

Legal questionnaire completed by Waverley Law • March 2024

This document contains responses from the law firm listed above to a questionnaire distributed by NCMEC (questions are in **bold text**). Responses to the questionnaire may be limited to officially enacted legislation; it is possible that actual practice or enforcement of the law varies, and relevant court rulings or case law may also differ from legislative text. Responses have been reformatted and may have been slightly edited for clarity. Furthermore, responses may include commentary, paraphrasing, and unofficial translations of source material (e.g., national legislation) originally produced in other languages. Only official source documents in official languages should be relied upon as legally binding. This document serves to inform further research and does not constitute legal advice from NCMEC or the listed law firm.

1. What laws and regulations contain legal definitions of the following terms or corresponding terms in your local jurisdiction (links to existing U.S. legal definitions are included, where relevant, as background for comparison – please include definitions of any corresponding terms in your country):

a. child or minor (18 U.S.C. 2256(1), <https://www.law.cornell.edu/uscode/text/18/2256>)

Generally –

Interpretation and General Clauses Ordinance 1977, section 4(1)

““infant” and “minor” mean a person who has not attained the age of eighteen years;”

These terms are to be used for the purposes of interpreting legislation and laws in general, except where specific legislation contains its own definition for the purpose of interpreting that particular legislation.

In family law –

Children Ordinance 2014, section 3(1)

““child” means, subject to [re. child maintenance], a person under the age of 18;”

The Children Ordinance 2014 codifies public and private family law, and this is the definition used for the purpose of that Ordinance and any subsidiary legislation made under it.

In criminal law –

Crimes Ordinance 2014, section 2(1)

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

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

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



The Crimes Ordinance 2014 codifies all criminal offences, except for regulatory offences which are found in the relevant legislation for each regulatory area. The definitions contained in the Crimes Ordinance 2014 are used to interpret that Ordinance and any subsidiary legislation made under it.

These general definitions apply to all crimes, not just sexual offences. For sexual offences against children, other age limits may apply for specific offences (e.g. to narrow down the scope). This is indicated below for the relevant offences.

b. child sexual exploitation (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(9), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

The phrase “child sexual exploitation” is not defined in Falkland Islands law.

The phrase “sexual exploitation” is defined in section 263 of the Crimes Ordinance 2014, but its application is restricted to the offences set out in sections 259 to 262 of the Crimes Ordinance 2014 , namely:

- Section 259 – paying for sexual services of a child
- Section 260 – causing or encouraging sexual exploitation of a child
- Section 261 – controlling a child in relation to sexual exploitation
- Section 262 – arranging or facilitating sexual exploitation of a child

In each case the offence is committed if the child is under age 13, or if the child is between ages 13 and 17 and the perpetrator does not reasonably believe the child is age 18 or over.

c. sexually explicit conduct (18 U.S.C. 2256(2), <https://www.law.cornell.edu/uscode/text/18/2256>)

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance. While there is no specific definition for “sexually explicit conduct”, there are a number of child sexual offences that seem to correspond to or potentially are able to cover this concept (as understood in a general way). These offences are:

- Section 211 – sexual activity with a child
- Section 212 – causing or encouraging a child to engage in sexual activity
- Section 213 – engaging in sexual activity in the presence of a child
- Section 214 – causing a child to watch a sexual act
- Section 216 – arranging or facilitating commission of a child sex offence
- Section 217 – meeting a child following sexual grooming
- Section 217A – sexual communication with children

The offences under sections 211 to 214 and section 216 are committed if the child is under age 13, or if the child is between ages 13 and 15 and the perpetrator does not reasonably



believe the child is age 16 or over.

The offences under section 217 and 217A are committed if the child is under age 16 and the perpetrator does not reasonably believe the child is age 16 or over.

d. child sexual abuse (18 U.S.C. 2243(a), <https://www.law.cornell.edu/uscode/text/18/2243>)

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

The phrase “child sexual abuse” is not defined in Falkland Islands law.

There are a number of sexual offences in the Crimes Ordinance 2014 which can be committed against an adult or against a child aged between 13 and 17 (sections 203 to 206 of the Ordinance, listed below). In each case there is a corresponding offence against a child under age 13 (sections 207 to 210 of the Ordinance, listed below). These offences are:

- Section 203 – rape
- Section 204 – assault by penetration
- Section 205 – sexual assault
- Section 206 – causing a person to engage in sexual activity without consent
- Section 207 – rape of a child under 13
- Section 208 – assault by penetration of a child under 13
- Section 209 – sexual assault of a child under 13
- Section 210 – causing a child under 13 to engage in sexual activity

A child under age 13 is deemed to be too young to consent to sexual activity. This is why sexual intercourse with a child under age 13 where the child is alleged to have “consented” is colloquially described as “statutory rape” and in legal terms the offence falls under section 207. For all of the offences against children under 13 listed in sections 207 to 210, the question of consent is therefore irrelevant.

e. child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8), <https://www.law.cornell.edu/uscode/text/18/2256>)

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

The phrases “child pornography” and “child sexual abuse material” are not defined in Falkland Islands law.

