

EXECUTIVE COUNCIL

CONFIDENTIAL

COPY NO:

MINUTES OF THE MEETING OF EXECUTIVE COUNCIL (No: 19/24) HELD TUESDAY 17 DECEMBER 2024

PRESENT:

The Deputy Governor
(Dave Morgan)

The Honourable Chief Executive
(Andy Keeling)

The Honourable Financial Secretary
(Pat Clunie)

The Honourable Jack Ford
The Honourable Mark Pollard
The Honourable Leona Roberts

CLERK: Cherie Clifford

PRESENT IN ACCORDANCE WITH SECTION 61(1) OF THE CONSTITUTION:

Commander British Forces, South Atlantic Islands
(Brigadier Daniel Duff)

Attorney General
(Simon Young)

Apologies

Her Excellency The Governor
(Alison Blake CMG)

Minutes of the Meeting of Executive Council held on 17 December 2024

- REF: EXCO 6/1 1 **Confirmation of the minutes of Executive Council meetings held on 07 November 2024**

The minutes were confirmed as a true and accurate record.

- REF: EXCO 6/1 2 **Matters Arising from the minutes of Executive Council meetings held on 07 November 2024**

- REF: MIN 29/3 2.1 **Navitas Investment Protection Agreement key principles - 162-24 DNR**

REDACTED

- REF: MIN 29/3 2.2 **Proposed approach to dealing with financial security arrangements and decommissioning for offshore hydrocarbons - 175-24 DNR**

REDACTED

- REF: MIN 29/3, LND 1/1 2.3 **Land Set Aside: Hydrocarbons development - 174-24 DNR**

REDACTED

- REF: EXCO 8/3 3 **Forward Plan**

The purpose of this report was to enable Executive Council to review the schedule of reports for submission in January 2025 onwards.

Members queried some reports that were missing from the report and should be included:

VSAT Licence Fee – outcome of Select Committee – February 2025

Future Telecoms – May 2025

Peraton

Members Remuneration – March 2025

Annual Prison Report – in light of the report on the agenda, reschedule the next report from February to December 2025.

- REF: TRE 2/31 4 **Debt Write-off - 204-24 FS**

MLA Pollard declared an interest in the one of the debtors and left the room.

The purpose of this report was to enable Executive Council to consider the write-off of uncollectable debt.

REDACTED

Executive Council approved the recommendation.

**ACTION: FS
NOT PUBLIC**

**REF: PWD
23/2B**

5 Investment in Improved Waste Management - 202-24 DPW

Members requested that this report is pulled for further work which they have discussed with the Director Public Works and it to be resubmitted in the New Year.

REF: STF 3/1E

6 Proposed Power station staffing restructuring - 101-24 DPW

The purpose of this report was to enable Executive Council to consider the strengthening of the management team and restructure of the Power Station department.

The Chief Executive advised that he and the Director of PWD have been discussing the resilience of the Power and Electrical Team for what seems like many months, with a view to reorganising and adding some strength in key areas. He stated that he was really pleased that this report has now come forward.

The proposals seek to strengthen the management in the team and restructure it into two strands, energy generation and energy distribution, including contracts, whilst also strengthening the renewables electrical team.

There is a cost to these changes, estimated at **REDACTED** if all posts are recruited from overseas.

The staffing charts in the appendix show the existing and recommended structures, whilst also showing current vacancies and staffing. The charts including officer's names will be redacted.

The Chief Executive commented that he was aware that the level of vacancies in the current team is of concern. They are using contractors to help with the Electrical section and other staff within PWD to help provide management cover. They have looked at market increments, but the Director is concerned that this will result in needing to apply market supplements to all trades in the department.

MLA Roberts commented that she was pleased to see this report come forward, she did express concern in that although it does strengthen the top, there were still vacancies and the ongoing pressures on the team at the lower end. MLA Roberts stated that

she was surprised at the grades and levels set and wasn't sure if the proposed market supplements would help or not. Furthermore, if the posts were recruited from overseas, there was the additional pressure of housing from an already critical pool. MLA Roberts queried whether if a local applied whether there was flexibility to provide a higher salary, given that there are funds allocated for relocation and gratuity etc. The Chief Executive advised that there is flexibility within the grade to move along the steps.

She supported the recommendations.

MLA Pollard agreed with the comments made by MLA Roberts noting that although they were fixing the top, there were still recruitment issues. He welcomed the progress that was being made. Again, he was unsure that the market supplements should be used across the trade, stating that they should only be used where needed otherwise they are not incentivising people to apply, and they are then moving across to the private sector. He commented that they needed to understand what was going on in this area, and the core recruitment issues.

