



BRITISH ANTARCTIC TERRITORY

THE POLICE POWERS ORDINANCE 2020

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THE BRITISH ANTARCTIC TERRITORY
THE POLICE POWERS ORDINANCE 2020

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BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,
Ben Merrick,
XX XXXX 2020

Ordinance No. 18 of 2020

THE POLICE POWERS ORDINANCE 2020

AN ORDINANCE to authorise the police officers of the Falkland Islands to perform police duties under the law of the Territory, to make provision in relation to the powers and duties of the police whilst in the Territory, to regulate the power of other persons to effect an arrest, to facilitate the transfer of a suspect from the Territory and to provide for matters incidental thereto.

PART 1

PRELIMINARIES

- | | |
|----------------------------|---|
| Citation and commencement. | 1. This Ordinance may be cited as the Police Powers Ordinance 2020 and shall come into force on XXXXX. |
| Definitions. | 2. (1) In this Ordinance, unless otherwise stated or the context otherwise requires –

“authorised police officer” means a member of the police force who has been authorised pursuant to section 3(1) to perform police duties under this Ordinance;

“child” means a person under the age of 14 years;

“controlled drug” has the same meaning as in the Misuse of Drugs Ordinance 2020;

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; |

“criminal investigation” means an investigation which authorised police officers or others have a duty to conduct with a view to it being ascertained –

(a) whether one or more offences under the law of the Territory has been committed;

(b) if so, whether any person or persons can be identified as having committed the offence or offences; and

(c) if so, whether the person or persons should be charged with the offence or offences, and includes –

(i) an investigation into crimes that have been committed;

(ii) an investigation to ascertain whether a crime has been committed,

(iii) an investigation which begins in the belief that a crime may have been committed, with a view to the possible institution of criminal proceedings;

“Criminal Procedure and Evidence Ordinance 2014” means the Criminal Procedure and Evidence Ordinance 2014 of the Falkland Islands.

“custodial sentence” means a sentence of imprisonment;

“custody record” has the meaning given to that term by section 47(3);

“dangerous instrument” means an article which has a blade or is sharply pointed (other than a folding pocket knife the blade of which has a cutting edge of 3 inches or less);

“document” means anything in or on which information of any description is recorded, and includes –

(a) any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means; and

(b) data recorded by electronic means;

“electronic means” includes telephone, e-mail or visual or oral link by computer or any other electronic device;

“fine” includes any pecuniary penalty or pecuniary forfeiture but does not include pecuniary compensation;

“guardian” in relation to a youth means any person who, in the opinion of the court or authorised police officer having responsibility for the proceedings in

which the youth is concerned, has for the time being charge or control over that youth;

“health care professional” means a person who has been engaged by the British Antarctic Survey to provide, as part or all of their duties, medical services in the Territory;

“indictable offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5 of the Administration of Justice Ordinance 2020;

“item subject to legal privilege” has the meaning given to that term by section 12;

“judge” means the Judge of the Supreme Court or any person presiding over a trial if not the Judge of the Supreme Court;

“legal practitioner” means a person who has been licenced to appear as counsel, or practise as a solicitor, pursuant to section 42 of the Administration of Justice Ordinance 2020;

“material” as a noun means material of all kinds, and includes –

- (a) information;
- (b) evidential statements; and
- (c) objects of all descriptions;

“offence” means –

- (a) any statutory offence for which a person may be tried by the Supreme Court, the Magistrate’s Court or the Summary Court and punished if convicted; and
- (b) in relation to any place outside the Territory, includes an act or omission punishable under the law of that place, however it is described;

“offence triable either way” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5 of the Administration of Justice Ordinance 2020;

“offensive weapon” means any article –

- (a) made or adapted for use for causing injury to persons; or

(b) intended by the person having it with him or her for such use by that person or by some other person;

“parent”, in relation to a youth, means any person, other than a guardian or the Crown, who has parental responsibility for the youth;

“picture” includes a likeness however produced;

“place” includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

“place of lawful custody” means any place designated by a magistrate pursuant to section 10 of the Criminal Procedure Ordinance 2020;

“police detention” has the meaning given in subsection (2);

“police officer” means a member of the police force;

“police force” means the Royal Falkland Islands Police established under the Falkland Islands’ Police Ordinance 2000;

“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;

“prohibited article” has the meaning given it by section 7(5);

“publication” includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

“qualifying offence” means –

- (a) any indictable offence or offence triable either way;
- (b) any summary offence punishable with imprisonment, not being imprisonment in default of payment of a fine, and

(c) any summary offence which is only punishable with payment of a fine, where the maximum fine that can be imposed for that offence exceeds the statutory maximum of the Summary Court.

“recording”, in relation to information, whether used as a verb or a noun, means putting it in a durable or retrievable form, such as writing or tape or disc and includes digital data which is retrievable;

“relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence;

“relevant time” in relation to detention of a person is the time at which the person arrested arrives at the place of lawful custody, except that in the case of a person who –

(a) attends voluntarily at a place of lawful custody; or

(b) accompanies an authorised police officer to a place of lawful custody without having been arrested,

and is arrested at the place of lawful custody, the relevant time is the time of the person’s arrest.

“sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offence; and “sentencing” is to be construed accordingly;

“statement” means any representation of fact, however made;

“statutory maximum” shall have the meaning assigned to it in section 25(2) of the Criminal Procedure Ordinance 2020;

“summary offence” shall have the meaning assigned to it by Schedule 1 of the Interpretation Act 1978, in the manner that schedule applies to the Territory in accordance with section 5 of the Administration of Justice Ordinance 2020;

“Territory” means the British Antarctic Territory as defined by section 2 of the British Antarctic Territory Order 1989;

“under a disability”, in relation to a defendant, means suffering from mental disorder and consequently incapable of making a defence;

“vehicle” includes any motor vehicle, snowmobile, cart, bicycle, vessel, aircraft or hovercraft;

“young person” means a person who has attained the age of 14 years and is under the age of 18 years;

“youth” means a person aged below 18 years, whether a child or a young person;

(2) A person is in police detention for the purposes of this Ordinance if the person –

(a) has been taken to a place of lawful custody after being arrested for an offence or for any other reason; or

(b) is arrested at a place of lawful custody after attending voluntarily at such a place or accompanying an authorised police officer to it,

and is detained there or is detained elsewhere in the charge of an authorised police officer.

(3) The word “suspect”, when used as a noun, means a person who has been arrested –

(a) by an authorised police officer in accordance with section 40, or

(b) by a person who is not an authorised police officer in accordance with section 41,

and neither of the criteria set out in subsection (4) apply.

(4) A person is not to be regarded as a suspect if –

(a) a magistrate has made a determination in accordance with section 6(3) or 9(3) of the Criminal Procedure Ordinance 2020, or

(b) an authorised police officer has made a determination in accordance with section 49(2).

(5) For the purposes of this Ordinance, a reference to a person being convicted of an offence under the law of a country or territory outside the Territory includes –

(a) a finding by a court exercising jurisdiction under the law of that country or territory in respect of such an offence equivalent to a finding that the person is not guilty by reason of mental disorder; and

(b) a finding by such a court in respect of such an offence equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.

(6) Where a provision of an Act of Parliament which is referred to in this Ordinance (or in an enactment of the Falkland Islands which has effect under

the law of the Territory by virtue of this Ordinance) is repealed and re-enacted, with or without modification, by a subsequent Act of Parliament, the reference to it in this Ordinance (or in the enactment of the Falkland Islands) shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

Authorisation of police officers.

3. (1) The Commissioner or the Administrator may authorise, by notice, one or more police officers to perform police duties under this Ordinance.

(2) A copy of any notice issued pursuant to subsection (1) shall be sent, by means of electronic transfer or otherwise, to the officer who has been so duly authorised.

Authorised police officers may act as Territory constables.

4. Every authorised police officer may, as occasion requires and either within or outside the Territory, act in accordance with the provisions of this Ordinance as a constable under the law of the Territory for the purposes of or in connection with –

(a) the investigation of an offence or suspected offence under any law for the time being in force in the Territory; or

(b) the arrest, detention or prosecution or intended prosecution of any person for such an offence or suspected offence or the arrest or detention of any person in pursuance of the order or sentence of a court; or

(c) the extradition or intended extradition of any person to another country under any law in that behalf for the time being in force in the Territory.

Particular functions of authorised police officers: mode of exercise.

5. (1) Without prejudice to any other functions that may be vested in a constable under any law for the time being in force in the Territory (and that are, by virtue of section 4, exercisable by an authorised police officer), there are hereby vested in authorised police officers, the various functions specified in this Ordinance.

(2) The provisions of this Ordinance shall have effect to the exclusion of Parts I to VI of the Police and Criminal Evidence Act 1984 (which would otherwise so have effect by virtue of section 5 of the Administration of Justice Ordinance 2020).

Other functions of public officers may be vested in authorised police officers.

