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21ABR82 – ODO(SA)(82). Nota circulada al subcomité. Acta de concesión de poderes de emergencia a la Reina.
(*ver también 15ABR y 19ABR*)

(CAB 148/218) (desclasificado DIC 2012)

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2nd Ref: ODO(SA)(82) 20

COPY NO 87

21 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

1. Attached for the information of the Sub-Committee is a copy of the draft supporting regulations to the Bill already circulated at Ref: ODO(SA)(82) 20.
2. An ad hoc meeting to discuss this emergency legislation will be held under the Chairmanship of Mr Heaton, Home Office in Room 765, Queen Anne's Gate at 3.00 pm on Friday 23 April. Representatives of the Treasury, Foreign and Commonwealth Office, Ministry of Defence, the Scottish Office, the Departments of Industry, Transport, Energy, Employment and Trade and of Parliamentary Counsel, the Board of Customs and Excise and the Export Credits Guarantee Department are invited to attend. Those intending to be present at the meeting are requested to inform the Home Office (01-233 3305) as soon as possible.

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

Cabinet Office

21 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*

D R A F T S T A T U T O R Y I N S T R U M E N T S

1982 No.

**THE DEFENCE (FALKLAND ISLANDS) REGULATIONS
1982**

Laid before Parliament in draft

<i>Made - - - -</i>	1982
<i>Coming into Operation</i>	1982

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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 or in any territory mentioned in section 2(1) of the principal Act;

“enemy” means the enemy in any 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(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 ETC.*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) Where a chattel is requisitioned under this Regulation the Secretary of State shall pay to the owner and to any other person interested in the chattel who suffers damage owing to the requisition such compensation as may be agreed or as may, in default of agreement, be determined by arbitration to be just having regard to all the circumstances of the particular case.

(5) In this Regulation "chattel" includes any vehicle, ship, aircraft or hovercraft and anything on board and any detachable part of a vessel, 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.

(6) 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.

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

Taking possession of land

4.—(1) The Secretary of State may take possession of any land 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 taking of possession of that land.

(2) While any land is in the possession of the Secretary of State by virtue of this Regulation the land may, notwithstanding any restriction imposed on its use (whether by any Act or other instrument or otherwise), be used by him or under his authority for such purpose and in such manner as he thinks necessary or expedient for any of the authorised purposes.

(3) Without prejudice to paragraph (2) above, the Secretary of State may, so far as appears to him to be necessary or expedient in connection with the taking of possession of any land in pursuance of this Regulation or with the use of any land in his possession by virtue of this Regulation, do (or authorise persons using the land under his authority to do) in relation to the land anything which any person having an interest in the land would be entitled to do by virtue of that interest.

(4) Where the Secretary of State is in possession of any land in pursuance of this Regulation he may by directions prohibit or restrict, or by order make provision for enabling such persons as may be specified in the order to prohibit or restrict, the exercise of rights of way over the land and of other rights relating to it which are enjoyed by any person whether by virtue of an interest in land or otherwise.

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(5) In respect of land of which possession is taken under this Regulation the Secretary of State shall pay to the person who would otherwise be entitled to possession of the land, and to any other person having an estate or interest in the land who suffers damage by reason of the taking of possession or of anything done in relation to the land while in the Secretary of State's possession, such compensation as may be agreed or as may, in default of agreement, be determined by arbitration to be just having regard to the circumstances of the particular case.

(6) Without prejudice to the definition in Schedule 1 to the Interpretation Act 1978(a), in this Regulation "land" includes part of a building or other structure.

Requisitioning of space or accommodation in ships etc.

5.—(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 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.

(a) 1978 c. 30.

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(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 or any territory mentioned in section 2(1) of the principal Act ;

(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 1956(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.

CONTROL OF NAVIGATION*Navigation instructions*

6.—(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 require—

(a) any ship to sail from one port in the United Kingdom to another such port ;

(b) any British-controlled ship to sail from any port to any other port, wherever either of those ports may be ;

(c) any British-controlled ship at sea to sail to any specified port, wherever that port may be ;

(d) any ship to leave the territorial waters of 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 go 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.

(6) The foregoing provisions of this Regulation shall apply in relation to seaplanes on the surface of the water [and to hovercraft] as they apply in relation to ships except that the reference to the master of a ship shall be

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

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construed as a reference to the commander of a seaplane [or hovercraft]; [and seaplanes taking off from or alighting on the water shall be deemed for the purposes of this Regulation to be on the surface of the water while in contact with it].

(7) In this Regulation "seaplane" includes a flying-boat and any other aircraft designed to manoeuvre on the water.

NATIONALS OF HOSTILE COUNTRIES

Expulsion orders

7.—(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 order for the expulsion from the United Kingdom of any person (not having the right of abode in the United Kingdom) who are nationals of any country which he considers to be hostile to the United Kingdom.

