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28 April 1982

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE
SUB-COMMITTEE ON THE SOUTH ATLANTIC AND THE FALKLAND ISLANDS

EMERGENCY POWERS (FALKLAND ISLANDS) BILL

Note by the Secretaries

A draft of this Bill dated 28 April is attached for information. Draft regulations will be available later in the week.

Also attached are draft Notes on Clauses for the Bill. Any comments on these should be addressed to Mrs J Thompson in the Home Office (213 5051) by noon on Friday 30 April.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office
28 April 1982

EMERGENCY POWERS (FALKLAND ISLANDS) BILL 1982

NOTES ON CLAUSES

INTRODUCTORY NOTE

1. The purpose of this Bill is to provide powers additional to those available under the prerogative and existing legislation which might be exercised in the special circumstances arising from the occupation by force of the Falkland Islands and their Dependencies by the Argentine Republic. It is drafted on a contingency basis and allows for Defence Regulations to meet the needs of the emergency to be made by Order in Council subject, except for reason of urgency, to advance approval by both Houses of Parliament.
2. The Bill has been drafted on the basis that the full panoply of Regulations which would be needed in the event of a major war threatening the United Kingdom mainland would not be made. It is envisaged that the Regulations will be confined to the provisions necessary in the limited context of operations in the South Atlantic.
3. The Bill provides for the expulsion of individuals where it is considered expedient, for the requisitioning of property, and control over the supply or transport of goods and services. There is also provision enabling the application and modification of other enactments by the Regulations, the creation and punishment of offences, the payment of compensation and the extra-territorial operation of the Regulations.
4. The parts of the Bill dealing with the Regulations are temporary and remain in force for three months unless continued in force (for maximum periods of three months) by order of the Secretary of State, subject to affirmative resolution of each House.

NOTES ON CLAUSES

CLAUSE 1 - POWER TO MAKE DEFENCE REGULATIONS BY ORDER IN COUNCIL

1. Clause 1 contains the substance of the Bill and provides a general power to make regulations ("Defence Regulations") for authorised purposes, as defined in subsection (1), arising from the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic. It sets out in subsections (2) to (4) the matters which may, in particular, be included in the Regulations and in subsections (5) and (6) the detailed arrangements for Parliamentary control over the Regulations, which will be subject to affirmative resolution. The Regulations may, in particular, provide for the expulsion of individuals from the United Kingdom, the requisitioning of property, the control of the supply or transport of goods and services, the suspension, amendment or application of other provisions made by or under an enactment, and in particular the suspension of the law relating to trading with the enemy, and the creation and punishment of offences.

2. Clause 1 subsection (1) contains a general power to make Defence Regulations by Order in Council as necessary or expedient for any of the authorised purposes. These are tied to the Argentine occupation and are defined as the defence of the realm in the circumstances arising out of the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic; meeting special circumstances arising or likely to arise out of that occupation; and the efficient prosecution of hostilities in consequence of that occupation. Subsection (1) also provides that nothing in the other provisions of the Bill shall prejudice the generality of the power to make Defence Regulations conferred by the subsection.

3. Clause 1 subsection (2) contains the most important matters for which Defence Regulations may, in particular, be made. These are:

(a) the expulsion from the United Kingdom of persons whose expulsion appears to the Secretary of State expedient. This power is not subject to the rules and appeal procedures under the Immigration Act 1971 to permit rapid expulsion for example of Argentine nationals who are considered a threat to the defence of the realm, or in retaliation for similar action taken against British nationals. (It is intended that the power to expel will apply only to nationals of Argentina or any other hostile country. Further exemptions may be granted in the Orders or on an administrative basis). There is no provision for Regulations about internment;

(b) authorising the taking of possession or control of any property or undertaking, or the acquisition of any property other than land. This provides a specific statutory basis (as opposed to the use of the prerogative) for obtaining the necessary facilities, supplies or means of transport required for the defence forces or in support of them. It would also permit the seizure and requisition of ships and other property owned by Argentine nationals. (Clause 5(2) makes it clear that the powers conferred by the Bill are in addition to, and do not derogate from those exercisable under the prerogative);

(c) imposing prohibitions or restrictions on the supply or transport of goods or the provision of services. This could be used, for example, to prevent the supply of strategic materials or armaments to the Argentine Republic;

(d) suspending, amending or applying (with or without modifications) any other legislation it may be desirable to invoke. This makes it clear that it is within the vires of the Regulations to suspend etc other statutory provisions;

(e) without prejudice to the generality of paragraph (d) suspending, to such an extent and with effect from such time as is specified in the Regulations, the Trading with the Enemy Act 1939 and any related enactment; and any rule of law related to trading with the enemy. The 1939 Act is designed to deal with a more serious situation than that arising from the ^{unlawful} Argentine occupation of the Falkland Islands, and its provisions are thus more severe than may be warranted in the present circumstances. On the outbreak of war, all dealing with "the enemy", which would include British subjects resident in Argentina, becomes illegal; and contractual obligations suspended or avoided.

(f) for the creation and punishment of offences. This provision allows the Regulations to create specific offences such as sabotage, and enables the codification of the relevant criminal law.

4. Clause 1 subsection (3) allows provision under Defence Regulations for requiring or authorising the payment of compensation in respect of things done for any of the authorised purposes, whether under the Regulations, the prerogative of the Crown, or otherwise. The effect is to allow compensation to be paid not only where property is acquired or used, but also, for example, for other losses such as where a voyage has to be cancelled. At present compensation is payable under the Compensation (Defence) Act 1939, but this now applies only where prerogative powers are exercised.

5. Clause 1 subsection (4) provides for a number of minor matters for which Defence Regulations may be made. These are:

(a) such incidental, consequential and supplementary provisions as appear necessary or expedient for the purpose of the Regulations, including in particular provision for the enforcement of the Regulations and for the charging of fees.

(In some circumstances, for example if all Argentinians in the United Kingdom were required to register with the police, fees might become payable);

(b) different provision for different parts of the United Kingdom; this is necessary since the Regulations extend to Scotland and Northern Ireland, which have their own systems of law;

(c) power for any Minister to provide for any of the authorised purposes by means of whatever instrument may be specified in the Regulations. This will allow for the making of orders and the issuing of instructions or directions;

(d) provision for the proof of any instrument made or of any authority given under the Regulations.

6. Clause 1 subsection (5) provides that an Order in Council under clause 1 shall not be made unless the draft Order containing the Regulations has been laid before Parliament and approved by a resolution of each House. The subsection also provides that an Order may be made, if urgency requires it, in advance of Parliamentary approval.

7. Clause 1 subsection (6) requires that if Parliamentary approval has not been obtained in advance, the Order in Council containing the Regulations must be laid before Parliament and shall cease to have effect after 7 days unless approved by resolution of both Houses. This will be without prejudice to any action already taken under the Regulations or the making of a new Order. The 7 day period excludes any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

NOTES ON CLAUSES

CLAUSE 2 - CONCERNING THE EXTRA-TERRITORIAL OPERATION OF DEFENCE REGULATIONS

1. Clause 2 makes provision for the extra-territorial operation of Defence Regulations by Order in Council. The normal principle is that United Kingdom legislation applies only to acts done within the territory of the United Kingdom. However for present purposes it is necessary to allow for a wider extent than that.

2. Clause 2 subsection (1) allows, subject to the limitations specified in subsection (2), the application of any provisions made by or under Defence Regulations, as may be specified in the Regulations to (a) persons outside the United Kingdom, (b) ships or aircraft or hovercraft outside or registered outside the United Kingdom, and (c) acts or omissions outside the United Kingdom.

3. Clause 2 subsection (2) cuts down the width of the provision otherwise allowable under subsection (1) by restricting it to ships, aircraft, hovercraft and persons with a United Kingdom connection. This is in keeping with the general position taken by the Government of the United Kingdom, that where extra-territorial jurisdiction is taken, it should so far as possible apply only to one's own nationals. Accordingly, Defence Regulations are not to apply to ships, aircraft or hovercraft unless registered in the United Kingdom or any territory to which the provisions of the Bill can be extended by Order in Council. Nor are they to apply to any person outside the United Kingdom or to acts or omissions done by any person outside the United Kingdom unless the person is -
 - (i) a citizen of the United Kingdom and Colonies, a person who is a British subject by virtue of section 2, 13 or 16 of the

British Nationality Act 1965 or a British protected person within the meaning of the said Act of 1948; or

(ii) a body incorporated or constituted under the law of any part of the United Kingdom or the law of any territory to which the provisions of this Bill can be extended by Order in Council; or

(iii) in command or charge of a ship, aircraft or hovercraft registered in the United Kingdom or any such territory.

There is an exception for provision made by virtue of clause 1(3) to allow payment to be made to foreign nationals outside the United Kingdom, and in respect of non-British ships requisitioned.

CLAUSE 3 - DURATION OF CLAUSES 1 AND 2

1. Clause 3 sets out the arrangements for the life of the temporary provisions of the Bill - that is clauses 1 and 2. On Royal Assent their provisions come into force for three months; they may then be renewed by the Secretary of State for up to three months at a time by an order subject to the affirmative resolution procedure. The Clause also enables an Order in Council to make such provision as appears necessary or expedient in connection with the expiration of clauses 1 and 2. Any such Order is subject to annulment by either House of Parliament.

2. Clause 3 subsection (1) provides that the temporary provisions - clause 1 and 2 - of the Bill are to remain in force for three months after Royal Assent. They will then lapse unless continued in force under clause 3 subsection (2).

3. Clause 3 subsection (2) provides that the Secretary of State may by order made by statutory instrument continue clauses 1 and 2 in force for periods up to three months at a time.

4. Clause 3 subsection (3) prescribes the Parliamentary procedure in respect of an order. It requires that any proposed continuance of clauses 1 and 2 under subsection (2) must be laid as a draft order before Parliament for approval by resolution of both Houses.

5. Clause 3 subsection (4) enables such provision to be made by Order in Council as appears necessary or expedient in connection with the expiry of clauses 1 and 2. An Order under this subsection may also make such incidental, supplementary and consequential provision as appear to be expedient for the purposes of the Order.

It also makes provision for similar action to be authorised for territories outside the United Kingdom.

