

Falkland Islands Constitutional Review - 2023

Falkland Islands Status

The second topic which the Select Committee on the Constitution would like to discuss is Falkland Islands Status.

The definition of Falkland Islands Status is set out in section 22(5) of the Constitution.

You can see the Constitution here: www.legislation.gov.fk/view/whole/2023-06-12/uksi-2008-2846

This document is structured as follows:

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- Summarises the Constitutional rights of those with Falkland Islands status ([page 3](#))
- Summarises other benefits, rights and responsibilities linked to Falkland Islands status ([Annex 2](#))

Part 2: Who has Falkland Islands status?

- Explains who has Falkland Islands status, and how you can acquire it ([pages 4-5](#))
- Explains who can lose their Falkland Islands status or have it revoked ([pages 6-8](#))

Part 3: What are the policy issues concerning who should have Falkland Islands status under the Constitution?

- Summarises key policy issues on which the relevant provisions of the current Constitution are based ([pages 9-15](#))

Part 4: Questions to think about and how to respond to the Select Committee

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Part 5: Annexes

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Part 1: What is Falkland Islands status?

The Constitution applies to everybody. However, the Constitution gives some specific rights only to people who “belong to the Falkland Islands”.

A person who belongs to the Falkland Islands is described in the Constitution as having “Falkland Islands status”.

Section 22(5) of the Constitution (see [Annex 1](#)) sets out in law who has Falkland Islands status (that is, it describes persons who “belong to the Falkland Islands”).

There are a number of different ways that you can have, or acquire, Falkland Islands status under the Constitution, which are explained in [Part 2](#) below.

What rights does the Constitution give to people with Falkland Islands status?

If you have Falkland Islands status, the Constitution:

- allows you to vote in the election of a member of the Legislative Assembly and to stand for election (but only if you meet certain other criteria) section 32;
- limits the restrictions that can be placed on your freedom of movement section 8; and
- allows laws to be made in some circumstances which may treat you more favourably than a person who does not have Falkland Islands status (for example, in connection with employment) section 16

What other benefits, rights and responsibilities do people with Falkland Islands status have?

There are a number of other benefits, rights and responsibilities which persons with Falkland Islands status have under Falkland Islands laws and Government policies. These are summarised in [Annex 2](#).

Part 2: Who has Falkland Islands status?

The Constitution describes the people who have Falkland Islands status automatically, and it provides that you can apply for the grant of Falkland Island status. The different groups of people are summarised below.

Whether you have Falkland Islands status automatically depends if you are (or were born as) “**a citizen**”. Usually this means a British citizen or a British overseas territories citizen, but more information about this is given in [Annex 3](#).

1. You have Falkland Islands status if you were born outside the Falkland Islands and:

you are a citizen (now) and when *you* were born;

your mother or father had Falkland Islands status (**and** was born in the Falkland Islands) *section 22(5)(e)*

2. You have Falkland Islands status, regardless of where you were born, if:

(a) when *you* were born:

(i) *you* were a citizen; **and**

(ii) *your mother or father* was permanently resident in the Falkland Islands *section 22(5)(b) & (c); OR*

(b) *you* are a citizen (now) **and** when *you* were born:

your mother or father had Falkland Island status (**and** was permanently resident in the Falkland Islands) *section 22(5)(d); OR*

(c) *you* have been granted Falkland Islands status under the Falkland Island Status Ordinance 1998 (and that status has not been revoked) *section 22(5)(f); OR*

(d) *you* had Falkland Islands status on 31 December 2008 under certain provisions of the former Constitution¹ (the relevant provisions are set out in [Annex 4](#)) *section 22(5)(a)*

¹ The former Constitution was contained in the Falkland Islands Constitution Order 1985 (SI 1985/444)
V2 - Issued 25.7.23 - Law and Regulation Directorate - for Gilbert House

Essentially there are three ways in which you can have or acquire Falkland Islands status:

- (a) by descent (ie through your parents)
- (b) by applying for it (under the Falkland Island Status Ordinance 1988)
- (c) by historic right (because you had it under the former Constitution)

Falkland Islands status by descent:

The way in which you can have Falkland Islands status by descent is summarised in this table so it can be understood at a glance:

| Section of the Constitution under which a person who meets the relevant criteria has Falkland Islands Status | Born inside OR outside FI | Born outside FI | Citizen at Birth | Citizen now | Parent Born in FI | Parent permanently resident in FI at time of person's birth | Parent has FI status at time of person's birth |
|--|---------------------------|-----------------|------------------|-------------|-------------------|---|--|
| s22(5)(b) & (c) | ✓ | | ✓ | | | ✓ | |
| s22(5)(d) | ✓ | | | ✓ | | ✓ | ✓ |
| s22(5)(e) | | ✓ | | ✓ | ✓ | | ✓ |

How do I acquire Falkland Islands status under the Falkland Islands Status Ordinance?

[Annex 5](#) summarises the process set out in the Falkland Islands Status Ordinance 1998 for the grant of Falkland Islands status.

Can a person lose Falkland Island status/have it revoked?

Most people who have Falkland Islands status cannot lose or be deprived of it – unless the Constitution were to change in that respect. However, there are four groups of people who can lose or be deprived of their Falkland Islands status:

1. *A person who has been granted Falkland Islands status under the Falkland Islands Status Ordinance 1998*

If your Falkland Islands status was granted under the Falkland Islands Status Ordinance, it can be revoked under section 5 of the Ordinance if:

- (a) you committed an offence in applying for Falkland Island status (for example, you lied on the application form);
- (b) you have been imprisoned for 12 months or more since you were granted Falkland Islands status;
- (c) you have been absent from the Falkland Islands for at least two years and you appear to be no longer ordinarily resident in the Falkland Islands (subject to some exceptions, such as absence to receive medical treatment); or
- (d) you are no longer a British citizen, British overseas territories citizen, or British Overseas citizen.

You must be given notice of any intention to revoke your Falkland Islands status under the Ordinance, and be given the opportunity to object.