There are a number of child pornography offences in the Crimes Ordinance 2014.

- Section 246 – possession of indecent photograph of a youth
- Section 247 – taking and publishing indecent photographs of youths
- Section 251 of the Ordinance defines “youth” for the purpose of these offences as meaning a person under age 18. While this definition is the same as the general definition at section 2(1) of the Crimes Ordinance (as noted in item (a) above), importantly it is emphasising that the age of consent to sexual activity (age 16) does



not apply to possession, taking or publication of sexually explicit images which are unlawful if they are of anyone under 18.

“Publishing” in this context means distributing or showing to others (section 247(1)).

- Section 202 of the Ordinance defines “indecent” as “an act or thing that right-thinking people will consider an affront to sexual modesty when applying the objective test of the recognised standards of propriety pertaining in the Falkland Islands at the time”.
- Section 251 broadly defines “photograph” as including a still image, a video recording, or a still image taken from a video recording. It also includes a “pseudo-photograph” which means an image, whether made by computer-graphics or otherwise, which appears to be a photograph. The definition covers both physical images and data stored on a computer disc or other electronic means which is capable of conversion into a photograph or pseudo-photograph.
- If a child age 16 or 17 is married to or in a civil partnership with or lives together as partners in an enduring family relationship, then their spouse or partner does not commit an offence under section 246 or 247 provided the child consented (or there were reasonable grounds for believing they consented) to their spouse or partner taking or possessing the photograph and it is not shown to anyone else.

f. computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9), <https://www.law.cornell.edu/uscode/text/18/2256>)

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

The principal child pornography offences are sections 246 and 247 of the Ordinance, namely possession and taking/publishing indecent photographs of youths respectively. See item (e) above.

In addition, section 252 of the Ordinance creates an additional offence of possession of prohibited images of youths (as defined under section 2(1), see item (a) above), where the image is not a photograph but for example a painting or a cartoon.

To be prohibited the image must:

- be “pornographic” (defined in section 252(3) as being “of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal”)
AND
- either be “an image which focuses solely or principally on a youth’s genitals or anal region” or portray one or more of a number of explicit acts detailed in section 252(7)
AND
- be “grossly offensive, disgusting or otherwise of an obscene character”

g. enticement or grooming (encouraging, persuading, or coercing a child to engage in sexual activity or to create child pornography or CSAM) (18 U.S.C. 2422(b), <https://www.law.cornell.edu/uscode/text/18/2422>)



Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

The phrase “grooming” is used in the context of the section 217 offence of meeting a child following sexual grooming. This section makes it a criminal offence to communicate with a person under age 16 and subsequently meet with them (or travel to meet with them) with the intention of committing any offence under Part 10 of the Ordinance. The grooming offence is committed even if the commission of the intended subsequent sexual offence does not itself occur.

There are a number of offences in the Crimes Ordinance 2014 which involve encouraging, persuading or coercing a child under age 16 to engage in or watch sexual activity, namely:

- Section 211 – sexual activity with a child
- Section 212 – causing or encouraging a child to engage in sexual activity
- Section 213 – engaging in sexual activity in the presence of a child
- Section 214 – causing a child to watch a sexual act

There is no offence in Falkland Islands law which deals specifically with encouraging, persuading or coercing a child to create child pornography, but depending on the circumstances this may involve the commission of another offence under the Crimes Ordinance 2014, namely:

- Section 212 – causing or encouraging a child to engage in sexual activity (if the child is under age 16)
- Section 247 – taking and publishing indecent photographs of youths (if the child is under age 18)

h. legal age of consent for sexual activity – are there laws and regulations, if so, what ages are specified?

The legal age of consent for sexual activity in the Falkland Islands is age 16. This is not expressly stated anywhere, but section 211 of the Crimes Ordinance 2014 makes it an offence to engage in sexual activity with a child under age 16.

The offence is committed if one person intentionally touches another person, the touching is sexual, and either the person being touched is under age 13 or they are under age 16 and the perpetrator did not reasonably believe they were age 16 or over.

The perpetrator can themselves be under age 16.

