — Information and records required for purposes of Ordinance

Section 39(1) is amended by adding the following new paragraph after paragraph (d) —

“(e) require the Board to supply information relevant to the exercise of any power with respect to —

(i) the making of pension sharing orders by the courts under Part III of the Matrimonial Causes Ordinance;

(ii) calculation and verification in relation to —

(aa) the valuation of benefits under a pension arrangement;

(bb) the determination of a member’s shareable rights under the Scheme; and

(cc) the valuation of shareable rights under a pension arrangement in so far as it relates to the making of pension sharing orders under section 26A of the Matrimonial Causes Ordinance.”

19. Schedule 2 amended — Power to act on advice and determination

Schedule 2 is amended as follows —

(a) by omitting “actuary or” in paragraph 2(1)(a); and

(b) by repealing paragraph 2(3) and replacing it with the following —

“(3) In order to be eligible for approval of the Scheme by Her Majesty’s Revenue and Customs and eligible to be treated as an exempt approved scheme under the Commissioners for Revenue and Customs Act 2005 and to comply with the preservation requirements of the Pensions Act 1995, the Board is empowered to give such undertakings to the HM Revenue and Customs and Revenue and the Pensions Regulator in respect of the provisions of pensions and benefits under the Scheme as may be required from time to time.”

20. Schedule 3 amended — Persons employed in government service on 1st January 1997

Schedule 3 is amended as follows —

(a) in paragraph 5 by omitting sub-paragraph (1) and replacing it with the following —

“(1) This paragraph applies in relation to any member who had reached the age of 40 years before 1 January 1997 and applies at the time the person reaches retirement age (the “retirement date” defined in paragraph 5A(2)) but does not apply in relation to any member within paragraph 5A(1).”;

(b) in paragraph 5A —

(i) by adding the following new sub-paragraph under paragraph (6) —

“(d) the quarter refers to the quarter immediately before that person left Falkland Islands Government service.”; and

(ii) by inserting the following new paragraph after paragraph (7) —

“(8) A pension benefit that is payable to or in respect of a member under sub-paragraph (3C) is not payable to a member who is under the age of 55.”; and

(c) by inserting the following new paragraph immediately after paragraph 5A —

“Pre-1997 Protected Rights

5AA.(1) This paragraph applies to any member who was in government service on 31 December 1996 and had not ceased to be in government service before 1 January 2001 and for whom a transfer value was paid into the Scheme.

(2) This paragraph (pre-1997 protected rights) is not applicable if a member elects to receive any form of pension benefits before the age of 55.

(3) For the purposes of this paragraph a person’s retirement date has the same meaning provided in paragraph 5A (2).

(4) When on any date, “the member’s pension date”, benefits under the Scheme become payable to or in respect of the member (if an election under section 28 to defer any benefit other than payment of a lump sum has been made, at the end of the period of deferment), the Board must ascertain and compare —

- (a) the terms of the qualifying annuity contract which might be purchased with the accumulated value of the member's share in the Scheme at the member's pension date; and
- (b) the terms of the pension or pensions and other benefits which would have been payable to or in respect of the member under the existing legislation, subject to subparagraph (10) and on the following assumptions —
 - (i) that the member had remained in government service until the member's 60th birthday, if that is not the case;
 - (ii) that the existing legislation was applicable to the member on the member's retirement date;
 - (iii) that benefits which would have been payable under the existing legislation as mentioned above are increased to the extent necessary to ensure that they comply with section 31; and
 - (iv) that any pension payable under the existing legislation would have been increased annually by 3 per cent.

(5) Sub-paragraphs (3A) to (3F) of paragraph 5A apply to a member whose benefits are payable under this paragraph.

(6) For the purposes of this paragraph, the accumulated value of a member's share (pre-1997 service) must be calculated in accordance with section 24(2) but disregarding —

- (a) any additional voluntary contribution made in respect of the member in respect of any period, and
- (b) any amount allocated to the benefit of the member by reference to any such contribution.