In practice the power to revoke a person's Falkland Islands status granted under the Ordinance has never been exercised.

2. *A person who acquired Falkland Islands status as the spouse, widow or widower of someone with Falkland Islands status*

Under the 1985 Constitution a person who was the spouse, widow or widower of a person with Falkland Islands status automatically also had Falkland Islands status.

When the Constitution changed in 2009, this position was maintained except that additional requirements were imposed to enable such a person to benefit from Falkland Islands status.

This means that a person who benefited from Falkland Islands status on 1 January 2009 by virtue of being the spouse, widow or widower of someone who had Falkland Islands status under the Constitution before it changed in 2009, will lose their Falkland Islands status in the following circumstances:

- (a) the person has status by virtue of being a spouse – and they live apart from their wife or husband and become divorced or legally separated; or
- (b) the person has status by virtue of being a widow or widower – and they remarry.

If a person loses their Falkland Islands status in these circumstances but they have previously held a permanent residence permit, the person is entitled to be granted a permanent residence permit under the Immigration Ordinance 1999 (section 18BB). This is because a permanent residence permit is automatically revoked on the grant of Falkland Islands status, so if such a person loses their Falkland Islands status, it is fair to revive the permanent residence permit that the person previously held.

3. *A person who had previously held Falkland Islands status by virtue of holding one of the types of British nationality, but who no longer holds that nationality*

The Constitution provides that certain persons have Falkland Islands status if they “... are a citizen...”. This means that the status is dependent on the person continuing to hold one of the types of British nationality (see [Annex 3](#)) for more information about citizenship and nationality).

It is possible for British nationality to be lost in some circumstances. This means that a person whose Falkland Islands status is dependent on that person continuing to hold one of the types of British nationality, then they will similarly lose (or have lost) their Falkland Islands status.

Some persons hold Falkland Islands status on the basis that they were “...a citizen at birth...”. These persons would not lose their Falkland Islands status on the basis that they lose their British nationality at a later date.

4. *A person whose Falkland Islands status was dependent on them being “domiciled” in the Falkland Islands, but who was no longer domiciled in the Falkland Islands on 31 December 2008*

Some persons acquired Falkland Islands status automatically under the Constitution, before it was changed with effect from 1 January 2009, by virtue of having been “domiciled” in the Falkland Islands (and having met certain other criteria). However, if the person was no longer domiciled in the Falkland Islands at any point before 1 January 2009, they would lose that status.

Your place of **domicile** generally means the country or place where you have your permanent home. Unlike your place of ordinary residence, you can only have one place of domicile, and domicile is much less fluid than the concept of a place where you are ordinarily resident. Historically a married woman’s domicile was that of her husband so she might have no control over her own place of domicile, although the law has more recently changed to correct that outmoded idea.

Part 3: What are the policy issues concerning who should have Falkland Islands status under the Constitution?

The idea of belonging to the Falkland Islands (and having Falkland Islands status) has developed over many decades since the introduction of the first Falkland Islands Constitution in 1985, with changes being made to this aspect of the Constitution in 1997 and 2009.

Although the reasons for change haven't always been clear, the following is a very general summary of the policy basis on which the current provisions of the Constitution dealing with Falkland Islands status appear to be based:

1. The importance of your parent's circumstances – acquisition by descent

Under the current Constitution, automatic acquisition of Falkland Islands status flows from your parent's circumstances rather than your place of birth; that is, not everyone born in the Falkland Islands will automatically have Falkland Islands status. This means that Falkland Islands status is generally acquired by descent rather than place of birth.

A person may be born in the Falkland Islands without having any links to the Falkland Islands (eg born to a temporary visitor). Under the current Constitution, a child's family circumstances and citizenship are considered more important than their place of birth when determining the rights that they should hold under the Constitution.

Policy reasons for this appear to derive from the value of having a settled population.

2. The importance of British nationality (citizenship)

Under the current Constitution, automatic acquisition of Falkland Islands status is dependent on the person holding one of the types of British nationality (except for some persons who already had Falkland Islands status on a particular date, who hold historic rights).

It is United Kingdom law which determines whether a person holds one of the types of British nationality, or whether a person may acquire it (see Annex 3).

Policy reasons for the importance of nationality reflect the history of the Falkland Islands as a former British colony; now a British overseas territory.

3. It is for the Legislative Assembly to decide who should be granted status – but it cannot impose a requirement that a person must have in the Falkland Islands for more than 7 years

Under the current Constitution, the grant of Falkland Islands status to a person who does not automatically have it under the Constitution should be determined by a law made by the Legislative Assembly.

However, the law may not include a requirement that a person must have been ordinarily resident for more than 7 years in order to obtain Falkland Island status.

The policy intention appears to be to give the Falkland Islands significant control over who may be granted Falkland Islands status – subject to placing a limit on the qualifying period of residence.

4. Other relevant policies concerning Falkland Island status?

a. What are the policy reasons for the maximum requirement of 7 years' ordinary residence in the Falkland Islands for the grant of status?

There is no standard period of residence for the threshold for determining that a person may be granted the status of “belonging to” a British overseas territory. There are a number of different periods, which seem arise from a combination of rational policy intention and historic context.

Under the first Falkland Islands Constitution of 1985, a person was *automatically* regarded as “belonging to the Falkland Islands” if they had been ordinarily resident in the Falkland Islands for 7 years (provided they met other criteria, such as commonwealth citizenship). It is not clear how the period was chosen.

This was changed in 1997 to provide that certain persons who had lived in the Falkland Islands for at least 7 years could apply for *the grant* of Falkland Island status (see Annex 7 for a summary of all the changes made to relevant parts of the Constitution).

The period appears to involve a policy balance between the desirability of a settled population and the desirability of enabling the population to grow.

b. What was the policy basis for introducing an application process for Falkland Islands status in 1997?