MLA Ford advised that in 4.9, FTW should read FTE. He asked in 7.1.2 whether the Renewable Technician post should not be E2 rather than F/E1. The Chief Executive advised that he would, check and revert to ensure it was the correct grade. He supported the recommendations.

The Deputy Governor asked that given all the issues with recruitment, have discussions been held to privatise this sector. Members advised that there have been discussions over the year and the cons outweighed the pros, the business case did not wash its face with no guarantees or control. It would mean creating another monopoly with no competition to drive down the prices.

Executive Council:

- (a) Approved the proposed restructure of the Public Work Department, Power & Electrical section including the additional posts.
- (b) Referred to Standing Finance Committee for the approval of additional funds of **REDACTED** for the operating budget from July 2025.

**ACTION: DPW/FS
PUBLIC WITH REDACTIONS**

REF: LND 17/14 7 **REDACTED Application for licence to lease land at the Canache - 197-24 AG**

The purpose of this report was to enable Executive Council to consider an application for a licence to lease land at the Canache.

REDACTED

Executive Council approved the recommendations.

**ACTION: AG/SLO
NOT PUBLIC**

REF: LND 17/14 8 **REDACTED: Application for licence to purchase existing property - 198-24 AG**

The purpose of this report was to enable Executive Council to consider an application for a licence to purchase an existing property.

REDACTED

Executive Council approved recommendations within the report with a 2-1 vote.

**ACTION: AG/SLO
NOT PUBLIC**

REF: LND 17/14 9 **REDACTED: Application to vary restrictions on land use at Moody Brook - 199-24 AG**

The purpose of this report was to enable Executive Council to consider an application to vary restrictions on land use at Moody Brook.

REDACTED

Executive Council approved the recommendations outlined in the report.

**ACTION: AG/SLO
PUBLIC WITH REDACTIONS**

REF: LND 17/14 10 **REDACTED: Application to lease land for Café on Stanley Common - 200-24 AG**

The purpose of this report was to enable Executive Council to consider an application to lease land for the construction of a Café on Stanley Common.

REDACTED

Executive Council did not approve the recommendations outlined in the report and requested further work be undertaken to facilitate the use of the land within the Ordinance.

**ACTION: AG/SLO
PUBLIC WITH REDACTIONS**

REF: IMM 1/1

11 **Review of the 2021 Immigration Amendments, Plus Further Proposed Minor Amendments, and Changes to Maximum Penalties for Immigration Offences.**

The purpose of this report was to enable Executive Council to consider the proposed Immigration amendments and changes to penalties for Immigration offences.

The Attorney General advised that this report was previously submitted to Executive Council and deferred. He advised that the report seeks to review some of the penalties and amend the Ordinance to reflect how the systems works practically.

MLA Pollard commented that he did not agree with the PRP cap of 90 and stated that he did not believe that the cap does what people believe it does. In terms of the other proposed amendments, he advised that he has compared and contrasted them to UK legislation, and they are not that wildly different. He supported the recommendation.

MLA Roberts too agreed commented that her only concern was with the quota and the potential for it to be maxed out early, which then brings its own implications.

The Deputy Governor commented in respect of 3.6 and the granting of “informal” work permissions to dependants of HMG/MoD employees, he advised that the number would fluctuate and requested that they be consulted, noting that they too have to comply with medical etc.

Executive Council:

- (a) Agreed that the review of the immigration laws amendments made in 2021, as well as a review of the maximum penalties for immigration offences;
- (b) Agreed that further minor amendments to the Immigration Ordinance 1999 and amendments to the Immigration Regulations 2021 which amount to minor policy and administrative changes which reflect how the wider immigration policies and rules are currently utilised to manage the immigration system and process permit applications;

- (c) Agreed that further minor amendments to the Immigration (Permanent Residence Permits) Regulations 2009 which amount to minor policy and administrative changes to the management of Permanent Residence Permit (PRP) applications; and
- (d) Agreed that if the amendments are approved, legislative drafting instructions are commenced which will lead to the drafting of the proposed legislative amendments.

**ACTION: DESIS/HoI
PUBLIC**

REF: IMM 1/1

12 Embarkation Tax – Review and legislative amendments - 161-24 SPA/DESI

The purpose of this report was to enable Executive Council to consider the review and proposed legislative amendments in relation to embarkation tax.

The Chief Executive explained that in 2021, ExCo agreed to renew the contracts for aviation security, but requested that a review of Embarkation Tax was carried out. Since its introduction in 1999, the policy intent of the has been to recover civil aviation security costs, although the desired level of recovery has never been quantified with a specific target.