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

(3) A person to whom an order under this section applies may be detained pending his removal or departure from the United Kingdom and—

(a) paragraphs 17 and 18 of Schedule 2 to the Immigration Act 1971 (arrest and detention) shall apply in relation to any such person as they apply 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.

(4) The powers conferred on the Secretary of State by paragraphs (1) and (3) above shall also be exercisable by any person authorised by him on his behalf.

OFFENCES

Treachery

8. Any person who, with intent to help the enemy, does any act which is designed or likely to give assistance to the naval, military or air operations of an enemy, 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 the enemy

9. Any person who, with intent to help the enemy, does any act which is likely to help the enemy or to prejudice the public safety or the defence of the realm shall, without prejudice to Regulation 8 above or to the law relating to treason, be guilty of an offence against this Regulation.

(a) 1971 c. 77.

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CONFIDENTIAL*Communication with enemy agents*

10.—(1) Any person who, having reasonable cause to believe that another person is engaged in assisting the enemy, 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

11.—(1) Any person who, 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 duty, either to the public or to any person, to do as it applies in relation to the doing of an act.

Interference with Her Majesty's forces etc.

12.—(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

13. 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

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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.

Trespassing and loitering

14.—(1) No person shall trespass on, or on premises in the vicinity of, any premises used or appropriated for any of the authorised purposes; and if any person is found trespassing on any premises in contravention of this paragraph then, without prejudice to any proceedings which may be taken against him, he may be removed by the appropriate person from the premises.

(2) No person shall, for any purpose prejudicial to the public safety, be in or in the vicinity of any premises used or appropriated for any of the authorised purposes.

(3) No person loitering in the vicinity of any premises used or appropriated for any of the authorised purposes shall continue to loiter in that vicinity after being requested by the appropriate person to leave it.

(4) In this Regulation "the appropriate person" means—

- (a) any person acting on behalf of Her Majesty;
- (b) any constable; or
- (c) the occupier of the premises concerned or any person authorised by the occupier.

(5) Any person who contravenes the foregoing provisions of this Regulation shall be guilty of an offence against this Regulation; and where, in any proceedings taken against a person by virtue of paragraph (2) above, it is proved that at the material time he was present in, or in the vicinity of, the premises concerned, the prosecution may thereupon adduce such evidence of the character of that person (including evidence of his having been previously convicted of any offence) as tends to show that he was so present for a purpose prejudicial to the public safety.

[(6) In this Regulation references to premises used or appropriated for any of the authorised purposes include references to vehicles, ships, aircraft or hovercraft used or appropriated for any of those purposes and references to trespass shall be construed accordingly.]

False statements and documents

15.—(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.

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CONFIDENTIAL*Restriction on disclosure of information*

16. 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 a Minister,
- shall be guilty of an offence against this Regulation.

Contravention of directions etc. under Regulations

17. Any person who contravenes any direction, prohibition, restriction or requirement given 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

18.—(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, knowingly 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).

SUPPLEMENTARY*Compensation*

19.—(1) Any arbitration under Regulations 3(4) or 4(5) above shall, unless otherwise agreed, be the arbitration—

- (a) in England and Wales, of a single arbitrator appointed by the Lord Chancellor ;
- (b) in Scotland, of a single arbiter appointed by the Lord President of the Court of Session ;
- (c) in Northern Ireland, of a single arbitrator appointed by the Lord Chief Justice of Northern Ireland.

(2) Without prejudice to the provisions of Regulations 3(4) and 4(5) or to any other provision contained in or having effect under any enactment, the Treasury may in such cases as they think fit make such payments as they think just by way of or towards compensating any person for anything done by him in compliance with any obligation imposed on him by or under these Regulations.

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

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(3) The provisions of Regulations 3(4) and 4(5) above shall be without prejudice to any agreement for the making of any payment (whether by way of compensation or otherwise) in respect of the doing of anything on behalf of Her Majesty for any of the authorised purposes whether by virtue of these Regulations, the prerogative of the Crown or otherwise, but where compensation in respect of the doing of anything as aforesaid would, apart from this paragraph, be payable both under those provisions and under any other enactment or rule of law, the compensation shall, subject to any such agreement, be payable in accordance with those provisions and not otherwise.

Penalties

20.—(1) A person guilty of an offence against Regulation 8 or 9 above shall be liable on conviction on indictment to imprisonment for life.

(2) A person guilty of an offence against Regulation 10 or 11 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(a);

(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(b);

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

21. 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.

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

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

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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.

Entry and search of premises

23.—(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 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 paragraph to Northern Ireland for the reference to a police force there shall be substituted a reference to the Royal Ulster Constabulary.

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19th April 1982

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