6. Clause 3 subsection (5) makes any Order in Council under subsection (4) subject to annulment by resolution of either House of Parliament.

NOTES ON CLAUSES

CLAUSE 4 - THE EXTENT OF THE BILL AND SUPPORTING REGULATIONS

1. Clause 4 authorises the extension of the Bill by Order in Council to any of the Channel Islands, the Isle of Man, and any colony and to installations including waters within 500 metres of the Continental Shelf area. Such an Order may specify the authority empowered to make Defence Regulations for that territory.

2. Clause 4 subsection (1) allows the provisions of the Bill to be extended, by Order in Council, to the Channel Islands, the Isle of Man, and to any colony, with whatever exceptions or variations might be necessary.

3. Clause 4 subsection (2) provides that an Order in Council under subsection (1) may substitute for Her Majesty in Council any authority in the territory concerned as the authority empowered to make Defence Regulations for the territory.

4. Clause 4 subsection (3) extends the application of subsections 1 and 2 of this clause to any installation in a designated area (and the waters within 500 metres of it) within the meaning of the Continental Shelf Act 1964. This will apply, for example, to oil and gas offshore rigs.

NOTES ON CLAUSES

CLAUSE 5 - CITATION AND OTHER SUPPLEMENTARY PROVISIONS

1. Clause 5 gives the short title of the Bill, provides a saving for the powers exercisable by virtue of the prerogative of the Crown, makes provision for meeting expenses incurred by the Government under the Bill, and deals with the meaning of references to the United Kingdom and other territories.
2. Clause 5 subsection (1) provides that the Act may be cited as the Emergency Powers (Falkland Islands) Act 1982.
3. Clause 5 subsection (2) declares that the powers conferred are additional to and not in derogation of those exercisable under the prerogative.
4. Clause 5 subsection (3) provides that any expenses incurred by any Minister or Government Department shall be met out of money provided by Parliament.
5. Clause 5 subsection (4) provides that any reference to the United Kingdom or any territory includes a reference to its territorial waters.

Emergency Powers (Falkland Islands) Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill confers a temporary power, by Order in Council, to make Defence Regulations in connection with the unlawful occupation of the Falkland Islands by the Argentine Republic.

Clause 1 contains a general power to make Defence Regulations, in connection with that unlawful occupation, for the defence of the realm (including dependent territories); for meeting special circumstances; and for the efficient prosecution of hostilities. The Regulations may, in particular, include provision for the expulsion of persons from the United Kingdom; for the taking of possession or control of property or undertakings or the acquisition of property other than land; for the control of the supply or transport of goods or the provision of services and of the performance of contracts; for the suspension, amendment or application of enactments and subordinate instruments, and in particular the suspension of the Trading with the Enemy Act 1939 and the common law relating to trading with the enemy; and for the creation and punishment of offences. They will be subject to affirmative resolution.

Clause 2 makes provision for the extra-territorial operation of Defence Regulations.

Clause 3 provides that clauses 1 and 2 are to remain in force for a period of 3 months and may be continued in force for further periods not exceeding 3 months at a time by an order made by the Secretary of State. Any such order will be subject to affirmative resolution.

Clause 4 enables the Bill to be extended to the Channel Islands, the Isle of Man or any colony, and to off-shore installations.

Clause 5 includes a saving for the powers exercisable by virtue of the prerogative of the Crown.

Financial effects of the Bill and effects on public service manpower

The financial effects of the Bill cannot be quantified. Public service manpower implications are small.

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Emergency Powers (Falkland Islands) Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill confers a temporary power, by Order in Council, to make Defence Regulations in connection with the unlawful occupation of the Falkland Islands by the Argentine Republic.

Clause 1 contains a general power to make Defence Regulations, in connection with that unlawful occupation, for the defence of the realm (including dependent territories); for meeting special circumstances; and for the efficient prosecution of hostilities. The Regulations may, in particular, include provision for the expulsion of persons from the United Kingdom; for the taking of possession or control of property or undertakings or the acquisition of property other than land; for the control of the supply or transport of goods or the provision of services and of the performance of contracts; for the suspension, amendment or application of enactments and subordinate instruments, and in particular the suspension of the Trading with the Enemy Act 1939 and the common law relating to trading with the enemy; and for the creation and punishment of offences. They will be subject to affirmative resolution.

Clause 2 makes provision for the extra-territorial operation of Defence Regulations.

Clause 3 provides that clauses 1 and 2 are to remain in force for a period of 3 months and may be continued in force for further periods not exceeding 3 months at a time by an order made by the Secretary of State. Any such order will be subject to affirmative resolution.

Clause 4 enables the Bill to be extended to the Channel Islands, the Isle of Man or any colony, and to off-shore installations.

Clause 5 includes a saving for the powers exercisable by virtue of the prerogative of the Crown.

Financial effects of the Bill and effects on public service manpower

The financial effects of the Bill cannot be quantified. Public service manpower implications are small.

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Emergency Powers (Falkland Islands) Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill contains a temporary power, by which it is intended to enable the Government to make regulations for the Falkland Islands in the event of an emergency.

The Bill is divided into three parts. Part I contains the temporary power, Part II contains the provisions relating to the duration and extent of the power, and Part III contains the provisions relating to the citation and other supplementary provisions.

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Emergency Powers (Falkland Islands) Bill

ARRANGEMENT OF CLAUSES

Clause

1. Defence Regulations.
2. Extra-territorial operation of Defence Regulations.
3. Duration of ss. 1 and 2.
4. Extent.
5. Citation and other supplementary provisions.

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Emergency Powers (Falkland Islands)

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Confer on Her Majesty certain powers which it is A.D. 1982 expedient that Her Majesty should be enabled to exercise in the circumstances arising out of the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1.—(1) Her Majesty may by Order in Council make such ^{Defence} regulations (to be known as "Defence Regulations") as appear to Her to be necessary or expedient for any of the following purposes (in this Act referred to as "the authorised purposes"), that is to say—
- (a) the defence of the realm (including Her Majesty's dependent territories) in the circumstances arising out of the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic;
 - (b) meeting special circumstances arising or likely to arise out of that occupation; and
 - (c) the efficient prosecution of any hostilities in which Her Majesty may be engaged in consequence of that occupation;

and nothing in the following provisions of this Act shall prejudice the generality of the powers conferred by this subsection.

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(2) Defence Regulations may for any of the authorised purposes make provision—

- (a) for the expulsion from the United Kingdom of persons whose expulsion appears to the Secretary of State to be expedient;
- (b) authorising the taking of possession or control, on behalf of Her Majesty, of any property or undertaking, or the acquisition on behalf of Her Majesty of any property other than land;
- (c) imposing prohibitions or restrictions on the supply or transport of goods, or on the provision of services, or on the performance of contracts;
- (d) suspending, amending or applying (with or without modification) any provision contained in or having effect by virtue of any enactment, whenever passed;
- (e) without prejudice to the generality of paragraph (d), suspending, to such extent and with effect from such time (whether before or after the passing of this Act) as may be specified in the Regulations, the operation of—
 - (i) the Trading with the Enemy Act 1939 and any related enactment; and
 - (ii) any rule of law relating to trading with the enemy;
- (f) for the creation and punishment of offences.

(3) Defence Regulations may make provision for requiring or authorising the payment of compensation in respect of things done for any of the authorised purposes, whether by virtue of Defence Regulations, the prerogative of the Crown, or otherwise.

(4) Defence Regulations may—

- (a) make such incidental, consequential and supplementary provisions as appear to Her Majesty necessary or expedient for the purposes of the Regulations, including in particular provision for the enforcement of the Regulations and for the charging of fees;
- (b) make different provision for different parts of the United Kingdom;
- (c) empower any Minister of the Crown to make provision for any of the authorised purposes by such instrument as may be specified in the Regulations;
- (d) include provision for the proof of any instrument or authority given under Defence Regulations.

(5) No Order in Council under this section shall be made unless—

- (a) a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament; or

(b) it is declared in the Order that it appears to Her Majesty that by reason of urgency it is necessary to make the Order without a draft having been so approved.

(6) Every Order in Council under this section (except such an Order of which a draft has been so approved)—

- (a) shall be laid before Parliament; and
- (b) shall cease to have effect at the expiry of a period of 7 days beginning with the date on which it was made unless, before the expiry of that period, the Order has been approved by a resolution of each House of Parliament, but without prejudice to anything previously done or to the making of a new Order.

In reckoning for the purposes of this subsection any period of 7 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

2.—(1) Subject to subsection (2), any provision made by or under Defence Regulations may apply to—

- (a) persons outside the United Kingdom;
- (b) ships, aircraft and hovercraft outside, or registered outside, the United Kingdom; and
- (c) acts or omissions outside the United Kingdom,

to such extent and in such circumstances as may be specified in the Regulations.

(2) No provision made (otherwise than by virtue of section 1(3)) by or under Defence Regulations shall—

- (a) apply to any ship, aircraft or hovercraft outside the United Kingdom unless it is registered in the United Kingdom or in any territory to which the provisions of this Act can be extended by Order in Council;
- (b) apply to any person outside the United Kingdom or to anything done or omitted by any person outside the United Kingdom unless the person in question is at the material time—

- (i) a citizen of the United Kingdom and Colonies, a person who is a British subject by virtue of section 2, 13 or 16 of the British Nationality Act 1948 or the British Nationality Act 1965 or a British protected person within the meaning of the said Act of 1948;
- or

CONFIDENTIAL

4. *Emergency Powers (Falkland Islands)*

(ii) a body incorporated or constituted under the law of any part of the United Kingdom or the law of any territory to which the provisions of this Act can be extended by Order in Council; or

(iii) in command or charge of a ship, aircraft or hovercraft registered in the United Kingdom or any such territory.

Duration of ss. 1 and 2.

3.—(1) Sections 1 and 2 shall remain in force until the expiry of the period of three months beginning with the day on which this Act is passed, and shall then expire unless continued in force by an order under subsection (2).

(2) The Secretary of State may from time to time by order made by statutory instrument provide that sections 1 and 2 shall continue in force for a period not exceeding three months from the coming into operation of the order.