Under the first Falkland Islands Constitution of 1985, there was no process for a person to apply to “belong to the Falkland Islands”. If a person met certain criteria, they were automatically determined to belong. One of the criteria was a period of at least 7 years’ ordinary residence.

When the Constitution was reviewed in the 1990s, it was noted that as a result of the establishment of Mount Pleasant Airport in the mid-1980s, a large number of persons employed to work there could automatically acquire the right to register as an elector under the Constitution² (approximately 450 civilians worked at Mount Pleasant Airport at that time).

It was concluded that “steps must be taken to avoid any risk of the votes of Falkland Islanders being swamped by the votes of person from outside the islands....Similar action has already been found necessary in other [British overseas] territories”.

As a result, the right of a Commonwealth citizen to be registered as an elector was abolished and replaced with a discretionary grant of Falkland Islands status to Commonwealth citizens who had been resident for at least 7 years (and Falkland Islands status was made a key requirement for registration as an elector).

It was noted that another option for change would be to increase the qualifying period for registration as an elector (for example, from 5 years, as it was at that time, to 15 years).

The report noted several risks in change to the existing position:

- the future of the Falkland Islands could depend on a controlled increase in settled immigrant population, but “that will not be achieved either effectively or harmoniously if newcomers are to be permanently treated as second-class citizens and denied the right to vote”
- a discretionary grant of Falkland Islands status could give rise to allegations of favouritism or corruption

² Report to a Select Committee of the Legislative Council on a Review of the Constitution – Mr Walter Wallace, 1995

It was recommended that the latter risk should be mitigated by the introduction of an advisory board who would assess applications on a points system before making recommendations for the grant of Falkland Islands status. However, this was not implemented.

c. What is the policy basis for not specifying citizenship/nationality in connection with the grant of Falkland Islands status?

Before 2009, one of the criteria named in the Constitution for the grant of Falkland Island status was Commonwealth citizenship. That requirement of Commonwealth citizenship was removed in 2009 – the Constitution now says nothing about citizenship or nationality in connection with the grant of Falkland Island status.

During the review of the Constitution which led to change in 2009, the Legislative Assembly indicated a desire to “better preserve the “Britishness” of the [Falkland Islands]”; by narrowing the requirement for grant of Falkland Islands status from having Commonwealth citizenship to having one of the types of British nationality.

Because the requirement as to citizenship has been entirely removed from the Constitution in connection with the grant of Falkland Islands status, this leaves the matter open to the Legislative Assembly to determine under the Falkland Islands Status Ordinance 1998. That Ordinance was amended in 2022 to replace reference in the Ordinance to Commonwealth citizenship with reference to the types of British nationality (reflecting the apparent desire noted above).

However, the Ordinance does not currently prevent Falkland Islands status from being granted to a person who does not have one of the types of British nationality. The Ordinance permits, in theory, Falkland Islands status to be granted to any person, regardless of their citizenship/nationality.

d. How do Falkland Islands status, citizenship (nationality), and the right to register as an elector work together?

The Constitution makes distinct provision (section 32) in relation to qualification to be registered as an elector.

This provides that persons must have Falkland Islands status and have one of the main types of British nationality to be eligible for registration as an elector (or the person must have been registered as an elector on 1 January 2009).

In particular, it is now possible to have Falkland Islands status but not to be eligible to register to vote in the following circumstances (ie if you were not already registered as an elector on 1 January 2009):

- (a) you were granted Falkland Islands status under the Falkland Islands Status Ordinance 1998 and you were not required to have one of the types of British nationality for that grant; or
- (b) you had Falkland Islands status on 31 December 2008 under the former Constitution regardless that you did not hold one of the types of British nationality.

Before 2023 it was common for persons to be granted Falkland Islands status without holding one of the types of British nationality.

Examples of other persons who held Falkland Island status under the former Constitution without holding one of the types of British nationality are; (a) someone who automatically acquired Falkland Islands status as the spouse of a person with Falkland Islands status; and (b) someone who acquired Falkland Islands status as a Commonwealth citizen who had lived in the Falkland Islands for 7 years.

It is not clear whether this slight disconnect between the provisions concerning Falkland Islands status and eligibility for registration to vote in the Constitution is deliberate or not.

e. Why do some people have a right to be granted a permanent right to remain under the Constitution?

Section 22(7) of the Constitution provides certain persons have a right to be granted a permanent right to remain in the Falkland Islands if they apply for and are refused Falkland Island status.

The people who have this right are:

- (a) a British overseas territories citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands;
- (b) a spouse, widow or widower of a person who has Falkland Islands status (see below for what these terms mean); and
- (c) a person under the age of eighteen years who is the child, stepchild, or child adopted in a manner recognised by law of a person who has Falkland Islands status.

What is a permanent right to remain?

The Constitution doesn't define what is meant by a right to permanently remain, but section 22(7) is given effect to by the Immigration Ordinance 1999, which provides that such persons are entitled to a permanent resident permit.

How does a permanent right to remain relate to Falkland Islands status?

The effect of this provision is that if one of these categories of person cannot satisfy the requirements for grant of Falkland Islands status, the person may, nonetheless remain in the Falkland Islands.

The policy reasons for this provision appear to be:

- (a) in the case of a person who has been naturalised as a British overseas territories citizen in the Falkland Islands, it would seem to undermine the nature of that British overseas territories citizenship if the person were not given a permanent right of residence in the Falkland Islands; and
- (b) in the case of a spouse, widow, widower or child of a person with Falkland Islands status, to give effect to the Constitutional right to family life.

The Immigration Ordinance enables the revocation of such permanent residence permits in the same manner as Falkland Islands status may be revoked under the Falkland Islands status Ordinance. However, it has not been tested whether the ability to revoke such a permanent residence permit is consistent with section 17(7) of the Constitution (or with the right to family life under section 9).