6. Where, under any law for the time being in force in the Territory, there is vested in public officers generally a function to be exercised for the purposes of the administration or enforcement of any such law, that function is hereby vested in authorised police officers generally, and where, under any such law, the Commissioner or a court or any other authority is empowered to vest any such function in any public officer, the Commissioner or the court or the other authority may vest that function in an authorised police officer; and in any such case references in any such law to a public officer exercising that

function shall be construed as including references to an authorised police officer so invested with it and exercising it.

PART 2

POWERS TO STOP AND SEARCH OR ENTER AND SEARCH

Powers to stop and search

Power of authorised police officers to stop and search persons, vehicles, etc.

7. (1) An authorised police officer may exercise any power conferred by this section in any place to which at the time when the officer proposes to exercise the power people have ready access, but which is not a dwelling.

(2) Subject to subsection (3) an authorised police officer may –

(a) search –

(i) any person or vehicle;

(ii) anything which is in or on a vehicle,

for stolen or prohibited articles; and

(b) detain a person or vehicle for the purpose of such a search.

(3) This section does not give an authorised police officer power to search a person or vehicle or anything in or on a vehicle unless the officer has reasonable grounds for suspecting that he or she will find stolen or prohibited articles.

(4) If in the course of such a search an authorised police officer discovers an article which the officer has reasonable grounds for suspecting to be a stolen or prohibited article, the officer may seize it.

(5) For the purposes of this Part, an article is prohibited if it is –

(a) an offensive weapon;

(b) a dangerous instrument; or

(c) an article –

(i) made or adapted for the use in the course of or in connection with an offence to which this sub-paragraph applies; or

(ii) intended by the person having it with the person for such use by that person or by some other person.

Provisions
relating to
search under
section 7.

(6) The offences to which subsection (5)(c)(i) applies are –

- (a) burglary;
- (b) theft;
- (c) criminal damage by fire.

8. (1) An authorised police officer who detains a person or vehicle in the exercise of –

- (a) the power conferred by section 7; or
- (b) any other power –
 - (i) to search a person without first arresting the person; or
 - (ii) to search a vehicle without making an arrest,

need not conduct a search if it appears subsequently to the officer that no search is required, or that a search is impracticable.

(2) An authorised police officer who contemplates a search, other than a search of an unattended vehicle, in the exercise of the powers mentioned in subsection (1) must take reasonable steps before he or she commences the search to bring to the attention of the appropriate person the matters specified in subsection (4) and must not commence the search until he or she has performed that duty.

(3) If the authorised police officer is not in uniform he or she must also produce to the appropriate person documentary evidence that he or she is an authorised police officer.

(4) The matters referred to in subsection (2) are –

- (a) the authorised police officer's name;
- (b) the object of the proposed search; and
- (c) the officer's grounds for proposing to make it.

(5) In this section “the appropriate person” means –

- (a) if the authorised police officer proposes to search a person - that person; and
- (b) if the officer proposes to search a vehicle, or anything in or on a vehicle - the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (1) an authorised police officer must leave a notice stating –

- (a) that the officer has searched it;
- (b) the officer's name and rank;
- (c) the effect of section 9(8).

(7) The authorised police officer must leave the notice referred to in subsection (6) inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time for which a person or vehicle may be detained for the purposes of such a search is the time reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 7, nor any other power to detain and search a person without first arresting the person, or to detain and search a vehicle without making an arrest, authorises an authorised police officer –

- (a) to require a person to remove any of the person's clothing in public other than an outer coat, jacket or gloves; or
- (b) if not in uniform, to stop a vehicle.

Duty to make
records
concerning
searches.

9. (1) When an authorised police officer has carried out a search pursuant to the provisions of this Part, other than a search under section 10, a record of the search must be made in writing unless it is not practicable to do so.

(2) The record of a search of a person must include a note of the person's name, if the authorised police officer knows it, but an officer must not detain a person to find out the name of the person.

(3) If an authorised police officer does not know the name of a person searched, the record of the search must include a note describing that person.

(4) The record of a search of a vehicle must include a note describing the vehicle, and stating the registration number of the vehicle if displayed upon the vehicle.

(5) When a record of a search is required by subsection (1) to be made –

- (a) if the search results in a person being arrested and taken to a place of lawful custody, the officer must ensure that the record is made as part of the person's custody record;

(b) in any other case, the officer must make the record at the time, or, if that is not practicable, as soon as practicable after the completion of the search.

(6) The record of a search of a person or a vehicle must –

(a) state –

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the authorised police officer to have resulted from the search; and

(b) identify the authorised police officer who made the search.

(7) If a record of a search of a person has been made under this section, the person who was searched is entitled to a copy of the record if he or she asks for one within 12 months of the search being made.

(8) If –

(a) a record of the search of a vehicle has been made under this section; and

(b) the owner of the vehicle or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search within 12 months of the search being made,

the person who made the request is entitled to a copy.

Powers to enter and search

Power to
authorise entry
and search of
premises.

10. (1) If, on application made by an authorised police officer, a magistrate is satisfied that there are reasonable grounds for believing that –

(a) a qualifying offence has been committed;

(b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

- (c) the material is likely to be relevant evidence;
- (d) it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) any of the conditions specified in subsection (3) applies,

the magistrate may issue a warrant authorising an authorised police officer to enter and search the premises.

(2) The premises referred to in subsection (1)(b) are –

- (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”); or
- (b) any premises occupied or controlled by a person specified in the application, including any premises specified as in paragraph (a) (in which case the application is for an “all premises warrant”)

(3) An authorised police officer may seize and retain anything for which a search has been authorised under subsection (1).

(4) The conditions mentioned in subsection (1)(e) are that –

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an authorised police officer arriving at the premises can secure immediate entry to them.

(5) The power to issue a warrant conferred by this section is in addition to any such power conferred by any other law.

Special provisions as to access – Schedule 1.

11. A member of the police force of the rank of sergeant or above may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application in the Falkland Islands under, and in accordance with, Schedule 1 of the Criminal Procedure and Evidence Ordinance 2014 (Access to special procedure material or excluded material).

Meaning of
“items subject to
legal privilege”.

12. (1) Subject to subsection (2), in this Part “items subject to legal privilege” means –

(a) communications between a legal practitioner and the practitioner’s client or any person representing the client made in connection with the giving of legal advice to the client;

(b) communications between a legal practitioner and the practitioner’s client or any person representing the client or between such a representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made –

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of
“excluded
material”.

13. (1) Subject to the following provisions of this section, in this Part “excluded material” means –

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which the person holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists of –

(i) documents; or

(ii) records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if the person holds it subject to –

(a) an express or implied undertaking to hold it in confidence; or

(b) a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment that comes into force after this Part comes into force, unless the later enactment limits the obligation under this section.

(3) A person holds journalistic material in confidence for the purposes of this section if –

(a) the person holds it subject to such an undertaking, restriction or obligation; and

(b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Meaning of
“personal
records”.

14. In this Part “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to –

(a) the individual’s physical or mental health;

(b) spiritual counselling or assistance given or to be given to the individual; or

(c) counselling or assistance given or to be given to the individual, for the purposes of the individual’s personal welfare, by any voluntary organisation or by any other individual who –

(i) by reason of his or her office or occupation has responsibilities for the individual’s personal welfare; or

(ii) by reason of an order of a court has responsibilities for the individual’s supervision.

Meaning of
“journalistic
material”.

15. (1) Subject to subsection (2), in this Part “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.

Meaning of
“special
procedure
material”.

16. (1) In this Part, “special procedure material” means –

(a) material to which subsection (2) applies; and

(b) journalistic material that is not excluded material.

(2) Subject to the following subsections, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who –

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject –

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in section 13(2)(b).

(3) If material is acquired –

(a) by an employee from his or her employer and in the course of his or her employment; or

(b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) If material is created by an employee in the course of his or her employment, it is only special procedure material if it would have been special procedure material if his or her employer had created it.

(5) If material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this section at a given time if, at that time or at any time within one year previously –

(a) one of the two companies has control of the other; or

(b) both are under the control of the same person or persons.

Search warrants:
Safeguards.

17. (1) This section and section 18 have effect in relation to the issue to an authorised police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the obligation in this section) of a warrant to enter and search premises (a “search warrant”).

(2) An entry on or search of premises under a search warrant is unlawful unless it complies with this section and section 18.

(3) An authorised police officer who applies for a search warrant must –

(a) state –

(i) the ground on which he or she makes the application;
and

(ii) the enactment under which the warrant would be issued;

(b) specify the premises which it is desired to enter and search;
and

(c) identify, so far as is practicable, the articles or persons to be sought.

(4) An application for a search warrant must be made without notice and supported by an application in writing.

(5) An authorised police officer applying for a search warrant must answer on oath any question asked by the magistrate hearing the application.

(6) A search warrant must –

(a) authorise an entry on one occasion only, unless it specifies that it authorises multiple entries;

(b) if it specifies that it authorises multiple entries - specify whether the number of entries authorised is unlimited, or limited to a specified maximum;

(c) specify –

(i) the name of the person who applied for it;

(ii) the date on which it was issued;

(iii) the enactment under which it is issued;

(iv) each set of premises to be searched or, in the case of an all premises warrant, the person who is in occupation or control of the premises to be searched and any premises under the occupation or control of that person that can be specified and are to be searched; and

(d) identify, so far as practicable, the articles or persons to be sought.