(3) No order under subsection (2) shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) Her Majesty may by Order in Council make such provision as appears to Her to be necessary or expedient in connection with the expiration of sections 1 and 2; and an Order in Council under this subsection may make or authorise the making of such incidental, supplemental and consequential provisions as appear to Her Majesty to be expedient for the purposes of the Order.

(5) Any Order in Council made under subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Extent.

4.—(1) Her Majesty may by Order in Council direct that the provisions of this Act shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to any of the following territories, namely any of the Channel Islands, the Isle of Man and any colony.

(2) Without prejudice to the generality of subsection (1), an Order in Council made under that subsection with respect to any territory may direct that any authority specified in the Order shall be substituted for Her Majesty in Council as the authority empowered to make Defence Regulations for that territory.

1964 c. 29.

(3) Without prejudice to section 3 of the Continental Shelf Act 1964, subsections (1) and (2) above shall apply in relation to, and to any waters within 500 metres of, any installation in a designated area within the meaning of that Act as they apply in relation to the Channel Islands and the Isle of Man.

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Emergency Powers (Falkland Islands)

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5.—(1) This Act may be cited as the Emergency Powers (Falkland Islands) Act 1982. Citation and other supplementary provisions.

(2) The powers conferred by or under this Act shall be in addition to, and not in derogation of, the powers exercisable by virtue of the prerogative of the Crown.

(3) Any expenses incurred by any Minister of the Crown or government department in consequence of the provisions of this Act shall be paid out of money provided by Parliament.

(4) In this Act any reference to the United Kingdom includes a reference to the territorial waters thereof, and any reference to any other territory includes a reference to the territorial waters of that territory.

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30 April 1982

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC AND THE
FALKLAND ISLANDS

EMERGENCY POWERS (FALKLAND ISLANDS) BILL

Note by the Secretaries

Attached is a preliminary version of the draft Defence Regulations forecast at ODO(SA)(82) 33. Further work is to be done on these next week. The regulations have been prepared on a contingency basis and represent a wide range of powers that officials consider may be needed. From these Ministers will be able to select those demanded by the circumstances.

These latest drafts replace those circulated at ODO(SA)(82) 20 1st and 2nd Ref.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office

30 April 1982

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Emergency Powers (Falkland
Islands) Bill

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BILL

To confer on Her Majesty certain powers which it is expedient that Her Majesty should be enabled to exercise in the circumstances arising out of the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic; and for connected purposes.

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28th April, 1982

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Draft Regulations under the Emergency Powers (Falkland Islands) Act 1982 laid before Parliament for approval by resolutions of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

1982 No.
EMERGENCY POWERS
The Defence (Falkland Islands) Regulations 1982

Laid before Parliament in draft

Made - - - - 1982
Coming into Operation 1982

ARRANGEMENT OF REGULATIONS

PRELIMINARY

1. Title and commencement.
2. Interpretation.

REQUISITIONING

3. Requisitioning of chattels.
4. Requisitioning of space or accommodation in ships etc.

SHIPPING

5. Navigation instructions.
6. Ports, shipbuilding and supplies for ships.

ROAD TRANSPORT

7. Drivers' hours.

TRADE WITH HOSTILE STATES

8. Supply of goods and services.
9. Suspension of Trading with the Enemy Act 1939 etc.

NATIONALS OF HOSTILE STATES

10. Registration with police.
11. Expulsion orders.
12. Arrest of persons subject to expulsion orders.

OFFENCES

13. Treachery.
14. Acts done with intent to assist a hostile state.
15. Communication with agents of hostile states.
16. Sabotage.
17. Interference with Her Majesty's forces etc.
18. Inducing withholding of services or breaches of discipline.
19. False statements and documents.
20. Restriction on disclosure of information.
21. Contravention of directions etc. under Regulations.
22. Attempts to commit offences and assisting offenders.

SUPPLEMENTARY

23. Penalties.
24. Power to arrest without warrant.
25. Prosecutions.
26. Entry and search of premises.
27. Instruments under Regulations.

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At the Court at , the day of 1982

Present

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by the Emergency Powers (Falkland Islands) Act 1982(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PRELIMINARY

Title and commencement

1.—(1) These Regulations may be cited as the Defence (Falkland Islands) Regulations 1982.

(2) These Regulations shall come into force on 1982.

Interpretation

2.—(1) In these Regulations—

“the authorised purposes” has the same meaning as in the principal Act;

“British-controlled”, in relation to a ship, aircraft or hovercraft, means registered in the United Kingdom, any of the Channel Islands, the Isle of Man or a colony;

“hostile state” means the Argentine Republic and any other country engaged in hostilities against Her Majesty, being such hostilities as are mentioned in section 1(1)(c) of the principal Act;

“port” includes any dock, pier, jetty, wharf, quay or other place at which ships can take on and land goods or passengers;

“the principal Act” means the Emergency Powers (Falkland Islands) Act 1982(a).

“ship” includes any vessel used in navigation.

(2) In these Regulations any reference to the master of a ship includes a reference to the person (other than a pilot) for the time being in charge of it and any reference to the commander of an aircraft or hovercraft includes a reference to the person for the time being in charge of the aircraft or hovercraft.

REQUISITIONING

Requisitioning of chattels

3.—(1) The Secretary of State may requisition any chattel in the United Kingdom if it appears to him to be necessary or expedient to do so for any of the authorised purposes and may give such directions as appear to him to be necessary or expedient in connection with the requisitioning of that chattel.

(2) Where the Secretary of State requisitions any chattel under this Regulation or under the prerogative of the Crown, he may—

(a) use or deal with, or authorise the use of or dealing with, the chattel for such purpose and in such manner as he thinks expedient for any of the authorised purposes; and

(a) 1982 c.

(b) hold, or sell or otherwise dispose of, the chattel as if he were the owner and as if it were free from any mortgage, pledge, lien, security or other similar obligation.

(3) The powers conferred by this Regulation shall also be exercisable by any person authorised by the Secretary of State to act on his behalf.

(4) In this Regulation “chattel” includes any vehicle, ship, aircraft or hovercraft and anything on board and any detachable part of a vehicle, ship, aircraft or hovercraft; and the power conferred by this Regulation shall be exercisable in respect of any British-controlled ship, aircraft or hovercraft (and anything on board and any detachable part of any such ship, aircraft or hovercraft) whether or not it is in the United Kingdom.

(5) In this Regulation “requisition” means, in relation to any chattel, take possession of the chattel or require it to be placed at the disposal of the Secretary of State.

(6) In the application of this Regulation to Scotland, for any reference to a chattel there shall be substituted a reference to a corporeal movable.

Requisitioning of space or accommodation in ships etc.

4.—(1) The Secretary of State may for any of the authorised purposes require any space or accommodation in a British-controlled ship, aircraft or hovercraft, whether or not in the United Kingdom, to be placed at his disposal and may give such directions as appear to him to be necessary or expedient in connection with any such requirement.

(2) If any requirement or direction under paragraph (1) above with respect to any ship, aircraft or hovercraft is contravened, the master of the ship or the commander of the aircraft or hovercraft, as the case may be, and the person having the management of it, shall each be guilty of an offence against this Regulation.

(3) Where, in respect of any ship, aircraft or hovercraft, wherever it may be, there subsists between a person of any class specified in paragraph (6) below and any other person a charter-party or other contract under which the first-mentioned person is entitled to possession of the ship, aircraft or hovercraft, or has the right to have anything carried, or to use any space or accommodation, in the ship, aircraft or hovercraft, the Secretary of State may serve on the first-mentioned person, in any manner appearing to him to be convenient, a notice stating that on such date as may be specified in the notice the rights and liabilities of that person under the contract will be transferred to the Secretary of State.

(4) Where a notice is served under paragraph (3) above the contract shall, as regards any rights exercisable or liabilities incurred after the date specified in the notice, have effect (subject to paragraph (5) below) as if the Secretary of State were a party to the contract instead of the person on whom the notice was served and as if for any reference in the contract to that person there were substituted a reference to the Secretary of State.

(5) The Secretary of State may at any time cancel a notice served under paragraph (3) above in respect of a contract, and thereupon paragraph (4) above shall, unless and until a further notice is served in respect of the contract, cease to operate in relation to the contract as regards any rights exercisable or liabilities incurred on or after the date on which the cancellation

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takes effect, and notice of any such cancellation shall be given as soon as may be by the Secretary of State in such manner as he thinks best for informing the person concerned.

(6) The classes of persons referred to in paragraph (3) above are—

- (a) persons who are resident in or incorporated under the law of, or any part of, the United Kingdom, any of the Channel Islands, the Isle of Man or a colony;
- (b) citizens of the United Kingdom and Colonies;
- (c) persons who are British subjects by virtue of section 2, 13 or 16 of the British Nationality Act 1948(a) or the British Nationality Act 1965(b);
- (d) British protected persons within the meaning of the said Act of 1948;
- (e) firms carrying on business in Scotland.

(7) The powers conferred by this Regulation shall also be exercisable by any person authorised by the Secretary of State to act on his behalf.

SHIPPING

Navigation instructions

5.—(1) The Secretary of State may issue instructions (in this Regulation referred to as "navigation instructions") as to the places in or to which ships may be or go, and generally regulating the movements, navigation, pilotage, anchorage, mooring, berthing and lighting of ships, and any such instructions may apply to British-controlled ships whether or not they are in the United Kingdom.

(2) Navigation instructions may make provision for any incidental and supplementary matters for which it appears to the Secretary of State issuing the instructions to be necessary or expedient for the purposes of the instructions to provide; but any such instructions shall so far as practicable avoid any prejudice to the revenue or to the due discharge of their functions by the Commissioners of Customs and Excise.

(3) If, in the case of any ship, any navigation instructions are contravened, the master of the ship shall be guilty of an offence against this Regulation.

(4) A person acting on behalf of Her Majesty may, in relation to any ship, take such steps and use such force as may appear to him to be reasonably necessary for securing compliance with any navigation instructions relating to the ship or, where an offence against this Regulation has occurred in the case of the ship, for enabling proceedings in respect of the offence to be effectually taken.

(5) In relation to any particular ship or to ships in a particular port anything authorised by this Regulation to be done by the Secretary of State may be done on his behalf by any person authorised by him.