The intention of the Constitution is unclear in terms of exactly how this right should apply in relation to children, that is, should the right continue after they

are 18 years old? There is an argument that it should not, but on the other hand, to remove the right when a child turns 18 is arguably inconsistent with the concept of a right to remain in the Falkland Islands on a *permanent* basis. In practice, a permanent residence permit granted to a child under section 17(7) continues to have effect regardless that the child turns 18.

f. Who is treated as a “spouse”, “widow” or “widower” under the Constitutional provisions about Falkland Islands status?

The terms “spouse” “widow” and “widower” are not defined under the Constitution.

Spouse

The term “spouse” might have traditionally been considered to have been limited to refer to persons who were legally married. In particular this was probably the practice when the first Falkland Islands Constitution was made in 1985.

However, as human rights have developed, it has been recognised that other persons should be treated as “spouses”; in particular in recognition of the right to family life. For example, the Immigration Ordinance now uses the term “partners”, meaning (a) a married couple or civil partnership; (b) two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or civil partnership.

Accordingly, the term “spouse” under the Constitution is now understood to be interpreted more broadly – in particular to acknowledge persons in a same sex relationship.

Widow and widower

The terms “widow” and “widower” are traditionally used to refer to a person who was legally married to a person who has died.

It does not appear that this term is now similarly interpreted broadly to include a person who was in a personal partnership with, but was not legally married to, a person who has died. It appears that these terms are much more likely to still be interpreted narrowly along traditional lines. It is not clear if there are any policy reasons for this; it appears more likely to be just because this particular aspect of language use is taking longer to catch up with modern practice.

Questions to consider:

1. **Who do you think should have Falkland Islands status automatically under the Constitution?** (we suggest that you put aside what the Constitution currently provides – we want to know what you think the policy should be?)

Should this be dependent on any of the following factors?:

- where you were born
- how long you have lived in the Falkland Islands
- your citizenship/nationality
- your parent's citizenship/nationality
- your parent's residence
- whether or not your parent has Falkland Islands status
- who your spouse is
- if you are widowed, who your spouse was before you were widowed
- whether you had Falkland Islands status in the past

2. **Should the Constitution set out any requirements for a person to be granted Falkland Islands status, OR should those requirements be decided under a law made by the Legislative Assembly?** (the Constitution is a UK law, so it is not made by the Legislative Assembly)

If the Constitution should set out any requirements for the grant of status, what should they be?

If the Constitution should include a period of residence for the grant of status, what should it be and why?

If the Constitution should include citizenship as a requirement for the grant of status, what should it be and why?

If you have listed any other requirements above for a person to be granted Falkland Islands status because you believe they should be set out in the Constitution, why?

- 4. Should the Constitution set out the circumstances in which the grant of Falkland Islands status to a person under an Ordinance may be revoked, OR should those circumstances be decided under a law made by the Legislative Assembly? (the Constitution is a UK law, so it is not made by the Legislative Assembly)**

If the Constitution should set out any circumstances for revocation of the grant of Falkland Islands status, what should they be, and why?

- 5. Should anyone who automatically has Falkland Islands status under the Constitution be able to lose it if their circumstances change? If yes, what are the circumstances, and why?**

- 6. Provision relating to children and spouses of persons who have Falkland Islands status**

Should the Constitution make different provision in relation to a child of a person who has Falkland Islands status? (such children under 18 are currently entitled to a permanent right to remain, but not to Falkland Islands status)

If so, what should that provision be and why?

Should the Constitution make different provision in relation to the spouse, widow or widower of a person who has Falkland Islands status? (such persons are entitled to a permanent right to remain, but not to Falkland Islands status)

How should “spouse”, “widow” and “widower” be interpreted under the Constitution? For example, should it be made clearer that a person who was not legally married can be treated as a widow if their partner dies?

- 7. What rights and benefits do you think someone with Falkland Islands status should have under the Constitution, and why?**
- 8. Do you have any comments about the grant of Falkland Islands status under the Falkland Islands Status Ordinance 1998? (this is not a key part of the Constitutional review, but there are linked issues)**
- 9. Do you believe that “belonging to the Falkland Islands” and “Falkland Islands status” are the right terms to use under the Constitution? (or, for example would you like to see “Falkland Islander” or another term used?)**

You are invited to give your views to the Select Committee

You are invited to give your views to the Select Committee about Falkland Islands status and the Constitution.

You can address any of the issues raised above, and/or raise any other issues relevant to Falkland Islands status and the Constitution.

You can make a **written submission** in any format, but you may like to use the dedicated form of response (the form is available at www.falklands.gov.fk/assembly/the-constitution/select-committee).

Your written submission should be received by **5 September 2023** to enable the Select Committee to consider your submission at its meeting of 19 September 2023 (the Committee may consider any submission received after this date at the meeting on 19 September, but that cannot be guaranteed).

Please submit your response:

- by emailing it to: constitutionalreview@sec.gov.fk (this method is strongly recommended); or
- by placing it in the box provided in the Post Office in Stanley; or
- by sending by post to Gilbert House, Stanley

See further guidance below about making a written submission.

You can also make an **oral submission** to the Committee on the morning of 19 September 2023.

You can include a request to make an oral submission when you make your written submission; or

You can make a request to make an oral submission by e-mailing constitutionalreview@sec.gov.fk or by calling Gilbert House on 27451.

Your request should be received by **12 September 2023** to enable the clerk to the Committee to schedule all oral submissions to be made at the meeting of 19 September.

Making a submission of written evidence to the Select Committee for the review of the Falkland Islands Constitution

The following guidance is about making a submission to the Select Committee. It also discusses what happens once your submission is received by the Committee.

How to make a submission

A box will be available in the Post Office for the return of written submissions, but you are strongly encouraged to submit your comments electronically via email: constitutionalreview@sec.gov.fk

How many submissions can I make?

The Select Committee will review the Constitution by subject area. Each subject area will be discussed at a meeting which is held in public. The Committee will invite submissions on each subject area by reference to the meeting scheduled to discuss that particular subject. You can make a submission to one or more meetings.

When do I make a submission?