No distinction is made in the legislation between heterosexual and homosexual activity.

Section 202(3) of the Crimes Ordinance 2014 says that touching is sexual if:

- “(a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual; or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.”



There are three major exceptions where the legal age of consent for sexual activity is age 18 and not age 16.

- First, sections 246 and 247 of the Crimes Ordinance 2014 make it a criminal offence to possess, make or distribute indecent photographs of a child under age 18.

This means if the child is age 16 or 17 and lawfully engages in sexual activity, nonetheless they must not be photographed or videoed doing so, even by their sexual partner.

- Second, certain behaviours towards a child under age 18 amount to criminal offences under the Crimes Ordinance 2014 if they are committed by an adult who is in a position of trust in relation to the child, and either the child is under age 13 or the child is between age 13 and 17 and the adult does not reasonably believe the child is age 18 or over.

This means if the child is age 16 or 17 and consents to the behaviours, nonetheless the adult commits an offence because of their position of trust. No offence is committed if the child is age 16 or 17 and the adult is their spouse or civil partner, or they were in a pre-existing sexual relationship before the adult ended up in a position of trust towards the child.

These offences are:

- Section 218 – abuse of position of trust: sexual activity with a child
- Section 219 – abuse of position of trust: causing or encouraging a child to engage in sexual activity
- Section 220 – abuse of position of trust: engaging in sexual activity in the presence of a child
- Section 221 – abuse of position of trust: causing a child to watch a sexual act

Examples of positions of trust are listed in section 222 and include probation officers, teachers and residential workers.

- Third, certain behaviours toward a child under age 18 amount to criminal offences under the Crimes Ordinance 2014 if they are committed by an adult who is in a familial relationship with the child, and either the child is under age 13 or the child is between age 13 and 17 and the adult does not reasonably believe the child is age 18 or over.

This means if the child is age 16 or 17 and consents to the behaviours, nonetheless the adult commits an offence because of their familial relationship. No offence is committed if the child is age 16 or 17 and the adult is their spouse or civil partner, or they were in a pre-existing sexual relationship before the familial relationship came into existence.

These offences are:

- Section 226 – sexual activity with a child family member



- Section 227 – encouraging a child family member to engage in sexual activity
- i. **Sextortion (extorting money or sexual favors from a child by threatening to share sexually explicit, child pornography or CSAM images of the child) (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(8), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)**

Falkland Islands criminal law is codified in the Crimes Ordinance 2014. Sexual offences are set out in Part 10 (sections 202 to 294) of the Ordinance.

There are no child or adult sextortion offences in Falkland Islands law (whether or not using the phrase “sextortion”), but the behaviours described could amount to one or more existing offences under the Crimes Ordinance 2014, including:

- Section 367 – blackmail (if extorting money)
- Section 211 – sexual activity with a child (if extorting sexual favours)
- Section 285B – disclosing or threatening to disclose private sexual photographs and films with intent to cause distress

2. Please explain any legal or regulatory requirement or recommendation for Online Platforms to undertake any of the following activities on their systems to protect children online from sexual exploitation:

a. review, screen, moderate, or detect content to identify child pornography or CSAM content

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All internet services have to go through a single satellite link. In consequence internet upload and download speeds are very slow, the service is vulnerable to interruption for a number of reasons, and internet costs are amongst the highest in the world. There are no Online Platforms based in the Falkland Islands, and no prospect of that occurring.

The Falkland Islands does not have any legislation regulating Online Platforms, nor does the Falkland Islands Government have any intention of introducing such legislation.

b. review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child

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- c. report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization**

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- d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about**

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- e. review content by human moderators to screen or moderate for child pornography or CSAM**

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- f. **remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency**

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- g. **use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including:**
- i. **“Hashing technology”** (<https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/>). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.
 - ii. **Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.**

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- h. **if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?**

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3. Are Online Platforms legally required or recommended to implement any method to verify the age of a user before allowing access to an online platform?

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4. Are Online Platforms legally required or recommended to implement any method to obtain parental consent before a child uses the services of such Online Platforms?

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5. Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:

NO

a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?



There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

The child or their guardian could seek an injunction from the Supreme Court of the Falkland Islands under civil law, relying on the Supreme Court's inherent jurisdiction, prohibiting publication of pornography or other images but there are no Online Platforms based in the Falkland Islands and the judgments of Falkland Islands courts are not generally enforceable elsewhere.

b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?

There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

The child or their guardian could seek an order for specific performance from the Supreme Court of the Falkland Islands under civil law, relying on the Supreme Court's inherent jurisdiction, requiring removal of pornography or other images from the servers of an Online Platform, but there are no Online Platforms based in the Falkland Islands and the judgments of Falkland Islands courts are not generally enforceable elsewhere.

c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?