(7) Two copies must be made of a warrant, each clearly certified by the person issuing the warrant as copies.

Execution of
search warrants.

18. (1) A search warrant may –

(a) be executed by any authorised police officer; and

(b) authorise persons to accompany the officer who is executing it.

(2) A person authorised under subsection (1)(b) –

(a) has the same powers as the authorised police officer whom the person accompanies in respect of –

(i) the execution of the warrant; and

(ii) the seizure of anything to which the warrant relates;
but

(b) may exercise those powers only in the company, and under the supervision, of the authorised police officer.

(3) Entry and search under a search warrant must be –

(a) within one month from the date of its issue;

(b) at a reasonable hour unless it appears to the authorised police officer executing it that the purpose of a search may be frustrated by entry at a reasonable hour.

(4) If the occupier of premises which are to be entered and searched is present at the time when an authorised police officer seeks to execute a search warrant in respect of them, the officer must –

(a) identify himself or herself to the occupier and, if not in uniform, produce to the occupier documentary evidence that he or she is an authorised police officer;

(b) produce the warrant to the occupier; and

(c) supply the occupier with a copy of it, certified as required by section 17(7).

(5) If –

(a) the occupier of the premises is not present at the time when an authorised police officer seeks to execute a search warrant; but

(b) some other person who appears to the authorised police officer to be in charge of the premises is present,

subsection (4) has effect as if a reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the authorised police officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) An authorised police officer executing a search warrant must make an endorsement on it stating whether –

(a) the articles or persons sought were found; and

(b) any articles were seized, other than articles which were sought.

(9) A search warrant which –

(a) has been executed; or

(b) has not been executed within the time authorised for its execution, must be returned to the office of the court out of which it was issued.

(10) A warrant which is returned to a court under subsection (9) must be retained for 12 months from its return by the court officer to whom it was returned.

(11) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, the occupier must be allowed to do so.

Entry and search without a search warrant

Entry for
purpose of
arrest, etc.

19. (1) Subject to the following provisions of this section, and without affecting any other enactment, an authorised police officer may enter and search any premises for the purpose of –

(a) executing any order of the Supreme Court or Magistrate's Court of the Falkland Islands, issued pursuant to section 4(2) of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989;

(b) arresting a person for a qualifying offence;

(c) recapturing a person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison or other place of detention;

(d) recapturing a person who is unlawfully at large and whom the officer is pursuing; or

(e) preventing death or serious personal injury or serious damage to property.

(2) Except for the purposes specified in subsections (1)(a) and (e), the powers of entry and search conferred by this section –

(a) are only exercisable if the authorised police officer has reasonable grounds for believing that the person whom he or she is seeking is on the premises; and

(b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search –

(i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and

(ii) any such dwelling in which the authorised police officer has reasonable grounds for believing that the person whom he or she is seeking may be.

(3) The power of search conferred by this section is only a power to search to the extent reasonably required for the purpose for which the power of entry is exercised.

(4) Nothing in this section affects any power of entry to deal with or prevent a breach of the peace.

Entry and search
after arrest.

20. (1) Subject to this section, an authorised police officer may enter and search any premises occupied or controlled by a person who is under arrest for a qualifying offence, if the officer has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates –

(a) to that offence; or

(b) to some other qualifying offence which is connected with or similar to that offence.

(2) An authorised police officer may seize and retain anything for which he or she may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering evidence of the kind mentioned in that subsection.

(4) An authorised police officer who enters and searches any premises pursuant to this section must make a record in writing –

(a) of the grounds for the search; and

(b) of the nature of the evidence that was sought.

(5) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the search record is to be made, the officer must, as soon as reasonably practicable, add the search record as part of the person's custody record.

PART 3

POWERS OF SEIZURE, ETC.

General
definitions for
this Part.

21. (1) In this Part –

“excluded material” has the meaning given to that term by section 13;

“item subject to legal privilege” has the meaning given to it by section 12;

“return”, in relation to seized property, is to be construed in accordance with section 35, and cognate expressions are to be construed accordingly;

“seize”, and cognate expressions, are to be construed in accordance with section 22(1);

“seized property”, in relation to any exercise of a power of seizure, means anything seized in exercise of that power;

“special procedure material” has the meaning given to it by section 16.

(2) In this Part, in relation to a time when seized property is in any person's possession in consequence of a seizure (“the relevant time”), a reference to a thing for which the person making the seizure had power to search is to be construed –

(a) if the seizure was made on the occasion of a search carried out on the authority of a warrant - as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;

(b) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by the person to be, or appeared to the person to be, of a particular description - as including –

(i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to the person, to be of that description; and

(ii) anything which is in fact of that description;

(c) if the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description - as including –

(i) anything which there are at the relevant time reasonable grounds for believing is of that description; and

(ii) anything which is in fact of that description;

(d) if the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies - as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 27 or 28.

(3) In this Part, “judicial officer” means the Senior Magistrate, except that if the Senior Magistrate is not available, owing to absence or indisposition, “judicial officer” means the Judge of the Supreme Court, in chambers.

Copies.

22. (1) Subject to subsection (3) –

(a) in this Part, “seize” includes “take a copy of”, and cognate expressions are to be construed accordingly;

(b) this Part applies as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and

(c) for the purposes of this Part, except sections 27 and 28, the powers mentioned in subsection (2) (which are powers to obtain

hard copies etc. of information which is stored in electronic form) are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly.

(2) The powers mentioned in subsection (1)(c) are any powers conferred by section 23(4) or 24.

(3) Subsection (1) does not apply to section 33.

General power of seizure, etc.

General power
of seizure, etc.

23. (1) The powers conferred by subsections (2), (3) and (4) are exercisable by an authorised police officer who is lawfully on any premises.

(2) The authorised police officer may seize anything which is on the premises if the officer has reasonable grounds for believing –

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The authorised police officer may seize anything which is on the premises if the officer has reasonable grounds for believing –

(a) that it is evidence in relation to an offence which the officer is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The authorised police officer may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form –

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form, if the officer has reasonable grounds for believing that –

(c) the information –

(i) is evidence in relation to an offence which he or she is investigating, or any other offence; or

(ii) has been obtained in consequence of the commission of an offence; and

(d) it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers of seizure conferred by this section are in addition to any similar power conferred by any enactment.

(6) No power of seizure conferred on an authorised police officer under any enactment (including an enactment that comes into force after this Part comes into force unless the later enactment limits the power in this section) authorises the seizure of an item which the authorised police officer exercising the power has reasonable grounds for believing to be subject to legal privilege.

Extension of powers of seizure to computerised information.

24. (1) Every power of seizure conferred by an enactment to which this section applies on an authorised police officer who has entered premises in the exercise of a power conferred by an enactment includes a power to require any information stored in any electronic form and accessible from the premises to be produced in a form –

(a) in which it can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form.

(2) This section applies –

(a) to any enactment in force when this Part came into force;

(b) to sections 10 and 20;

(c) to paragraph 13 of Schedule 1 of the Criminal Procedure and Evidence Ordinance 2014 (Access to special procedure material and excluded material); and

(d) to any enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

Access and copying.

25. (1) An authorised police officer who seizes anything in the exercise of a power conferred by any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section) must, if so requested by a person showing himself or herself –

(a) to be the occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure, provide that person with a record of what the officer seized.

(2) The officer must provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (7), if a request for permission to be granted access to anything which –

(a) has been seized by an authorised police officer; and

(b) is retained by the authorised police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer must allow the person who made the request access to it under the supervision of an authorised police officer.

(4) Subject to subsection (7), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer must –

(a) allow the person who made the request access to it under the supervision of an authorised police officer for the purpose of photographing or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) An authorised police officer may also photograph or copy, or have photographed or copied, anything which the officer has power to seize, without a request being made under subsection (4).

(6) If anything is photographed or copied under subsection (4)(b), the photograph or copy must be supplied to the person who made the request within a reasonable time after the making of the request.

(7) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice –

(a) that investigation;

(b) the investigating of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings which might be brought as a result of –

(i) the investigation of which the officer is in charge; or

(ii) any such investigation as is mentioned in paragraph (b).

(8) The references to an authorised police officer in subsections (1), (2), (3)(a) and (5) include a person authorised under section 18(1) to accompany an authorised police officer executing a warrant.

Retention.

26. (1) Subject to subsection (4), anything which has been seized by an authorised police officer or taken away by an authorised police officer following a requirement made by virtue of section 23 or 24 may be retained for as long as is necessary in all the circumstances.

(2) Without limiting subsection (1) –

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) –

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, if there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used –

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody, may be retained when the person from whom it was seized –

(i) is no longer in police detention or the custody of a court; or

(ii) is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) The reference in subsection (1) to anything seized by an authorised police officer includes anything seized by a person authorised under section 18(1) to accompany an authorised police officer executing a warrant.

Additional powers of seizure

Additional powers of seizure from premises.