(7) For the purposes of this paragraph —

- (a) the pension amount must be calculated by separate reference to contributions pre-1997, listed as 'B', and those contributions post-1997 listed as 'A' in the investment section of the contribution database in respect of each individual member record;
- (b) the total of the pre-1997 element and post-1997 element combined will constitute the pension payment;
- (c) employees who are eligible for pre-1997 protected rights and those to whom paragraph 5A (1) applies will be eligible to receive the greater of the two top ups; and
- (d) "contribution database" means the database containing members' information in relation to contributions, accrued values and other relevant information.

(8) In sub-paragraph (7)(b) —

- (a) the “pre-1997 element” of the pension is calculated —
 - (i) as the length of service to 31 December 1996 in months divided by 720, up to a maximum of 20 years and this total is then multiplied by the employee’s salary at retirement, or at the date the employee had ceased in government service;
 - (ii) for pre-1997 service in excess of 20 years, the excess, in months, is divided by 600 and added to (i) and this total is then multiplied by the employee’s salary at retirement, or at the date the employee had ceased in government service.
- (b) the “post-1997 element” of the pension —
 - (i) does not attract pre-1997 protected rights;
 - (ii) is the annual pension calculated as the accumulated value of post-1997 contributions at the date of retirement divided by the applicable annuity factor; and

(9) In paragraph (8)(b)(ii) the “applicable annuity factor” means, as at the date of retirement, an estimate of the number of years that the accrued value of the pension will be required to provide a pension.

(10) Where a pension is payable to or in respect of any member under paragraph 5A(3C) before the member is 60 years of age, the amount of any annuity and lump sum found in accordance with paragraph 5A(3) which relates to pre-1997 service must be reduced in accordance with the table at paragraph 5A (7).”.

PART 3 **AMENDMENT OF MATRIMONIAL CAUSES ORDINANCE**

21. Amendment of Matrimonial Causes Ordinance

- (1) This Part amends the Matrimonial Causes Ordinance (Title 38(2).3).
- (2) Part III of the Matrimonial Causes Ordinance is amended as follows —
 - (a) by inserting the following new sections after section 26 —

“26A. Pension sharing orders in connection with divorce proceedings, etc.

 - (1) On granting a decree of divorce or judicial separation or a decree of nullity of marriage the court may, on an application made under this section, make a pension sharing order in relation to the marriage.
 - (2) A pension sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute.
 - (3) A “pension sharing order” is an order which makes the shareable rights under a pension arrangement of one of the parties to a marriage to be subject to pension sharing for the benefit of the other party to the marriage.

(4) The pension sharing order must specify —

- (a) the shareable rights under a specified pension arrangement to which a party to a marriage is entitled;
- (b) the percentage or the amount of the value of the pension arrangement which is available to be shared by the parties to the marriage; and
- (c) the information specified under section 26B.

(5) In this section the reference to “shareable rights” under a specified pension arrangement relates to rights in relation to which pension sharing is available under Part IVA of the Falkland Islands Pensions Scheme Ordinance.

26B. Pension sharing orders

(1) The court must specify in the pension sharing order —

- (a) the shareable rights of the party to the marriage under the pension arrangement;
- (b) the percentage of the value, or the amount payable to the other party in the pension sharing order; and
- (c) how that value or amount is to be paid to the other party; and
- (d) the time scale within which the payment must be made.

(2) The court may not make a pension sharing order —

- (a) in relation to any excluded rights or benefits as are specified under the relevant pension arrangement (Part IVA of the Falkland Islands Pensions Scheme Ordinance);
- (b) after a decree of divorce or nullity in relation to the marriage has been made absolute; or
- (c) in relation to any relevant pension arrangement which is already the subject of a pension sharing order.”; and

(b) under section 40(1) by inserting “26A,” immediately after “26”.