Invitations for submissions will be regularly published in the Penguin News and online (www.falklands.gov.fk/assembly/the-constitution/select-committee). The invitation in connection with Falkland Islands status and the Constitution is set out above at page 18.

What if I only want to make one submission - just covering the areas of the Constitution that I am interested in?

You can make a submission at any time covering any area of the Constitution and the Committee will endeavour to consider that submission, regardless that it is not received in connection with a particular meeting.

What a submission should look like

You can make up your own format for a submission or you can use the standard form of response - see:

www.falklands.gov.fk/assembly/the-constitution/select-committee

Submissions of written evidence should:

- Be in Word or PDF
- Comprise a single document. If there are any annexes or appendices, these should ideally be included in the same document (although that may not be possible if you are using the standard form of response).
- State clearly who the submission is from, i.e. whether from yourself in a personal capacity or sent on behalf of an organisation.
- Be concise – we recommend no more than 3,000 words in length.
- Include any factual information you have to offer from which the committee might be able to draw conclusions, or which could be put to other witnesses for their reactions.
- Include any recommendations for action by the Government or others which you would like the committee to consider.

It also assists the committee if those submitting evidence adhere to the following guidelines. Although not essential, your submission should ideally:

- Begin with an executive summary in bullet point form of the main points made in the submission.
- Have numbered paragraphs

Those making a submission should note the following:

- Material already published elsewhere should not form the basis of a submission, but may be referred to within or attached to a submission, in which case it should be clearly referenced.
- You should be careful not to comment on matters currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the Committee how this might affect the written evidence you can submit (email constitutionalreview@sec.gov.fk).
- Select Committees do not normally investigate individual cases of complaint or allegations of maladministration.

What happens to the evidence once submitted?

- The Select Committee will publish most of the written evidence they receive on the internet with the transcript of the proceedings.
- **If you do not wish your submission to be published**, you must clearly say so and explain your reasons for not wishing its disclosure. The Committee will take this into account in deciding whether to publish. If you wish to include private or confidential information in your submission to the Committee, please contact the clerk of the Committee to discuss this.
- A Committee is not obliged to accept your submission as evidence, nor to publish any or all of the submission even if it has been accepted as evidence. This may occur where a submission is very long or contains material to which it is inappropriate to give parliamentary privilege.
- Once submitted, no public use should be made of any submission prepared specifically for the committee unless you have first obtained permission from the clerk of the Committee. If you are given permission by the Committee to publish your evidence separately, you should be aware that you will be legally responsible for its content.

(Adapted from the House of Commons Guide for Witnesses giving written or oral evidence)

Part 5: Annexes

Annex 1 - Copy of section 22(5)-(8) of the Constitution—

Extract of section 22 of the current Constitution (2009) – “Interpretation”

“(5) For the purposes of this Chapter, a person shall be regarded as belonging to the Falkland Islands if he or she has Falkland Islands status and a person has such status if that person is—

- (a) a person who immediately before the commencement of this Constitution had Falkland Islands status—
 - (i) by virtue of section 17(5)(a), (b), (c), (d)(i) or (f) of the former Constitution; or
 - (ii) by virtue of section 17(5)(e) of the former Constitution—
 - (aa) as a spouse, and the person is not living apart from his wife or her husband under a decree of a competent court or a deed of separation; or
 - (bb) as a widow or widower, and the person has not remarried; or
- (b) a person who was born in the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person’s birth; or
- (c) a person who was born outside the Falkland Islands, who was a citizen at birth and whose father or mother was permanently resident in the Falkland Islands at the time of the person’s birth; or
- (d) a citizen who was born in or outside the Falkland Islands whose father or mother at the time of the person’s birth had Falkland Islands status and was permanently resident in the Falkland Islands; or
- (e) a citizen who was born outside the Falkland Islands whose father or mother was born in the Falkland Islands and had Falkland Islands status at the time of the person’s birth; or
- (f) a person who has been granted Falkland Islands status under an Ordinance providing for the grant of that status to persons who have been ordinarily resident in the Falkland Islands for a period of at least seven years, or such period not exceeding seven years as the Ordinance may prescribe, and has not, in accordance with that Ordinance, lost or been deprived of such status.

(6) A person who has Falkland Islands status by virtue of subsection (5)(c) shall be regarded for the purposes of subsection (5)(e) as having been born in the Falkland Islands.

(7) Without prejudice to the right of any person to apply for the grant of Falkland Islands status, the following shall have a right by virtue of this Constitution to apply for such status under an Ordinance referred to in subsection (5)(f)—

- (a) a British overseas territories citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands;
- (b) a spouse, widow or widower of a person who has Falkland Islands status; and
- (c) a person under the age of eighteen years who is the child, stepchild, or child adopted in a manner recognised by law of a person who has Falkland Islands status;

and if an applicant referred to in this subsection is not granted Falkland Islands status, he or she shall, subject to section 9(2), be granted a permanent right to remain in the Falkland Islands.

(8) For the purposes of subsection (5), “citizen” means a person who is a British citizen, a British overseas territories citizen or a British Overseas citizen; or who was, at the material time, a citizen of the United Kingdom and Colonies, a British Dependent Territories citizen or a British subject.

Annex 2 - What rights, benefits, and responsibilities come with Falkland Islands status in addition to those under the Constitution?