This report looks at ways in which a recovery target could be set based on passenger numbers. It also proposes to exempt passengers of certain charter flights from paying embarkation tax. Charter flight operators are invoiced for all civil aviation security costs, and therefore there is no cost for Government to recover. Given the stated policy intent of recovering such costs, charging those passengers embarkation tax would constitute double charging and is unfair. It also looks at how the tax is collected and concludes that integration into the IATA ticketing system (as is normal elsewhere) is not feasible or necessary unless there is a large increase in passenger numbers.

The Chief Executive noted that Members have received a briefing and have slightly differing views to those recommended.

MLA Roberts commented that Members did receive a good briefing and discussion. She advised that they would, like to approve recommendation (a) but to decouple it from the cost recovery and to continue to review the fees and charges via Budget Select Committee, whilst noting that it may not be a full cost recovery, it will recover some costs.

In respect of the exemption, she commented that it is a low cost, it doesn't look like double charging and the embarkation tax is still charged to Airbridge passengers, charging should continue and be collected at the terminal.

In respect of the integrating the embarkation tax into the LATAM ticketing system, there is a practical issue and therefore it is agreed to continue with the current system. MLA Roberts commented that they have asked for this to be raised again with the agents International Tours & Travel to see whether this can at least be incorporated into local bookings.

MLA Pollard stated that this improvement has no impact on FIG but would improve the customer service. He agreed with the proposed change to the recommendation and reviewing the fees and charges annually via Budget Select Committee.

The Financial Secretary noted the Members views on cost recovery for the service, he stated that there is a user pays policy in place. MLA Pollard noted the policy commenting that it is an ad hoc system and is applied differently for services across the board.

The Commander British Forces commented that it would be good to progress the MoU between MoD/FIG on the terminal, this is a civil/airops MoU.

Executive Council:

- (a) Agreed to continue with the current system of collecting Embarkation Tax at the MPA terminal and the Customs & Immigration premises, and to only consider integration into the IATA ticketing system if there is a considerable increase in passengers and the current system is no longer practicable.
- (b) Agreed to keeping to the current system for the embarkation tax of increasing in line with other Government fees and charges via Budget Select Committee.
- (c) Did not agree to an exemption from Embarkation Tax for passengers of certain charter flights and avoid double recovery of aviation security costs.

**ACTION: DPECS/SPA
PUBLIC**

The purpose of this report was to enable Executive Council to consider the establishment of a Maritime Committee under the Maritime Ordinance 2017.

The Chief Executive advised that the implications of the lack of a Maritime Committee have been noted by the members of the Maritime Compliance Steering Committee (MCSC) which has a very different, mainly regulatory, function and membership. At the MCSC held on Friday 24th November 2023, it was agreed that a Maritime Committee was a concept worth taking forward and it was agreed that Head of the Maritime Authority (FIMA) would table a formal proposal at the next meeting. At the subsequent meeting on Friday 5th April 2024 Head of FIMA gave an update, including the draft Terms of Reference for the Maritime Committee at Annex A and it was agreed that he would continue to refine the detail and produce an ExCo Paper on the subject.

The Falkland Islands Fishing Companies Association (FIFCA) are strongly supportive of the proposal, as are others within the maritime sector.

Draft Terms of Reference and a draft Agenda for the Maritime Committee are set out in Annexes A and B respectively. The format of the agenda will be adjusted as the Committee beds in.

The suggested attendance is given at para 4.5 to 4.7.

The Attorney General commented that having the Committee established would enable clear consultation and discussion where changes are made to rules and Regulations prior to submission to EXCO, it would also remove discussions around maritime issues from the Fisheries Committee.

MLA Pollard comment that this was a good thing, but he did have concerns. He stated that the terms of reference were really light, he also had concerns around the membership of the committee. He asked who were the voting members, he advised that normally officers are there as advisors and not voting members. He was also concerned about the rotations; in that they could end up with representation from the same company. He stated that perhaps the membership could follow the same process as is in place for lay members.

MLA Pollard commented that all of this needs to be tightened up and suggested that the Committee is formed and that it is reviewed within 6-12 months to ensure that it is working and that the terms of reference are fit for purpose.

MLA Ford asked how long after this is agreed could the committee be established, he stated that he would not wish for reports on the Forward Plan to be delay in order that the committee is consulted. He asked whether the legislation needed to be amended to facilitate.

The Attorney General advised that it could be set up immediately, however the pilotage report has already been consulted with the indicated membership, other reports would follow the committee route. The Attorney General advised that the legislation did not require amending, there is already provision within it for a Committee and that the terms of reference does not form part of the legislation.

MLA Roberts agreed that it should be formulated as soon as possible to provide that level of transparency.

Executive Council:

- (a) Noted the arguments set out in this paper in support of establishing a Maritime Committee and the proposed membership of the Committee and that clarity is provided around voting members and a process is put in place for rotations of representations
- (b) Approved the draft Terms of Reference at Annex A.
- (c) Agreed that FIMA should make arrangements to establish the Committee and arrange an inaugural meeting as soon as practicable.

