
STATUTORY INSTRUMENTS

1989 No. 2399

SOUTH ATLANTIC TERRITORIES

The Falkland Islands Courts (Overseas Jurisdiction) Order 1989

Made - - - - 19th December 1989

Laid before Parliament 8th January 1990

Coming into force - - 30th January 1990

At the Court at Buckingham Palace, the 19th day of December 1989

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by the British Settlements Acts 1887 and 1945⁽¹⁾ or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Falkland Islands Courts (Overseas Jurisdiction) Order 1989 and shall come into force on 30th January 1990.

Interpretation

2. In this Order, unless the contrary intention appears—

“the Constitution” means the Constitution of the Falkland Islands set out in Schedule 1 to the Falkland Islands Constitution Order 1985⁽²⁾;

“Court of Appeal” means the Court of Appeal of the Falkland Islands established by section 78 of the Constitution;

“decision” includes judgment, sentence or order;

“the Magistrate's Court” means the Magistrate's Court of the Falkland Islands established by the Administration of Justice Ordinance⁽³⁾ as amended by the Administration of Justice (Amendment) Ordinance 1970⁽⁴⁾;

(1) 1887 c. 54 and 1945 c. 7 (9 & 10 Geo. 6).

(2) S.I. 1985/444.

(3) Laws of the Falkland Islands, Cap 3.

(4) Falkland Islands Ordinance No 1 of 1970 (Falkland Islands Gazette Vol. LXXIX p. 87).

“the Supreme Court” means the Supreme Court of the Falkland Islands established by section 77 of the Constitution;

“Territory” means, as the context requires, the British Antarctic Territory or South Georgia and the South Sandwich Islands;

“the relevant Territory” means, in relation to proceedings in respect of any particular matter, the Territory under the law of which that matter arises.

Jurisdiction of Supreme Court and Magistrate’s Court in Territory proceedings.

3.—(1) The Supreme Court shall have jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising—

- (a) under the law of the British Antarctic Territory, being proceedings which, under any law in force in that Territory, are within the jurisdiction of the Supreme Court of the British Antarctic Territory; and
- (b) under the law of South Georgia and the South Sandwich Islands, being proceedings which, under any law in force in that Territory, are within the jurisdiction of the Supreme Court of South Georgia and the South Sandwich Islands.

(2) The Magistrate’s Court shall have jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising—

- (a) under the law of the British Antarctic Territory, being proceedings which, under any law in force in that Territory, are within the jurisdiction of the Magistrate’s Court of the British Antarctic Territory; and
- (b) under the law of South Georgia and the South Sandwich Islands, being proceedings which, under any law in force in that Territory, are within the jurisdiction of the Magistrate’s Court of South Georgia and the South Sandwich Islands.

(3) The Supreme Court shall have such jurisdiction to hear and determine appeals from decisions of the Magistrate’s Court, exercising jurisdiction under subsection (2) of this section, as would, under any law in force in a Territory, be vested in the Supreme Court of that Territory if those decisions had been decisions of the Magistrate’s Court of that Territory.

(4) In this section “jurisdiction” includes original, appellate, supervisory and revisory jurisdiction.

Powers of Supreme Court and Magistrate’s Court.

4.—(1) In exercising the jurisdiction conferred on them by section 3 of this Order in any proceedings, the Supreme Court and the Magistrate’s Court shall have the like powers as they would have had if the proceedings had concerned matters arising under the law of the Falkland Islands.

(2) Without prejudice to the generality of subsection (1) of this section, the Supreme Court and the Magistrate’s Court shall have power—

- (a) to order the arrest, and detention pending the outcome of the proceedings, of a person accused of an offence under the law of the relevant Territory, or to impose conditions to secure the attendance of such a person at his trial or for any other purpose;
- (b) to order the seizure and detention of any article which may be evidence of such an offence;
- (c) to order persons to give evidence or produce documents in proceedings relating to such an offence or in civil proceedings in respect of matters arising under the law of the relevant Territory;

- (d) to order the conveyance in custody of any person charged with such an offence from the relevant Territory to any place in the Falkland Islands where he can be tried for that offence; and
- (e) to order the conveyance of any article which may be evidence of such an offence from the relevant Territory to any place in the Falkland Islands where a person charged with that offence can be tried.

(3) The powers conferred on the Supreme Court and the Magistrate's Court by the foregoing provisions of this section shall extend as well to persons in the relevant Territory and as respects things done or to be done in the relevant Territory as to persons in the Falkland Islands and as respects things done or to be done in the Falkland Islands.

Institution of criminal proceedings under Territory law before Falkland Islands courts.

5.—(1) Where a person who is charged with an offence under the law of a Territory is committed by a court of the Territory for trial by the Supreme Court or the Magistrate's Court of the Territory, the committing court—

- (a) may, at the time of committal or subsequently, order that the trial shall take place, in accordance with the provisions of this Order, before, respectively, the Supreme Court or the Magistrate's Court of the Falkland Islands; and
- (b) if it does so order, shall remand the accused person in custody or on bail, pending such trial, in accordance with any law in that behalf in force in the Territory.

(2) Where an order has been made by a court of a Territory under subsection (1) of this section—

- (a) until an order is made by the Supreme Court or the Magistrate's Court under paragraph (b) of this subsection, an order made under subsection (1)(b) shall have effect in the Falkland Islands; and
- (b) without prejudice to the powers in that behalf vested in the court of the Territory, the Supreme Court or the Magistrate's Court, as the case may be, may make the necessary dispositions and orders, in exercise of the powers conferred on it in that behalf by this Order, to secure the attendance of the accused person and of witnesses, and the production of documents and other evidence, at the trial and generally for the purposes of the trial.