OBJECTS AND REASONS

This Bill amends the Falkland Islands Pensions Scheme Ordinance and the Matrimonial Causes Ordinance.

Part 1 provides for introductory matters as follows —

Clauses 1 and 2 provide for the title and the commencement of the Ordinance by publication in the *Gazette*;

Part 2 provides for the amendment of the Falkland Islands Pensions Scheme Ordinance as follows —

Clause 3 provides for the replacement of all references to ‘Director of Corporate Resources’ with Financial Secretary;

Clauses 4 and 5 provide for an amendment of some of the terms used in the Ordinance which have now changed meaning because of the new policy effected within this Ordinance and further to clarify and provide the different ages within which one can retire;

Clause 7 amends section 10 to remove the reference to appointment of auditors who qualify under the Companies Act 1989 to avoid cross-referencing to UK legislation which has changed and therefore make it more general by referring to a person who qualified as an auditor in the UK instead;

Clauses 6 and 8 remove references to actuary;

Clause 9 amends section 17 to provide for pension contributions to be paid for a member up to the member’s 75th birthday and provides that individuals who take on new employment when they are over 64 years may opt out of joining the Scheme;

Clause 10 amends section 20 to provide for the time when payment must be made as well as the calculation of payment of pension contributions into the Scheme;

Clause 11 amends section 26 to provide for members who leave the Scheme before completing 2 years as members to be refunded by being paid amounts equal to the accrued value of their account instead of using the aggregate of theirs and their employers’ contributions or only their contributions;

Clause 12 amends section 28 to provide for when a person is entitled to draw down on their benefits - that is upon reaching normal retirement age or, an earlier age when the person elects to do so. It goes on to provide for a member to be given a sum equal to the accrued value of the member’s pension where at the time of retirement, that member’s pension fund is so small that it can only purchase an annuity of £750 or less per annum – this is an increase from the current sum of £500;

Clause 13 amends section 30 to include as beneficiaries, persons who were living with a deceased member as partner, whether or not they were married, so that those persons can have a share of any benefits accruing to the deceased member and similarly *clause 14* amends section 31 to expand the definition of ‘spouse’ to include unmarried partners;

Clause 15 amends section 33 to align the calculation of death benefits for members who are government employees to be calculated and dealt with in the same way as for other non-government members;

Clause 16 amends section 33A to reflect the date when the revised permanent ill-health disability benefits changed with respect to all pensionable FIG employees (1 January 1997 changed to 1 April 2011);

Clause 17 inserts a new part (Part IVA) with sections 36A and 36B which provide for how the Board must give effect to pension sharing orders made by the courts under the Matrimonial Causes Ordinance;

Clause 18 amends section 39 to include a power to make regulations on information which the Board must supply to the courts in relation to pension sharing orders;

Clause 19 amends Schedule 2 to make consequential amendments in relation to the removal of references to ‘actuary’; and

Clause 20 amends Schedule 3 to provide for the calculation of pre-1997 protected rights for employees who were not yet 40 years as at 31 December 1996 who continue to be in government service. The amendment also provides for the investment units attributable to government employees who had transfer values for pre-1997 service to be kept separately from post-1997 contributions so the protected rights can be easily calculated and safeguarded.

Part 3 amends the Matrimonial Causes Ordinance to give the courts the power to make pension sharing orders on divorce, judicial separation or nullity of marriage;

This Part contains new section 26A and 26B which provide for the power to make pension sharing orders and the details which pension sharing orders must contain.

LEGISLATIVE ASSEMBLY

ORDER PAPER

THURSDAY 29 JANUARY 2015

PROCEDURE FOR THE MOTION FOR ADJOURNMENT

CLERK	“Motion for Adjournment”
CHIEF EXECUTIVE	“Mr Speaker I beg to move that House stands adjourned sine die.”
	Honourable Members may speak to the Motion.
THE SPEAKER	“The House stands adjourned accordingly.” Mr Speaker then departs