FIS = Falkland Islands status

PRP = Permanent residence permit

| LAW | Summary of rights/benefits/responsibilities |
|---|---|
| Communications (Fees) Regulations 2019 | -make provision for a person without FIS/PRP to hold a temporary amateur radio licence (ie temporary licences not available to persons with FIS/PRP) |
| Crimes Ordinance 2014 | - provides for persons with FIS to be prosecuted in the Falkland Islands for certain serious crimes committed outside the Falkland Islands - criteria for some offences differs for persons with FIS and those without such status (eg sexual offences, trafficking people, forced marriage) These provisions are based on the principle that generally a country will only seek to prosecute crimes committed within its territory, but it may also seek to prosecute its citizens in some instances where the crimes are committed outside its territory. |
| Criminal Procedure and Evidence Ordinance 2014 | - provides that rehabilitation of offenders provisions do not apply to applications made under the Falkland Islands Status Ordinance 1998 - ie a person's conviction must be declared on such an application (Schedule 11) |
| Customs Ordinance 2003 | - persons with FIS are precluded from claiming exemptions from duty available to HM Forces etc (s. 114) |
| Education Ordinance 1989 | - enables discrimination in the appointment or promotion of teachers, in favour of persons who have FIS |
| Education (Governance and Accountability) Ordinance 2022 | - provides that the provision of financial assistance under the Ordinance may discriminate between persons who have FIS/PRP and others (s. 19) |
| Education (Financial Assistance for Further Education/Higher Education etc) Regulations 2022 | - make provision for financial assistance to cease if the beneficiary/their parent does not have FIS /PRP |
| Employment Protection Ordinance 1989 | - makes different provision in relation to unfair dismissal in certain circumstances if the relevant person does not have FIS/PRP (s. 53) |
| Family Allowances Ordinance 2023 | - provides that eligibility for family allowance is dependent on the child having FIS or the parent having FIS/PRP, or 3 years residence |
| Fish Farming Ordinance 2006 | - enables a fish farming licence holder to sub-licence fish farming activities to companies with relevant FIS shareholding (s. 15) |
| Fisheries (Conservation and Management) Ordinance 2006 | - links eligibility for individual transferable quota with FIS company shareholding and control etc - provides that powers of detention and imprisonment of persons under the Ordinance vary, depending on if a person has FIS or is ordinarily resident or not |
| Fisheries (Action Plans) Regulations 2021 | - encourages goals to increase ownership and control of the Falkland Islands seafood sector by persons with FIS |

| | |
|---|--|
| Immigration Ordinance 1999 (and Regulations made under it) | <ul style="list-style-type: none"> - provides that persons who have FIS/PRP have the right of abode so are generally free from immigration controls - provides that a migrant worker may not be employed by a registered employer if a suitable person who has a right of abode in the Falkland Islands (FIS/PRP) has applied for the vacancy and is available and willing to do the work (and employers must be registered before employing migrant workers) |
| Land (Non-residents) Ordinance 1999 (and Regulations made under it) | - makes provision that persons who; (a) do not have FIS/PRP; and (b) are not ordinarily resident in the Falkland Islands - must hold a licence to hold land |
| Maritime Ordinance 2019 | <ul style="list-style-type: none"> - provides for regulations to be made in relation to health and safety on ships with relevant ownership by persons with FIS (s. 84) - provides for regulations to be made securing employment and providing for terms and conditions of employment of persons with FIS in relation to trans-shipment services (s. 103) - provides for regulations to be made in relation to seafarers' cards and discharge books in respect of Falkland Islands Seafarers – who are defined by reference to Falkland Islands ships and FIS (ss 124SS & 124TT) - makes different provision on jurisdiction for offences under the Ordinance and Maritime Labour Ordinance in connection with persons with FIS and those without (s. 265) |
| Maritime (Registration of Ships) Regulations 2019 | - provides for the registration of ships in the Falkland Islands depending on shareholding by relevant persons with FIS |
| Maritime Labour Ordinance 2019 | - provides for regulations to be made in relation to seafarers' cards and discharge books in respect of Falkland Islands seafarers – who are defined by reference to Falkland Islands ships and FIS (ss. 63 & 64) |
| Public Health Ordinance 1894 | - provides for exemption to be made in relation to medical service charges on the basis of discrimination between persons who have FIS and other persons, and persons who have a PRP and other persons (s. 44) |
| Travel Credit Scheme Ordinance 2019 (and Regulations made under it) | - establishes a scheme for travel credit payments for persons with FIS (which utilises the electoral register as a simple administrative method of confirming that a person ordinarily has FIS). |
| 2. GOVERNMENT POLICY | Summary of rights/benefits/responsibilities |
| Policy for allocation of Government owned housing | Housing is allocated to employees recruited from overseas. Otherwise, the policy provides that only persons with FIS or have held a PRP for at least 4 years are eligible. Those persons must also generally satisfy a minimum period of residence before becoming eligible. |
| Joint Housing Assistance Scheme (Joint Scheme operated with Standard Chartered Bank) | Eligibility for loans under the Scheme is limited to persons who either have FIS or a PRP (and where application is made for a joint mortgage, at least one of the persons must meet that requirement). |
| NOTE – there may be other relevant Government Policies | |

Annex 3 - Quick guide to citizenship and nationality

Citizenship describes the legal relationship between a country and a person. It gives a person rights and responsibilities.

There is considerable overlap between citizenship and nationality, and the terms are sometimes used interchangeably.

It is possible in some circumstances to be a national of a particular country, but not a citizen.

The Falkland Islands is not a country (state), so is not generally considered to have its own nationality (and so the Falkland Islands Government does not issue passports for example).

As a British overseas territory, we have strong links to British nationality. However, a person born in the Falkland Islands does not necessarily have British nationality or British citizenship (that will depend on the circumstances of their birth and their parent or parents' circumstances).

Merely living in the Falkland Islands does not mean that persons acquire British citizenship either. Persons who have lived in the Falkland Islands may be eligible to apply to be "naturalised" as a British overseas territories citizen.

Falkland Islands status might best be seen as the closest thing there is to a "citizenship" which is unique to the Falkland Islands. It is necessary, for example, to have Falkland Islands status to register to vote (subject to certain exceptions).

Most people who have Falkland Islands status will also have one of the types of British nationality, but not all people with Falkland Islands status will have a type of British nationality. However, policies have shifted in recent years to strengthen the link between British nationality and Falkland Islands status – indicating that in future, it may be more difficult to have Falkland Islands status without also having British nationality.