27. (1) If —

(a) a person who is lawfully on any premises finds anything on those premises that the person has reasonable grounds for believing may be or contain something for which the person is authorised to search on those premises;

(b) a power of seizure to which this section applies, or the power conferred by subsection (2), would entitle the person, if he or she found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and

(c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises —

(i) whether what the person has found is something that he or she is entitled to seize; or

(ii) the extent to which what the person has found contains something that he or she is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what the person has found as it is necessary to remove from the premises to enable that to be determined.

(2) If —

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which the person would be entitled to seize but for its being comprised in something else that the person has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, are confined to –

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation - whether the separation –

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable on those premises would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 23(6) (powers of seizure not to include anything legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Additional
powers of
seizure from the
person.

28. (1) If –

(a) a person carrying out a lawful search of any person finds something that the person has reasonable grounds for believing may be or may contain something for which the person is authorised to search;

(b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle the person, if he or she

found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and

(c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search –

(i) whether what the person has found is something that he or she is entitled to seize; or

(ii) the extent to which what the person has found contains something that he or she is entitled to seize,

that person's powers of seizure include power under this section to seize so much of what he or she has found as it is necessary to remove from that place to enable that to be determined.

(2) If –

(a) a person carrying out a lawful search of any person finds something ("the seizable property") which the person would be entitled to seize but for its being comprised in something else that the person has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that person's powers of seizure include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, are confined to –

(a) how long it would take to carry out the determination or separation at that time and place;

(b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;

(c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation - whether the separation –

(i) would be likely; or

(ii) if carried out by the only means that are reasonably practicable at that time and place would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 23(6) (powers of seizure not to include anything that a person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by subsection (2).

(5) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Notice of
exercise of
power under
section 27 or 28.

29. (1) When a person exercises a power of seizure conferred by section 27, the person must (subject to subsections (2) and (3)) give to the occupier of the premises a written notice –

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 36 to 38 about applying for the return of seized items;

(d) specifying the name and address of the person to whom notice of an application under section 36(1) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 30(2).

(2) If it appears to the person exercising on any premises a power of seizure conferred by section 27 that –

(a) the occupier of the premises is not present on the premises at the time of the exercise of the power; but

(b) there is some other person present on the premises who is in charge of the premises,

subsection (1) of this section has effect as if it required the notice under that subsection to be given to that other person.

(3) If it appears to the person exercising a power of seizure conferred by section 27 that there is no one present on the premises to whom the person may give a notice for the purposes of complying with subsection (1) of this section, he or she must, before leaving the premises, instead of complying with that subsection, attach a notice such as is mentioned in that subsection in a prominent place to the premises.

(4) A person who exercises a power of seizure conferred by section 28 must give a written notice to the person from whom the seizure is made –

(a) specifying what has been seized in reliance on the powers conferred by that section;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of sections 36 to 38 about applying for the return of seized items;

(d) specifying the name and address of the person to whom notice of any application under section 36(1) in respect of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 30(2).

Return or retention of seized property

Examination
and return of
property seized
under section 27
or 28.

30. (1) This section applies when anything has been seized under a power conferred by section 27 or 28.

(2) The person for the time being in possession of the seized property in consequence of the exercise of that power must ensure that arrangements are in place so that (subject to section 38) –

(a) an initial examination of the property is carried out as soon as reasonably practicable after the seizure;

(b) the examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);

(c) anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and

(d) until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.

(3) The seized property falls within this subsection only to the extent that it is –

(a) property for which the person seizing it had power to search when he or she made the seizure but is not property the return of which is required by section 31;

(b) property the retention of which is authorised by section 33; or

(c) something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).

(4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard must be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he or she chooses) of being represented at the examination.

(5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

Obligation to return items subject to legal privilege.

31. (1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies –

(a) it appears to the person who for the time being has possession of the seized property in consequence of the seizure that the property –

(i) is an item subject to legal privilege; or

(ii) has such an item comprised in it; and

(b) if the item is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which an item subject to legal privilege is comprised falls within this subsection if –

(a) the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 33; and

(b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.

(3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when he or she made the seizure, but is not property which is required to be returned under this section or section 32.

(4) This section applies –

(a) to the powers of seizure conferred by sections 27 and 28; and

(b) to any power of seizure (not falling within paragraph (a)) conferred on an authorised police officer by or under any enactment, including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section.

Obligation to return excluded and special procedure material.

32. (1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies –

(a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property –

(i) is excluded material or special procedure material; or

(ii) has any excluded material or any special procedure material comprised in it;

(b) its retention is not authorised by section 33; and

(c) in a case in which the material is comprised in something else which has been lawfully seized - it is not comprised in property falling within subsection (2) or (3),

the person must ensure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which any excluded material or special procedure material is comprised falls within this subsection if –

(a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he or she made the seizure but is not property the return of which is required by this section or section 31; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(3) Property in which any excluded material or special procedure material is comprised falls within this subsection if –

(a) the whole or a part of the rest of the property is property the retention of which is authorised by section 33; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(4) This section applies to every power of seizure contained in an enactment in force when this Part comes into force, or coming into force after this Part comes into force, unless the later enactment limits the power in this section.

Retention of
seized property.

33. (1) The retention of –

(a) property seized on any premises by an authorised police officer who was lawfully on the premises; or

(b) property seized by an authorised police officer carrying out a lawful search of any person, is authorised by this section if the property falls within subsection (2) or (3).

(2) Property falls within this subsection to the extent that there are reasonable grounds for believing that –

(a) it is property obtained in consequence of the commission of an offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(3) Property falls within this subsection to the extent that there are reasonable grounds for believing that –

(a) it is evidence in relation to any offence; and

(b) it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(4) Nothing in this section authorises the retention (except pursuant to section 31(2)) of anything the return of which is required by section 31.

(5) Subsection (1)(a) includes property seized on any premises by a person authorised under section 18(1) to accompany an authorised police officer executing a warrant.

Retention of
property seized
under section 27
or 28.

34. (1) This section has effect in relation to the following provisions (the “relevant provisions”) –

(a) section 26; and

(b) any power to seize property conferred by a written law or any enactment in force in the Territory.

(2) The relevant provisions apply in relation to any property seized in exercise of a power conferred by section 27 or 28 as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.

(3) Nothing in any of sections 30 to 33 authorises the retention of any property at any time when its retention would not (other than as provided for in this Part) be authorised by the relevant provisions.

(4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.

Person to whom
seized property
is to be returned.

35. (1) If –

(a) anything has been seized in exercise of any power of seizure; and

(b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it is (subject to the following provisions of this section) an obligation to return it to the person from whom it was seized.

(2) If —

(a) any person ('A') is obliged under this Part to return anything that has been seized to the person ('B') from whom it was seized; and

(b) A is satisfied that some other person has a better right to that thing than B,

A must instead return it to that other person or, as the case may be, to the person appearing to A to have the best right to the thing in question.

(3) If different persons claim to be entitled to the return of anything that is required to be returned under this Part, the thing may be retained for as long as is reasonably necessary for the determination, in accordance with subsection (2), of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which —

(a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises; and

(b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

Remedies and safeguards

Application for
return of
property.

36. (1) When anything has been seized in exercise, or purported exercise, of a relevant power of seizure, any person with a relevant interest in the seized property may apply to the judicial officer, on one or more of the grounds mentioned in subsection (2), for the return of the whole or a part of the seized property.

(2) The grounds for an application under subsection (1) are that —

(a) there was no power to make the seizure;

(b) the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 31(2);

(c) the seized property is or contains any excluded material or special procedure material which –

(i) has been seized under a power to which section 32 applies;

(ii) is not comprised in property falling within section 32(2) or (3); and

(iii) is not property the retention of which is authorised by section 33;

(d) the seized property is or contains something seized under section 27 or 28 which does not fall within section 30(3);

(3) Subject to subsection (5), the judicial officer, on an application under subsection (1), must –

(a) if satisfied as to any of the matters mentioned in subsection (2) - order the return of so much of the seized property as is property in relation to which the judicial officer is so satisfied; and

(b) to the extent that the officer is not so satisfied - dismiss the application.

(4) The judicial officer, on an application under subsection (1) –

(a) made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure; or

(b) made –

(i) by a person with a relevant interest in anything seized under section 27 or 28; and

(ii) on the grounds that the requirements of section 30(2) have not been or are not being complied with,

may give such directions as the officer thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(5) On an application under this section, the judicial officer may, if satisfied that the retention of the property is justified on grounds stated in subsection (7), authorise the retention of any property which –

(a) has been seized in exercise, or purported exercise, of a relevant power of seizure; and

(b) would otherwise fall to be returned.

(6) The grounds referred to in subsection (5) are that if the property were returned it would immediately become appropriate –

(a) to issue, on the application of the person who is in possession of the property at the time of the application, a warrant under which it would be lawful to seize the property; or

(b) to make an order under paragraph 4 of Schedule 1 of the Criminal Procedure and Evidence Ordinance 2014 (Access to special procedure material and excluded material) under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).

(7) If any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts (“part A” and “part B”) comprised in it such that –

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (6) in relation to part A;

(b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

the facts mentioned in paragraph (a) must not be taken into account by the judicial officer in deciding whether the retention of the property is justified on grounds falling within subsection (6).