Ports, shipbuilding and supplies for ships.

6.—(1) This Regulation applies to any undertaking which is carried on by a person of any class specified in Regulation 4(6) above and is engaged wholly or mainly in one or more of the following activities—

- (a) the management of a port;

(a) 1948 c. 56. (b) 1965 c. 34.

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- (b) the building, repair or modification of ships; or
- (c) the supply of goods or services for, or for the operation of, ports or ships.

(2) The person carrying on an undertaking to which this Regulation applies and any person employed in any such undertaking shall comply with any directions relating to the carrying on of the undertaking given by the Secretary of State or by a person authorised by him in that behalf.

(3) Any directions under paragraph (2) above may be complied with notwithstanding any restriction or obligation imposed by or under any enactment, rule of law or agreement.

(4) The Secretary of State or any person authorised by him in that behalf may by directions provide—

(a) for the person carrying on an undertaking to which this Regulation applies to be relieved, either absolutely or subject to any conditions or restrictions, of any obligation imposed by or under any enactment, rule of law or agreement with respect to the carrying on of the undertaking;

(b) for the suspension, either absolutely or subject to any conditions or restrictions, of any provision affecting any of the activities of the undertaking contained in, or in any instrument made under, any enactment.

(5) Any directions under this Regulation shall so far as practicable avoid any prejudice to the revenue or to the due discharge of their functions by the Commissioners of Customs and Excise.

(6) In the case of an undertaking in Northern Ireland the powers conferred by paragraphs (2) and (4) above shall be exercisable also by the Department of Commerce for Northern Ireland.

(7) This Regulation applies to an undertaking such as is described in paragraph (1) above—

(a) whether or not it forms part of a larger undertaking which is not wholly or mainly engaged in the activities there mentioned; and

(b) whether or not it is carried on in the United Kingdom; and a certificate given by the Secretary of State or by a person authorised by him in that behalf to the effect that an undertaking is one to which this Regulation applies shall be conclusive evidence of that fact.

ROAD TRANSPORT

Drivers' hours

7.—(1) Nothing in section 96(1) to (6) of the Transport Act 1968(a) (driver's permitted hours and periods of duty and rest) shall apply to a driver so long as he is acting under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State.

(2) Nothing in regulations under section 98 of that Act—
(a) which concerns the entering of a current record in a driver's record book, or

(a) 1968 c. 73

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(b) which requires a driver to have such a book in his possession, shall apply to a driver so long as he is acting under, and accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State.

(3) No provision of the applicable Community rules, within the meaning of Part VI of the said Act of 1968, which imposes any requirement with respect to driving periods or rest periods of drivers or members of the crews of vehicles (whether laden or not) used for the carriage of passengers or goods shall apply to any person so long as—

(a) he is acting under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State; and

(b) the vehicle of which he is driver or crew member is within Great Britain.

(4) An authority under any of the foregoing paragraphs may, instead of conferring all the exemptions specified in that paragraph, confer only such exemptions as are specified in the authority.

TRADE WITH HOSTILE STATES

Supply of goods and services

8.—(1) The Secretary of State may by order—

(a) prohibit the sale or supply of goods or services to any person to whom this Regulation applies; and

(b) require any person intending to sell or supply goods or services to any such person to notify the Secretary of State.

(2) An order under paragraph (1) above may apply generally or in relation to such cases as are specified in the order; and any prohibition imposed by an order under that paragraph may be subject to conditions as to the obtaining of consent or otherwise.

(3) The persons to whom this regulation applies are—

(a) any hostile state;

(b) any individual resident in the territory of a hostile state;

(c) any body of persons carrying on business in any place if and so long as that body is controlled by a hostile state or any such individual as aforesaid;

(d) any body of persons instituted or incorporated in or under the laws of a hostile state;

(e) as respect any business carried on in the territory of a hostile state, any individual or body of persons carrying on that business.

(4) The persons to whom this Regulation applies do not include any individual by reason only of his being a national of a hostile state

Suspension of Trading with the Enemy Act 1939 etc.

9.—(1) While this paragraph is in force—

(a) the Trading with the Enemy Act 1939(a); and

(a) 1939 c. 89.

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(b) any rule of law relating to trading with the enemy, shall not apply by reason of the existence of a state of war between Her Majesty and any country specified by an order made by the Secretary of State.

(2) Paragraph (1) above shall be in force from the beginning of any such state of war as aforesaid until such date as may be specified by an order made by the Secretary of State; and different dates may be specified in relation to different provisions of the said Act of 1939.

NATIONALS OF HOSTILE STATES

Registration with police

10.—(1) The Secretary of State may by order direct that any regulations made under section 4(3) of the Immigration Act 1971 (a) (registration with police) shall apply to any persons who—

(a) have indefinite leave under that Act to enter or remain in the United Kingdom; and

(b) are nationals of a hostile state.

(2) An order under this Regulation may provide for the regulations mentioned in paragraph (1) above to apply to any such persons as are there mentioned with such modifications and subject to such exceptions as may be specified in the order.

Expulsion orders

11.—(1) Without prejudice to any powers exercisable by virtue of the prerogative of the Crown, the Secretary of State may, if it appears to him to be necessary or expedient to do so for any of the authorised purposes, make an expulsion order against any persons who are nationals of a hostile state.

(2) An expulsion order shall have effect as imposing on each person to whom it applies a requirement to leave the United Kingdom and a prohibition on re-entering it.

(3) It shall be the duty of the Secretary of State to secure that a person to whom an expulsion order applies is afforded the earliest practicable opportunity of making representations to him in writing.

(4) A person to whom an expulsion order applies may be detained pending his removal or departure from the United Kingdom and—

(a) paragraph 18 of Schedule 2 to the Immigration Act 1971 (a) (detention) shall apply in relation to any such person as it applies in relation to a person liable to be detained under paragraph 16 of that Schedule; and

(b) paragraph 1 of Schedule 3 to that Act (removal directions) shall apply in relation to any such person as it applies in relation to a person in respect of whom a deportation order is in force.

(a) 1971 c. 77

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(5) The powers conferred on the Secretary of State by paragraphs (1) and (4)(b) above shall also be exercisable by any person authorised by him on his behalf.

Arrest of persons subject to expulsion orders

12.—(1) A person liable to be detained under Regulation 11(4) above may be arrested without warrant by a constable or immigration officer.

(2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that a person liable to be arrested under this Regulation is to be found on any premises he may grant a warrant authorising a constable or immigration officer to enter those premises, if necessary by force, at any time within one month of the date of the warrant for the purpose of searching for and arresting that person.

(3) If a member of a police force of a rank not lower than superintendent or an immigration officer of a rank not lower than inspector reasonably believes that a person liable to be arrested under this Regulation is to be found in any premises and that by reason of urgency it is impracticable to apply for a warrant under paragraph (2) above he may by a written order signed by him confer the powers that would be exercisable by virtue of such a warrant.

(4) In this Regulation "premises" includes any vehicle, ship, aircraft or hovercraft.

(5) In the application of this Regulation to Scotland, for the reference to a justice of the peace there shall be substituted a reference to a sheriff or a magistrate or justice of the peace and for the reference to information on oath there shall be substituted a reference to evidence on oath.

(6) In the application of this Regulation to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate, for the reference to information there shall be substituted a reference to complaint and for the reference to a police force there shall be substituted a reference to the Royal Ulster Constabulary.

OFFENCES

Treachery

13. Any person who, with intent to help a hostile state, does any act which is likely to give assistance to the naval, military or air operations of such a state, to impede such operations of Her Majesty's forces or to endanger life shall be guilty of an offence against this Regulation.

Acts done with intent to assist a hostile state

14. Any person who, with intent to help a hostile state, does any act which is likely to prejudice the public safety or the defence of the realm shall, without prejudice to Regulation 13 above or to the law relating to treason, be guilty of an offence against this Regulation.

Communication with agents of hostile states

15.—(1) Any person who, having reasonable cause to believe that another person is engaged in assisting a hostile state, communicates or associates with that other person shall be guilty of an offence against this Regulation.

(2) In any proceedings for an offence under this Regulation in respect of a particular communication or association it shall be a defence to prove that the communication or association was for a purpose not prejudicial to the public safety or the defence of the realm.

Sabotage

16.—(1) Any person who does any act with intent to impair—

(a) the efficiency or impede the working or movement of any ship, aircraft, hovercraft, vehicle, machinery, apparatus or other thing used or intended to be used in Her Majesty's service or in the performance of services for any of the authorised purposes; or

(b) the usefulness of any works, structure or premises used or intended to be so used, shall be guilty of an offence against this Regulation.

(2) Paragraph (1) above shall apply in relation to an omission on the part of a person to do anything which he is under a relevant duty to do as it applies in relation to the doing of an act.

(3) In paragraph (2) above "relevant duty" means a duty imposed by or by virtue of any enactment, by any rule of law or by or by virtue of any contract, not being a duty to work periods of duty (however described) determined by or in accordance with a contract.

Interference with Her Majesty's forces etc.

17.—(1) Any person who does any act which he has reasonable cause to believe would be likely to endanger the safety of any member of Her Majesty's forces, of any constable or of any person charged with the exercise or performance of any power or duty under any of these Regulations or for any of the authorised purposes shall be guilty of an offence against this Regulation.

(2) Any person who—

(a) wilfully obstructs any person acting in the course of his duty as a constable or exercising or performing any power or duty under any of these Regulations or for any of the authorised purposes; or

(b) does any act which he has reasonable cause to believe would be likely to prevent any person from, or mislead or interfere with any person in, performing his duty as a constable or exercising or performing any power or duty under any of these Regulations or for any of the authorised purposes,

shall be guilty of an offence against this Regulation.

Inducing withholding of services or breaches of discipline

18. Any person who—

(a) does any act calculated to induce any member of Her Majesty's forces or any constable or any person exercising or performing any power or duty under these Regulations or for any of the authorised purposes to withhold his services or commit breaches of discipline; or

(b) with intent to contravene or to aid, abet, counsel or procure a contravention of, paragraph (a) of this Regulation, has in his possession or under his control any document of such a nature that the dissemination of copies of it among members of Her Majesty's forces or constables or any such persons would constitute such a contravention, shall be guilty of an offence against this Regulation.