British nationality is split into 6 different types, which are summarised in very general terms below:

| Type of British nationality | Main ways to have or acquire it | Main rights associated with it |
|------------------------------------|---|---|
| British citizen | <ul style="list-style-type: none"> - dependent on the circumstances of your birth and of your parents (which includes certain links with British Overseas Territories) - you can apply to be "naturalised" as a British citizen (you must satisfy requirements as to period of residence etc) - you may be eligible for registration as a British citizen by virtue of another type of British nationality | <ul style="list-style-type: none"> - British passport - Right to live and work in UK free of immigration controls |

| | | |
|--|--|--|
| British overseas territories citizen (BOTC) previously called <i>British Dependent Territories citizen</i> | <p>- you were born before 1.1.1983; and</p> <p>(a) you were a citizen of the United Kingdom Colonies; or</p> <p>(b) you had certain connections with a British overseas territory</p> <p>- you were born after 1.1.1983; and</p> <p>(a) you were born in a BOT; and</p> <p>(b) your parent was BOTC/legally settled in a BOT;</p> <p>OR you were adopted in a BOT by a BOTC;</p> <p>OR you were born outside the BOT to a parent who has gained BOTC otherwise than by descent</p> | <p>- British passport</p> <p>- consular assistance</p> |
| British overseas citizen | <p>-on 1 January 1983; (a) you were a citizen of the United Kingdom Colonies; and you did not become a British citizen on that date</p> <p>-in certain circumstances, if you are stateless</p> | <p>- British passport</p> <p>- consular assistance</p> |
| British subject | <p>-on 1 January 1983 you were;</p> <p>(a) a British subject without citizenship (you had been a British subject on 31.12.1948 and did not become a citizen of the UK & Colonies/Commonwealth Country/Pakistan/Ireland; or</p> <p>(b) a person who had been a citizen of Ireland on 31.12.1948 and made a claim to remain a British subject</p> | <p>- British passport</p> <p>- consular assistance</p> |
| British National (Overseas) | <p>- as a BOT of Hong Kong you registered as a British national (overseas before 1.7.1997)</p> | <p>-British passport</p> <p>-consular assistance</p> |
| British protected person | <p>- on 1.1.1983;</p> <p>(a) you were a citizen or national of Brunei;</p> <p>(b) you were already a British protected person; and</p> <p>(c) you would otherwise have been born stateless in certain circumstances</p> | <p>-British passport</p> <p>-consular assistance</p> |

Annex 4 - Who has Falkland Islands status by virtue of having it under the former Constitution?

In 2009 the Constitution changed the definition of Falkland Islands status, but sought to preserve the position of people who already had Falkland Islands status. This policy was referred to as ensuring that such persons were “no worse off” in connection with their Falkland Islands status under the new Constitution.

The following people therefore have Falkland Islands status by virtue of their status on 31 December 2008:

“(a) a person who immediately before the commencement of this Constitution had Falkland Islands status—

(i) by virtue of section 17(5)(a), (b), (c), (d)(i) or (f) of the former Constitution; or

(ii) by virtue of section 17(5)(e) of the former Constitution—

(aa) as a spouse, and the person is not living apart from his wife or her husband under a decree of a competent court or a deed of separation; or

(bb) as a widow or widower, and the person has not remarried”

To understand what this means, you need to consider the previous provisions of section 17, which were as follows:

“(5) For the purposes of the foregoing provisions of this Chapter a person shall be regarded as belonging to the Falkland Islands if he enjoys Falkland Islands status and a person enjoys such status if that person is—

(a) a citizen who was born in the Falkland Islands; or

(b) a citizen who was born outside the Falkland Islands—

(i) whose father or mother was born in the Falkland Islands; or

(ii) who is domiciled in the Falkland Islands and whose father or mother became, while resident in the Falkland Islands, a citizen by virtue of having been naturalised or registered as such or as a British subject or as a citizen of the United Kingdom and Colonies; or

(c) a citizen by virtue of having been so naturalised or registered while resident in the Falkland Islands; or

(d) a Commonwealth citizen who is domiciled in the Falkland Islands who either

(i) was ordinarily resident in the Falkland Islands for the seven years immediately preceding 1st September 1997; or

(ii) has been granted such status under the provisions of an Ordinance providing for the grant of that status to Commonwealth citizens who have been ordinarily resident in the Falkland Islands for a period of at least seven years and has not, in accordance with the provisions of that Ordinance, lost or been deprived of such status; or

(e) the spouse, widow or widower of such a person as is referred to in any of the preceding paragraphs of this subsection, and, in the case of a spouse, is not living apart from her husband or his wife, as the case may be, under a decree of a competent court or a deed of separation; or

(f) under the age of eighteen years and is the child, stepchild or child adopted in a manner recognised by law, of such a person as is referred to in any of the preceding paragraphs of this subsection.”

Annex 5 - What are the requirements under the Falkland Islands Status Ordinance 1998 for the grant of Falkland Islands status?

The Falkland Islands Status Ordinance 1998 was made in accordance with section 17(5)(f) of the Falkland Islands Constitution, which provides that a person may be granted Falkland Island status:

“...under an Ordinance providing for the grant of that status to person who have been ordinarily resident in the Falkland Islands for a period of at least 7 years, or such period not exceeding 7 years as the Ordinance may prescribe” (and the person hasn’t lost that status)

You can see a copy of the Falkland Island Status Ordinance here: www.legislation.gov.fk/view/html/inforce/2023-06-29/fiord-1998-12

The effect of the Ordinance are summarised below:

1. Any person may apply to the Principal Immigration Officer for Falkland Islands status.
2. The Principal Immigration Officer has some powers to refuse applications if they believe that the person has not been ordinarily resident for 7 years or does not hold one of the types of British citizenship.
3. All other applications for Falkland Islands status must be considered by Executive Council (quarterly).
4. The Falkland Islands Status Ordinance does not specify who may be granted Falkland Island status or must be refused it, but the following is a summary of the policies generally applied in relation to applications:
 - (a) Before 1 May 2023, applications would routinely be rejected unless the applicant had been ordinarily resident in the Falkland Islands for 7 years before the date of their application and was a Commonwealth citizen.
 - (b) Since 1 May 2023, applications are likely to be rejected unless the applicant had been ordinarily resident in the Falkland Islands for 7 years before the date of their application and holds one of the types of British nationality.
 - (c) Generally, the following information has been requested as part of the application process for Falkland Islands status and has been considered in making the decision to grant an application for Falkland Islands status:
 - i. details of the applicant’s partner
 - ii. details of any dependents
 - iii. employment status
 - iv. personal resources (property, businesses, money, pensions etc)
 - v. previous refusal of Falkland Islands immigration permit

- vi. criminal record
- vii. health

- (d) However, with effect from 2022/2023 a simplified approach has been taken based only on: (a) 7 years' ordinary residence; (b) a relevant type of British nationality; and (c) good character (ie consideration of criminal record).
- (e) The approach under paragraph (d) is being taken pending a review of the criteria which should be used for determining applications for Falkland Islands status. That is because it is considered that there is a need for clearer policies in connection with the grant of Falkland Islands status under the Falkland Islands Status Ordinance 1998.
- (f) As noted above, the Ordinance currently permits, in theory, Falkland Islands status to be granted to any person. So the proposed review of criteria for grant of Falkland Islands status is likely to also lead to amendment to the Falkland Islands Status Ordinance 1998 in order to make its provisions clearer. That review has been paused pending consideration of the issues concerning Falkland Islands status as part of the review of the Constitution.

Annex 6 – Comparison table of provisions of the Constitution defining persons who have Falkland Islands status (1985, 1997, 2009)

| 1985 | 1997 | 2009 |
|--|-------------|--|
| <ul style="list-style-type: none"> - is a citizen - was born in FI <p>17(5)(a)</p> | - no change | - no direct equivalent, but see 22(5)(b), (c) and (d) below |
| <ul style="list-style-type: none"> - is a citizen - was born outside FI - is domiciled in FI - whose parent was naturalised/registered as a citizen whilst resident in FI <p>17(5)(b)(i)</p> | - no change | - no direct equivalent, but see 22(5) (b), (c), (d) and (e) |
| <ul style="list-style-type: none"> - is a citizen - was born outside FI - whose parent was born in FI <p>17(5)(b)(ii)</p> | - no change | <ul style="list-style-type: none"> - is a citizen - was born outside FI - whose parent was born in FI - <i>whose parent had FI status at the time of the person's birth</i> <p>22(5)(e)</p> |
| | | <ul style="list-style-type: none"> -<i>was a citizen at birth</i> -<i>was born in or outside FI</i> -<i>whose parent at the time of the person's birth was permanently resident in FI</i> <p>22(5) (b) & (c)</p> |
| | | <ul style="list-style-type: none"> - <i>is a citizen</i> - <i>was born in or outside FI</i> -<i>whose parent at the time of the person's birth</i> <ul style="list-style-type: none"> <i>a. had FI status</i> <i>b. was permanently resident in FI</i> <p>22(5)(d)</p> |

| | | |
|--|--|---|
| <p>- is a citizen by virtue of having been naturalised/ registered as a citizen whilst resident in FI</p> <p>17(5)(c)</p> | <p>- no change</p> | <p>- no equivalent</p> <p>(but person is entitled to permanent right to remain under 22(7))</p> |
| <p>- is a Commonwealth citizen</p> <p>- is domiciled in FI</p> <p>- has been ordinarily resident in FI for not less than 7 years</p> <p>17(5)(d)</p> | <p>- is a Commonwealth citizen</p> <p>- is domiciled in FI</p> <p>- has been ordinarily resident in FI for not less than 7 years <i>immediately before 1 September 1997</i></p> | <p>- no direct equivalent, but see 22(5)(f) below</p> |
| | <p><i>- is a Commonwealth citizen</i></p> <p><i>- is domiciled in FI</i></p> <p><i>- has been granted FI status under an Ordinance which provides for the grant of FI status</i></p> <p><i>- has been ordinarily resident in FI for at least 7 years (as required under the Ordinance)</i></p> <p><i>- has not lost or been deprived of FI status under that Ordinance</i></p> | <p><i>- is a person who has been granted FI status under an Ordinance which provides for the grant of FI status</i></p> <p><i>-has not lost or been deprived of FI status under that)</i></p> <p><i>(the Ordinance may provide that grant is dependent on a period of ordinary residence up to 7 years)</i></p> <p>22(5)(f)</p> |
| <p>- is the wife or widow of any person above</p> <p>- is not living apart from and divorced or legally separated from her husband</p> <p>17(5)(e)</p> | <p>- is the <i>spouse, widow or widower</i> of any person above</p> <p>- is not living apart from and divorced or legally separated from <i>their spouse</i></p> | <p>- no equivalent</p> <p>(but person is entitled to permanent right to remain under 22(7))</p> |
| <p>- is under 18</p> <p>- is the child, stepchild, or adopted child of any person above</p> <p>17(5)(f)</p> | <p>- no change</p> | <p>- no equivalent</p> <p>(but person is entitled to permanent right to remain under 22(7))</p> |
| | | <p>- on 31.12.08 the person had FI status under 17(5)(a), (b), (c), (d)(i) or (f) of the former (1997) Constitution</p> |
| | | <p>- on 31.12.08 the person had FI status under 17(5)(e) of the former (1997) Constitution</p> |

| | | |
|--|--|--|
| | | <ul style="list-style-type: none"> - if FIS is by virtue of being a spouse, is not living apart from and divorced or legally separated from their spouse - if FIS by virtue of being widow/widower, the person has not remarried |
| Citizen = British citizen British overseas territories citizen, British Overseas citizen | | Citizen = British citizen British overseas territories citizen, British Overseas citizen, or person who was at the material time a citizen of the UK and Colonies, a British Dependent Territories citizen or a British subject |