(8) A person who fails without reasonable cause to comply with an order or direction of the judicial officer in exercise of the jurisdiction under this section commits a contempt of court, punishable as if it were a criminal contempt of court committed in the face of the court.

(9) The relevant powers of seizure for the purposes of this section are –

(a) the powers of seizure conferred by sections 27 and 28;

(b) any power of seizure (not falling within paragraph (a)) conferred on an authorised police officer by or under any enactment (including an enactment that comes into force after this Part comes into force, unless the later enactment limits the power in this section).

(10) In this section, “person with a relevant interest in seized property” means –

(a) the person from whom the property was seized;

(b) any person with an interest in the property; or

(c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(11) For the purposes of subsection (10)(b), the persons who have an interest in seized property include, in the case of property which is or contains an item subject to legal privilege, the person in whose favour that privilege is conferred.

Cases in which
duty to secure
arises.

37. (1) When property has been seized in exercise, or purported exercise, of any power of seizure conferred by this Part or Part 2 (Powers to Stop and Search), a duty to secure arises under section 38 in relation to the seized property if –

(a) a person entitled to do so applies under section 36 for the return of the property;

(b) at least one of the conditions set out in subsections (2) and (3) is satisfied; and

(c) notice of the application is given to a relevant person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 31(2).

(3) The second condition is that –

(a) the seized property was seized by a person who had, or purported to have, power to seize it by virtue only of a power conferred by this Part or Part 2 (Powers to Stop and Search) (other than section 10(2)); and

(b) the application –

(i) is made on the ground that the seized property is or contains something which does not fall within section 30(3); and

(ii) states that the seized property is or contains special procedure material or excluded material.

(4) In this section “relevant person” means –

- (a) the person who made the seizure;
- (b) the person for the time being having possession, in consequence of the seizure, of the seized property; or
- (c) the person named for the purposes of subsection (1)(d) or (4)(d) of section 29 in any notice given under that section with respect to the seizure.

The duty to secure.

38. (1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to ensure that arrangements are in place so that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 37(1) –

- (a) examined;
- (b) copied; or
- (c) put to any use to which its seizure would, apart from this subsection, entitle it to be put,

except with the consent of the applicant or in accordance with the directions of the judicial officer.

(2) Subsection (1) does not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Subsection (8) of section 36 (contempt of court) applies in relation to any jurisdiction conferred on the judicial officer by this section as it applies in relation to the jurisdiction conferred by that section.

Use of inextricably linked property.

39. (1) This section applies to property, other than property which is for the time being required to be secured pursuant to section 38, if –

- (a) it has been seized under any power conferred by this Part or Part 2 (Powers to Stop and Search); and
- (b) it is inextricably linked property.

(2) Subject to subsection (3), the person for the time being having possession, in consequence of the seizure, of the inextricably linked property must ensure that arrangements are in place so that the seized property

(without being returned) is not at any time, except with the consent of the person from whom it was seized –

- (a) examined;
- (b) copied; or
- (c) put to any other use.

(3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(4) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (5) to (7).

(5) Property falls within this subsection if –

- (a) it has been seized under a power conferred by section 27 or 28; and
- (b) but for subsection (3)(c) of section 30, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.

(6) Property falls within this subsection if –

- (a) it has been seized under a power to which section 31 applies; and
- (b) but for subsection (1)(b) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

(7) Property falls within this subsection if –

- (a) it has been seized under a power of seizure to which section 32 applies; and
- (b) but for subsection (1)(c) of that section, the person for the time being having possession of the property would be under a duty to ensure its return as mentioned in that subsection.

PART 4

POWERS OF ARREST WITHOUT WARRANT

Arrest without
warrant:
Authorised
police officers.

- 40.** (1) An authorised police officer may arrest without a warrant anyone –
- (a) who is about to commit a qualifying offence;
 - (b) who is in the act of committing a qualifying offence;
 - (c) whom the officer has reasonable grounds for suspecting to be about to commit a qualifying offence;
 - (d) whom the officer has reasonable grounds for suspecting to be committing a qualifying offence.
- (2) If an authorised police officer has reasonable grounds for suspecting that a qualifying offence has been committed, the officer may arrest without a warrant anyone whom he or she has reasonable grounds to suspect of being guilty of it.
- (3) If a qualifying offence has been committed, an authorised police officer may arrest without a warrant anyone –
- (a) who is guilty of the qualifying offence;
 - (b) whom the officer has reasonable grounds for suspecting to be guilty of it.
- (4) The power of arrest without warrant of a person conferred by subsection (1), (2) or (3) is exercisable only if the authorised police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person.
- (5) The reasons are –
- (a) to enable the name of the person to be ascertained (if the authorised police officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his or her name is the person's real name);
 - (b) correspondingly as regards the person's address;
 - (c) to prevent the person –
 - (i) causing physical injury to himself or herself or any other person;
 - (ii) suffering physical injury; or

(iii) causing loss of or damage to property;

(d) to protect a child or other vulnerable person from the person;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person;

(f) to prevent any prosecution for the offence from being hindered by the disappearance or other action of the person;

(g) to enable a suspect to be taken before a magistrate pursuant to section 49(3).

Arrest without
warrant: Other
persons.

41. (1) A person other than an authorised police officer may arrest without a warrant anyone –

(a) who is in the act of committing a qualifying offence;

(b) whom the person has reasonable grounds for suspecting to be committing a qualifying offence.

(2) If a qualifying offence has been committed, a person other than an authorised police officer may arrest without a warrant anyone –

(a) who is guilty of the qualifying offence;

(b) whom the person has reasonable grounds for suspecting to be guilty of it.

(3) The power of arrest without warrant of a person conferred by subsection (1) or (2) is exercisable only if –

(a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person; and

(b) it appears to the person making the arrest that it is not reasonably practicable for an authorised police officer to make it instead.

(4) The reasons are to prevent the person arrested –

(a) causing physical injury to himself or herself or any other person;

(b) suffering physical injury;

(c) causing loss of or damage to property; or

(d) making off before an authorised police officer can assume responsibility for the person.

(5) A person who makes an arrest pursuant to this section must as soon as reasonably practicable take the arrested person before a magistrate, to be dealt with in accordance with section 5 of the Criminal Procedure Ordinance 2020.

Effect of handing over a suspect to an authorised police officer.

42. Where a suspect has been handed over to the care and custody of an authorised police officer, in accordance with section 7 of the Criminal Procedure Ordinance 2020, the suspect is deemed to have been arrested by the authorised police officer and the provisions of this and subsequent Parts apply as if the person had been arrested by the authorised police officer.

Saving of other powers of arrest.

43. (1) Any written law in force when this Part comes into force that enables an authorised police officer or any other person –

(a) to arrest a person for an offence without a warrant; or

(b) to arrest a person with a warrant or an order of the court,

continues to have effect, but subject to the provisions of this Ordinance.

(2) Nothing in this Part affects any power –

(a) at common law to arrest a person without a warrant for a breach of the peace; or

(b) of arrest for enforcement of any civil process.

Information to be given on arrest.

44. (1) Subject to subsection (5), when a person is arrested otherwise than by being informed that he or she is under arrest, the arrest is not lawful unless the person arrested is informed that he or she is under arrest as soon as practicable after the arrest.

(2) If a person is arrested by an authorised police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as practicable after, the arrest.

(4) If a person is arrested by an authorised police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section requires a person to be informed –

(a) that he or she is under arrest; or

(b) of the ground for the arrest,

if it was not reasonably practicable for the person to be so informed because the person has escaped from arrest before the information could be given.

Voluntary
attendance at
place of lawful
custody, etc.

45. If for the purpose of assisting with an investigation a person attends voluntarily at a place of lawful custody or at any other place where an authorised police officer is present, or accompanies an authorised police officer to a place of lawful custody or any such other place without having been arrested, the person –

(a) is entitled to leave at will unless he or she is placed under arrest; and

(b) must be informed at once that he or she is under arrest if a decision is taken by an authorised police officer to prevent the person from leaving at will.

Search upon
arrest.

46. (1) If a person has been arrested by an authorised police officer and the authorised police officer has reasonable grounds for believing that the person may present a danger to himself or herself or others, the authorised police officer may search the person.

(2) If a person has been arrested by an authorised police officer, the authorised police officer may, subject to subsections (3) to (5) –

(a) search the arrested person for anything which –

(i) the person might use to assist the person to escape from lawful custody; or

(ii) might be evidence relating to an offence; and

(b) enter and search any premises in which the person was when arrested or immediately before the person was arrested for evidence relating to that offence.

(3) The power to search conferred by subsection (2) is only a power to search to the extent that it is reasonably required for the purpose of discovering any thing or any evidence as mentioned in subsection (2)(a).

(4) The powers conferred by this section to search a person –

(a) do not authorise an authorised police officer to require a person to remove any of the person's clothing in public other than an outer coat, jacket or gloves;

(b) do authorise a search of a person's mouth.

(5) An authorised police officer may not search a person in the exercise of the power conferred by subsection (2)(a) unless the officer has reasonable

grounds for believing that the person to be searched may have concealed on him or her anything for which a search is permitted under that paragraph.