False statements and documents

19.—(1) Any person who, in furnishing any information for the purposes of any of these Regulations, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular shall be guilty of an offence against this Regulation.

(2) Any person who with intent to deceive—

(a) forges or uses, or lends to or allows to be used by another person, a document issued for the purposes of any of these Regulations; or

(b) makes or has in his possession a document so closely resembling such a document as aforesaid as to be calculated to deceive; or

(c) produces, furnishes, sends or otherwise makes use of, for the purposes of any of these Regulations, any document which is false in a material particular,

shall be guilty of an offence against this Regulation.

Restriction on disclosure of information

20. Any person who discloses any information obtained by him by virtue of these Regulations except—

(a) for the purpose of the execution of these Regulations; or

(b) with permission given by or on behalf of the Secretary of State, shall be guilty of an offence against this Regulation.

Contravention of directions etc. under Regulations

21. Any person who contravenes any direction, order prohibition, restriction or requirement given, made or imposed under any of these Regulations shall, if the contravention is not expressed to constitute an offence against any of the foregoing provisions, be guilty of an offence against this Regulation.

Attempts to commit offences and assisting offenders

22.—(1) Without prejudice to the operation of section 8 of the Accessories and Abettors Act 1861(a) and section 44 of the Magistrates' Courts Act 1980(b), any person who attempts to commit, conspires with any other person to commit, or does any act preparatory to the commission of, an offence against any of these Regulations shall be guilty of an offence against that Regulation.

(2) Any person who, knowing or having reasonable cause to believe that another person is guilty of an offence against any of these Regulations, gives that other person any assistance with intent to prevent, hinder or

(a) 1861 c. 94. (b) 1980 c. 43.

interfere with the apprehension, trial or punishment of that person for that offence shall be guilty of an offence against that Regulation.

(3) In the application of this Regulation to Scotland, for the reference to section 8 of the said Act of 1861 and section 44 of the said Act of 1980 there shall be substituted a reference to any rule of law relating to art and part guilt and to sections 216 and 428 of the Criminal Procedure (Scotland) Act 1975(a).

(4) In the application of this Regulation to Northern Ireland, for the reference to section 44 of the said Act of 1980 there shall be substituted a reference to Article 59 of the Magistrates' Courts (Northern Ireland) Order 1981(b).

SUPPLEMENTARY

Penalties

23.—(1) A person guilty of an offence against Regulation 13 or 14 above shall be liable on conviction on indictment to imprisonment for life.

(2) A person guilty of an offence against Regulation 15 or 16 above shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years or to a fine or to both.

(3) A person guilty of an offence against any other of these Regulations shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the prescribed sum or to both.

(4) In paragraph (3)(b) above "the prescribed sum" means—

(a) in the case of an offence committed in England, Wales or Northern Ireland, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c);

(b) in the case of an offence committed in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975(a);

and for the purposes of the application of this definition in Northern Ireland the provisions of the said Act of 1980 which relate to the sum mentioned in sub-paragraph (a) above shall extend to Northern Ireland.

Power to arrest without warrant

24.—(1) Where a constable, with reasonable cause, suspects that an offence against any of these Regulations has been committed he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.

(2) The powers conferred by paragraph (1) above shall also be exercisable—

(a) by any member of Her Majesty's forces for the purpose of carrying out his duty;

(a) 1975 c. 21. (b) S.I. 1981/1675 (N.I.26). (c) 1980 c. 43.

(b) in relation to an offence consisting of the contravention of an expulsion order, by an immigration officer.

Prosecutions

22.—(1) Proceedings for an offence against any of these Regulations shall not be instituted except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(2) Proceedings in respect of an offence alleged to have been committed by any person against any of these Regulations may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(3) Paragraph (1) above does not apply to Scotland.

(4) In the application of this Regulation to Northern Ireland, for the reference to the Director of Public Prosecutions there shall be substituted a reference to the Director of Public Prosecutions for Northern Ireland.

Entry and search of premises

26.—(1) If a justice of the peace is satisfied by information on oath that evidence of the commission of an offence against any of these Regulations or of an act prejudicial to any of the authorised purposes is to be found on any premises he may grant a search warrant authorising entry to those premises.

(2) The warrant shall authorise a constable or a member of Her Majesty's forces, together with any other persons named in the warrant and any other constables or members of Her Majesty's forces—

(a) to enter the premises, if necessary by force, at any time within one month of the date of the warrant ;

(b) to search the premises and every person who is found there or who is reasonably believed by a person exercising the warrant to have recently left or to be about to enter the premises ; and

(c) to seize anything found on the premises, or on any person searched as aforesaid, which is reasonably believed by a person executing the warrant to be such evidence as is mentioned in paragraph (1) above.

(3) If a member of a police force of a rank not lower than superintendent reasonably believes that such evidence as is mentioned in paragraph (1) above is to be found on any premises and that by reason of urgency it is impracticable to apply for a warrant under that paragraph he may by a written order signed by him confer the powers that would be exercisable by virtue of such a warrant.

(4) In this Regulation "premises" includes any vehicle, ship, aircraft or hovercraft.

(5) In the application of this Regulation to Scotland, for the reference to a justice of the peace there shall be substituted a reference to a sheriff or a magistrate or justice of the peace and for the reference to information on oath there shall be substituted a reference to evidence on oath.

(6) In the application of this Regulation to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate, for the reference to information there shall be substituted a reference to complaint and for the reference to a police force there shall be substituted a reference to the Royal Ulster Constabulary.

Instruments under regulations

27.—(1) Orders made under Regulation 8, 9 or 10 above shall be statutory instruments.

(2) Any other instrument made under these Regulations may be proved—

(a) by the production of a document purporting to be such an instrument and to be printed under the authority of a person having power under these Regulations to make an instrument of that description ; or

(b) by the production of a document purporting to be certified as a true copy of such an instrument by or on behalf of a person having power under these Regulations to make an instrument of that description.

(3) References in paragraph (2) above to an instrument include references to any part of an instrument and that paragraph is without prejudice to any other method of proof.

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30th April 1982

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Doc Ref: ODO(SA)(82) 33

COPY NO 86

15 May 1982

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE
SUB-COMMITTEE ON THE SOUTH ATLANTIC AND THE FALKLAND ISLANDS

EMERGENCY POWERS (FALKLAND ISLANDS) BILL

Note by the Secretaries

1. A preliminary version of the draft Defence Regulations was circulated at Ref: ODO(SA)(82) 33; a new print of these should be available next week. In the meantime a draft Note by Officials, which might be put to Ministers in the event of a state of war existing, has been prepared under Home Office supervision and is attached. The draft Note invites decisions on the content and timing of legislation and reflects the understanding that Ministers may be reluctant to introduce emergency legislation without a compelling reason so to do.
2. Any comments on the draft Note should be made to the Home Office (Mr Heaton 213 7123 or Mr Sanderson 213 6310) by NOON on MONDAY 17 MAY. In the absence of comment it will be assumed that Departments are content with the line taken in the draft Note.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office

15 May 1982

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DRAFT OF PAPER

FALKLAND ISLANDS: EMERGENCY LEGISLATION

Note by Officials

Now that Argentina has declared war, Ministers will wish to consider what form emergency legislation should take and when it should be introduced.

2. The only compelling need for emergency legislation now is in relation to the Trading with the Enemy Act 1939 and related common law rules. The Act comes into effect automatically on a declaration of war. It imposes requirements which would go beyond those needed at present, take much time and effort to undo, and cause long term damage to British trading interests in Argentina. For example, money payable to or for the benefit of the enemy would have to be paid to the Custodian of Enemy Property (who is still administering monies paid to him during the Second World War). Additionally, common law rules dissolve all contracts with the enemy. This could have serious long term effects on British investment in Argentina (amounting to £200m); it could jeopardise the Argentine operations of the London-based Bank of London and South America, the second largest foreign bank in Argentina.

3. It therefore appears that legislation should be introduced as soon as practicable to enable the Act and related common law rules to be suspended with retrospective effect, and enable individual provisions of the Act to be brought into operation by order should this prove necessary. This would be achieved by Clause 1(2)(e) of the draft Emergency Powers (Falkland Islands) Bill [attached].

4. But legislation solely for this purpose would be difficult to contemplate. So the draft Bill goes wider. The powers in Clause 1(2)(b)(c) and (d) relate to requisitioning, prohibiting or restricting the supply or transport of goods or services, and creating offences. Clause 1(2)(a) provides for a power of expulsion; but the Security Service does not consider that Argentines in this country are a threat; and the Home Office see no need in present circumstances for a power of expulsion to be exercised, and would prefer it not to be taken now, in case it provokes Argentina to expel UK citizens.

5. Draft Defence (Falkland Islands) Regulations to be made under the Bill [are attached]. In addition regulations, required for the prohibition of payments under contract and for compensation, are being prepared. The draft regulations cover a wider range of matters than may be required, and Ministers are invited to consider which regulations are required in current circumstances, and whether there are any additional powers they would wish to take.

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6. It is suggested that (with the preliminary regulations 1 and 2 and regulation 27) the minimum powers to justify the introduction of emergency legislation might be regulations 3-9, dealing with requisitioning, shipping, drivers' hours and trading with the enemy.

7. Regulation 10 (registration with the police) would be required mainly as a preliminary to the exercise of a power of expulsion (regulations 11-12). If Ministers decide that this power is not required, regulations 10-12 can be omitted.

8. The offences in regulations 13-16 (treachery, assisting a hostile state, sabotage) are in relation to the defence of the realm. They are not required at present, and it is difficult to envisage circumstances in which they might be needed. Ministers may agree that regulations 13-16 can be omitted.

9. Regulations 17-18 (interference with HM forces etc) are designed to supplement the powers of requisition etc in regulations 3-9; so are regulations 19-20 (false statements and non-disclosure of information) and regulations 21-22 (contravention of directions and commission of offences). Regulations 23-26 similarly provide for penalties, power of arrest, prosecutions and power of entry and search in connection with offences under the regulations. All these powers will be needed if the regulations are to be effective.