There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

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The child or their guardian could seek an injunction from the Supreme Court of the Falkland Islands under civil law, relying on the Supreme Court's inherent jurisdiction, prohibiting publication of pornography or other images, but there are no Online Platforms based in the Falkland Islands and the judgments of Falkland Islands courts are not generally enforceable elsewhere.

d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?

There are no specific legal remedies in the Falkland Islands available to children who have



been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

The child or their guardian could seek an injunction prohibiting publication from the Supreme Court of the Falkland Islands under civil law, relying on the Supreme Court's inherent jurisdiction, but the judgments of Falkland Islands courts are not generally enforceable elsewhere.

e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child's image or video, either in a civil or a criminal proceeding?

There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

- Section 608 of the Criminal Procedure and Evidence Ordinance 2014 empowers a court, when sentencing a defendant convicted of an offence, to make an order requiring the defendant to pay compensation for any personal injury, loss or damage resulting from the offence. A compensation order forms part of the overall sentence for the offence.
- Section 498 of the Criminal Procedure and Evidence Ordinance 2014 allows a victim of crime, or their relatives if the victim is a child, to provide a victim impact statement to the sentencing court setting out how the offence has affected the victim.

Although a victim impact statement must not express any opinion on sentence, the child or their guardian can inform the court through the prosecution service that they want compensation for injury suffered by the child. "Personal injury" is not defined in the legislation but at common law is deemed to include both physical and psychological harm.

The court, when deciding whether to award compensation and how much, will take into account the defendant's means. Unless the defendant has significant savings, compensation will not be ordered if the defendant is given an immediate custodial sentence.

The child, through their guardian, could seek damages in civil proceedings for personal injury based on the common law doctrine of tort. Any compensation ordered by a criminal court would be deducted from the damages awarded for personal injury (see section 608 of the Criminal Procedure and Evidence Ordinance 2014).

The Limitation Act 1980 (a United Kingdom Act of Parliament which forms part of the law of England and Wales) applies as law in the Falkland Islands. In accordance with section 11, a civil claim for damages for personal injury should be commenced within three years of the date of the injury or the date upon which the person became aware of their injury. However, because a child does not have legal capacity to bring court proceedings, the deadline for



commencing a claim will be extended to three years after the child's 18th birthday.

f. the ability to seek any other forms of victim compensation/recovery/services provided for under the law and/or by a government-funded source?

There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

The Falkland Islands does not have a criminal injuries compensation scheme or equivalent, so there is no ability for a child or adult who is a victim of a sexual or any other offence to receive compensation from a government-funded source.

The Falkland Islands has a free healthcare service. This includes an emotional well-being service through which psychological assessment, counselling, psychiatric care or other mental health provision may be accessed in appropriate cases. A child who suffered trauma through being a victim of crime would be given priority access to these services.

g. notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?

There are no specific legal remedies in the Falkland Islands available to children who have been victimised by online child sexual exploitation.

There are some general legal remedies which may be of use to children in this situation, but their utility is limited where an offender or a relevant Online Platform is outside the Falkland Islands.

There is no legislation in the Falkland Islands requiring notification to a victim (or their guardian, if a child) when an offender is arrested for distributing child pornography depicting the victim.

In practice, if the arrest was made by the police in the Falkland Islands, they would liaise with Social Services to ensure the victim was notified promptly and offered support throughout the police investigation and subsequent prosecution.

6. "Safety by Design" is defined as tools or processes that are built into an Online Platform to protect children by making it easier for the relevant Online Platform to detect or prevent the distribution of child pornography or CSAM.

a. Are Online Platforms legally required to incorporate "Safety by Design" into their systems?

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i. If so, must these steps be taken before the launch of an Online Platform?

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ii. If so, if an Online Platform has already been in public use, when must they have incorporated "Safety by Design" measures?

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iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.

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b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform's incorporation of "Safety by Design"?

The Falkland Islands is an Overseas Territory of the United Kingdom of Great Britain and Northern Ireland with a total population of less than 5,000 people. The principal industries are fishing, sheep farming and tourism.

All internet services have to go through a single satellite link. In consequence internet upload and download speeds are very slow, the service is vulnerable to interruption for a number of reasons, and internet costs are amongst the highest in the world. There are no Online Platforms based in the Falkland Islands, and no prospect of that occurring.

The Falkland Islands does not have any legislation regulating Online Platforms, nor does the Falkland Islands Government have any intention of introducing such legislation.