(6) An authorised police officer may not search premises in the exercise of the power conferred by subsection (2)(b) unless the officer has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on premises.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of two or more separated dwellings, it is limited to a power to search –

(a) a dwelling in which the arrest took place or in which the person arrested was immediately before his or her arrest; and

(b) parts of the premises which the occupier of the dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) An authorised police officer searching a person in exercise of the power conferred by subsection (1) may seize and retain anything the officer finds, if the officer has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to any other person.

(9) An authorised police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything the officer finds, other than an item subject to legal privilege, if the officer has reasonable grounds for believing –

(a) that the person might use it to assist the person to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

PART 5

POLICE DETENTION

Police detention – conditions and duration

Making and
keeping a
custody record.

47. (1) This section applies where a person is detained following arrest by an authorised police officer.

(2) The authorised police officer shall be responsible for making and keeping a custody record and making initial decisions about police detention.

(3) In this Ordinance, “custody record” means the record of particulars relating to the custody of a person who is arrested and detained in accordance with this Part.

Limitations on
police detention.

48. (1) A person arrested for an offence must not be kept in police detention except in accordance with this Part.

(2) If at any time the authorised police officer –

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under this Part,

the officer must order the person’s immediate release from custody.

Duties of
authorised
police officers
before
determination of
reasonable
suspicion.

49. (1) If a person is arrested by an authorised police officer for an offence, the authorised police officer –

(a) shall make a determination as to whether there is sufficient evidence to provide reasonable grounds for suspicion that the suspect has committed a qualifying offence, and

(b) may detain the suspect at a place of lawful custody for the period necessary to enable the officer to make that determination.

(2) If the authorised police officer determines that there is not sufficient evidence, the suspect must be released and informed that he or she is no longer under arrest.

(3) If the authorised police officer determines that there is sufficient evidence, the suspect must be taken before a magistrate, to be dealt with in accordance with section 8 of the Criminal Procedure Ordinance 2020.

(4) If the authorised police officer keeps the suspect in police detention before taking that person before a magistrate pursuant to subsection (3), the officer must as soon as practicable make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record must be made in the presence of the suspect who must at that time be informed by the authorised police officer of the grounds for the detention.

(6) Subsection (5) does not apply if the suspect is, at the time when the written record is made –

(a) incapable of understanding what is said to him or her;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) If the suspect is not in a fit state to be dealt with under subsection (3), the suspect may be kept in police detention until he or she is in a fit state.

(8) The determination required by subsection (1) shall be made as expeditiously as possible, and in any event within 48 hours.

Transfer from
the Territory.

50. (1) If a magistrate makes an order pursuant to section 9(2)(a) of the Criminal Procedure Ordinance 2020 (for the transfer of a suspect from the Territory), the suspect shall be handed over to the care and custody of an authorised police officer for transfer from the Territory to the Falkland Islands for the investigation to continue.

(2) The authorised police officer shall take the suspect to the Falkland Islands by the most expeditious route for further investigation into the qualifying offence and any other offence which may be disclosed by the investigation.

Permitted
activities in
relation to the
arrested person
whilst in the
Territory.

51. (1) At any time after a person has been arrested by an authorised police officer and whilst that suspect is detained in police custody in the Territory an authorised police officer may –

(a) carry out searches pursuant to sections 55, 56 and 57;

(b) take samples pursuant to sections 61 and 62;

(c) test for the presence of Class A or Class B drugs pursuant to section 63, and

(d) take photographs pursuant to section 65.

(2) The provisions contained within subsection (1) shall not restrict the ability to carry out the activities set out in sub-subsections (a) to (d) in the Falkland Islands, where permitted under the law of that territory, whether or not such an activity has already been carried out in the Territory.

Rights of a
suspect whilst in
the Territory.

52. Whilst in the Territory, and where applicable within the terms of those sections, a suspect shall have the rights provided by –

(a) section 58 (right to have someone informed when arrested);

(b) section 59 (additional rights of youths who are arrested);

(c) section 60 (access to legal advice).

Procedure to be
adopted after
suspect is

53. (1) This section shall apply where a suspect has been transferred from the Territory to the Falkland Islands pursuant to section 50(2).

transferred from
the Territory.

(2) After arrival in the Falkland Islands, the suspect shall be subject to the laws of that territory, but if an information is laid against that person alleging that he or she has, or is suspected of having, committed an offence under the law of the Territory, the provisions contained within the Falkland Islands (Overseas Jurisdiction) Order 1989 shall apply.

(3) For the avoidance of doubt, if an information is laid before the Summary Court sitting in the Falkland Islands alleging that the suspect has, or is suspected of having, committed an offence under the law of the Territory, those proceedings shall be within the jurisdiction of the Magistrate's Court of the Territory, or the Supreme Court of the Territory, as determined by Parts 3 and 2 of the Administration of Justice Ordinance 2020.

PART 6

TREATMENT OF SUSPECTS BY AUTHORISED POLICE OFFICERS

Search of persons

Interpretation of
Part.

54. (1) In this Part –

“analysis”, in relation to a skin impression, includes comparison and matching;

“appropriate consent” means –

(a) in relation to a suspect who has attained the age of 18 years - the consent of that person;

(b) in relation to a suspect who has not attained that age but has attained the age of 14 years - the consent of that person and his or her parent or guardian; and

(c) in relation to a suspect who has not attained the age of 14 years - the consent of his or her parent or guardian;

“appropriate criminal intent” means an intent to commit an offence under section 6(3) of the Misuse of Drugs Ordinance 2020 (possession of controlled drug with intent to supply to another);

“approved dentist” means a health care professional who has been approved by the British Antarctic Survey to provide dentistry as part or all of their medical services;

“approved place” for the taking of an intimate sample means any of the places specified in section 57(7);

“Class A drug” and “Class B drug” have the same meaning as in the Misuse of Drugs Ordinance 2020;

“DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;

“drug offence search” means an intimate search for a Class A drug or Class B drug which an officer has conducted by virtue of section 57(1)(b);

“extradition arrest power” means a power of arrest under an enactment with a view to the extradition of the person arrested;

“fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of –

(a) any of the person’s fingers; or

(b) either of the person’s palms;

“intimate sample” means –

(a) a sample of blood, semen or any other tissue, fluid, urine or pubic hair;

(b) a dental impression; or

(c) a swab taken from any part of a suspect’s genitals (including pubic hair) or from a suspect’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a suspect’s body orifices other than the mouth;

“non-intimate sample” means –

(a) a sample of hair other than pubic hair;

(b) a sample taken from a nail or from under a nail;

(c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;

(d) saliva; or

(e) a skin impression;

“skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of the person’s foot or of any other part of the person’s body;

“speculative search”, in relation to a samples taken from a person, means a check against other samples or against information derived from other samples;

“sufficient” and “insufficient”, in relation to a sample, means (subject to subsection (2)) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) References in this Part to a sample proving insufficient include references to cases in which, as a consequence of –

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample; or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

(3) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 64 (retention and destruction of samples).

(4) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to –

- (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted;
- (b) a person who has been found not guilty of the offence by reason of insanity, or who has been found to be under a disability and to have done the act charged in respect of the offence.

Searches of
detained
suspects.

55. (1) An authorised police officer must ascertain and record or cause to be recorded everything that a suspect has with him or her when the suspect is –

(a) arrested, and

(b) taken to a place of lawful custody.

(2) A record under subsection (1) must be made as part of the suspect's custody record.

(3) Subject to subsection (4), an authorised police officer may seize and retain anything as mentioned in subsection (1) or cause it to be seized and retained.

(4) Clothes and personal effects may only be seized if the authorised police officer –

(a) believes that the suspect may use them to –

(i) cause physical injury to himself or herself or any other person;

(ii) damage property;

(iii) interfere with evidence; or

(iv) assist the person to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) If anything is seized, the suspect must be told the reason for the seizure unless the suspect is –

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him or her.

(6) Subject to subsection (10), a suspect may be searched –

(a) if the authorised police officer considers it necessary to enable the officer to carry out his or her duty under subsection (1); and

(b) to the extent the authorised police officer considers necessary for that purpose.

(7) A suspect who is in custody at a place of lawful custody or is in police detention otherwise than at such a place may at any time be searched in order to ascertain whether the person has with him or her anything which the suspect could use for any of the purposes specified in subsection (4)(a).

(8) Subject to subsection (9), an authorised police officer may seize and retain, or cause to be seized and retained, anything found on a search authorised by this section.

(9) An authorised police officer may only seize clothes and personal effects in the circumstances specified in subsection (4).

(10) An intimate search may not be conducted under this section.

(11) A search under this section must be carried out only by an authorised police officer.

(12) The authorised police officer carrying out a search under this section must whenever practicable be of the same gender as the person searched.

Searches and
examinations to
ascertain
identity.

56. (1) A suspect who is detained in a place of lawful custody following arrest by an authorised police officer may be searched or examined, or both –

(a) for the purpose of ascertaining whether the suspect has any mark that would tend to identify him or her as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of the suspect's identity.