**ACTION: DESIS/HoFIMA
PUBLIC**

REF: MED 1/2 14 Mental Capacity and Deprivation of Liberty Policy – 191-24 DHS

The purpose of this report was to enable Executive Council to consider the draft Mental Capacity and Deprivation of Liberty Policy.

The Chief Executive advised that the draft Mental Capacity and Deprivation of Liberty Policy builds upon the previous work completed over the last 2 years to introduce operational policies for FIG staff in respect of mental capacity (ExCo 77/23) and deprivation of liberty (ExCo 61/24).

This draft Policy will form the basis for developing a Mental Capacity and Deprivation of Liberty Ordinance for the Falkland Islands. This

will introduce new legal mechanisms and safeguards to support people who lack the mental capacity to make decisions. This project and eventual legislation aim to promote and protect the decision-making rights of those who may temporarily or permanently lack mental capacity.

The proposed legislation will apply to everyone involved in the care, treatment, and support of people aged 18 or over living in the Falkland Islands who are unable to make all or some decisions for themselves.

It is being proposed that the Ordinance will be based on the UK Mental Capacity Act, 2005 but is adapted to the unique health and social care context of the Falkland Islands. The report outlines the various interventions that are being proposed, which include;

- Clarifying in law who is regarded as lacking mental capacity,
- Indicating that decisions must be made in the best interests of the person who lacks mental capacity
- Re-establishing the Court of Protection to enable it to carry out different functions to protect people who lack mental capacity
- Introducing Deprivation of Liberty Safeguards
- Providing for the need to develop Codes of Practice
- Introducing the granting of Lasting Power of Attorney
- Introducing the ability to appoint a Deputy in defined circumstances
- Establishing the Office of the Public Guardian, which will have various responsibilities connected to the administration of the proposed Ordinance.
- Introducing Advanced Decisions to Refuse Treatment.
- Excluding certain decisions from being made on behalf of a person who lacks mental capacity.
- Appointing Independent Mental Capacity Advocates
- Specifying the legal parameters when conducting research on persons who lack mental capacity.
- Outlining offences and penalties in circumstances in which people given powers under the proposed Ordinance are founded to have mistreated and/ or neglected a person who lacks capacity.
- Clarifying the circumstances in which the Falklands Islands laws will apply and when the Falkland Islands will have jurisdiction over an adult who lacks mental capacity.
- Introducing the power to make rules and regulations that are necessary for the implementation of the Ordinance.

The Chief Executive advised that it is being recommended that Honourable Members note the draft Policy in respect of Mental Capacity and Deprivation of Liberty and approve it being subjected

to a public consultation, as well as approving its inclusion on the Legislation Programme for 2024/25. However, it is unlikely that the work will be progressed during 2024/25 and therefore he would recommend it be placed on the programme, but the timeframe not stipulated.

MLA Pollard commented that he would hope that adequate training and reporting mechanisms to Boards are put in place around this for those involved to ensure safeguarding.

The Attorney General noted the role of the Justices of Peace, he stated that it was odd, but there wasn't an alternative.

MLA Roberts commented that she was supportive of the recommendation, she commented that there is a desire to formalise the advocacy role which underpins the internal policy.

Executive Council:

- (a) Noted the attached draft Mental Capacity and Deprivation of Liberty Policy (the draft Policy);
- (b) Approved that officers conduct a public consultation on the draft Policy; and
- (c) Approved the inclusion of the mental capacity and deprivation of liberty legislation on the Legislation Programme.

**ACTION: DHS
PUBLIC**

REF: POL 7/6

15 **2024 Annual Report - Prison Monitoring Board - 201-24
DESI/HoPS**

The purpose of this report was to enable Executive Council to consider the 2024 annual report of the Prison Monitoring Board.

The Chief Executive advised that this is a starred report and is therefore requested to be taken as read and approved without discussion. He advised that it was a good report with no recommendations.

Executive Council noted the Annual Prison Monitoring report 2024, submitted to the Governor under legislation concerning His Majesty's Prison Stanley.

**ACTION: DESI/HPS
PUBLIC**

REF: TEL 1/1 16.1 **REDACTED** – Letter of Comfort

REDACTED

REF: GSO 16.2 Airbridge Seat Allocation
3/24D

REDACTED

REF: TRE 2/31 16.3 Capital Financing

The Deputy Governor advised that they have received verbal approval from the Secretary of State, they are awaiting the formal letter.

REF: EXCO 3/1 16.4 Date of Next Meeting

Tuesday 28 January 2025, 10am