10. Conclusion

Ministers are invited -

- a. to agree that emergency legislation should be in the form of the present draft Emergency Powers (Falkland Islands) Bill, but without provision for a power of expulsion;
- b. to agree that regulations to be made initially should^{be} those in the draft Defence (Falkland Islands) Regulations, with the additional regulations referred to in paragraph 5 but without the present draft regulations 10-16.
- c. to decide when the Bill should be introduced and the draft Regulations laid.

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3rd Ref: ODO(SA)(82) 33

COPY NO 86

21 May 1982

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC AND THE
FALKLAND ISLANDS

EMERGENCY POWERS (FALKLAND ISLANDS) BILL

Note by the Secretaries

Attached at Annex A for the information of the Sub-Committee is the new print of the draft Defence Regulations forecast at 2nd Ref: ODO(SA)(82) 33. This reference also circulated a draft Note for Ministers. The draft OD paper has now been amended in the light of comments received from Departments and is attached at Annex B in the form in which it is held ready for submission to Ministers.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office

21 May 1982

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REVISED DRAFT OD PAPER

FALKLAND ISLANDS: EMERGENCY LEGISLATION

Note by Officials

Now that Argentina has declared war, Ministers will wish to consider what form emergency legislation should take and when it should be introduced.

2. The main economic measures against Argentina and the requisitioning of ships have been effected without the need for emergency legislation. The only compelling need for emergency legislation now is in relation to the Trading with the Enemy Act 1939 and related common law rules. The Act comes into effect automatically on a declaration of war. It imposes requirements which would go beyond those needed at present, take much time and effort to undo, and cause long term damage to British trading interests in Argentina. For example, money payable to or for the benefit of the enemy would have to be paid to the Custodian of Enemy Property (who is still administering monies paid to him during the Second World War). Additionally, common law rules dissolve all contracts with the enemy. This could have serious long term effects on British investment in Argentina (amounting to £200m); it could jeopardise the Argentine operations of the London-based Bank of London and South America, the second largest foreign bank in Argentina.

3. It therefore appears that legislation should be introduced as soon as practicable to enable the Act and related common law rules to be suspended with retrospective effect, and enable individual provisions of the Act to be brought into operation by order should this prove necessary. This would be achieved by Clause 1(2)(e) of the draft Emergency Powers (Falkland Islands) Bill [attached].

4. But legislation solely for this purpose might be difficult to contemplate. So the draft Bill goes wider. The powers in Clause 1(2)(b)(c) and (f) relate to requisitioning, prohibiting or restricting the supply or transport of goods or services and the performance of contracts and

creating offences. Clause 1(2)(a) provides for a power of expulsion; but the Security Service has not so far identified any activity by Argentines in this country which would justify their expulsion on security grounds, and the Home Office see no need in present circumstances for a power of expulsion to be exercised, and would prefer it not to be taken now, in case it provokes Argentina to expel United Kingdom citizens.

5. Draft Defence (Falkland Islands) Regulations to be made under the Bill [are attached]. The draft regulations cover a wider range of matters than may be required, and Ministers are invited to consider which regulations are required in current circumstances, and whether there are any additional powers they would wish to take.

6. It is suggested that (with the preliminary regulations 1 and 2 and regulation 29) the minimum powers to justify the introduction of emergency legislation might be regulations 3-12, dealing with requisitioning, compensation, shipping, drivers' hours and trading with the enemy.

7. Regulation 13 (registration with the police) would be required mainly as a preliminary to the exercise of a power of expulsion (regulations 14-15). If Ministers decide that this power is not required, regulations 13-15 can be omitted.

8. The offences in regulations 16-18 (assisting a hostile state, sabotage) are in relation to the defence of the realm. They are not required at present, and it is difficult to envisage circumstances in which they might be needed. Ministers may agree that regulations 16-18 can be omitted.

9. Regulations 19-20 (interference with HM forces etc) are designed to supplement the powers of requisition etc in regulations 3-12; so are regulations 21-22 (false statements and non-disclosure of information) and regulations 23-24 (contravention of directions and commission of offences). Regulations 25-28 similarly provide for penalties, power of arrest, prosecutions and power of entry and search in connection with offences under the regulations. All these powers will be needed if the regulations are to be effective.

10. Conclusion

Ministers are invited -

a. to agree that emergency legislation should be in the form of the present draft Emergency Powers (Falkland Islands) Bill, but without provision for a power of expulsion;

b. to agree that regulations to be made initially should be those in the draft Defence (Falkland Islands) Regulations, with the additional regulations referred to in paragraph 5 but without the present draft regulations 13-18.

c. to decide when the Bill should be introduced and the draft Regulations laid.

Cabinet Office

21 May 1982

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Draft Regulations made by Order in Council under the Emergency Powers (Falkland Islands) Act 1982 laid before Parliament for approval by resolutions of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

**1982 No.
EMERGENCY POWERS
The Defence (Falkland Islands) Regulations 1982**

Laid before Parliament in draft
Made - - - - 1982
Coming into Operation 1982

ARRANGEMENT OF REGULATIONS

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At the Court at _____, the _____ day of _____ 1982

Present

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by the Emergency Powers (Falkland Islands) Act 1982(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PRELIMINARY

Title and commencement

1.—(1) These Regulations may be cited as the Defence (Falkland Islands) Regulations 1982.

(2) These Regulations shall come into force on 1982.

Interpretation

2.—(1) In these Regulations—

“the authorised purposes” has the same meaning as in the principal Act;

“British-controlled”, in relation to a ship, aircraft or hovercraft, means registered in the United Kingdom, any of the Channel Islands, the Isle of Man or a colony;

“chattel”, in relation to Scotland, means a corporeal movable;

“hostile state” means the Argentine Republic and any other country engaged in hostilities against Her Majesty, being such hostilities as are mentioned in section 1(1)(c) of the principal Act;

“the principal Act” means the Emergency Powers (Falkland Islands) Act 1982.

“ship” includes any vessel used in navigation.

(2) In these Regulations any reference to the master of a ship includes a reference to the person (other than a pilot) for the time being in charge of it and any reference to the commander of an aircraft or hovercraft includes a reference to the person for the time being in charge of the aircraft or hovercraft.

REQUISITIONING

Requisitioning of chattels

3.—(1) The Secretary of State may requisition any chattel in the United Kingdom if it appears to him to be necessary or expedient to do so for any of the authorised purposes and may give such directions as appear to him to be necessary or expedient in connection with the requisitioning of that chattel.

(2) Where the Secretary of State requisitions any chattel under this Regulation or under the prerogative of the Crown, he may—

(a) use or deal with, or authorise the use of or dealing with, the chattel for such purpose and in such manner as he thinks expedient for any of the authorised purposes; and

(a) 1982 c. _____

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(b) hold, or sell or otherwise dispose of, the chattel as if he were the owner and as if it were free from any mortgage, pledge, lien, security or other similar obligation.

(3) The powers conferred by this Regulation shall also be exercisable by any person authorised by the Secretary of State to act on his behalf.

(4) In this Regulation “chattel” includes any vehicle, ship, aircraft or hovercraft and anything on board and any detachable part of a vehicle, ship, aircraft or hovercraft; and the powers conferred by this Regulation shall also be exercisable in respect of a chattel outside the United Kingdom if it is a British-controlled ship, aircraft or hovercraft or anything on board or any detachable part of any such ship, aircraft or hovercraft.

(5) In this Regulation “requisition” means, in relation to any chattel, take possession of the chattel or require it to be placed at the disposal of the Secretary of State.

Requisitioning of space or accommodation in ships etc.

4.—(1) The Secretary of State may for any of the authorised purposes require any space or accommodation in a British-controlled ship, aircraft or hovercraft, whether or not in the United Kingdom, to be placed at his disposal and may give such directions as appear to him to be necessary or expedient in connection with any such requirement.

(2) If any requirement or direction under paragraph (1) above with respect to any ship, aircraft or hovercraft is contravened, the master of the ship or the commander of the aircraft or hovercraft, as the case may be, and the person having the management of it, shall each be guilty of an offence against this Regulation.

(3) The powers conferred by this Regulation shall also be exercisable by any person authorised by the Secretary of State to act on his behalf.

Requisitioning of rights under charter-parties etc.

5.—(1) This Regulation applies to any person in the United Kingdom, and to any person outside the United Kingdom falling within section 2(2)(b)(i) or (ii) of the principal Act, who under a charter-party or other contract has rights entitling him—

(a) to possession of a ship, aircraft or hovercraft in the United Kingdom or elsewhere; or

(b) to have anything carried, or to use any space or accommodation, in any such ship, aircraft or hovercraft.

(2) The Secretary of State may for any of the authorised purposes serve, in any manner appearing to him to be convenient, on any person to whom this Regulations applies a notice stating that on such date as may be specified in the notice the rights and liabilities of that person under the contract will be transferred to the Secretary of State.

(3) Where a notice is served under paragraph (2) above the contract shall, as regards any rights exercisable or liabilities incurred after the date specified in the notice, have effect (subject to paragraph (4) below) as if—

(a) the Secretary of State were a party to the contract instead of the person on whom the notice was served; and

(b) for any reference in the contract to that person there were substituted a reference to the Secretary of State.

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(4) The Secretary of State may at any time cancel a notice served under paragraph (2) above in respect of a contract, and thereupon paragraph (3) above shall, unless and until a further notice is served in respect of the contract, cease to operate in relation to the contract as regards any rights exercisable or liabilities incurred on or after the date on which the cancellation takes effect.

(5) Notice of any cancellation under paragraph (4) above shall be given as soon as may be by the Secretary of State in such manner as he thinks best for informing the person concerned.

(6) The powers conferred by this Regulation shall also be exercisable by any person authorised by the Secretary of State to act on his behalf.

Compensation: Regulations 3 and 4

6.—(1) Subject to paragraph (2) below, the Compensation (Defence) Act 1939^(a) shall have effect in relation to the exercise of the powers conferred by Regulations 3 and 4 above as it has effect in relation to the exercise of emergency powers as defined in that Act.

(2) In its application by virtue of this Regulation the said Act of 1939 shall have effect with the following modifications.