(2) An authorised police officer may only carry out a search or examination under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if –

(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) An authorised police officer may only carry out a search or examination under subsection (1) for the purpose mentioned in paragraph (b) of that subsection if –

(a) the suspect has refused to identify himself or herself; or

(b) the officer has reasonable grounds for suspecting that the suspect is not who he or she claims to be.

(4) Any identifying mark found on a search or examination under this section may be photographed –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it - without it.

(5) A search or examination carried out, or a photograph taken, under this section may only be carried out or taken by an authorised police officer.

(6) To the extent practicable, a person may not under this section carry out a search or examination of a suspect of the opposite gender or take a photograph of any part of the body of a suspect of the opposite gender.

(7) An intimate search may not be carried out under this section.

(8) A photograph taken under this section –

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(9) In subsection (8) –

(a) the reference to crime includes a reference to any conduct which –

(i) constitutes one or more criminal offences (whether under the law of the Territory or of a place outside the Territory); and

(ii) is, or corresponds to, any conduct which, if it took place in the Territory, would constitute one or more criminal offences;

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Territory of any crime or suspected crime and to a prosecution brought in respect of any crime in a place outside the Territory.

(10) In this section –

(a) references to ascertaining a suspect's identity include references to showing that the suspect is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person are to be construed accordingly.

(11) In this section “mark” includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any suspect’s case facilitates the ascertainment of the suspect’s identity or the identification of the suspect as a person involved in the commission of an offence.

(12) Nothing in this section applies to a person arrested under an extradition arrest power.

57. (1) Subject to this section, if an authorised police officer has reasonable grounds for believing –

(a) that a suspect who has been arrested and is in police detention may have concealed on him or her anything which he or she –

(i) could use to cause physical injury to himself or herself or any other person; and

(ii) might so use while he or she is in police detention or in the custody of a court; or

(b) that such a person –

(i) may have a Class A drug or Class B drug concealed on him or her; and

(ii) was in possession of it with the appropriate criminal intent before the arrest,

the officer may conduct an intimate search of the person.

(2) An authorised police officer may not conduct an intimate search of a suspect for anything unless the officer has reasonable grounds for believing that it cannot be found without the suspect being intimately searched.

(3) If it is proposed that a drug offence search be carried out, the authorised police officer must inform the person to be searched of the grounds for conducting such a search.

(4) An intimate search which is only a drug offence search must be by way of examination by a health care professional.

(5) An intimate search other than a drug offence search must be by way of examination by a health care professional unless this is not practicable, in which case it must be carried out by an authorised police officer.

(6) An authorised police officer may not carry out an intimate search of a suspect of the opposite gender.

(7) An intimate search must not be carried out except –

- (a) at a place of lawful custody; or
- (b) at a place used for medical purposes.

(8) If an intimate search of a suspect is carried out, the custody record relating to the person must state –

- (a) which parts of the person's body were searched; and
- (b) why they were searched.

(9) If the intimate search of a suspect is a drug offence search, the custody record relating to the suspect must also state –

- (a) the grounds for carrying out that search; and
- (b) the fact that the appropriate consent was given.

(10) The information required to be recorded by subsections (8) and (9) must be recorded as soon as practicable after the completion of the search.

(11) The authorised police officer may seize and retain anything which is found on an intimate search of a suspect, or cause any such thing to be seized and retained –

- (a) if the officer believes that the suspect may use it –
 - (i) to cause physical injury to himself or herself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist the person to escape; or
- (b) if the officer has reasonable grounds for believing that it may be evidence relating to an offence.

(12) If anything is seized under this section, the suspect must be told the reason for the seizure unless the suspect is –

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him or her.

(13) If the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence the court may draw such inferences from the refusal as appear proper.

Right to have
someone
informed when
arrested.

58. (1) A suspect who has been arrested –

(a) by someone who is not an authorised police officer and is being held in custody pursuant to section 6(2)(c)(i) of the Criminal Procedure Ordinance 2020, awaiting the arrival of an authorised police officer, or

(b) by an authorised police officer and is being held in police custody,

is entitled, if he or she so requests, to have one named friend or relative or other person who is known to the person or who is likely to take an interest in the person's welfare told that the person has been arrested and is being detained there.

(2) Delay in telling a named person under subsection (1) is only permitted if –

(a) the authorised police officer has reasonable grounds for believing that the telling will –

(i) lead to interference with or harm to evidence connected with a qualifying offence;

(ii) lead to interference with or physical injury to other persons;

(iii) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it;

(iv) hinder the recovery of any property obtained as a result of such an offence; or

(b) the authorised police officer has reasonable grounds for believing that –

(i) the person detained for the qualifying offence has benefited from his or her criminal conduct; and

(ii) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(3) Whether or not subsection (2) applies, the detained person must be permitted to exercise the right conferred by subsection (1) within 36 hours after the relevant time.

(4) For the purposes of subsection (2) the question whether a suspect has benefited from that person's criminal conduct is to be decided in accordance with the Proceeds of Crime Act 2002, as it applies to the Territory.

(5) If a delay in telling a named person is permitted –

(a) the detained person must as soon as practicable be told the reason for the delay; and

(b) the reason must as soon as practicable be noted on the person's custody record.

(c) there must be no further delay once the reason for permitting delay ceases to subsist.

Additional
rights of youths
who are
arrested.

59. (1) If a youth has been arrested –

(a) by someone who is not an authorised police officer and is being held in custody pursuant to section 6(2)(c)(i) of the Criminal Procedure Ordinance 2020, awaiting the arrival of an authorised police officer, or

(b) by an authorised police officer and is being held in police custody,

all practicable steps must be taken to ascertain the identity of a person responsible for the youth's welfare.

(2) If the identity of a person responsible for the welfare of the youth can be ascertained, the person must be informed, unless it is not practicable to do so –

(a) that the youth has been arrested;

(b) why he or she has been arrested; and

(c) where he or she is being detained.

(3) If information is to be given under subsection (2), it must be given as soon as practicable.

(4) For the purposes of this section the persons responsible for the welfare of a youth are –

(a) the youth's parent or guardian; or

(b) any other person who has for the time being assumed responsibility for the youth's welfare.

(5) The rights conferred on a youth by subsections (1) to (4) are in addition to the rights under section 58.

Access to legal advice.

60. (1) Every suspect who is being detained at a place of lawful custody pursuant to section 49(1)(b) is entitled, if the suspect so requests, to consult a legal practitioner at any time.

(2) Consultation with a legal practitioner –

(a) is private; and

(b) may be conducted by telephone, or some other form of electronic communication device.

(3) Subject to subsection (4), a request under subsection (1), and the time of its making, must when it is made be recorded in the custody record.

(4) If a suspect makes such a request, the suspect must be permitted to consult a legal practitioner as soon as practicable, except to the extent that delay is permitted by this section.

(5) Delay in compliance with a request to consult a legal practitioner is only permitted if a police officer of the rank of inspector or above, who may or may not be the authorised police officer, authorises it in accordance with subsection (6).

(6) A police officer may only authorise delay in complying with a request if –

(a) if the officer has reasonable grounds for believing that complying with the request will –

(i) lead to interference with or physical injury to other persons;

(ii) lead to interference with or harm to evidence connected with a qualifying offence;

(iii) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it;

(iv) hinder the recovery of any property obtained as a result of such an offence, or

(b) if the officer has reasonable grounds for believing that –

(i) the suspect has benefited from that person's criminal conduct; and

(ii) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the rights in subsection (1).

(7) For the purposes of subsection (6), the question whether a suspect has benefited from that person's criminal conduct is to be decided in accordance with the Proceeds of Crime Act 2002, as it applies to the Territory.

(8) If delay in complying with a request is permitted by this section –

(a) the suspect must as soon as practicable be told the reason for it;

(b) the reason must as soon as practicable be noted on the suspect's custody record;

(c) there must be no further delay once the reason for permitting delay ceases to subsist.

Fingerprints, samples, etc.

Intimate
samples.

61. (1) Without affecting section 63, an intimate sample may be taken from a suspect in police detention only if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient, if the appropriate consent is given.

(3) An authorised police officer may only take an intimate sample under subsection (1) or (2) if the officer has reasonable grounds for –

(a) suspecting the involvement of the person from whom the sample is to be taken is a qualifying offence; and

(b) believing that the sample will tend to confirm or disprove the person's involvement in that offence.

(4) An intimate sample may be taken from a person if –

(a) two or more non-intimate samples suitable for the same means of analysis have been taken from the person under section 62(6) (persons convicted of offences outside the Territory) but have proved insufficient; and

(b) the appropriate consent is given.

(5) An officer may only take an intimate sample under subsection (4) if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(6) If consent is given, it must be in writing.

(7) An intimate sample can only be taken from a person at an approved place.

(8) Before an intimate sample is taken from a person, an authorised police officer must inform the person of –

(a) the reason for taking the sample; and

(b) the fact that the sample may be the subject of a speculative search.

(9) The reason referred to in subsection (8)(a) must include, unless the sample is taken under subsection (4), a statement of the nature of the offence in which it is suspected that the person has been involved.

(10) After an intimate sample has been taken from a person, the following must be recorded as soon as practicable, and if the person is detained at a place of lawful custody, included on the person's custody record –

(a) the matters referred to in subsection (8)(a);

(b) the fact that the person has been informed as specified in subsection (8)(b); and

(c) the fact that the appropriate consent was given.