(3) Where an information is laid before a court in the Falkland Islands that a person in the Falkland Islands has, or is suspected of having, committed an offence under the law of a Territory, being an offence which the Supreme Court or the Magistrate's Court has jurisdiction under this Order to hear and determine, the court before which the information is laid shall deal with that information in the like manner as if the offence alleged in it were an offence under the law of the Falkland Islands triable only by the Supreme Court or the Magistrate's Court and shall dispose of the case accordingly.

Law to be applied.

6.—(1) In exercising the jurisdiction conferred on them by section 3 of this Order in any proceedings, the Supreme Court and the Magistrate's Court shall—

- (a) in all matters of procedure or evidence, apply the law, including rules of court, of the Falkland Islands; and
- (b) in all matters of substantive law, including remedies in civil proceedings and sentencing powers in criminal proceedings, apply the law of the relevant Territory.

(2) If in any such proceedings the question arises whether any matter is one of procedure or evidence or substantive law, the question shall be determined by the court before which the question arises, and—

- (a) any such determination by the Supreme Court shall be final; and

- (b) an appeal against any such determination by the Magistrate's Court may be made to the Supreme Court, whose decision on the appeal shall be final.

Application of Falkland Islands Constitution to Territory offences.

7. In relation to a case in which proceedings for a criminal offence under the law of a Territory are being pursued before a court of the Falkland Islands under any provision of this Order, or in which such proceedings are in contemplation, or in which a person has been convicted in such proceedings, references in the Constitution to—

- (a) a criminal offence shall be construed as including references to a criminal offence under the law of the Territory;
- (b) an order of a court shall be construed as including references to an order of a court of the Territory; and
- (c) authority of law for the deprivation of a person's personal liberty shall be construed as including references to any law of the Territory authorising such deprivation.

British Antarctic Territory appeals.

8.—(1) Article 4 of the British Antarctic Territory Court of Appeal Order 1965(5) is amended by the insertion after paragraph (3) of the following new paragraph—

“(4) In this article and in article 5 below—

- (a) the expression “court of the Territory” shall be construed as including the Supreme Court and the Magistrate's Court of the Falkland Islands, to the extent that the Falkland Islands Courts (Overseas Jurisdiction) Order 1989 confers jurisdiction on those courts to hear and determine proceedings in respect of matters arising under the law of the Territory;
- (b) the term “appeal” shall be construed as including a reference of a case to the Court which, under any law in force in the Territory, takes effect as an appeal.”.

(2) Section 85 of the Constitution shall not apply in respect of any decision of the Supreme Court in exercise of the jurisdiction conferred on it by section 3 of this Order in respect of matters arising under the law of the British Antarctic Territory.

South Georgia and the South Sandwich Islands appeals.

9.—(1) The Court of Appeal shall have jurisdiction to hear and determine such appeals from the courts of South Georgia and the South Sandwich Islands as may be prescribed by any law in force in that Territory.

(2) In connection with an appeal in any proceedings from a court of South Georgia and the South Sandwich Islands the Court of Appeal shall, subject to the provisions of any law in force in that Territory, have all the powers and jurisdiction that are possessed by that court in those proceedings under any law in force in that Territory.

(3) The Court of Appeal may, in accordance with such directions as the President of the Court may from time to time issue, sit in the Falkland Islands or elsewhere for the purpose of exercising any jurisdiction and powers conferred on it by or under this section.

(4) In this section—

- (a) the expression “court of South Georgia and the South Sandwich Islands” shall be construed as including the Supreme Court and the Magistrate's Court of the Falkland Islands, to the extent that this Order confers jurisdiction on those courts to hear and determine

(5) S.I. 1965/590, amended by S.I. 1989/842.

proceedings in respect of matters arising under the law of South Georgia and the South Sandwich Islands;

- (b) the term “appeal” shall be construed as including a reference of a case to the Court of Appeal which, under any law in force in South Georgia and the South Sandwich Islands, takes effect as an appeal.

Enforcement

10.—(1) Any decision which is given in any proceedings by the Supreme Court or the Magistrate’s Court in exercising the jurisdiction and powers conferred on them by sections 3, 4 and 5 of this Order shall have effect in the Falkland Islands, and, so far as the case requires, shall there be executed, enforced or otherwise complied with, as if it were given in exercise of the court’s jurisdiction in proceedings in respect of matters arising under the law of the Falkland Islands.

(2) Any decision which is given by the Court of Appeal or the British Antarctic Territory Court of Appeal in any proceedings on appeal from the Supreme Court or the Magistrate’s Court exercising the jurisdiction and powers conferred on them by sections 3, 4 and 5 of this Order shall have effect in the Falkland Islands, and, so far as the case requires, shall there be executed, enforced or otherwise complied with, as if it were given in exercise of the jurisdiction of the Court of Appeal in proceedings in respect of matters arising under the law of the Falkland Islands.

(3) Any decision referred to in subsection (1) or (2) of this section to which effect falls to be given in the relevant Territory (whether by execution or other means of enforcement or in any other way) shall be given such effect.

(4) Where, by virtue of this Order, effect falls to be given and is given in the Falkland Islands (or elsewhere outside the relevant Territory) to any decision referred to in subsection (1) or (2) of this section concerning a matter arising under the law of a Territory, it shall be given full force and recognition in that Territory.

(5) In this section the term “appeal” shall be construed as including a reference of a case to the Court of Appeal or the British Antarctic Territory Court of Appeal which, under any law in force in South Georgia and the South Sandwich Islands or, as the case may be, the British Antarctic Territory, takes effect as an appeal.

G. I. de Deney
Clerk of the Privy Council

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers jurisdiction on the courts of the Falkland Islands to deal with certain civil and criminal proceedings in respect of matters arising under the law of the British Antarctic Territory and South Georgia and the South Sandwich Islands.