(3) Any reference to the emergency shall be construed as a reference to any special circumstances arising or likely to arise out of the unlawful occupation of the Falkland Islands and their Dependencies by the Argentine Republic.

(4) In sections 4 and 5 (compensation for requisitioning, and taking space or accommodation in, ships, aircraft, etc.) references to aircraft shall include references to hovercraft.

(5) Section 4 shall apply in relation to any chattel (in addition to chattels of the descriptions there mentioned) if a notice to that effect is given by the Secretary of State to the owner at the time when the chattel is requisitioned, and a chattel in respect of which such a notice is given shall accordingly not be regarded as goods within the meaning of section 6 (compensation in respect of chattels not falling within section 4).

(6) Proviso (ii) to section 4(1) (exclusion in certain cases of compensation for loss in consequence of war operations) shall not apply.

(7) In section 10 (compensation to carry interest at prescribed rate not exceeding five per cent. per annum) the words "not exceeding five per cent. per annum" shall be omitted; and the rate of interest under that section may be prescribed as the rate for the time being determined under section 5 of the National Loans Act 1968^(b) in relation to any specified class of loan.

(8) The modifications specified in paragraphs (3) to (7) above shall also have effect in relation to the said Act of 1939 as it applies to any exercise (whether before or after the coming into force of this Regulation) of any powers exercisable by virtue of the prerogative of the Crown in respect of the special circumstances mentioned in paragraph (3) above.

[9] The modifications specified in paragraph (7) above shall also have effect in relation to interest accruing during the period while this Regulation is in force on any compensation payable under the said Act of 1939 otherwise than as applied by this Regulation.]

(a) 1939 c. 75.

(b) 1968 c. 13.

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Compensation: Regulation 5

7.—(1) Where a notice is served on a person under Regulation 5(2) above in respect of his rights and liabilities under a contract, compensation shall be payable to him out of moneys provided by Parliament—

(a) for so much of any sum paid by him under or in accordance with the contract as relates to the period for which those rights and liabilities are transferred pursuant to the notice;

(b) for any expenses incurred by him at the request or with the consent of the Secretary of State in connection with the transfer; and

(c) for the consideration paid by him for any rights obtained by him in substitution for those transferred so far as it exceeds the consideration paid or payable by him (and not made good under sub-paragraph (a) above) for the rights transferred.

(2) Any compensation under sub-paragraph (a) of paragraph (1) above shall accrue due at the time when the contract expires or when the notice under Regulation 5(2) above is cancelled, whichever is the earlier; and any compensation under sub-paragraph (b) or (c) of that paragraph shall accrue due when the expenditure in respect of which the compensation is payable was incurred.

(3) Sections 7 to 18 of the Compensation (Defence) Act 1939 (tribunals for determining disputes and general and supplementary provisions) shall apply in relation to compensation payable under this Regulation as they apply in relation to compensation payable under that Act and shall so apply with the modifications specified in Regulation 6(3) to (7) above and as if the compensation referred to in section 8(1) included compensation under this Regulation.

SHIPPING

Navigation instructions

8.—(1) The Secretary of State may issue instructions (in this Regulation referred to as "navigation instructions") as to the places in or to which ships may be or go, and generally regulating the movements, navigation, pilotage, anchorage, mooring, berthing and lighting of ships, and any such instructions may apply to British-controlled ships whether or not they are in the United Kingdom.

(2) Navigation instructions may make provision for such incidental and supplementary matters as the Secretary of State thinks necessary or expedient; but any such instructions shall so far as practicable avoid any prejudice to the revenue or to the due discharge of their functions by the Commissioners of Customs and Excise.

(3) If, in the case of any ship, any navigation instructions are contravened, the master of the ship shall be guilty of an offence against this Regulation.

(4) A person acting on behalf of Her Majesty may, in relation to any ship, take such steps and use such force as may appear to him to be reasonably necessary for securing compliance with any navigation instructions relating to the ship or, where an offence against this Regulation has occurred in the case of the ship, for enabling proceedings in respect of the offence to be effectually taken.

(5) In relation to any particular ship or to ships in a particular port anything authorised by this Regulation to be done by the Secretary of State may be done on his behalf by any person authorised by him.

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ROAD TRANSPORT

Drivers' hours

9.—(1) Nothing in section 96(1) to (6) of the Transport Act 1968(a) (driver's permitted hours and periods of duty and rest) shall apply to a driver so long as he is acting under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State.

(2) Section 97 of that Act (installation and use of recording equipment) shall not apply to any vehicle so long as it is used under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State.

(3) Nothing in regulations under section 98 of that Act—

(a) which concerns the entering of a current record in a driver's record book, or

(b) which requires a driver to have such a book in his possession, shall apply to a driver so long as he is acting under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State.

(4) No provision of the applicable Community rules, within the meaning of Part VI of the said Act of 1968, which imposes any requirement with respect to driving periods or rest periods of drivers or members of the crews of vehicles (whether laden or not) used for the carriage of passengers or goods shall apply to any person so long as—

(a) he is acting under, and in accordance with, any general or special authority granted for the purposes of this paragraph by or on behalf of the Secretary of State; and

(b) the vehicle of which he is the driver or a crew member is within Great Britain.

(5) An authority under any of the foregoing paragraphs may, instead of conferring all the exemptions specified in that paragraph, confer only such exemptions as are specified in the authority.

(6) In the application of this Regulation to Northern Ireland—

(a) for the reference in paragraph (1) to section 96(1) to (6) of the Transport Act 1968 there shall be substituted a reference to paragraphs (1) to (3) of Article 56 of the Road Traffic (Northern Ireland) Order 1981(a);

(b) for the reference in paragraph (2) to section 97 of that Act there shall be substituted a reference to Regulation 4 of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1979 (b);

(c) for the reference in paragraph (3) to section 98 of that Act there shall be substituted a reference to Article 56(5) or 66(1) of the said Order of 1981;

(d) for the references in paragraph (4) to Part VI of that Act and to Great Britain there shall be substituted references to that Order and to Northern Ireland.

(a) S.I.1981/154 (N.I. 1) (b) S.R. (N.I.) 1979 No. 443.

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TRADE WITH HOSTILE STATES

Supply of goods and services

10.—(1) The Secretary of State may by order—

(a) prohibit the sale or supply of goods or services to any person to whom this sub-paragraph applies; and

(b) require any person intending to sell or supply goods or services to any such person to notify the Secretary of State.

(2) An order under paragraph (1) above may apply generally or in relation to such cases as are specified in the order; and any prohibition imposed by an order under that paragraph may be subject to conditions as to the obtaining of consent or otherwise.

(3) The persons to whom paragraph (1)(a) above applies are—

(a) any hostile state;

(b) any individual resident in the territory of a hostile state;

(c) any body carrying on business in any place if and so long as that body is controlled by a hostile state or any such individual as aforesaid;

(d) any body incorporated or constituted in or under the law of a hostile state;

(e) as respect any business carried on in the territory of a hostile state, any individual or body carrying on that business.

Payments under contracts

11.—(1) Except with permission granted by or on behalf of the Treasury no person in the United Kingdom, and no person outside the United Kingdom who falls within any class specified in paragraph (2) below, shall in pursuance of any contract make a payment to, or to the credit or order of—

(a) the government of the Argentine Republic; or

(b) any person who is resident in that country or was so resident on or after 3rd April 1982.

(2) The classes of persons referred to in paragraph (1) above are—

(a) persons falling within section 2(2)(b)(i) of the principal Act;

(b) bodies incorporated or constituted under the law of any part of the United Kingdom.

(3) Any permission granted under this Regulation may be granted either absolutely or subject to conditions.

(4) If any person contravenes this Regulation he shall be guilty of an offence against this Regulation.

(5) For the purposes of this Regulation a branch in the Argentine Republic of any business, whether carried on by a body corporate or otherwise, shall be treated as if it were a body corporate resident in that country.

(6) This Regulation is without prejudice to any directions given under section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964(a).

Suspension of Trading with the Enemy Act 1939 etc.

12.—(1) While this paragraph has effect—

(a) the Trading with the Enemy Act 1939(b); and

(a) 1964 c. 60. (b) 1939 c. 89.

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(b) any rule of law relating to trading with the enemy, shall not apply by reason of the existence of a state of war between Her Majesty and any country specified by an order made by the Secretary of State.

(2) Paragraph (1) above shall have effect from the beginning of any such state of war as aforesaid until such date as may be specified by an order made by the Secretary of State; and different dates may be specified in relation to different provisions of the said Act of 1939.

NATIONALS OF HOSTILE STATES

Registration with police

13.—(1) The Secretary of State may by order direct that any regulations made under section 4(3) of the Immigration Act 1971 (a) (registration with police) shall apply to any persons who—

(a) have indefinite leave under that Act to enter or remain in the United Kingdom; and

(b) are nationals of a hostile state.

(2) An order under this Regulation may provide for the regulations mentioned in paragraph (1) above to apply to any such persons as are there mentioned with such modifications and subject to such exceptions as may be specified in the order.

Expulsion orders

14.—(1) Without prejudice to any powers exercisable by virtue of the prerogative of the Crown, the Secretary of State may, if it appears to him to be necessary or expedient to do so for any of the authorised purposes, make an expulsion order against any persons who are nationals of a hostile state.

(2) An expulsion order shall have effect as imposing on each person to whom it applies a requirement to leave the United Kingdom and a prohibition on re-entering it.

(3) It shall be the duty of the Secretary of State to secure that a person to whom an expulsion order applies is afforded the earliest practicable opportunity of making representations to him in writing.

(4) A person to whom an expulsion order applies may be detained pending his departure or removal from the United Kingdom and—

(a) paragraph 18 of Schedule 2 to the Immigration Act 1971 (detention) shall apply in relation to any such person as it applies in relation to a person liable to be detained under paragraph 16 of that Schedule; and

(b) paragraph 1 of Schedule 3 to that Act (removal directions) shall apply in relation to any such person as it applies in relation to a person in respect of whom a deportation order is in force.

(5) The powers conferred on the Secretary of State by paragraphs (1) and (4)(b) above shall also be exercisable by any person authorised by him on his behalf.