(11) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by an approved dentist.

(12) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by a health care professional.

(13) If a person refuses to submit to the taking of an intimate sample without good cause, in proceedings against that person for an offence –

(a) the court, in deciding whether there is a case to answer; and

(b) the court or jury, in deciding whether the person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper, and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting

to, corroboration of any evidence against a person in relation to which the refusal is material.

Non-intimate
samples.

62. (1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) If consent is given, it must be in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if –

(a) the person is in police detention in consequence of being arrested for a qualifying offence;

(b) the person –

(i) has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by and authorised police officer; or

(ii) has had such a sample taken but it proved insufficient;
and

(4) An authorised police officer may only take a non-intimate sample under subsection (3) if the officer has reasonable grounds –

(a) to suspect that the person from whom the sample is to be taken has been involved in a qualifying offence; and

(b) to believe that the sample will tend to confirm or disprove the person's involvement in that offence.

(5) A non-intimate sample may be taken from a person without the appropriate consent if the person has been charged with a qualifying offence, or informed that he or she will be charged with such an offence, and the person –

(a) has not had a non-intimate sample taken in the course of the investigation of the offence by and authorised police officer;

(b) has had a non-intimate sample taken in the course of that investigation but –

(i) it was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(c) has had a non-intimate sample taken in the course of that investigation, but –

(i) the sample has been destroyed pursuant to this Part or some other enactment; and

(ii) it is disputed, in relation to any proceedings relating to the offence, whether a DNA profile relevant to the proceedings was derived from the sample.

(6) A non-intimate sample may be taken from a person without the appropriate consent if –

(a) under the law in force in a country or territory outside the Territory the person has been convicted of an offence under that law (whether or not the person has been punished for it); and

(b) the act constituting the offence would constitute a qualifying offence if done in the Territory,

and if –

(c) the person has not had a non-intimate sample taken from him or her on a previous occasion under this subsection; or

(d) the person has had such a sample taken from him or her on a previous occasion under this subsection but –

(i) the sample was not suitable for the same means of analysis; or

(ii) it proved insufficient.

(7) If a non-intimate sample is taken from a person without the appropriate consent pursuant to this section –

(a) before the sample is taken, an authorised police officer must inform the person of –

(i) the reason for taking the sample; and

(ii) the power by virtue of which it is taken; and

(b) those matters must be recorded as soon as practicable after the sample is taken.

(8) The reason referred to in subsection (7)(a)(i) must include a statement of the nature of the offence in which it is suspected that the person has been involved.

(9) If a non-intimate sample is taken from a person under this section, whether with or without the appropriate consent –

(a) before the sample is taken, an authorised police officer must inform the person that it might be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the sample has been taken, and if the person is detained at a place of lawful custody, included on the person's custody record.

(10) A non-intimate sample may only be taken as specified in any of subsections (5) and (6) if the authorised police officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(11) An authorised police officer must not take a non-intimate sample under this section consisting of a skin impression if a skin impression of the same part of the body has already been taken from the person in the course of the investigation of the offence, unless that skin impression has proved insufficient.

(12) Nothing in this section applies to a person arrested under an extradition arrest power.

Testing for
presence of
Class A drugs or
Class B drugs.

63. (1) A sample of urine or a non-intimate sample may be taken from a suspect in police detention for the purpose of ascertaining whether the person has any Class A drug or Class B drug in his or her body if –

(a) the arrest condition is met; and

(b) both the age condition and the request condition are met.

(2) The arrest condition is that the suspect has been arrested for a qualifying offence but has not been charged with that offence and either –

(a) the offence is an offence under the Misuse of Drugs Ordinance 2020; or

(b) the authorised police officer has reasonable grounds for suspecting that the misuse by the person of a Class A drug or Class B drug caused or contributed to the offence and has authorised the sample to be taken.

(3) The age condition is that the suspect has attained the age of 18;

(4) The request condition is that an authorised police officer has requested the suspect to give the sample.

(5) Before requesting the suspect to give a sample, the authorised police officer must –

(a) warn the suspect that if, when requested to give a sample, he or she fails to do so without good cause he or she may be prosecuted; and

(b) in a case within subsection (2)(b) - inform the suspect of the giving of the authorisation and of the grounds in question.

(6) If a sample is taken under this section from a person in respect of whom the arrest condition is met, no other sample may be taken from the person under this section during the same continuous period of detention.

(7) A sample, other than a urine sample, may be taken under this section only by a health care professional.

(8) Information obtained from a sample taken under this section may be disclosed –

(a) if the person concerned is in police detention, for the purpose of informing any decision about the person's supervision;

(b) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned; and

(c) for any other purpose prescribed by law.

(9) The provisions in this section do not limit sections 61 and 62 as to the taking of samples for other purposes.

Retention and
destruction of
samples.

64. (1) Where a suspect is ordered to be removed from the Territory, to be taken to the Falkland Islands by an authorised police officer in accordance with section 50(2), that authorised police officer may take with him or her any samples that have been taken in the Territory under this Part.

(2) Where a suspect has been investigated by an authorised police officer, but is released without an order being made for that person's transfer from the Territory in accordance with section 50(2), the authorised police officer may, if the authorised police officer wishes to make any further enquiries, take with him or her any samples that have been taken in the Territory under this Part.

(3) If samples are taken from the Territory to the Falkland Islands pursuant to subsections (1) or (2), Chapters 1 and 2 of the Criminal Procedure and Evidence Ordinance 2014 shall apply to the retention and destruction of those samples, subject to the amendments and modifications set out in the Schedule.

(4) If subsection (2) applies, any samples not taken to the Falkland Islands by the authorised police officer shall be destroyed.

Miscellaneous provisions

Photographing
of suspects, etc.

65. (1) A suspect who is detained in a place of lawful custody may be photographed –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it - without it.

(2) A person falling within subsection (3) may, on the occasion of the relevant event referred to in that subsection, be photographed elsewhere than at a place of lawful custody –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(3) A person falls within this subsection if the person has been –

(a) arrested by an authorised police officer for an offence; or

(b) taken into custody by an authorised police officer after being arrested for an offence by a person other than an authorised police officer.

(4) A person proposing to take a photograph of any person under this section may –

(a) for the purpose of doing so, require the removal of any item or substance worn on or over the whole or part of the head or face of the person to be photographed; and

(b) if the requirement is not complied with - remove the item or substance.

(5) Only an authorised police officer may take a photograph under this section.

(6) A photograph taken under this section –

(a) may be used by, or disclosed to, any person for any purpose related to –

(i) the prevention or detection of crime;

(ii) the investigation of an offence;

(iii) the conduct of a prosecution; or

(iv) the enforcement of a sentence; and

(b) after being so used or disclosed, may –

(i) be retained; but

(ii) not be used or disclosed except for a purpose so related.

(7) In subsection (6) –

(a) the reference to crime includes a reference to any conduct which –

(i) constitutes one or more criminal offences under the law of the Territory or of a country or territory outside the Territory; and

(ii) is, or corresponds to, any conduct which, if it all took place in the Territory, would constitute one or more criminal offences;

(b) the references to an investigation and to a prosecution include references respectively to any investigation outside the Territory of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Territory.

(8) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person are to be construed accordingly.

Interviews.

66. (1) Subject to subsection (2), audio or visual recording of interviews with suspects must be conducted only at a place of lawful custody in the Falkland Islands.

(2) Nothing in subsection (1) shall prevent an authorised police officer from asking a suspect questions concerning an offence where information –

(a) relating to the offence;

(b) relating to the suspect;

(c) concerning the alleged victim,

is urgently required for the purposes of –

(i) providing suitable medical treatment to any person;

(ii) preventing any physical harm being caused to any person;

(iii) preventing any loss or damage to property, or

(iv) ensuring the safety of persons in the Territory.

(3) Where questions are asked of a suspect pursuant to subsection (2), the interview shall be conducted in accordance with Code of Practice E or F of the Criminal Procedure and Evidence Ordinance 2014, as far as may be possible given the resources that are available in the Territory.

Variation of provisions.

67. The application of the provisions contained within this ordinance is subject to any variation made by section 48 of the Criminal Procedure Ordinance 2020.

PART 7

CODES OF PRACTICE

Codes of practice.

68. (1) Authorised police officers, in carrying out their duties in the Territory, must have regard to any relevant provision of a code of practice issued in accordance with Part 7 of the Criminal Procedure and Evidence Ordinance 2014.

(2) A failure by an authorised police officer to comply with any provision of a code of practice does not invalidate any action taken by the authorised police officer or in itself render the officer liable to any criminal or civil proceedings.

(3) If it appears to a court or tribunal conducting criminal or civil proceedings that –

(a) any provision of a code of practice; or

(b) any failure mentioned in subsection (2),

is relevant to any question arising in the proceedings, the provision or failure may be taken into account in deciding the question.

(4) In this section, any ‘code of practice’ shall be read with such modifications, adaptations, qualifications and exceptions as the circumstances in the Territory render necessary.