(a) 1971 c. 77

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Arrest of persons subject to expulsion orders

15.—(1) A person liable to be detained under Regulation 14(4) above may be arrested without warrant by a constable or immigration officer.

(2) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that a person liable to be arrested under this Regulation is to be found on any premises he may grant a warrant authorising a constable or immigration officer to enter those premises, if necessary by force, at any time within one month of the date of the warrant for the purpose of searching for and arresting that person.

(3) If a member of a police force of a rank not lower than superintendent or an immigration officer of a rank not lower than inspector reasonably believes that a person liable to be arrested under this Regulation is to be found in any premises and that by reason of urgency it is impracticable to apply for a warrant under paragraph (2) above he may by a written order signed by him confer the powers that would be exercisable by virtue of such a warrant.

(4) In this Regulation "premises" includes any vehicle, ship, aircraft or hovercraft.

(5) In the application of this Regulation to Scotland, for the reference to a justice of the peace there shall be substituted a reference to a sheriff or a magistrate or justice of the peace and for the reference to information on oath there shall be substituted a reference to evidence on oath.

(6) In the application of this Regulation to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate, for the reference to information on oath there shall be substituted a reference to complaint on oath and for the reference to a police force there shall be substituted a reference to the Royal Ulster Constabulary.

OFFENCES

Assisting a hostile state

16.—(1) Any person who, with intent to assist a hostile state, does any act which is likely—

(a) to give assistance to the naval, military or air operations of such a state or to impede such operations by Her Majesty's forces; or

(b) to endanger life; or

(c) to prejudice the public safety or the defence of the realm, shall be guilty of an offence against this Regulation.

(2) This Regulation is without prejudice to the law relating to treason.

Communication with agents of hostile state

17.—(1) Any person who, having reasonable cause to believe that another person is engaged in assisting a hostile state, communicates or associates with that other person shall be guilty of an offence against this Regulation.

(2) In any proceedings for an offence under this Regulation in respect of a particular communication or association it shall be a defence to prove that

the communication or association was for a purpose not prejudicial to the public safety or the defence of the realm.

Sabotage

18.—(1) Any person who does any act with intent to impair—

(a) the efficiency or impede the working or movement of any ship, aircraft, hovercraft, vehicle, machinery, apparatus or other thing used or intended to be used in Her Majesty's service or in the performance of services for any of the authorised purposes; or

(b) the usefulness of any works, structure or premises used or intended to be so used,

shall be guilty of an offence against this Regulation.

(2) Paragraph (1) above shall apply in relation to an omission on the part of a person to do anything which he is under a relevant duty to do as it applies in relation to the doing of an act.

(3) In paragraph (2) above "relevant duty" means a duty imposed by or by virtue of any enactment, by any rule of law or by or by virtue of any contract, not being a duty to work periods of duty (however described) determined by or in accordance with a contract.

Interference with Her Majesty's forces etc.

19.—(1) Any person who does any act which he has reasonable cause to believe would be likely to endanger the safety of any member of Her Majesty's forces, of any constable or of any person charged with the exercise or performance of any power or duty under any of these Regulations or for any of the authorised purposes shall be guilty of an offence against this Regulation.

(2) Any person who—

(a) wilfully obstructs any person acting in the course of his duty as a constable or exercising or performing any power or duty under any of these Regulations or for any of the authorised purposes; or

(b) does any act which he has reasonable cause to believe would be likely to prevent any person from, or mislead or interfere with any person in, performing his duty as a constable or exercising or performing any power or duty under any of these Regulations or for any of the authorised purposes,

shall be guilty of an offence against this Regulation.

Inducing withholding of services or breaches of discipline

20. Any person who—

(a) does any act calculated to induce any member of Her Majesty's forces or any constable or any person exercising or performing any power or duty under these Regulations or for any of the authorised purposes to withhold his services or commit breaches of discipline; or

(b) with intent to contravene or to aid, abet, counsel or procure a contravention of, paragraph (a) of this Regulation, has in his possession or under his control any document of such a nature that the dissemination of copies of it among members of Her Majesty's forces or constables or any such persons would constitute such a contravention,

shall be guilty of an offence against this Regulation.

False statements and documents

21.—(1) Any person who, in furnishing any information for the purposes of any of these Regulations, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular shall be guilty of an offence against this Regulation.

(2) Any person who with intent to deceive—

(a) forges or uses, or lends to or allows to be used by another person, a document issued for the purposes of any of these Regulations; or

(b) makes or has in his possession a document so closely resembling such a document as aforesaid as to be calculated to deceive; or

(c) produces, furnishes, sends or otherwise makes use of, for the purposes of any of these Regulations, any document which is false in a material particular,

shall be guilty of an offence against this Regulation.

Restriction on disclosure of information

22. Any person who discloses any information obtained by him by virtue of these Regulations except—

(a) for the purpose of the execution of these Regulations; or

(b) with permission given by or on behalf of the Secretary of State,

shall be guilty of an offence against this Regulation.

Contravention of directions etc. under Regulations

23. Any person who contravenes any direction, order, prohibition, restriction or requirement given, made or imposed under any of these Regulations shall, if the contravention is not expressed to constitute an offence against any of the foregoing provisions, be guilty of an offence against this Regulation.

Attempts to commit offences and assisting offenders

24.—(1) Without prejudice to the operation of section 8 of the Accessories and Abettors Act 1861(a) and section 44 of the Magistrates' Courts Act 1980(b), any person who attempts to commit, conspires with any other person to commit, or does any act preparatory to the commission of, an offence against any of these Regulations shall be guilty of an offence against that Regulation.

(2) Any person who, knowing or having reasonable cause to believe that another person is guilty of an offence against any of these Regulations, gives that other person any assistance with intent to prevent, hinder or interfere with the apprehension, trial or punishment of that person for that offence shall be guilty of an offence against that Regulation.

(3) In the application of this Regulation to Scotland, for the reference to section 8 of the said Act of 1861 and section 44 of the said Act of 1980 there shall be substituted a reference to any rule of law relating to art and part-guilt and to sections 216 and 428 of the Criminal Procedure (Scotland) Act 1975(c).

(a) 1861 c. 94. (b) 1980 c. 43. (c) 1975. c 21.

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(4) In the application of this Regulation to Northern Ireland, for the reference to section 44 of the said Act of 1980 there shall be substituted a reference to Article 59 of the Magistrates' Courts (Northern Ireland) Order 1981(a).

SUPPLEMENTARY

Penalties

25.—(1) A person guilty of an offence against Regulation 16 above shall be liable on conviction on indictment to imprisonment for life.

(2) A person guilty of an offence against Regulation 17 or 18 above shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years or to a fine or to both.

(3) A person guilty of an offence against any other of these Regulations shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the prescribed sum or to both.

(4) In paragraph (3)(b) above "the prescribed sum" means—

(a) in the case of an offence committed in England, Wales or Northern Ireland, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980;

(b) in the case of an offence committed in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975;

and for the purposes of the application of this definition in Northern Ireland the provisions of the said Act of 1980 which relate to the sum mentioned in sub-paragraph (a) above shall extend to Northern Ireland.

(5) For the purposes of paragraph (4) above an offence committed by a person outside the United Kingdom shall be treated as committed in the part of the United Kingdom in which proceedings against that person are taken in respect of the offence.

Power to arrest without warrant

26.—(1) Where a constable, with reasonable cause, suspects that an offence against any of these Regulations has been committed he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.

(2) The powers conferred by paragraph (1) above shall also be exercisable—

(a) by any member of Her Majesty's forces for the purpose of carrying out his duty;

(b) in relation to an offence consisting of the contravention of an expulsion order, by an immigration officer.

Prosecutions

27.—(1) Proceedings for an offence against any of these Regulations shall not be instituted except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(a) S.I. 1981/1675 (N.I.26).

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(2) Proceedings in respect of an offence alleged to have been committed by any person against any of these Regulations may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(3) Paragraph (1) above does not apply to Scotland.

(4) In the application of this Regulation to Northern Ireland, for the reference to the Director of Public Prosecutions there shall be substituted a reference to the Director of Public Prosecutions for Northern Ireland.

Entry and search of premises

28.—(1) If a justice of the peace is satisfied by information on oath that evidence of the commission of an offence against any of these Regulations or of an act prejudicial to any of the authorised purposes is to be found on any premises he may grant a search warrant authorising entry to those premises.

(2) The warrant shall authorise a constable or a member of Her Majesty's forces, together with any other persons named in the warrant and any other constables or members of Her Majesty's forces—

(a) to enter the premises, if necessary by force, at any time within one month of the date of the warrant;

(b) to search the premises and every person who is found there or who is reasonably believed by a person executing the warrant to have recently left or to be about to enter the premises; and

(c) to seize anything found on the premises, or on any person searched as aforesaid, which is reasonably believed by a person executing the warrant to be such evidence as is mentioned in paragraph (1) above.

(3) If a member of a police force of a rank not lower than superintendent reasonably believes that such evidence as is mentioned in paragraph (1) above is to be found on any premises and that by reason of urgency it is impracticable to apply for a warrant under that paragraph he may by a written order signed by him confer the powers that would be exercisable by virtue of such a warrant.

(4) In this Regulation "premises" includes any vehicle, ship, aircraft or hovercraft.

(5) In the application of this Regulation to Scotland, for the reference to a justice of the peace there shall be substituted a reference to a sheriff or a magistrate or justice of the peace and for the reference to information on oath there shall be substituted a reference to evidence on oath.

(6) In the application of this Regulation to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate, for the reference to information on oath there shall be substituted a reference to complaint on oath and for the reference to a police force there shall be substituted a reference to the Royal Ulster Constabulary.

Instruments under regulations

29.—(1) Orders made under Regulation 10, 12 or 13 above shall be statutory instruments.

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(2) Any other instrument made under these Regulations may be proved—

(a) by the production of a document purporting to be such an instrument and to be printed under the authority of a person having power under these Regulations to make an instrument of that description; or

(b) by the production of a document purporting to be certified as a true copy of such an instrument by or on behalf of a person having power under these Regulations to make an instrument of that description.

(3) References in paragraph (2) above to an instrument include references to any part of an instrument and that paragraph is without prejudice to any other method of proof.

Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order)

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21st May 1982

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